

STAMP DUTIES ACT, 1923

Reprint No. 1—15.1.92

Reprint No. 2—3.2.92 [Schedule and Appendix]

(Reprint No. 2)

SOUTH AUSTRALIA

STAMP DUTIES ACT, 1923

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 3 February 1992.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 November 1984.

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being

Stamp Duties Act, 1923, No. 1569 of 1923 [Assented to 21 November 1923]

as amended by

Stamp Duties Act, 1927, No. 1822 of 1927 [Assented to 21 December 1927]¹
Stamp Duties Amendment Act, 1928, No. 1860 of 1928 [Assented to 17 October 1928]
Lottery and Gaming Act Amendment Act, 1928, No. 1877 of 1928 [Assented to 1 November 1928]
Statute Law Revision Act, 1935, No. 2246 of 1935 [Assented to 19 December 1935]
Stamp Duties Act Amendment Act, 1936, No. 2312 of 1936 [Assented to 19 November 1936]
Stamp Duties Act Amendment Act, 1937, No. 2359 of 1937 [Assented to 19 November 1937]
Stamp Duties Act Amendment Act, 1938, No. 2387 of 1938 [Assented to 25 August 1938]²
Stamp Duties Act Amendment Act, 1941, No. 48 of 1941 [Assented to 27 November 1941]
Stamp Duties Act Amendment Act, 1942, No. 22 of 1942 [Assented to 12 November 1942]
Stamp Duties Act Amendment Act, 1944, No. 30 of 1944 [Assented to 14 December 1944]
Stamp Duties Act Amendment Act, 1945, No. 32 of 1945 [Assented to 3 January 1946]³ (as amended by Stamp Duties Act Amendment Act, 1947, No. 41 of 1947 [Assented to 11 December 1947])
Stamp Duties Act Amendment Act, 1950, No. 16 of 1950 [Assented to 2 November 1950]
Stamp Duties Act Amendment Act, 1952, No. 5 of 1952 [Assented to 2 October 1952]
Statute Law Revision Act, 1952, No. 42 of 1952 [Assented to 4 December 1952]
Stamp Duties Act Amendment Act (No. 2), 1952, No. 55 of 1952 [Assented to 8 January 1953]⁴
Stamp Duties Act Amendment Act, 1953, No. 30 of 1953 [Assented to 10 December 1953]
Stamp Duties Act Amendment Act, 1954, No. 29 of 1954 [Assented to 2 December 1954]
Stamp Duties Act Amendment Act, 1956, No. 8 of 1956 [Assented to 11 October 1956]⁵
Stamp Duties Act Amendment Act, 1959, No. 45 of 1959 [Assented to 17 December 1959]⁶
Stamp Duties Act Amendment Act, 1960, No. 7 of 1960 [Assented to 19 May 1960]⁷
Banks Statutory Obligations Amendment Act, 1962, No. 32 of 1962 [Assented to 1 November 1962] (as amended by Statute Law Revision Act, 1973, No. 77 of 1973 [Assented to 6 December 1973])
Statutes Amendment (Stamp Duties and Motor Vehicles) Act, 1964, No. 24 of 1964 [Assented to 9 October 1964]⁸
Stamp Duties Act Amendment Act, 1965, No. 58 of 1965 [Assented to 23 December 1965]⁹ (as amended by Stamp Duties Act Amendment Act, 1966, No. 59 of 1966)¹⁰
Lottery and Gaming Act Amendment Act (No. 2), 1966, No. 46 of 1966 [Assented to 13 October 1966]¹¹
Stamp Duties Act Amendment Act, 1966, No. 59 of 1966 [Assented to 10 November 1966]¹⁰
Marketable Securities Transfer Act, 1967, No. 14 of 1967 [Assented to 6 April 1967]¹²
Stamp Duties Act Amendment Act, 1967, No. 48 of 1967 [Assented to 19 October 1967]
Stamp Duties Act Amendment Act (No. 2), 1968, No. 26 of 1968 [Assented to 5 December 1968]¹³
Stamp Duties Act Amendment Act, 1968, No. 32 of 1968 [Assented to 12 December 1968]¹⁴ (as amended by Statute Law Revision Act, 1974, No. 42 of 1974)
Stamp Duties Act Amendment Act (No. 3), 1968, No. 56 of 1968 [Assented to 19 December 1968]¹⁵
Stamp Duties Act Amendment Act, 1970, No. 42 of 1970 [Assented to 3 December 1970]
Stamp Duties Act Amendment Act, 1971, No. 71 of 1971 [Assented to 4 November 1971]¹⁶ (as amended by Stamp Duties Act Amendment Act, 1971, Amending Act, 1971, No. 103 of 1971 [Assented to 3 December 1971]¹⁷)
Stamp Duties Act Amendment Act (No. 2), 1971, No. 80 of 1971 [Assented to 18 November 1971]¹⁸
Statute Law Revision Act, 1974, No. 42 of 1974 [Assented to 11 April 1974]
Stamp Duties Act Amendment Act, 1974, No. 90 of 1974 [Assented to 2 December 1974]¹⁹
Stamp Duties Act Amendment Act, 1975, No. 63 of 1975 [Assented to 4 September 1975]²⁰
Statutes Amendment (Gift Duty and Stamp Duties) Act, 1975, No. 76 of 1975 [Assented to 16 October 1975]²¹
Statutes Amendment (Gift Duty and Stamp Duties) Act, 1976, No. 54 of 1976 [Assented to 28 October 1976]²²
Stamp Duties Act Amendment Act, 1976, No. 101 of 1976 [Assented to 16 December 1976]²³
Racing Act, 1976, No. 104 of 1976 [Assented to 16 December 1976]²⁴
Stamp Duties Act Amendment Act, 1977, No. 28 of 1977 [Assented to 28 July 1977]
Stamp Duties Act Amendment Act, 1978, No. 27 of 1978 [Assented to 30 March 1978]²⁵
Stamp Duties Act Amendment Act (No. 2), 1978, No. 89 of 1978 [Assented to 30 November 1978]²⁶
Stamp Duties Act Amendment Act, 1979, No. 66 of 1979 [Assented to 15 November 1979]²⁷
Stamp Duties Act Amendment Act, 1980, No. 111 of 1980 [Assented to 18 December 1980]²⁸
Stamp Duties Act Amendment Act, 1981, No. 70 of 1981 [Assented to 30 October 1981]²⁹
Stamp Duties Act Amendment Act, 1982, No. 15 of 1982 [Assented to 11 March 1982]³⁰
Stamp Duties Act Amendment Act (No. 2), 1982, No. 30 of 1982 [Assented to 8 April 1982]³¹
Stamp Duties Act Amendment Act (No. 3), 1982, No. 95 of 1982 [Assented to 23 December 1982]³²
Stamp Duties Act Amendment Act, 1983, No. 65 of 1983 [Assented to 29 September 1983]³³
Stamp Duties Act Amendment Act (No. 2), 1983, No. 89 of 1983 [Assented to 1 December 1983]³⁴
Statute Law Revision Act, 1984, No. 50 of 1984 [Assented to 24 May 1984]³⁵

Stamp Duties Act Amendment Act, 1985, No. 81 of 1985 [Assented to 22 August 1985]³⁶
Stamp Duties Act Amendment Act, 1986, No. 8 of 1986 [Assented to 13 March 1986]
Stamp Duties Act Amendment Act (No. 2), 1986, No. 100 of 1986 [Assented to 11 December 1986]³⁷
Statutes Amendment (Taxation) Act, 1987, No. 2 of 1987 [Assented to 5 March 1987]
Stamp Duties Act Amendment Act, 1988, No. 21 of 1988 [Assented to 14 April 1988]³⁸
Stamp Duties Act Amendment Act, 1989, No. 8 of 1989 [Assented to 16 March 1989]³⁹
Stamp Duties Act Amendment Act (No. 2), 1989, No. 52 of 1989 [Assented to 14 September 1989]⁴⁰
Stamp Duties Act Amendment Act (No. 3), 1989, No. 64 of 1989 [Assented to 29 October 1989]⁴¹
Stamp Duties Act Amendment Act, 1990, No. 4 of 1990 [Assented to 29 March 1990]
Stamp Duties Act Amendment Act (No. 2), 1990, No. 33 of 1990 [Assented to 26 April 1990]
Stamp Duties Act Amendment Act (No. 3), 1990, No. 36 of 1990 [Assented to 3 May 1990]⁴²
Stamp Duties Act Amendment Act (No. 4), 1990, No. 47 of 1990 [Assented to 8 November 1990]⁴³
Stamp Duties (Concessional Duty and Exemptions) Amendment Act 1991 No. 19 of 1991 [Assented to 18 April 1991]
Stamp Duties (Assessments and Forms) Amendment Act 1991 No. 74 of 1991 [Assented to 12 December 1991]⁴⁴
Motor Vehicles (Historic Vehicles and Disabled Persons' Parking) Amendment Act 1991 No. 54 of 1991 [Assented to 28 November 1991]⁴⁵

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- 1 Came into operation 24 December 1927: *Gaz.* 22 December 1927, p. 1609.
- 2 Came into operation (except s. 4(1)) on assent; s. 4(1) came into operation 16 January 1939: s. 4(2).
- 3 Came to operation (except s. 3) on assent; s. 3 came into operation 3 September 1939: s. 4(1), as amended by the Stamp Duties Act Amendment Act, 1947.
- 4 Came into operation (except ss. 4-6) on assent; ss. 4-6 came into operation 22 January 1953: *Gaz.* 22 January 1953, p. 72.
- 5 Came into operation (except s. 6) on assent; s. 6 came into operation 10 September 1956: s. 6(3).
- 6 Came into operation 1 February 1960: *Gaz.* 7 January 1960, p. 1.
- 7 Came into operation 1 February 1960: s. 3(2).
- 8 Came into operation (except ss. 1, 2 and 9(a)) 19 October 1964: *Gaz.* 15 October 1964, p. 1203; ss. 1, 2 and 9(a) came into operation on assent: s. 2(1).
- 9 Came into operation (except ss. 1-4, 6, 9, 14, 15(b), (l)-(o) and 16) 14 February 1966: s. 3(2); remainder of Act came into operation on assent: s. 3(1).
- 10 Came into operation (except s. 9(1)) 21 November 1966: *Gaz.* 19 November 1966, p. 1882; s. 9(1) came into operation 14 February 1966: s. 9(2).
- 11 Came into operation 8 December 1966: s. 3a as inserted by Act No. 33 of 1972, s. 4.
- 12 Came into operation 1 July 1967: *Gaz.* 25 May 1967, p. 1657.
- 13 Came into operation 1 January 1969: *Gaz.* 5 December 1968, p. 2429.
- 14 Came into operation 1 February 1969: *Gaz.* 12 December 1968, p. 2558.
- 15 Came into operation 1 February 1969: *Gaz.* 19 December 1968, p. 2670.
- 16 Came into operation (except s. 13(3)) 1 December 1971: *Gaz.* 11 November 1971, p. 1928; s. 13(3) came into operation 1 January 1972: *Gaz.* 3 December 1971, p. 2298.
- 17 Came into operation 30 November 1971: s. 1(1).
- 18 Came into operation 1 January 1972: *Gaz.* 23 December 1971, p. 2627.
- 19 Came into operation (except s. 7) 16 December 1974; s. 7 came into operation 2 January 1975: *Gaz.* 2 December 1974, p. 3555.
- 20 Came into operation 18 September 1975: *Gaz.* 18 September 1975, p. 1574.
- 21 Came into operation 14 July 1975: s. 2.
- 22 Came into operation 14 July 1976: s. 2.
- 23 Came into operation (except s. 2) on assent; s. 2 came into operation 16 June 1977: *Gaz.* 16 June 1977, p. 1708.
- 24 Came into operation (except s. 4(1) and Part II, Division 3) 1 January 1977: *Gaz.* 16 December 1976, p. 2252; s. 4(1) and Part II, Division 3 came into operation 1 February 1977: *Gaz.* 27 January 1977, p. 179.
- 25 Came into operation (except ss. 3-6 and 9) on assent: s. 2(1); ss. 3-6 and 9 had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.
- 26 Came into operation 18 January 1979: *Gaz.* 18 January 1979, p. 97.
- 27 Came into operation 1 November 1979: s. 2.
- 28 Came into operation 6 November 1980: s. 2.
- 29 Came into operation 2 November 1981: *Gaz.* 30 October 1981, p. 1423.
- 30 Came into operation 22 March 1982: *Gaz.* 18 March 1982, p. 857.
- 31 Came into operation (except s. 4) 24 December 1981: s. 2; s. 4 came into operation 19 August 1982: *Gaz.* 19 August 1982, p. 512.
- 32 Came into operation 23 December 1982: *Gaz.* 23 December 1982, p. 1935.
- 33 Came into operation 1 January 1984: *Gaz.* 24 November 1983, p. 1515.
- 34 Came into operation 1 January 1984: s. 2.
- 35 Came into operation (except Schedules 1, 3, 4 and 5) 1 November 1984: *Gaz.* 1 November 1984, p. 1398; Schedules 1, 3 and 5 came into operation 1 January 1985: *Gaz.* 13 December 1984, p. 1811; Sched. 4 came into operation 6 July 1985: *Gaz.* 9 May 1985, p. 1398.
- 36 Came into operation 5 August 1985: s. 2.
- 37 Came into operation (except ss. 16(a), (b), (c), (d) and 18(h), (i)) 18 December 1986; remainder of Act came into operation 1 February 1987: *Gaz.* 18 December 1986, p. 1877.
- 38 Came into operation (except s. 3) 7 December 1987: s. 2(1); s. 3 came into operation 14 June 1988: s. 2(2).
- 39 Came into operation 1 February 1988: s. 2.
- 40 Ss. 3 and 7 came into operation 9 August 1989: s. 2(2); ss. 4 and 5 came into operation 1 October 1989: s. 2(3); remainder of Act came into operation 21 September 1989: *Gaz.* 21 September 1989, p. 915.
- 41 Came into operation 28 March 1990: *Gaz.* 15 March 1990, p. 729.
- 42 Came into operation 24 May 1990: *Gaz.* 17 May 1990, p. 1359.
- 43 Came into operation (except s. 5(2)) 1 July 1990: s. 2(1); s. 5(2) came into operation 1 January 1991: s. 2(2).
- 44 Came into operation 12 December 1991: *Gaz.* 12 December 1991, p. 1746.
- 45 Came into operation 3 February 1992: *Gaz.* 23 January 1992, p. 200.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

An Act to consolidate certain Acts relating to stamp duties.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the *Stamp Duties Act, 1923*.

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* * * * * * * * * *

Interpretation

4. In this Act, unless it is otherwise provided or there is something in the context repugnant thereto—

“adhesive stamp” means an adhesive stamp purchased or otherwise obtained from the Commissioner or a distributor of stamps in pursuance of this Act:

“authorized officer” means an authorized officer under section 6(4):

“Commissioner” means any person appointed Commissioner of Stamps under this Act, and includes the Deputy Commissioner of Stamps and any other officer while performing any of the duties or functions of the Commissioner:

“die” means die or other machine or implement used for impressing or imprinting stamps upon documents:

“discretionary trust” means an arrangement, however made, under which a person holds property, and the beneficial interest in all or any part of that property may be vested in a person (in this Act referred to as an “object” of the discretionary trust) on the exercise of a discretion, whether subject to any other contingency or not and whether the exercise of the discretion is obligatory or optional:

“duty” includes every duty chargeable under this Act:

“executed” and “execution”, with reference to instruments not under seal, mean signed and signature:

* * * * * * * * * *

“forge” includes counterfeit:

“impressed stamp” means—

(a) a stamp impressed or imprinted by means of a die;

or

(b) a record imprinted or made by means of any machine or implement, under the direction of the Commissioner in pursuance of this Act:

“instrument” includes every written document:

“marketable security” includes—

- (a) any stock, share or other security of any municipal or other corporation, company or society;
 - (b) any debenture, debenture stock, bond, note or other security of a government or of any municipal or other corporation, company or society, whether constituting a charge on the assets of the government, municipal or other corporation, company or society or not;
 - (ba) any interest under a deed approved for the purposes of Division 6 of Part IV of the *Companies (South Australia) Code*, other than an interest of a kind excluded by regulation for the purposes of this Act;
 - (c) any stock or other security of such a kind as is or can be bought or sold through the agency of a member of any stock exchange in the Commonwealth;
 - (d) a right in respect of a marketable security;
- and
- (e) any other security of a kind prescribed for the purposes of this Act:

“material” means any sort of material upon which words or figures can be expressed:

“money” includes all sums expressed in Australian or foreign currency:

“records” means records of any kind (whether in documentary or other form):

“right in respect of a marketable security” means a right, whether actual, prospective or contingent, of any person to have issued to him a marketable security, whether or not on payment of any money or other consideration for the marketable security:

“savings bank” means any of the following banks:

- (a) the Australia and New Zealand Savings Bank Limited;
- (b) the Commonwealth Savings Bank;
- (c) the National Australia Savings Bank Limited;
- (d) the State Bank of South Australia;
- (e) Westpac Savings Bank Limited:

“stamp” means an adhesive stamp or an impressed stamp:

“stamped” means bearing an impressed stamp or having an adhesive stamp affixed:

“stock” means any share in the stocks or funds of any State or government, or in the capital stock or funded debt of any company, corporation or society (whether incorporated in this State or elsewhere):

“unit” in relation to a unit trust scheme means a right or interest (however described) of a beneficiary under a unit trust scheme:

“unit trust scheme” means an arrangement made for the purpose, or having the effect, of providing for persons having funds available for investment facilities for the participation by them, as beneficiaries under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property subject to the trust:

“write”, “written” and “writing” include every mode in which words or figures can be expressed upon material.

Stamp duties to be charged and to be recoverable as a debt

5. (1) Subject to the exemptions contained in the second schedule and other provisions of this Act, there shall be charged, for the use of the Crown, the several stamp duties specified in that schedule and elsewhere in this Act upon and for the several instruments therein set forth, and also such other duties as are specified in that schedule or in any other provision of this Act.

(2) The duty chargeable upon any such instrument shall be a debt due to the Crown from every party who executes the instrument, and shall be recoverable in the name of the Commissioner on behalf of the Crown from any such party or parties in any court of competent jurisdiction.

* * * * *

(4) Where by any provision of this Act any duty is expressed to be payable by any person or by any person of a class, the duty shall be a debt due to the Crown from such person and shall be recoverable from such person in accordance with subsection (2) as if it were duty chargeable upon an instrument executed by that person.

Application of Stamp Duties Act Amendment Act, 1980

5a. (1) Subject to subsection (2), this Act, as in force immediately before the commencement of the *Stamp Duties Act Amendment Act, 1980*, applies in relation to instruments executed before that commencement.

(2) The amendments made to this Act by sections 9, 13 and 15(b), (f) and (g) of the *Stamp Duties Act Amendment Act, 1980*, apply in relation to instruments executed before or after the commencement of that Act.

(3) This Act, as amended by the *Stamp Duties Act Amendment Act, 1980*, applies in relation to instruments executed or brought into existence after the commencement of that Act.

Refund of tax overpaid

5ab. Where the Commissioner finds that as a consequence of amendments effected to this Act tax has been overpaid, the Commissioner may, on the Commissioner's own initiative, refund to the person who paid the tax the amount of the overpayment.

Liability to duty of instruments outside South Australia

5b. Subject to this Act, duty shall be chargeable in respect of an instrument that is outside South Australia if the instrument relates (wherever it was executed) to property situated, or any matter or thing done or to be done, in South Australia.

The Commissioner, Deputy Commissioner and staff

6. (1) There shall be—

(a) a Commissioner of Stamps;

(b) a Deputy Commissioner of Stamps;

and

(c) such other staff as is necessary for the administration of this Act.

(2) The Commissioner, the Deputy Commissioner and the other staff referred to above shall be Public Service employees.

(3) The powers of the Commissioner are also exercisable by the Deputy Commissioner.

(4) The following persons are authorized officers for the purposes of this Act—

(a) the Commissioner and the Deputy Commissioner;

and

(b) any Public Service employee appointed by the Commissioner to be an authorized officer.

Actions by or against the Commissioner

6aa. The Commissioner may sue and be sued in the name of the “Commissioner of Stamps”.

Secrecy provisions

6a. A person shall not divulge or communicate information that is or was acquired by the person by reason of being, or having been, employed in, or in connection with, the administration of this Act except—

(a) with the consent of the person from whom the information was obtained;

(b) in connection with the administration of this Act;

(c) to—

(i) the Commonwealth Commissioner of Taxation;

or

(ii) an officer of this or another State, or of a Territory, employed in the administration of laws relating to taxation;

(d) to the Commissioner for Corporate Affairs;

or

(e) for the purposes of legal proceedings under this Act.

Penalty: \$10 000.

Commissioner may act as State taxation officer

6b. The Commissioner may perform the functions of a State taxation officer under Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth.

Distribution of stamps, commission, etc.

7. (1) The Governor may appoint any person a distributor of stamps.

(2) Any such distributor may be remunerated by a commission upon the value of stamps purchased for disposal by him, or by salary, or by any other allowance, and upon the sale of stamps to any such distributor such discount may be allowed as may be authorized by regulations made under this Act.

(3) A bank paying duty to the Treasurer in respect of cheque forms issued pursuant to section 48a may be allowed commission at the rate authorized by regulations made under this Act as if—

(a) the bank had been duly appointed a distributor of stamps;

(b) the amount of the duty so paid were money paid by the bank for the purchase of stamps.

(4) The Treasurer may, out of the General Revenue and without any further appropriation than this section, pay to any bank the commission allowed under subsection (3) in respect of all duty paid to the Treasurer by the bank in respect of cheque forms.

Stamps to be provided

8. The Treasurer shall, for denoting the several duties chargeable under this Act, provide such stamps or dies as may be required for the purposes of this Act, and may do any other act which may be necessary for effectually collecting the duties.

PART II

GENERAL PROVISIONS WITH RESPECT TO STAMP DUTIES

Payment and denotation of stamp duties

9. All duties chargeable upon any instrument shall be paid and denoted according to the provisions of this Act.

Duty, how denoted

10. Except where express provision is made to the contrary, all duties shall be denoted by impressed stamps only and, where it is provided that any duty may be denoted by an adhesive stamp, the duty may be denoted by an impressed stamp or by an adhesive stamp.

Appropriate stamps to be used

11. (1) A stamp which, by any word or words on the face of it, is appropriated to any particular description of instrument shall not be used for any instrument of another description.

(2) An instrument falling under the particular description to which any stamp is so appropriated shall not be deemed duly stamped unless it is stamped with the stamp so appropriated.

(3) No instrument shall be deemed duly stamped with an adhesive stamp unless the words "DUTY STAMP" are printed on and form part of the stamp.

Adhesive stamps to be cancelled

12. (1) An instrument, the duty upon which is required or permitted by this Act to be denoted by an adhesive stamp, shall not be deemed duly stamped with an adhesive stamp unless—

(a) the person required by this Act to cancel the adhesive stamp cancels it by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectually cancels the stamp and renders it incapable of being used for any other instrument;

or

(b) it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

(2) Where two or more adhesive stamps are used to denote the duty upon an instrument, each stamp shall be cancelled in the manner described above.

(3) Every person who, being required by this Act to cancel an adhesive stamp, neglects or refuses duly and effectually to do so in the manner described above shall be liable to a penalty not exceeding twenty dollars.

How instruments to be stamped

13. (1) Every instrument written upon stamped material shall be written in such manner, and every instrument partly or wholly written before being stamped shall be so stamped, that the stamp may appear on the face of the instrument and cannot be used for, or applied to, any other instrument written upon the same piece of material.

(2) If more than one instrument is written upon the same piece of material, each one of those instruments shall be separately and distinctly stamped with the duty with which it is chargeable.

Instruments to be separately charged

14. Except where express provision is made to the contrary—

- (a) any instrument containing or relating to several distinct matters shall be separately and distinctly charged with duty in respect of each of such matters as if the portion of the instrument containing or relating to each such matter were a separate instrument;
- (b) any instrument made for any consideration in respect of which it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration, shall, in addition to being charged with *ad valorem* duty, be charged with duty in respect of the last mentioned consideration as if it were an instrument made only for that consideration.

Duty to be calculated on value in Australian money

15. Where any instrument is chargeable with *ad valorem* duty in respect of any money in any currency other than Australian currency, the duty shall be calculated on the value of that money in Australian currency according to the current rate of exchange at the date of the instrument.

Ascertainment of value of property subject to powers, etc.

15a. In any case in which it is necessary to ascertain the value of any property for the purpose of assessing *ad valorem* duty on any instrument executed after the passing of the *Stamp Duties Act Amendment Act, 1941*, the existence of any overriding power of revocation or reconveyance in that or any other instrument may be disregarded in determining the value of the property.

Duty in force when instrument produced for stamping to apply

16. The duty chargeable upon any instrument shall be calculated according to the rates in force at the time when the instrument is produced to the Commissioner for the purpose of being stamped.

Duty payable in respect of instruments conditionally executed

17. (1) Subject to subsection (2), an instrument that is executed conditionally by one or more parties is liable to duty as if it had been executed unconditionally.

(2) If—

- (a) duty is paid on or in respect of an instrument that was executed conditionally by one or more of the parties;
- (b) the Commissioner is satisfied that, by reason of non-fulfilment of the condition, or recall of the execution, the instrument will never come into force,

the Commissioner will, on application by a party who paid the duty and production of the instrument, cancel any stamp on the instrument and refund the amount of the duty paid.

Duty on other instruments

18. Where the duty with which any instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of the last mentioned duty may, on production of both the instruments, be denoted in such manner as the Commissioner thinks fit upon the first mentioned instrument.

All facts to be truly set forth

19. (1) All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, shall be fully and truly set forth in the instrument.

(2) Every person who, with intent to defraud the Crown (and the suppression of any such fact or circumstance shall be *prima facie* evidence of such an intent)—

(a) executes any instrument in which all the facts and circumstances affecting the liability to duty that arises upon the instrument are not fully and truly set forth;

or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all those facts and circumstances,

shall be liable to a penalty of not less than one hundred dollars and not more than one thousand dollars.

Certain copies dutiable

19a. (1) Notwithstanding any other provision of this Act, but subject to subsection (2), where an original instrument chargeable with duty under this Act has not been duly stamped or has been destroyed without being duly stamped, any copy of the instrument shall, for the purposes of this Act, be chargeable with duty and penalty (if applicable) as if it were the original and be deemed to have been executed by the person or persons who executed the original at the same time as the original was executed.

(2) Where an original instrument or a copy of an instrument is duly stamped under this Act, the Commissioner shall, upon application and production of that original or copy, stamp any copy or further copy or the original, as the case may be, with a particular stamp denoting that it is duly stamped.

(3) In this section—

“copy” includes—

(a) a duplicate or counterpart of an original instrument;

(b) an instrument that acknowledges, evidences or records the existence or terms of an original instrument;

or

(c) an instrument that acknowledges, evidences or records the transaction or a part of the transaction to which an original instrument relates or related.

Penalty for not duly stamping

20. (1) Except where express provision is made to the contrary, an instrument may be stamped without penalty—

(a) where it was executed in South Australia—within two months after its execution;

or

(b) where it was executed outside South Australia—within two months after its receipt in South Australia or within six months after its execution, whichever period first expires.

(1a) Except where express provision is made to the contrary, an instrument that is unstamped or insufficiently stamped after the expiration of the period referred to in subsection (1) shall, in addition to the unpaid duty, be charged with a penalty of—

(a) fifty dollars;

or

(b) an amount equal to 10 per centum of the amount of the unpaid duty for each month for which the instrument has remained unstamped or insufficiently stamped from the day when it was executed until the amount equals the amount of the unpaid duty,

whichever is the greater amount.

(2) The payment of any such penalty shall be denoted on the instrument by a particular stamp.

(3) The Commissioner may, at any time after the execution of any instrument, remit any penalty or any part thereof incurred in respect of the instrument.

(4) If an instrument that is chargeable with stamp duty is not produced to the Commissioner for stamping within the period prescribed by subsection (1), any person who executed the instrument, or on whose behalf it was executed, is guilty of an offence.

Penalty: \$10 000.

(5) Subsection (4) does not apply in relation to—

(a) an instrument executed, or brought into existence, before 7th December, 1987;

(b) an instrument that has been duly stamped in some other manner authorized by this Act within the relevant period.

(6) It is a defence to a charge against subsection (4) to prove that the defendant delivered the instrument or had it delivered into the possession of some other party, or an agent for some other party, to the instrument in the reasonable expectation that the other party would have it stamped.

(7) The commission of an offence against subsection (4) does not affect the validity of the instrument in relation to which the offence was committed.

(8) Where a body corporate is guilty of an offence against subsection (4), each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed by that subsection unless it is proved that he or she could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.

Admissibility of unstamped instruments in evidence

21. Upon the production of any instrument chargeable with duty as evidence in any civil proceedings in any part of South Australia, the officer whose duty it is to read the instrument shall call the attention of the presiding judge, special magistrate or justices to any omission or insufficiency of the stamp thereon.

* * * * *

Except as aforesaid no unstamped instrument to be received in evidence

22. No instrument chargeable with duty executed in any part of South Australia, or relating, wherever it was executed, to any property situated, or to any matter or thing done or to be done, in any part of South Australia, shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful or available at law or in equity, unless duly stamped.

Assessment of duty

23. (1) The Commissioner may (whether requested to do so or not) express an opinion on either or both of the following questions:

- (a) whether duty is payable in a particular case;
- (b) what amount of duty is payable in a particular case.

(1a) The Commissioner may require a person requesting an opinion to furnish such information as the Commissioner thinks necessary for the purposes of the opinion and may refuse to give the opinion until that information has been furnished.

(1b) The Commissioner shall not express an opinion in respect of an unexecuted instrument.

(2) If the Commissioner is of the opinion that an instrument is not chargeable with duty, the instrument may be stamped with a particular stamp denoting that it is not chargeable with duty.

(3) If the Commissioner is of the opinion that an instrument is chargeable with duty, he shall assess the duty with which it is, in his opinion, chargeable and, when the instrument is duly stamped in accordance with the assessment of the Commissioner, it may also be stamped with a particular stamp denoting that it is duly stamped.

(4) Every instrument stamped with the particular stamp denoting either that it is not chargeable with duty or that it is duly stamped shall be admissible in evidence and shall be available for all purposes, notwithstanding any objection relating to duty.

(5) Notwithstanding anything contained in this section—

- (a) any instrument upon which the duty has been assessed by the Commissioner shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment of the Commissioner;
- (b) the stamping after the execution thereof of any instrument prohibited by this Act from being so stamped shall not be lawful.

Objections to, and appeal against, assessments

24. (1) Any person who is dissatisfied with the assessment of the Commissioner may, on payment of duty in accordance therewith—

- (a) within fourteen days after the date of the Commissioner's assessment, forward to the Treasurer a statement of the grounds of his objection to the assessment;

or

- (b) within twenty-one days after the date of the Commissioner's assessment, appeal to the Supreme Court.

(2) The Treasurer may, on receipt of a statement of grounds of objection, confirm or modify the Commissioner's assessment and, if the assessment is reduced, any excess duty paid by the objector will be refunded together with interest on the excess, from the date of payment of the duty, at the rate fixed under subsection (10).

(3) If upon the confirmation or modification by the Treasurer of the Commissioner's assessment the person is still dissatisfied, he may, within twenty-one days after the Treasurer's decision is communicated to him, appeal to the Supreme Court.

(4) For the purpose of any appeal to the Supreme Court under this section, the appellants may require the Commissioner to state and sign a case setting forth the question upon which his opinion was required and the assessment made by him.

(5) The Commissioner shall thereupon state and sign a case accordingly and deliver it to the appellant and, upon his application, the case may be set down for hearing in the Supreme Court.

(6) Upon the hearing of such a case (at least seven days notice of which shall be given to the Commissioner), the Court shall determine the question submitted and assess the duty, if any, chargeable under this Act.

(7) If the Court finds that the appellant has paid duty that is not chargeable under this Act, or has paid duty in excess of the amount chargeable under this Act, the Court will order the Commissioner—

(a) to refund the amount that was not properly chargeable together with interest on that amount, from the date of payment of the duty, at the rate fixed under subsection (10);

and

(b) to pay the appellant's costs of the appeal.

(8) If the assessment of the Commissioner is confirmed by the Court, the costs incurred by the Commissioner in relation to the appeal shall be ordered by the Court to be paid by the appellant to the Commissioner.

(9) For the purposes of this section, the Supreme Court may consist of one judge only.

(10) The Minister may, by notice in the *Gazette*—

(a) fix a rate of interest in respect of refunds of duty under this section;

or

(b) vary a rate of interest previously fixed under this section.

* * * * *

Records open to inspection

26. All public officers having in their custody any rolls, books, records, papers, documents or proceedings, the inspection of which may tend to secure any duty, or to the proof or discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorized to do so by the Commissioner to inspect all such rolls, books, records, papers, documents and proceedings and to take, free of charge, such notes and extracts as the authorized person thinks necessary.

No instrument to be enrolled or registered unless stamped

27. No person whose office it is to enrol, register or enter in or upon any rolls, books or records any instrument chargeable with any duty, or the memorial of any instrument chargeable with any duty, shall enrol, register or enter any such an instrument or memorial unless the instrument is duly stamped.

Power to obtain information and evidence

27a. (1) For the purposes of determining whether duty is payable in a particular case or what amount of duty is payable or for the purposes of inquiring into any other matter relevant to the enforcement of this Act, the Commissioner may, by notice in writing, require any person—

(a) to furnish the Commissioner, either orally or in writing, with such information as the Commissioner requires;

- (b) to attend for examination before the Commissioner or any authorized officer;
or
- (c) to produce any instrument or records in the person's custody relevant to the subject matter of the inquiry.
- (2) The Commissioner may require the information or evidence to be given on oath or verified by statutory declaration.
- (3) The regulations may authorize reimbursement of expenses in accordance with a prescribed scale to persons required under this section to attend for examination before the Commissioner or an authorized officer.
- (4) Where an instrument or record is produced under this section, the Commissioner or authorized officer—
- (a) may take and retain possession of the instrument or record for such period as is necessary to enable it to be inspected and copies of, or extracts from, it to be made or taken by or on behalf of the Commissioner;
- and
- (b) shall permit a person who would be entitled to inspect the instrument or record if it were not in the possession of the Commissioner or authorized person to inspect the instrument or record at any reasonable time.
- (5) Where a person has a lien on an instrument or record, nothing done under this section prejudices the lien.
- (6) A person who fails, without reasonable excuse, to comply with a requirement of the Commissioner under this section is guilty of an offence.

Penalty: \$10 000.

Access to records, etc.

27b. (1) For the purposes of ascertaining whether the provisions of this Act are being or have been complied with, or for any other purpose related to the enforcement of this Act, the Commissioner or an authorized officer may at any reasonable time—

- (a) enter premises;
- and
- (b) inspect and take extracts from, or make copies of, any instrument or record in the premises that appears to be relevant to the assessment of duty.
- (2) A person who—
- (a) hinders the Commissioner or an authorized officer in the exercise of powers conferred by this section;
- or
- (b) fails to afford such assistance to the Commissioner or authorized officer as is necessary to enable the carrying out of an inspection under this section,
- is guilty of an offence.

Penalty: \$10 000.

Warrant to search and enter premises

27c. (1) If a magistrate is satisfied, on the application of the Commissioner (which must be supported by an affidavit or other sworn evidence), that there is reasonable ground for suspecting that an instrument or record relevant to the assessment of duty may be found in certain premises, the magistrate may issue a warrant authorizing an authorized officer together with any other person named in the warrant—

- (a) to enter those premises (using such force as is necessary for the purpose);
- (b) to search the premises and to break open and search anything in the premises in which an instrument or record may be stored or concealed;

and

- (c) to take possession of, on behalf of the Commissioner, any instrument or record that appears to be relevant to the assessment of duty.

(2) Where an authorized officer takes possession of an instrument or record under this section, that person or a person to whom it is subsequently delivered—

- (a) may retain possession of the instrument or record for such period as is necessary to enable it to be inspected, and copies of, or extracts from, it to be made or taken by or on behalf of the Commissioner;

and

- (b) shall permit any other person who would be entitled to inspect the instrument or record if it were not retained under paragraph (a) to inspect the instrument or record at any reasonable time.

(3) Where a person has a lien on an instrument or record, nothing done under this section prejudices the lien.

(4) A person shall not obstruct any person acting in execution of a warrant under this section or assisting in the execution of such a warrant.

Penalty: \$10 000.

(5) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.

Power to retain instruments

27d. Where an instrument chargeable with duty under this Act, but unstamped or insufficiently stamped, comes into the possession of the Commissioner, the Commissioner shall retain possession of the instrument until the full amount of the duty payable in respect of the instrument, together with any penalty, is paid.

Commissioner not liable for acting *bona fide* in exercise of his powers or discharge of his duties

27e. No action shall lie against the Commissioner by reason of the exercise or discharge or the purported exercise or discharge by him in good faith of his powers or duties under this Act or in respect of any matter arising out of the exercise or discharge or the purported exercise or discharge of those powers or duties.

PART III

SPECIAL PROVISIONS WITH RESPECT TO CERTAIN STAMP DUTIES

* * * * *

*Agreements***Adhesive stamp may be used for agreement not under seal**

29. The duty upon an agreement not under seal may be denoted by an adhesive stamp, which shall be cancelled by one of the parties executing the agreement.

When agreement comprised of several letters

30. In any case where an agreement is constituted by two or more letters, the agreement and all the letters shall be deemed to be duly stamped if any one of the letters is duly stamped with the duty payable upon the agreement.

Certain contracts to be chargeable as conveyances on sale

31. (1) Any contract or agreement in writing for the sale of any estate or interest in any property (including goods, wares and merchandise not being goods, wares and merchandise agreed to be sold in the ordinary course of trade by a party whose business is or includes the sale of such goods, wares and merchandise) except—

(a) property which cannot vest in the purchaser except upon registration of a conveyance;

* * * * *

or

(c) stock or marketable securities or shares in the stock, funds or capital of any corporation, company or society,

shall be charged with the same *ad valorem duty* as if it were an actual conveyance on sale of the estate or interest contracted or agreed to be sold.

* * * * *

(2) Where duty has been duly paid on a contract or agreement in accordance with subsection (1), any conveyance made to the purchaser in pursuance of the contract or agreement shall not be chargeable with any duty, and the Commissioner, upon application and upon the production of the contract or agreement duly stamped, shall stamp the conveyance with a particular stamp denoting that it is duly stamped.

(3) For the purposes of this section, a receipt for the payment, in pursuance of any contract or agreement, of any purchase money shall, in the absence of any further or other instrument being or evidencing the contract or agreement, be charged with *ad valorem* duty.

(4) If any such contract or agreement as is mentioned in subsection (1) is afterwards rescinded or annulled, or for any other reason is not substantially performed or carried into effect so as to operate as, or to be followed by, a conveyance, the person who paid the *ad valorem* duty upon the contract or agreement shall be deemed to be possessed of stamped material rendered useless by being inadvertently spoiled, within the meaning of section 106, and the provisions of that section shall apply accordingly.

(5) This section shall not apply to, or in respect of, any hire-purchase agreement within the meaning of this Act.

Duty on agreements for "walk in walk out" sales of land used for primary production

31a. Notwithstanding section 31, if—

- (a) a contract or agreement in writing provides for the sale as a going concern of a pastoral holding, farm, orchard or other land used wholly or mainly for primary production, together with stock, implements and other chattels held or used in connection therewith;
 - (b) the contract or agreement sets out separately the consideration payable for the land and the consideration payable for stock, implements or other chattels;
- and
- (c) the Commissioner certifies in writing on the contract or agreement that he is of the opinion that the consideration specified as being payable for the land represents the value of that land,

then the contract or agreement in writing shall be chargeable with stamp duty as if it related solely to the land mentioned therein and not to the stock, implements and other chattels.

Rental Business

Interpretation

31b. For the purposes of the provisions of this Act falling under the heading of *Rental Business*, unless the contrary intention appears—

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*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*

“goods” includes all chattels personal and any fixture severable from the realty, but does not include money, livestock or things in action:

*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
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*	*	*	*	*	*	*	*	*	*

“registered person” means a person registered under section 31e:

“related corporation”, in relation to a corporation, means a corporation that is, by virtue of section 7(5) of the *Companies (South Australia) Code*, deemed to be related to the first mentioned corporation:

“rental business” means the business of—

- (a) letting, bailing, or otherwise giving rights to use, goods other than books;
- or

(b) acquiring the rights of the lessor, bailor or other disponent under any agreement or arrangement for the letting, bailing or hiring of goods other than books, or under any other similar agreement or arrangement with respect to the use of goods other than books,

but does not include the business of giving to any person the right to use goods in conjunction with a lease of, or licence to occupy or use, any land.

*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*

Persons carrying on rental business to be registered

31d. (1) Subject to subsection (3), a person shall not carry on any rental business in South Australia (whether or not he also carries on any other business), or advertise or hold himself out in any way as carrying on any such business, whether the head office or principal place of business of that person is in South Australia or elsewhere, unless he is a registered person.

Penalty: Five thousand dollars.

(2) Any person who, in the course of any business, undertakes negotiations in South Australia with the object of transacting any rental business shall be deemed to carry on rental business in South Australia, whether or not he has an established place of business in South Australia.

(3) Subsection (1) shall not apply to a person acting as an agent or employee of a registered person by reason only of the fact that he is so acting.

(4) A person who is convicted of an offence that is a contravention of subsection (1) shall, in addition to any other penalty that may be imposed, be liable to pay a penalty equal to double the amount of duty that he should have paid if at the material time he had been a registered person and he had lodged with the Commissioner, in relation to the business in respect of which he is convicted, a statement as required by section 31f(1).

Registration

31e. (1) The Commissioner shall register any person who applies in the prescribed form for registration under this section.

(2) A registered person who is no longer required to be registered may, by notice in the prescribed form given to the Commissioner, cancel his registration under this section.

Statement to be lodged by registered person

31f. (1) Subject to this Act, and in particular to section 31i, a registered person shall—

(a) not later than the twenty-first day of each month, lodge with the Commissioner a statement in the prescribed form setting out the total amount received during the preceding month in respect of his or her rental business;

and

(b) at the time of lodging the statement with the Commissioner, pay to the Commissioner, as duty on that statement, a sum equal to 1.8 per centum of the amount (if any) by which the amount referred to in paragraph (a) exceeds \$2 000.

(2) Where—

(a) a registered person has been carrying on rental business;

and

(b) the total amount received by him during the last preceding period of twelve months in respect of that rental business did not exceed \$24 000,

the registered person may, instead of lodging a statement with the Commissioner under subsection (1), by notice in writing given to the Commissioner, elect to lodge with the Commissioner, not later than the thirty-first day of March in each year, a statement showing the total amount received by him in the period commencing on the first day of February in the last preceding year and ending on the thirty-first day of January in the year in which the statement is lodged in respect of his rental business (not including any amount previously included in a statement lodged with the Commissioner pursuant to subsection (1)(a)) and to pay to the Commissioner as duty on that statement an amount equal to 1.8 per centum of the amount (if any) by which the total amount exceeds \$24 000.

(3) The registered person who has given to the Commissioner a notice of election under subsection (2) shall be liable to pay and shall pay to the Commissioner at the time of lodging the statement the amount of duty on the statement in accordance with the notice of election but, where the total amount so received by the registered person in that period does not exceed \$24 000, the registered person shall not be liable to pay to the Commissioner any duty on that statement.

(4) Any election made by a registered person pursuant to subsection (2) may be cancelled with effect from and in relation to the period of twelve months commencing on the first day of February next following, by notice in writing under the hand of the registered person given to the Commissioner or by notice in writing under the hand of the Commissioner given to the registered person, if the Commissioner is satisfied that the total amount received by the registered person who has made the election was in excess of \$40 000 in any period of twelve months.

* * * * *

(6) A registered person who contravenes or fails to comply with any of the requirements of this section shall be liable to a penalty not exceeding five hundred dollars and shall be liable to pay a penalty equal to double the amount of any duty that would have been payable if that requirement had not been contravened or had been complied with, as the case may be.

Amounts to be included in statement

31g. The amounts to be shown in any statement required to be lodged under section 31f include—

* * * * *

(d) in relation to rental business, amounts received by, or on behalf of, the registered person in respect of the use of goods, where—

(i) the right to use the goods was granted in South Australia;

(ii) any of the negotiations by, or on behalf of, the registered person with respect to the grant of the right to use the goods were undertaken in South Australia;

or

(iii) the goods were delivered in South Australia to the person to whom the right to use those goods was granted;

- (e) amounts that, although not constituting payments in respect of the use of goods, are received by, or on behalf of, the registered person in respect of his or her rental business.

Manner of denoting duty on statement

31h. The duty paid by a registered person on a statement lodged with the Commissioner under section 31f shall be denoted by cash register imprint on the statement or in such other manner approved by the Auditor-General as is notified by the Commissioner in the *Gazette*.

Matter not to be included in statement

31i. (1) Nothing contained in section 31f shall require a registered person to include in a statement required by that section to be lodged with the Commissioner any amount in respect of—

- (a) a transaction entered into by him in the course of any business carried on by him as a pawnbroker licensed under the *Pawnbrokers Act, 1888*;
- (b) the sale of any goods (other than where there is an agreement, arrangement or understanding that the person to whom the goods are sold may, at a later time, sell the goods back to the registered person);

* * * * *

- (g) the grant, by a corporation to a related corporation, of the right to the use of goods beneficially owned by that first mentioned corporation;

or

- (h) any business transacted by him outside South Australia, where—

- (i) no negotiations leading to the transaction of the business took place in South Australia;

and

- (ii) the amounts obtained or the goods obtained by the other party to the transaction were obtained for the purpose of being wholly expended or wholly used outside South Australia.

(1a) Where a registered person receives in excess of \$2 000 per month for or in relation to the use of goods under a lease, bailment, licence or other agreement that provides for the registered person to be responsible for the servicing of those goods, the registered person may deduct from the excess, on account of the cost of servicing those goods—

- (a) an amount not exceeding 40 per centum of the excess or such higher proportion of the excess as is fixed by the Commissioner, on the application of the registered person, in respect of particular goods where, in the opinion of the Commissioner, the higher proportion is properly attributable to the cost of servicing the goods;

or

- (b) the actual cost of servicing the goods,

whichever is the lesser.

(2) A registered person shall supply to the Commissioner such particulars of the matters referred to in this section as are prescribed or as are in any particular case required by the Commissioner.

Registered person to keep records

31j. (1) A registered person shall keep or cause to be kept in South Australia sufficient books and records to enable all amounts required to be set out in a statement to be lodged by him with the Commissioner under section 31f to be accurately calculated.

Penalty: Five hundred dollars.

(2) A registered person shall keep the books and records referred to in subsection (1), together with all working papers used in making the calculations referred to in that subsection, available for inspection for a period of three years from the month or year, as the case may be, to which each statement in which such amounts are set out relates or for such lesser period as the Commissioner may in any particular case allow.

Penalty: Five hundred dollars.

Calculation by other methods

31k. (1) Where the Commissioner is satisfied that—

(a) it is not reasonably practicable to calculate precisely any amount which is to be set out in the statement of any registered person required to be lodged under section 31f, he may agree to accept from that person statements in which that amount is calculated in such a manner or on such a basis as he thinks fit;

or

(b) in the circumstances of a particular case, it is not reasonable to require statements to be lodged by the registered person in each month, he may agree to accept statements at such times and relating to such periods as he thinks fit.

(2) Where, pursuant to subsection (1), the Commissioner agrees to accept from a registered person a statement—

(a) in which an amount is calculated in a manner or on a basis different from that required under section 31f;

or

(b) at a time, or relating to a period, otherwise than in accordance with that section, the registered person shall, at the time of lodging that statement with the Commissioner, pay to the Commissioner the amount of duty that would be payable on that statement if it were lodged by him with the Commissioner in accordance with that section.

(3) The Commissioner may, by notice in writing served personally or by post on a registered person, cancel any agreement made pursuant to subsection (1) and, upon the day specified in the notice as the day on which the agreement is cancelled, that agreement shall have no further force or effect in relation to that registered person.

Passing on of rental duty

31l. (1) Subject to this section, a registered person or any person acting on his behalf shall not add the amount of any duty or of any part of the duty payable by the registered person as such under this Act to any amount payable by any other person with whom he has entered into or is conducting any rental business, whether by agreement or otherwise, or otherwise demand or recover or seek to recover any such first mentioned amount from that other person.

Penalty: Two hundred dollars.

(2) In the event of a contravention of subsection (1)—

(a) the court by which the defendant is convicted shall, in addition to imposing a penalty for the offence, order the defendant to refund to the other person referred to in that subsection any such amount which has been paid by that other person;

or

(b) the other person referred to in that subsection may recover any such amount from the registered person, or person to whom he paid it, by action in a court of competent jurisdiction as if it were a debt due to him from that person.

(3) The Governor may by proclamation—

(a) exempt a class of transactions from the application of this section;

or

(b) vary or revoke any such exemption.

* * * * *

Default assessments

31m. (1) Where the Commissioner has reason to believe or suspect that a person—

(a) has failed to lodge a statement as required by section 31f or by an agreement under section 31k;

or

(b) has failed to pay any duty, or has paid insufficient duty, in respect of a rental business as required by this Act,

the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents the duty that is payable in respect of the relevant rental business during the relevant period.

(2) Where the Commissioner makes an assessment under this section—

(a) the Commissioner must cause notice in writing of the assessment to be served on any registered person who is in default;

and

(b) the person is, subject to any determination made on an objection or appeal under section 24, liable to pay any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to subsection (4).

(3) A person liable to pay duty as a result of an assessment under this section who fails to pay the amount specified in the notice of assessment on or before the date specified in the notice is guilty of an offence.

Penalty: \$2 000 plus an amount equal to twice the amount of the Commissioner's assessment under subsection (1).

(4) Where a person is liable to pay duty by virtue of an assessment under this section, the person is liable to pay further duty, by way of penalty, of an amount equal to twice the amount of that duty.

(5) The Commissioner may, at any time, remit any further duty, or part of any further duty, payable by way of a penalty under this section.

* * * * *

Unregistered persons

31n. (1) The Commissioner may enter into an agreement with a person—

(a) who carries on rental business;

and

(b) who is not required to be registered,

under which the Commissioner approves the person for the purposes of this section and the person undertakes to lodge statements and pay duty on those statements as if the person were required to be, and were in fact, registered.

(2) A party to an agreement under this section may, by notice in writing to the other party, terminate the agreement at any time.

(3) Where—

(a) a person who carries on rental business is neither approved under this section nor registered;

and

(b) in the course of that business, another person (being a person domiciled or resident in the State) pays an amount to that person under an agreement that relates to the use of goods,

the other person shall within 21 days after making that payment—

(c) furnish to the Commissioner a return, in the form approved by the Commissioner, stating the amount of that payment;

and

(d) pay as duty on that return a sum equal to 1.8 per centum of that amount.

(4) A person who fails to furnish a return as and when required by subsection (3) is liable to pay a penalty equal to double the amount of duty that would have been payable if the return had been furnished.

(5) A person who fails to pay duty as and when required by subsection (3) is liable to pay a penalty equal to double the amount of duty payable.

(6) Subsection (3) does not apply—

(a) where the total amount that is, or will be, payable under the agreement does not exceed \$100;

or

(b) where—

(i) the agreement was made with a person carrying on rental business outside the State;

(ii) none of the negotiations leading to the agreement were carried out in the State;

and

(iii) the goods were obtained for the purpose of being used exclusively outside the State.

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*	*	*	*	*	*	*	*	*	*

Annual Licences

Interpretation

32. In this Act—

“assurance or insurance business” means and includes—

- (a) the granting or issuing of any life, personal accident, fire, fidelity, guarantee, livestock, plate glass, marine or other assurance or insurance policies;
- (b) the acceptance, either directly or indirectly, of any premium, renewal premium or consideration for, or in respect of, the granting or issuing or keeping alive or in force of any life, personal accident, fire, fidelity, guarantee, livestock, plate glass, marine or other policy;
- (c) the receiving of any letter or declaration of interest attaching to any life, personal accident, fire, marine or other policy issued in South Australia or elsewhere;

or

- (d) the carrying out, by means of assurance or insurance effected out of South Australia, of any written, verbal or implied contract or undertaking to effect assurance or insurance:

“company” includes corporation and society, whether corporate or unincorporate:

“firm of persons” includes any association of underwriters carrying on marine assurance or insurance business through a managing underwriter solely:

“general insurance business” means any assurance or insurance business not relating to life insurance policies:

“life insurance policy” does not include a policy covering personal accident or workers compensation or a policy complying with Part IV of the *Motor Vehicles Act, 1959*:

“policy” includes any instrument in the nature of a policy, an open policy, an insurance cover or any instrument in any manner covering any assurance or insurance:

“premium” means any amount paid or payable in respect of any assurance or insurance, and includes—

- (a) any levy charged to a policy holder;
- (b) an instalment of premium.

Annual licence required for insurance business

33. A company, person or firm of persons must not carry on any assurance or insurance business in any year in South Australia, whether the head office or principal place of business of that company, person or firm is in South Australia or elsewhere, unless the company, person or firm has taken out an annual licence for that year in a form determined by the Commissioner.

Penalty: \$10 000.

Application for annual licence

34. (1) A company, person or firm of persons requiring an annual licence must make a written application to the Commissioner in a manner and form determined by the Commissioner and supported by such evidence as the Commissioner may require.

(2) Any information or statement contained in the application must be verified by statutory declaration made—

(a) where the applicant is a natural person—by that person;

(b) where the applicant is a firm—by a member of the firm;

(c) where the applicant is a company—by a member of the board or committee of management of the company;

or

(d) in any case—by a person authorized by the applicant and approved by the Commissioner.

(3) A company, person or firm of persons that applies for an annual licence must, at the time of lodging the application, pay to the Commissioner the duty (if any) payable under the second schedule on the annual licence.

(4) A company, person or firm of persons that fails to comply with any of the requirements of this section is guilty of an offence.

Penalty: \$10 000.

Issuing and term of annual licence

35. (1) The Commissioner is authorized to issue an annual licence on payment of the duty (if any) payable on the annual licence.

(2) An annual licence comes into force on the date specified in the licence (which may be a date earlier than the date of issue of the licence) and remains in force until 31 December of the year in which it is issued.

Monthly returns in respect of general insurance business

36. (1) A company, person or firm of persons that carries on general insurance business in South Australia, whether the head office or principal place of business of that company, person or firm is in South Australia or elsewhere, must lodge with the Commissioner a return in a form determined by the Commissioner, supported by such evidence as the Commissioner may require, not later than the fifteenth day of the month following each month in which the company, person or firm carries on such business.

(2) Any information or statement contained in a monthly return must be verified by statutory declaration in the same way as is required for an application for an annual licence.

(3) A company, person or firm of persons that lodges a monthly return must, at the time of lodging the monthly return, pay to the Commissioner the duty (if any) payable under the second schedule on the monthly return.

(4) A company, person or firm of persons that fails to comply with any of the requirements of this section is guilty of an offence.

Penalty: \$10 000.

Denoting of duty

37. The duty paid on an annual licence or a monthly return must be denoted by cash register imprint on the licence or return.

Duty payable on acquisition of insurance business

38. Where a company, person or firm of persons acquires contractual rights and obligations of, or in connection with, the assurance or insurance business of some other company, person or firm, the acquiring company, person or firm is liable to pay to the Commissioner the amount of any unpaid duty in respect of premiums received or in any manner charged in account (whether directly or by agents) by the other company, person or firm after the end of the period in respect of which such duty was last paid by the other company, person or firm as if the acquiring company, person or firm had received or charged in account those premiums.

Records to be kept in respect of insurance business

39. (1) A company, person or firm of persons that is or has been required to hold an annual licence must keep or cause to be kept in South Australia sufficient books and records to enable all premiums and other amounts required for calculating duty on an annual licence or monthly return to be accurately calculated.

(2) The books and records referred to in subsection (1) together with all working papers used in calculating the duty must be kept available for inspection for a period of five years from the year or month, as the case may be, to which the books, records or papers relate or for such lesser period as the Commissioner may in any particular case allow.

(3) A company, person or firm of persons that fails to comply with any of the requirements of this section is guilty of an offence.

Penalty: \$10 000.

Default assessments

40. (1) Where the Commissioner has reason to believe or suspect that a company, person or firm of persons—

(a) has failed to lodge an application for an annual licence, or a monthly return, as required under this Act;

or

(b) has failed to pay any duty, or has paid insufficient duty, on an annual licence or monthly return under this Act,

the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents the duty that would be payable assuming that the company, person or firm had duly taken out an annual licence, or lodged a monthly return, as required under this Act, or the duty that should have been paid on an annual licence or monthly return taken out or lodged by that company, person or firm, as the case may be.

(2) Where the Commissioner makes an assessment under this section of duty that would be payable by a company, person or firm assuming that it had duly taken out an annual licence, or lodged a monthly return, as required under this Act, the Commissioner may create an annual licence or monthly return for that purpose and any annual licence or monthly return so created has effect as if it had been taken out or lodged by the company, person or firm.

(3) Where the Commissioner makes an assessment under this section—

(a) the Commissioner must cause notice in writing of the assessment to be served on the company, person or firm to which the assessment relates;

and

- (b) the company, person or firm is, subject to any determination made on an objection or appeal under section 24, liable to pay any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to section 41.

Further duty by way of penalty

41. (1) Where a company, person or firm is liable to pay duty by virtue of a default assessment under section 40, the company, person or firm is liable to pay further duty, by way of a penalty, of an amount equal to twice the amount of that duty.

(2) Where a company, person or firm makes a late payment of duty on an annual licence or monthly return, the company, person or firm is liable to pay further duty, by way of a penalty, of an amount of—

(a) \$50;

or

(b) an amount equal to 10 per cent of the amount of the duty on the annual licence or monthly return for each month for which the company, person or firm delayed in making the payment until the amount equals the amount of the unpaid duty,

whichever is the greater.

(3) For the purposes of subsection (2), the time for payment of duty on an annual licence or monthly return will be taken to be the time before which the company, person or firm is required to take out the annual licence or lodge the monthly return under this Act.

(4) The Commissioner may, at any time, remit any further duty, or part of any further duty, payable by way of a penalty under this section.

Refund of overpaid duty

42. (1) Where a company, person or firm of persons claims that it has overpaid duty on an annual licence or a monthly return, the Commissioner must, on application by that company, person or firm within three years after the day on which the overpayment was alleged to have been made, make an assessment of whether an overpayment was made and, if so, the amount overpaid.

(2) Where the Commissioner makes an assessment under this section—

(a) the Commissioner must cause notice in writing of the assessment to be served on the company, person or firm to which the assessment relates;

and

(b) the company, person or firm is, subject to any determination made on an objection or appeal under section 24, entitled to a refund of any duty determined by the Commissioner under the assessment to have been overpaid.

Duty on policies effected outside South Australia

42aa. (1) Every company, person or firm of persons which is not required to take out an annual licence under section 33 and which obtains, effects or renews, outside South Australia, a policy of assurance or insurance wholly or partly in respect of any property in South Australia, or any risk, contingency or event occurring in South Australia, shall, within one month of obtaining, effecting or renewing that policy, lodge with the Commissioner a return in the prescribed form containing such particulars of that policy and such other information as may be prescribed or as the Commissioner may in any particular case require.

(2) The Commissioner may allow a rebate of the duty payable on that proportion of any premium which is, in his opinion, properly attributable to the assurance or insurance of any property outside South Australia or any risk, contingency or event occurring outside South Australia.

(3) The person lodging such a return shall, upon lodgment, pay to the Commissioner the duty payable thereon, which shall be denoted by cash register imprint on the receipt issued therefor.

(4) Any company, person or firm of persons which or who fails to comply with any of the provisions of this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one hundred dollars and, by way of additional penalty, an amount equal to double the amount of the duty which would have been payable if the provisions of this section had been complied with.

(5) Subsection (1) does not apply to any policy of life assurance.

Unlicensed insurers

42ab. (1) The Commissioner may enter into an agreement with an insurer who is not required to take out an annual licence under this Act under which—

(a) the Commissioner approves the insurer for the purposes of this section;

and

(b) the insurer undertakes to pay duty as if the insurer were required to be licensed and were in fact licensed under this Act.

(2) A party to an agreement under this section may, by notice in writing to the other party, terminate the agreement at any time.

(3) Where an insurer is neither licensed under this Act nor approved under this section, a person who pays a premium to the insurer shall, within 21 days after the end of the month in which the premium was paid—

(a) furnish a return to the Commissioner stating the amount of premium;

and

(b) pay stamp duty on the return calculated by reference to the amount of the premium and the appropriate rate prescribed by the second schedule in relation to annual licences.

Penalty: \$10 000.

(4) This section does not apply in relation to a levy paid under the *Workers Rehabilitation and Compensation Act, 1986*.

(5) In this section—

“insurer” means a person, firm or company that carries on assurance or insurance business in the State.

Application for Motor Vehicle Registration

Interpretation

42a. In this Act—

“applicant” means a person by or on whose behalf an application to register a motor vehicle or an application to transfer the registration of a motor vehicle is made:

“application to register a motor vehicle” means an application to register a motor vehicle made under the *Motor Vehicles Act, 1959*, and includes an application so made to renew the registration of a motor vehicle:

“application to transfer the registration of a motor vehicle” means an application to transfer the registration of a motor vehicle made under the provisions of the *Motor Vehicles Act, 1959*:

“commercial motor vehicle” has the same meaning as in the *Motor Vehicles Act, 1959*:

“dealer” means a person licensed as a dealer under the *Second-hand Motor Vehicles Act, 1983*:

“list price” means—

(a) in relation to a motor vehicle, the price fixed by the manufacturer, importer or principal distributor as the retail selling price in the State of a motor vehicle of the make and model in question;

or

(b) in relation to optional equipment, the additional price so fixed if the vehicle is to be sold with the optional equipment:

“market value”, in relation to a motor vehicle, means the amount for which the motor vehicle might reasonably be sold, free of encumbrances, in the open market:

“motor vehicle” and “trailer” have the same meanings as those expressions respectively have in the *Motor Vehicles Act, 1959*:

“new motor vehicle” means a motor vehicle not previously registered in this State or elsewhere:

“optional equipment”, in relation to a motor vehicle for which there is a list price, means equipment or a feature of the vehicle that is not covered by that list price, being—

(a) a particular kind of transmission;

(b) power steering;

or

(c) any other prescribed equipment or feature:

“policy of insurance” means a policy of insurance under Part IV of the *Motor Vehicles Act, 1959*:

“primary producer” has the same meaning as in the *Motor Vehicles Act, 1959*:

“second-hand motor vehicle” means a motor vehicle previously registered in this State or elsewhere.

Stamp duty on application for motor vehicle registration

42b. (1) For the purposes of this Act, the value of a motor vehicle is—

(a) in the case of an application to register a new motor vehicle for which there is a list price—

(i) if the motor vehicle has no optional equipment, the list price of the vehicle;

or

(ii) if the motor vehicle has optional equipment, the list price of the motor vehicle plus the list price or, if there is no list price, the actual price of the equipment;

(b) in the case of an application to transfer the registration of a second-hand motor vehicle upon sale of the vehicle, the consideration for the sale or the market value of the motor vehicle, whichever is the higher;

or

(c) in any other case, the market value of the motor vehicle.

(1aa) The applicant for registration, or transfer of registration, of a motor vehicle shall state in the application the value of the motor vehicle as at the date of the application.

(1a) The amount of stamp duty—

(a) payable upon an application to register a motor vehicle shall be an amount calculated by the addition of—

(i) the amount prescribed by the second schedule as the component payable in respect of registration;

and

(ii) the amount prescribed by the second schedule as the component payable in respect of a policy of insurance;

or

(b) payable upon an application to transfer the registration of a motor vehicle shall, subject to subsection (1b), be the amount prescribed by the second schedule as the component payable in respect of registration and, in the case of such an application, no additional component shall be payable in respect of a policy of insurance.

(1b) Where, after the commencement of the *Stamp Duties Act Amendment Act (No. 2), 1990*—

(a) the registered owner of a motor vehicle applies to transfer the registration into joint names with his or her spouse;

or

(b) a motor vehicle is registered in the names of two persons who are each other's spouses and they apply to transfer the registration into the name of one of them,

the amount of stamp duty payable upon the application is one-half of the amount that would, but for this subsection, have been payable pursuant to subsection (1a).

(1c) In subsection (1b)—

“spouse” of a person includes a *de facto* husband or wife of the person who has been cohabiting continuously with the person for at least five years.

(2) The amount payable upon an application in accordance with subsection (1a) or (1b) shall be paid by the applicant to the Registrar of Motor Vehicles at the time of making the application.

(2a) The duty paid by any person—

(a) on an application to register a motor vehicle shall be denoted by impressed stamp or cash register imprint, or by both, on the certificate or interim certificate of registration relating to that motor vehicle issued by the Registrar or on such form or forms as may be approved by the Commissioner;

and

(b) on an application to transfer the registration of a motor vehicle shall be denoted by impressed stamp or cash register imprint, or by both, on such form or forms as may be approved by the Commissioner.

(3) The Registrar of Motor Vehicles shall furnish the Commissioner, at least once in every month, with a statement showing details of amounts received by him as stamp duty on applications to register, and to transfer the registration of, motor vehicles, and showing separately the amounts so received upon applications to register motor vehicles in respect of policies of insurance, and shall pay all amounts of stamp duty received by him to the Treasurer who shall—

(a) place to the credit of the General Revenue—

(i) all amounts representing the stamp duty received by the Registrar on applications to register motor vehicles except amounts paid upon such applications in respect of policies of insurance;

and

(ii) all amounts representing the stamp duty received by the Registrar upon applications to transfer the registration of motor vehicles;

and

(b) place to the credit of the Hospitals Fund kept at the Treasury all amounts representing stamp duty received by the Registrar upon applications in respect of policies of insurance.

(3a) The moneys placed to the credit of the Hospitals Fund in accordance with subsection (3)(b) shall be used for the provision, maintenance, development and improvement of public hospitals within the meaning of section 16 of the *State Lotteries Act, 1966*, and equipment for such hospitals in such amounts as the Treasurer shall upon the recommendation of the Chief Secretary (but subject to appropriations for the purpose which Parliament may from time to time determine) approve.

(4) Where the Commissioner is not satisfied that the amount stated in an application to register a motor vehicle or to transfer the registration of a motor vehicle is the value of the motor vehicle as at the date of the application, the Commissioner may, on the basis of the Commissioner's own valuation of the motor vehicle, assess the duty payable.

(5) The applicant shall, at the request of the Commissioner, furnish such information as the Commissioner may reasonably require for the purpose of making a valuation under subsection (4).

Penalty: \$2 000.

(6) Where the Commissioner assesses duty under subsection (4), the Commissioner—

(a) may recover the amount of any additional duty payable;

or

(b) must refund, or authorize the Registrar of Motor Vehicles to refund, any amount of overpaid duty,

and the Registrar of Motor Vehicles must, at the request of the Commissioner, make an appropriate endorsement on the application for registration or transfer of registration.

(6a) Where additional duty is payable on an assessment under subsection (4), the applicant is liable to pay further duty, by way of penalty, of an amount equal to twice the amount of any additional duty payable.

(6b) The Commissioner may, at any time, remit any further duty, or part of any further duty, payable by way of penalty under this section.

(7) The Commissioner or the Registrar of Motor Vehicles may require an applicant who claims to be entitled to an exemption from, or reduction in, stamp duty under this section—

(a) to state that fact on the application;

and

(b) to provide such information as the Commissioner or Registrar may require for the purpose of determining the applicant's claim.

* * * * *

Default assessments

42c. (1) Where the Commissioner has reason to believe or suspect that a person—

(a) has failed to lodge an application for registration, or transfer of registration, of a motor vehicle as and when required by this Act;

or

(b) has failed to pay any duty, or has paid insufficient duty, in respect of the registration, or transfer of registration, of a motor vehicle as required by this Act,

the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents the duty that is payable under this Act.

(2) Where the Commissioner makes an assessment under this section—

(a) the Commissioner must cause notice in writing of the assessment to be served on any person who is in default;

and

(b) the person is, subject to any determination made on an objection or appeal under section 24, liable to pay any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to subsection (4).

(3) A person liable to pay duty as a result of an assessment under this section who fails to pay the amount specified in the notice of assessment on or before the date specified in the notice is guilty of an offence.

Penalty: \$2 000 plus an amount equal to twice the amount of the Commissioner's assessment under subsection (1).

(4) Where a person is liable to pay duty by virtue of an assessment under this section, the person is liable to pay further duty, by way of penalty, of an amount equal to twice the amount of that duty.

(5) The Commissioner may, at any time, remit any further duty or part of any further duty, payable by way of penalty under this section.

Power to refund duty overpaid

42d. (1) In any case where the Commissioner is satisfied that duty has been paid where no duty was payable, or that too much duty has been paid, upon an application to register a motor vehicle or upon an application to transfer the registration of a motor vehicle, the Commissioner may refund, or authorize the Registrar of Motor Vehicles to refund, to the applicant the duty or the excess of duty so paid, as the case may be.

(1a) Without limiting the effect of subsection (1), in any case where the Commissioner is satisfied that, before the expiration of three months after registration of a motor vehicle or of the transfer of registration of a motor vehicle that motor vehicle has been returned by the applicant to the person from whom the motor vehicle was acquired and accepted by that person, or that the registration or transfer of registration (as the case may be) was made in error, the Commissioner may refund, or authorize the Registrar of Motor Vehicles to refund, to the applicant the stamp duty paid in respect of the application in pursuance of which that motor vehicle was registered by the Registrar of Motor Vehicles or in respect of the application in pursuance of which the registration of that motor vehicle was transferred.

(2) The money required to make any refund authorized by section 42b or this section shall be paid out of the General Revenue of the State and this Act shall be sufficient authority without any other appropriation for any such payment.

Regulations

42e. In addition to any power by any other section conferred on the Governor to make regulations as to any matter, the Governor may make any regulations which may be necessary or convenient for carrying out any of the provisions of sections 42a, 42b, 42d and this section or for better effecting the objects of those sections and in particular (without limiting the effect of this section) for prescribing exemptions additional to or in substitution for or repealing or varying any of the exemptions to the item in the second schedule commencing "APPLICATION to Register a Motor Vehicle".

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*Bills of Exchange, Promissory Notes, Coupons and Interest Warrants***Interpretation**

46. In this Act—

"bill of exchange" means and includes—

- (a) any bill of exchange, draft, order, cheque, payment order and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned;
- (b) any order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available or upon any condition or contingency which may or may not be performed or happen;

and

- (c) any order for the payment of any sum of money at any stated period, and also any order for the payment of any sum of money by any person at any time after the date thereof, sent or delivered by the person making the same to the person by whom the payment is to be made or to any person on his behalf:

“payment order” means a payment order within the meaning of Division I of Part VIII of the *Cheques and Payment Orders Act 1986* of the Commonwealth:

“promissory note” means and includes—

- (a) any document or writing (except a bank note) containing or importing a promise to pay any sum of money;

and

- (b) any note promising the payment of any sum of money out of any particular fund which may or may not be available or upon any condition or contingency which may or may not be performed or happen.

Duty not to be chargeable after certain date

46a. (1) Notwithstanding any other provisions of this Act, duty shall not be chargeable in respect of a bill of exchange (other than a cheque or payment order) or promissory note issued on or after the first day of January, 1984.

(2) Notwithstanding any other provisions of this Act, duty is not chargeable in respect of a cheque or payment order issued on or after a day to be fixed by proclamation.

Duty on bills, notes, etc., how denoted

47. The duty on a bill of exchange (including a draft payable on demand), promissory note, coupon or interest warrant may be denoted by an adhesive stamp and, in the case of a bill of exchange or promissory note drawn or made out of South Australia, the duty shall be denoted by an adhesive stamp only.

Stamping of bill of exchange where terms of bill are changed

47a. (1) Where a bill of exchange has been accepted as payable otherwise than as drawn, the bill shall be deemed for the purposes of this Act to be a bill of exchange drawn as accepted.

(2) Where a bill of exchange has been endorsed and the endorsement prevents the endorsee as a holder of the bill from requiring payment as drawn, the bill shall be deemed for the purposes of this Act to be a bill of exchange drawn as endorsed.

(3) Where the drawer of a bill of exchange or any other person has expressly or by implication signified that the bill may be accepted otherwise than as drawn, the bill shall be deemed for the purposes of this Act to have been drawn as so signified.

(4) Where under any agreement express or implied a bill of exchange is to be paid otherwise than as drawn or accepted, the bill shall be deemed for the purposes of this Act to have been drawn or accepted, as the case may be, in accordance with the agreement.

(5) Where a bill of exchange becomes liable to *ad valorem* duty by the operation of any of the provisions of this section and has already been stamped with any *ad valorem* duty under this Act, the amount of *ad valorem* duty to which, but for this subsection, it would be liable is reduced by the amount of the *ad valorem* duty under this Act with which it has already been stamped.

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When bills, notes, etc., to be stamped

48. (1) The adhesive stamp denoting the duty upon any bill of exchange, promissory note, coupon or interest warrant shall be cancelled by the person by whom the bill of exchange, promissory note, coupon or interest warrant is drawn, made or issued before he delivers it out of his hands, custody or power.

(2) In the case of a draft payable on demand, the stamp may be affixed and cancelled by the maker or holder thereof.

(3) If any bill of exchange for the payment of money on demand, or any coupon or interest warrant, chargeable only with duty of ten cents or less is presented for payment unstamped or insufficiently stamped, the person to whom it is so presented may affix thereto a proper adhesive stamp and may cancel it as if he had been the drawer of the bill or the issuer of the coupon or interest warrant and may, upon so doing, pay the sum mentioned in the bill, coupon or interest warrant and charge the duty or part thereof, as the case may be, in account against the person by whom the bill was drawn or the coupon or interest warrant was issued, or deduct the duty or part thereof from that sum, and the bill, coupon or interest warrant shall, so far as respects the duty, be deemed good and valid; but nothing in this subsection shall relieve any person from any penalty he may have incurred in relation to the bill, coupon or interest warrant.

(4) If any bill of exchange or promissory note, other than a bill of exchange or promissory note payable on demand, has not been stamped or has been insufficiently stamped, the holder may, within fourteen days from the date thereof, by paying the duty or the deficiency to the Commissioner, have the bill of exchange or promissory note duly stamped.

(5) Every holder of any unstamped bill of exchange, promissory note, coupon or interest warrant drawn or issued out of South Australia shall, before he presents it for payment or endorses, transfers or in any manner uses, negotiates or pays it, cause it to be duly stamped; but—

- (a) if at the time when any such bill, note, coupon or interest warrant comes into the hands of any *bona fide* holder thereof there is affixed thereto an adhesive stamp appearing to be duly cancelled, the stamp shall, so far as it relates to the holder, be deemed to be duly cancelled, although it does not appear to be so affixed or cancelled by the proper person;
- (b) if at the time when any such bill, note, coupon or interest warrant comes into the hands of any *bona fide* holder thereof there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for the holder to cancel the stamp as if he were the person by whom it was affixed and, upon his so doing, the bill, note, coupon or interest warrant shall be deemed duly stamped and shall be as valid and available as if the stamp had been cancelled by the person by whom it was affixed,

but nothing in this subsection shall relieve any person from any penalty under this Act.

Licences for duty paid cheques and payment orders

48a. (1) The Commissioner may, in his discretion, issue to a bank a licence enabling the bank to do either or both of the following:

- (a) to issue (whether within or outside South Australia) cheque forms having the words "STAMP DUTY PAID" printed on the cheque forms;

or

- (b) to endorse on cheques drawn outside South Australia the words "STAMP DUTY PAID".

(2) Every such licence—

- (a) shall be in such form and contain such terms, conditions, limitations and restrictions as the Commissioner thinks fit;
- (b) in particular shall contain such conditions as the Commissioner thinks proper with respect to the payment of duty, at the rate fixed in respect of cheques by this Act, which the bank holding the licence shall make to the Commissioner in respect of cheque forms issued or cheques endorsed by the bank pursuant to the licence;
- (c) shall be revocable at any time at the will of the Commissioner.

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(4) Any money due to the Commissioner by a bank in accordance with a licence issued under this section may be recovered by the Commissioner by action brought by him in any court having jurisdiction in common law actions up to the amount claimed.

(5) The power to make regulations conferred on the Governor by section 112 shall include power to make regulations with respect to the printing and control of cheque forms for use under this section, with respect to the endorsement of cheques under this section and generally with respect to licences and the duties of persons holding licences under this section.

(5a) Notwithstanding any other provision of this Act, but subject to subsection (5b), a cheque drawn on a form—

- (a) that was issued to a customer by a bank pursuant to a licence in force under this section;

or

- (b) that was issued to a customer by a bank and impressed with a stamp for the amount of duty payable in respect of cheques at the time of stamping,

shall be deemed to be duly stamped, notwithstanding that the rate of duty payable in respect of cheques increased before the time at which the cheque was drawn.

(5b) Subsection (5a) does not apply to a cheque where—

- (a) the form on which the cheque was drawn was issued by a bank before the day specified for the purposes of this paragraph in a proclamation;

and

- (b) the cheque was drawn after the day specified for the purposes of this paragraph in the proclamation, being a day not earlier than the thirtieth day after the publication of the proclamation.

(5c) A proclamation may be made for the purposes of subsection (5b) in relation to a particular increase in the rate of duty payable in respect of cheques and subsequent proclamations may be made for the purposes of that subsection in relation to subsequent increases in that rate of duty.

(5d) Where a proclamation referred to in subsection (5b) is made and, by virtue of the operation of the proclamation and that subsection, subsection (5a) does not apply to a cheque, the cheque shall be deemed to have been duly stamped if—

- (a) an adhesive stamp or impressed stamp is applied to the cheque, being a stamp for the amount of the increase in duty that became payable between the time of the issue of the form on which the cheque was drawn and the time at which the cheque was drawn;

or

(b) the Commissioner signifies, in writing, that he is satisfied that proper arrangements have been made with him for payment of the additional duty referred to in paragraph (a).

(5e) Notwithstanding any other provision of this Act, a cheque drawn outside South Australia and endorsed with the words "STAMP DUTY PAID" pursuant to a licence under this section shall be deemed to be duly stamped.

(6) In this section—

"bank" means—

(a) any bank carrying on the business of banking in the State, including any bank owned or carried on by the Crown in right of the Commonwealth or the State;

and

(b) any company or other corporation which holds money on current account on behalf of its customers or clients and pays such money on unconditional written orders payable on demand and addressed by the customers or clients to the company or corporation:

"cheque" includes any such unconditional written order as is mentioned in paragraph (b) of the definition of "bank" in this section.

(7) This section also applies in relation to payment orders as if—

(a) references to a bank were references to a non-bank financial institution within the meaning of the *Cheques and Payment Orders Act 1986* of the Commonwealth;

(b) references to a cheque were references to a payment order;

and

(c) references to a cheque form were references to a form for a payment order.

Penalty on taking unstamped bill or promissory note

49. Any person who takes or receives from any other person any bill of exchange or promissory note not duly stamped, in payment or as a security or by purchase or otherwise, without causing it to be duly stamped after receiving it shall be liable to a penalty not exceeding forty dollars.

Where bill or note deemed to be drawn

50. A bill of exchange or promissory note purporting to be drawn or made out of South Australia shall, for the purposes of this Act, be deemed to have been so drawn or made, although it may, in fact, have been drawn or made within South Australia.

Bills or notes issued unstamped

51. (1) Any person who issues, endorses, transfers, uses, negotiates, presents for payment or pays any bill of exchange, promissory note, coupon or interest warrant chargeable with duty and not duly stamped shall be liable to a penalty not exceeding forty dollars.

(2) Any person who takes or receives from any other person any bill of exchange, promissory note, coupon or interest warrant not duly stamped, in payment, as a security, by purchase or otherwise, shall not be entitled to recover thereon, or to make it available for any purpose, until it is duly stamped.

Bills in sets

52. When a bill of exchange is drawn in a set, according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the duly stamped bill, be exempt from duty and, upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

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*Duty on Transactions on Branch Registers***Returns to be lodged by companies**

59b. (1) In this section—

“exempt entry” means—

(a) an entry made in a prescribed register;

or

(b) an entry made in a register to give effect to an instrument of transfer which is a sufficient instrument of transfer under Division 8 of Part IV of the *Companies (South Australia) Code* or the corresponding provision of a corresponding law of a proclaimed State or Territory of the Commonwealth and which is deemed, under section 90e(3), to be duly stamped:

“prescribed register” means a register kept at a place which is within South Australia or a proclaimed State or Territory of the Commonwealth or within any other proclaimed country.

(2) The Governor may, by proclamation, declare a State or Territory of the Commonwealth or any country to be a proclaimed State, Territory or country for the purposes of this section and may, by subsequent proclamation, vary or revoke any such proclamation.

(3) A company must, not later than the fourteenth day of each month, lodge with the Commissioner in such manner and form as the Commissioner may require a return setting out—

(a) if the principal register of the company is in South Australia—particulars of all entries in a register of the company (other than exempt entries) copies of which have been received by the company during the preceding calendar month under section 262(5) of the *Companies (South Australia) Code*;

(b) if the principal register of the company is not in South Australia—particulars of all entries in a register of the company (other than exempt entries) relating to a transfer of shares executed or registered outside South Australia during the preceding calendar month.

(4) A company that is required to lodge a return under subsection (3) shall furnish the Commissioner with such other evidence and information as he may in any case require to enable him to verify the correctness of the duty paid on the return.

(5) Every such return shall be liable to the same duty as would, in aggregate, have been payable if the transfers to which the entries relate were transfers executed in South Australia of shares on a register situated in South Australia.

(5a) Where duty has already been paid under this Act on a transfer with respect to which a return has been lodged under this section, an amount equal to the amount of duty already paid on the transfer will not be chargeable on the return.

(6) The duty chargeable on a return lodged in accordance with this section shall be payable by the company that lodges the return under subsection (3) on the lodging of the return and shall be denoted by cash register imprint on the receipt issued therefor.

(7) A payment by a company of duty under this section shall be deemed to be a payment on behalf of the parties to whom the entries in the return relate and the amount of duty attributable to any entry may be deducted by the company from any money payable by the company to any such party or recovered by suit or action from any such party as a debt.

(8) A company that contravenes, or fails to comply with, any requirement of this section shall be liable—

(a) to a penalty, fixed by the Commissioner, not exceeding five hundred dollars;

and

(b) to an additional penalty equal to double the amount of duty that would have been payable if the requirement had not been contravened or had been complied with.

(9) The Commissioner may remit wholly or in part the penalty referred to in subsection (8).

(10) A company shall at all reasonable times permit the Commissioner or any inspector or other officer authorized by him to enter on premises to inspect and take copies of papers, records and documents for, or relating to, the entries made in a branch register.

(11) A company or any director or employee of a company who fails or refuses to comply with any of the provisions of subsection (10) shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Conveyances and Conveyances on Sale

Interpretation

60. In this Act—

“conveyance” includes—

(a) every conveyance, assignment, transfer or declaration of trust and every application under the *Real Property Act, 1886*;

(b) every decree or order of any court, judge or commissioner;

(c) every other application or request of any kind;

and

(d) every other assurance or instrument of any kind,

by which or by virtue of which or by the operation of which, whether upon registration or otherwise, or by the issue of a certificate of title in pursuance of which, any real or personal property or any estate or interest in any such property is assured to, or vested in, any person, and also includes a surrender to the Crown of any lease or other interest in land, in order that the Crown may grant to a person other than the surrenderor a lease of, or other interest in, the same land or any part thereof; and “to convey” has a meaning coextensive with the meaning of “conveyance”, as extended by this section:

“conveyance on sale” includes—

(a) every conveyance, assignment, transfer or application under the *Real Property Act, 1886*;

(b) every decree or order of any court, judge or commissioner;

(c) every other application or request of any kind;

and

(d) every other assurance or instrument,

by which or by virtue of which any real or personal property, upon the sale thereof, is legally or equitably transferred to, or vested in, the purchaser or any other person on his behalf or by his direction, and also includes—

(e) every application for a foreclosure order under the *Real Property Act, 1886*;

and

(f) every lease for which any consideration other than the rent reserved may be paid or agreed to be paid (but only so far as such consideration is concerned).

Value of property conveyed or transferred

60a. (1) Subject to subsection (2), a reference in this Act (other than in Part IV) to the value of property conveyed or transferred is a reference to the market value of the property—

(a) in the case of a conveyance on sale—as at the date of the sale;

or

(b) in any other case—as at the date of the conveyance,

assuming, in either case, that the property had, at that date, been free from any encumbrances.

(2) In the case of a conveyance on sale, the Commissioner may treat the consideration for the sale as being the value of the property conveyed or transferred unless it appears to the Commissioner that the consideration may be less than the value of the property as referred to in subsection (1).

(3) Where no evidence of the value of property conveyed or transferred, or comprising or forming part of the consideration for a conveyance, is furnished to the Commissioner, or the evidence so furnished is, in his opinion, unsatisfactory, the Commissioner may cause a valuation of the property to be made by some person appointed by him and may assess the duty payable by reference to that valuation.

(4) The Commissioner may, having regard to the merits of the case, charge the whole or a part of the expenses of, or incidental to, the making of a valuation pursuant to subsection (3) to the person liable to pay the duty and may recover the amount so charged from him as a debt due to the Crown.

(5) In subsection (1)—

“encumbrance” does not include a prescribed encumbrance or an encumbrance of a prescribed kind.

Refund of duty where transaction is rescinded or annulled

60b. (1) Where a party to an instrument of a kind that is registrable under the *Real Property Act, 1886*, satisfies the Commissioner, upon application made to him not later than one year after execution of the instrument—

(a) that he has paid duty upon the instrument;

and

(b) that the transaction in respect of which the instrument was executed has been frustrated or avoided or has miscarried through failure of a party to comply with a condition,

the applicant shall be deemed to be possessed of stamped material rendered useless by being inadvertently spoiled within the meaning of section 106, and the provisions of that section shall apply accordingly.

(2) This section does not apply in respect of an instrument executed before the commencement of the *Stamp Duties Act Amendment Act, 1975*.

Method or estimating value of consideration where consideration consists of shares

61. Where the consideration or part of the consideration for a conveyance chargeable with *ad valorem* duty consists of shares or debentures to be issued by a company, or a contract to issue such shares or debentures, the market value of the shares or debentures shall be taken as the value of the consideration or part.

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Consideration in case of lease

64. In the case of a lease for which any consideration other than the rent reserved may be paid or agreed to be paid, the amount of the other consideration shall be deemed the consideration for the conveyance on sale.

Where consideration consists of real or personal property

65. Where the consideration or any part of the consideration for a conveyance on sale consists of any real or personal property other than money, the market value of the real or personal property at the date of the sale shall be taken as the value of the consideration or part of the consideration.

Where consideration is payable in instalments

66. Where the consideration or any part of the consideration for a conveyance on sale consists of money payable periodically for a definite period, so that the total amount to be paid can be previously ascertained, the total amount shall be taken as the consideration or part of the consideration.

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Computation of duty where instruments are interrelated

67. (1) Subject to subsection (2), this section applies to the following instruments:

(a) a conveyance on sale;

(b) a conveyance operating as a voluntary disposition *inter vivos*;

or

(c) an instrument chargeable with duty as if it were a conveyance (including a statement under section 71e).

(2) This section does not apply to the following instruments:

(a) a conveyance that relates to property that is being conveyed in separate parcels to different persons by separate conveyances where the Commissioner is satisfied that no arrangement or understanding exists between the persons under which the parcels of property conveyed are to be used otherwise than separately and independently from each other;

(b) a conveyance of stock, implements or other chattels in a case where section 31a applies;

(c) a conveyance on sale of any marketable security;

(d) an instrument excluded from the operation of this section by the regulations.

(3) Where two or more instruments to which this section applies—

(a) arise from a single contract of sale;

or

(b) together form, or arise from, substantially one transaction or one series of transactions,

the instruments are chargeable with *ad valorem* duty calculated on the sum of the amounts by reference to which *ad valorem* duty on each of the instruments would, but for this subsection, have been calculated, and that duty will be apportioned to the various instruments as determined by the Commissioner.

(4) Where by instruments that have been, or appear to have been, executed within 12 months of each other a person conveys property or interests in property to the same person (whether that person takes alone or with the same or different persons), it will be presumed, unless the Commissioner is satisfied to the contrary, that the instruments form one transaction or one series of transactions.

(5) A person who executes, or is otherwise engaged or concerned in the preparation or certification of, an instrument chargeable with duty under subsection (3) and who, upon submission of the instrument to the Commissioner for stamping, fails to disclose the total consideration (if any) given and the whole of the property included in the transaction or series of transactions in connection with which the instrument is executed, is guilty of an offence.

Penalty: \$5 000.

(6) It is a defence to a charge under subsection (5) to prove that the defendant did not know and could not reasonably have been expected to know the matters required to be disclosed by that subsection.

(7) This section does not operate to reduce the duty payable on an instrument.

(8) In this section—

“interest” includes a potential beneficial interest as defined in section 71(15).

Duty in certain cases

68. * * * * *
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(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance, contracts to sell it to any other person and the property is in consequence conveyed immediately to the subpurchaser, the conveyance shall be chargeable with *ad valorem* duty as a conveyance for the consideration for the sale to the original purchaser and also as a conveyance for the consideration for the sale by the original purchaser to the subpurchaser, in the same manner as if the considerations were specified in separate instruments.

(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance, contracts to sell the whole or any part or parts thereof to any other person and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel shall be chargeable with *ad valorem* duty as a conveyance for the consideration for the sale to the original purchaser and also as a conveyance for the consideration for the sale by the original purchaser to the subpurchaser, in the same manner as if the considerations were specified in separate instruments. The consideration for the sale to the original purchaser in respect of each part or parcel shall, for the purposes of this subsection, be ascertained by determining the ratio which the value of the part or parcel in question bears to the value of the whole property and shall be specified in the instrument of conveyance.

(5) Where a subpurchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty as a conveyance for the consideration moving from him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with *ad valorem* duty as a conveyance for the consideration for the sale to the original purchaser.

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Evasion of duty

70. (1) Subject to subsection (2), an instrument executed in order, either directly or indirectly, to avoid or evade the payment of the duty payable upon a conveyance on sale is void.

(2) Where a third party relying in good faith on an instrument that is void by virtue of subsection (1) purports to acquire an interest in property subject to the instrument, the instrument shall, for the purposes of that transaction, be treated as valid, provided that it is duly stamped as a conveyance on sale.

Instruments chargeable as conveyances operating as voluntary dispositions *inter vivos*

71. (1) The value for the purposes of this Act of the property conveyed by any conveyance operating as a voluntary disposition *inter vivos* shall be declared in the conveyance.

(2) Notwithstanding anything in section 23, the Commissioner may be required to express his opinion under that section on any conveyance operating as a voluntary disposition *inter vivos*, and no such conveyance shall be deemed to be duly stamped unless the Commissioner has expressed his opinion thereon in accordance with that section.

(3) For the purposes of this Act, the following instruments shall, subject to this section, be deemed to be conveyances operating as voluntary dispositions *inter vivos*:

(a) an instrument to which subsection (4) applies effecting or acknowledging, evidencing or recording, any of the following transactions:

(i) a transfer of property to a person who takes as trustee;

(ii) a declaration of trust;

or

(iii) a transfer of a beneficial interest in property subject to a trust or a potential beneficial interest in, or in relation to, property subject to a discretionary trust,

whether or not any consideration is given for the transaction;

or

(b) an instrument to which paragraph (a) does not apply, being a conveyance that is not chargeable with duty as a conveyance on sale.

(4) This subsection applies to any instrument that relates to land, a marketable security or a unit under a unit trust scheme, or an interest or potential beneficial interest in land, a marketable security or a unit under a unit trust scheme.

(4a) A reference in subsection (4) to a unit trust scheme does not include an arrangement made by a deed approved for the purposes of Division 6 of Part IV of the *Companies (South Australia) Code* or the corresponding provisions of a law in force in another State or a Territory.

(5) Subject to subsection (6), an instrument effecting or acknowledging, evidencing or recording, any of the following transactions shall be deemed not to be a conveyance operating as a voluntary disposition *inter vivos*:

(a) a transfer of property for nominal consideration for the purpose of securing the repayment of an advance or loan, not being land subject to the provisions of the *Real Property Act, 1886*;

(b) a transfer *in specie* of property of a company in liquidation made by the liquidator to a shareholder of the company;

(c) a transfer of any marketable security issued by a public company to a person who takes as trustee, where—

(i) the beneficial interest in the property is, upon the transfer, vested in the transferor;

and

(ii) the transfer is not in pursuance of a sale;

(d) a transfer of property for the purpose of effectuating the retirement of a trustee or the appointment of a new trustee, where the Commissioner is satisfied that the transfer is not part of a scheme for conferring a benefit, in relation to the trust property, upon the new trustee or any other person, whether as a beneficiary or otherwise, to the detriment of the beneficial interest or potential beneficial interest of any person;

(e) a transfer of property to a person who has a beneficial interest in the property by virtue of an instrument that is duly stamped, where—

(i) the beneficial interest arises under a trust of which the transferor is a trustee;

and

- (ii) (A) the transferor or some other trustee or trustees of the trust obtained his, her or their interest in the property under one of the other paragraphs of this subsection (except paragraph (d));
or
- (B) the transferor or some other trustee or trustees of the trust obtained his, her or their interest in the property by virtue of an instrument duly stamped with *ad valorem* duty;
- (f) a transfer to a natural person who is an object of a discretionary trust of property or a beneficial interest in property subject to the discretionary trust, where—
 - (i) the discretionary trust was created by an instrument that is duly stamped;and
 - (ii) the Commissioner is satisfied that the discretionary trust was created wholly or principally for the benefit of that person or a family group of which that person is a member;
- (g) a transfer of a potential beneficial interest in property subject to a discretionary trust, where—
 - (i) the discretionary trust was created by an instrument that is duly stamped wholly or principally for the benefit of a family group;and
 - (ii) the transfer is made by one member of the family group to another member of the family group, or by a member of the family group by way of surrender or renunciation of the potential beneficial interest and another member of the family group is to continue as an object or beneficiary under the trust;
- (h) a transfer to or by a person in his capacity as the personal representative of a deceased person or the trustee of the estate of a deceased person, being a transfer made in pursuance of the provisions of the will of the deceased person or the laws of intestacy and not being a transfer in pursuance of a sale;
- (i) any variation of the terms of a trust, where the trust was created by an instrument that is duly stamped and the variation does not involve the creation or variation of any beneficial interest or potential beneficial interest in property subject to the trust;
- (j) a voluntary disposition of property that is wholly for charitable or religious purposes;
- (k) a transfer of a prescribed class.

(6) Subsection (5) does not apply in relation to a transfer of property or a beneficial interest in property to a person who has, prior to the transfer, a beneficial interest or potential beneficial interest in the property but who takes the property or interest transferred to him as trustee under a further trust.

(7) For the purposes of subsection (5)(e), a person who is an object of a discretionary trust by virtue of an instrument that is duly stamped shall not be regarded as having a beneficial interest in the trust property by virtue of an instrument that is duly stamped unless that person has been appointed to be a beneficiary under the discretionary trust by a further instrument that is duly stamped.

(8) A conveyance operating as a voluntary disposition *inter vivos* that transfers a potential beneficial interest in, or in relation to, property subject to a discretionary trust shall, subject to this Act, be chargeable with duty as if it transferred the beneficial interest in the property that the transferee would have if the discretion under the discretionary trust were so exercised as to confer upon him the greatest benefit in relation to that property that can be conferred upon him under the discretionary trust.

(9) An instrument that acknowledges, evidences or records a transaction of a kind referred to in subsection (3)(a) (not being a copy within the meaning of section 19a that is duly stamped) shall, for the purposes of this Act, be deemed to have effected the transaction and to have been executed by the parties to the transaction at the same time as the transaction took place.

(10) For the purposes of this Act, in determining the value of property transferred by a conveyance operating as a voluntary disposition *inter vivos*, no regard shall be had to the fact that the person to whom the property is transferred takes or is to hold the property subject to a trust or has a beneficial interest in the property.

(11) Notwithstanding any other provisions of this Act but subject to subsection (11a), the rate of duty chargeable in respect of a conveyance operating as a voluntary disposition *inter vivos* of a marketable security shall, if that conveyance is made in pursuance of sale, be the rate fixed by the second schedule in respect of a conveyance or transfer on sale of a marketable security or, as the case may require, in respect of a return lodged pursuant to section 90d.

(11a) Subsection (11) does not apply in relation to a statement under Part IV.

(12) Where an instrument of a kind referred to in subsection (3)(a) is duly stamped under this Act, the Commissioner shall, upon application and production of that instrument, stamp any other instrument of a kind referred to in subsection (3)(a) that he is satisfied relates to the same transaction with a particular stamp denoting that it is duly stamped.

(13) Without limiting the generality of subsection (12), where an instrument that is duly stamped transfers or creates, or acknowledges, evidences or records, the transfer or creation of any property or interest in property and the person to or in whom the property or interest in property is transferred or vested takes the property or interest in property as trustee, the Commissioner shall, upon application and production of that instrument, stamp any declaration of trust or other instrument that acknowledges, evidences or records the fact that the person took the property or interest in property as trustee with a particular stamp denoting that it is duly stamped.

(14) Notwithstanding any other provisions of this Act, where—

(a) property has been transferred to a person who took as trustee;

(b) that property is subsequently transferred back to the transferor;

and

(c) the Commissioner is satisfied that no person other than the transferor under the first transfer has had a beneficial interest in the property during the period elapsing between the transfers,

the Commissioner shall, if *ad valorem* duty was paid in respect of the first transfer, upon application, refund to the person who paid that duty an amount equal to the difference between the amount of the duty and four dollars.

(15) In this section—

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“family group” means a group of persons connected by an unbroken series of relationships of consanguinity or affinity:

“potential beneficial interest” means the rights, expectancies or possibilities of an object of a discretionary trust in, or in relation to, property subject to the discretionary trust:

“public company” means a public company within the meaning of the *Companies (South Australia) Code*:

“transfer” means—

(a) transfer, assure or vest property (including a potential beneficial interest in, or in relation to, property) to or in any person, whether legally or equitably and whether or not subject to registration, the issue of a certificate of title or other similar requirement;

(b) surrender or renounce a beneficial interest or potential beneficial interest in, or in relation to, property;

or

(c) surrender to the Crown any lease or other interest in land in order that the Crown may grant to a person other than the surrenderor a lease of, or other interest in, the same land or any part of the same land:

“trust” includes an implied trust or a discretionary trust:

“trustee” includes—

(a) a trustee under an implied trust;

or

(b) a person who holds property subject to a discretionary trust:

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Provision where trust property distributed *in specie*

71a. If any will or any instrument by which any trust is declared contains a direction to convert any property into money and to pay the proceeds to any beneficiary and, instead of converting the property into money the executor, administrator or trustee, as the case may be, conveys the property *in specie* to the beneficiary, the conveyance shall not be chargeable with duty as a conveyance on sale or as a conveyance operating as a voluntary disposition *inter vivos* if, in the case of a trust other than a trust declared by a will, the beneficiary is beneficiary by virtue of an instrument that is duly stamped.

Partition or division of property

71b. (1) Where upon the partition or division of any property any consideration exceeding in amount or value two hundred dollars is paid or given, or agreed to be paid or given, for equality, the instrument by which the partition or division is effected shall be charged with duty as if it were a conveyance on sale and that consideration were equal to the value of the property.

(2) A person who executes, or is otherwise engaged or concerned in the preparation or certification of, an instrument effecting the partition or division of any property and who, upon submission of the instrument to the Commissioner for stamping, does not

disclose the total consideration (if any) paid or given, or agreed to be paid or given, for equality shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) It is a defence to a charge under subsection (2) that the defendant did not know and could not reasonably be expected to have known the total consideration required to be disclosed by that subsection.

(4) This section applies only in relation to a conveyance for the partition or division of property between members of a family group.

(5) In this section—

“family group” has the meaning assigned to that expression by section 71(15).

Concessional rates of duty in respect of the purchase of a first home, etc.

71c. (1) Where upon an application made on or after 9 August, 1989, in a manner and form determined by the Commissioner and supported by such evidence as he may require the Commissioner is satisfied—

(a) that the applicant or applicants—

(i) are natural persons;

(ii) on or after the fifteenth day of September, 1979, entered into a contract for the purchase of a relevant interest in land or for the purchase of shares in a company that confer a right to occupy land of the company;

(iii) are the sole purchasers of the land or the shares;

and

(iv) —

—have entered into a contract for the construction of a dwelling house on the land and intend to occupy the dwelling house as their principal place of residence within 12 months of completion of construction;

or

—where there is presently a dwelling house on the land—were occupying that dwelling house as their principal place of residence at the date of the conveyance, or intend to so occupy the dwelling house within 12 months of the date of the conveyance;

and

(b) that no party to the application has previously—

(i) occupied a dwellinghouse (except as a minor) either in the State or elsewhere in pursuance of a relevant interest of that party in the dwellinghouse (other than an interest arising under an agreement with the South Australian Housing Trust relating to the purchase of the dwelling house to which the application relates) or any interest of that party in shares conferring a right to occupy the dwellinghouse;

or

(ii) received the benefit of this section,

this section applies to a conveyance under which the land or shares are conveyed to the purchaser or purchasers.

(1a) Subsection (1)(b)(ii) does not apply to an applicant who is the occupier of a Housing Trust home and who is purchasing the home under an agreement with the South Australian Housing Trust if the Commissioner is satisfied—

(a) that the conveyance to which the application relates arises from that agreement; and

(b) that the applicant previously received the benefit of this section only in relation to another conveyance arising from the same agreement.

(2) The duty payable upon a conveyance to which this section applies will be as follows:

(a) where the amount by reference to which the duty would, apart from this section, be calculated does not exceed \$80 000—no duty will be payable;

or

(b) where the amount by reference to which the duty would, apart from this section, be calculated exceeds \$80 000—the duty payable will be the amount payable apart from this section less the amount of duty payable on a conveyance of property the value of which is \$80 000.

(2a) Where the Commissioner is satisfied by such evidence as the Commissioner may require—

(a) that a person or persons who have paid stamp duty on a conveyance would have been entitled to the benefit of this section in respect of the conveyance if when it was submitted for stamping the requirements of subsection (1)(a)(iv) had been satisfied;

(b) that person or those persons in fact occupied a dwellinghouse on the land comprised in the conveyance, or in pursuance of rights conferred by shares comprised in the conveyance, as their principal place of residence within 12 months of the date of the conveyance,

the Commissioner shall refund to that person or those persons any duty in excess of the amount that would have been payable if the conveyance had been stamped under this section.

(2b) A person who makes a statement in, or in connection with, an application under this section knowing the statement to be false or misleading in a material respect is guilty of an offence.

Penalty: \$5 000.

(3) In this section—

“dwelling house” does not include residential premises that form part of industrial or commercial premises:

“Housing Trust home” means residential premises owned by the South Australian Housing Trust:

“perpetual lease” means a perpetual lease under the *Crown Lands Act, 1929*:

“relevant interest”, in relation to land or a dwelling house, means any estate or interest conferring a right to possession, including any such estate or interest arising under a perpetual lease but not including any other leasehold estate or interest.

(4) This section applies to a conveyance first lodged with the Commissioner for stamping on or after 9 August, 1989.

Exemption from duty in respect of certain maintenance agreements, etc.

71ca. (1) In this section—

“instrument to which this section applies” means—

(a) a maintenance agreement registered under Part VIII of the *Family Law Act 1975* of the Commonwealth;

or

(b) a deed or other instrument (including an application to transfer registration of a motor vehicle) for the purposes of, or consequential upon—

(i) a maintenance agreement registered under Part VIII of the *Family Law Act 1975* of the Commonwealth;

or

(ii) an order under Part VIII of the *Family Law Act 1975* of the Commonwealth:

“maintenance agreement” means a maintenance agreement as defined in the *Family Law Act 1975* of the Commonwealth:

“marriage” includes a marriage that is void and thus liable to annulment, and “married” has a corresponding meaning.

(2) Where an instrument to which this section applies—

(a) provides for a disposition of property between two persons who, at the time of execution of the instrument, are or have been married to each other and no other person takes or is entitled to take an interest in property in pursuance of the instrument;

or

(b) in the case of an application to transfer registration of a motor vehicle—is consequential upon a disposition of property between two persons who, as at the date of the application, are or have been married to each other,

the instrument is exempt from stamp duty if, at the time it is submitted for stamping, the marriage of the two persons referred to above has been dissolved or annulled.

(3) Where an instrument to which this section applies would have been exempt from stamp duty under subsection (2) if it were not for the fact that when it was submitted for stamping a marriage had not been dissolved or annulled, a person by whom stamp duty was paid on the instrument shall be entitled to a refund of the duty on proof to the satisfaction of the Commissioner that the marriage was subsequently dissolved or annulled.

Exemption from duty in respect of a conveyance between husband and wife

71cb. (1) An instrument of which the sole effect is to transfer an interest in the matrimonial home from one spouse to the other is exempt from stamp duty.

(2) The Commissioner may require a party to an instrument in respect of which an exemption is claimed under this section to provide such evidence as the Commissioner may require for the purpose of determining whether the instrument is exempt from duty under this section.

(3) In this section—

“matrimonial home”, in relation to spouses, means residential premises that constitute their principal place of residence but does not include premises that form part of industrial or commercial premises:

“spouses” includes persons who have been cohabiting continuously as *de facto* husband and wife for at least five years before execution of the instrument in respect of which an exemption is claimed under this section.

(4) This section applies in relation to instruments executed after its commencement.

Concessional duty to encourage mineral or petroleum exploration activity

71d. (1) Where upon an application made under this section the Treasurer, after consultation with the Minister of Mines and Energy, is satisfied—

(a) that the applicants are parties to a conveyance of an exploration tenement or an interest in an exploration tenement;

and

(b) that the consideration or a part of the consideration for the conveyance consists of an undertaking on the part of the person or persons acquiring an interest in the tenement by virtue of the conveyance—

(i) to engage in exploratory or investigatory operations (to be carried on after the date of the undertaking) within that part of the area of the tenement to which the conveyance relates;

or

(ii) to contribute to the cost of exploratory or investigatory operations (to be carried on after the date of the undertaking) within that part of the area of the tenement to which the conveyance relates,

this section applies to the conveyance.

(2) An application under this section must—

(a) be made in a manner and form determined by the Treasurer;

(b) set out a statement of—

(i) the value of the interest being transferred by the conveyance;

and

(ii) the value of the undertaking referred to in subsection (1)(b);

and

(c) be accompanied by such evidence as the Treasurer may require.

(2a) The duty payable upon a conveyance to which this section applies will be as follows:

(a) where the amount by reference to which the duty would, apart from this section, be calculated does not exceed the value of the undertaking referred to in subsection (1)(b)—the duty will be \$1 000;

(b) where the amount by reference to which the duty would, apart from this section, be calculated exceeds the value of the undertaking referred to in subsection (1)(b)—the duty will be an amount calculated in accordance with the following formula:

$$D = (A - V) + \$1\ 000$$

where

D is the amount payable

A is the amount of duty payable apart from this section

V is the amount of duty payable on a conveyance of an interest in property the value of which equals the value of the undertaking referred to in subsection(1)(b).

(3) In this section—

“exploration tenement” means—

(a) an exploration licence granted under the *Mining Act, 1971*;

(b) a petroleum exploration licence granted under the *Petroleum Act, 1940*;

or

(c) an exploration permit for petroleum granted under the *Petroleum (Submerged Lands) Act, 1967*.

(4) A reference in this section to an exploration tenement includes a reference to a portion of an exploration tenement.

(5) For the purposes of this section, the value of the undertaking referred to in subsection (1)(b) will be taken to be equal to the costs for which the person or persons acquiring an interest in the tenement by virtue of the conveyance become liable, or for which that person or those persons are reasonably expected to become liable, by virtue of the undertaking (assessed as at the time that the undertaking was given).

(6) This section applies to a conveyance first lodged with the Commissioner for stamping on or after the commencement of the *Stamp Duties (Concessional Duty and Exemptions) Amendment Act 1991*.

Transactions effected without creating a Dutiable Instrument

Transactions otherwise than by dutiable instrument

71e. (1) Subject to subsection (2), this section applies to a transaction in the following circumstances—

(a) the transaction results in a change in the ownership of a legal or equitable interest in—

(i) land;

(ii) a business, or the goodwill of a business, situated in the State;

or

(iii) an interest in a partnership;

and

(b) (i) the transaction is not effected by an instrument on which *ad valorem* duty is chargeable;

but

(ii) if the transaction had been effected, or wholly effected, by an instrument, the instrument would be chargeable with duty as a conveyance or as if it were a conveyance.

(2) This section does not apply to any of the following transactions—

- (a) the appointment of a receiver or trustee in bankruptcy;
- (b) the appointment of a liquidator;
- (c) a compromise or arrangement under Part VIII of the *Companies (South Australia) Code*;
- (d) a conveyance of property (not being land subject to the provisions of the *Real Property Act, 1886*) for nominal consideration for the purpose of securing the repayment of an advance or loan;
- (e) any other transaction of a prescribed class.

(3) Where a transaction to which this section applies is entered into, a statement in a form approved by the Commissioner must be lodged with the Commissioner setting out—

- (a) the nature and effect of the transaction;
- (b) a description of the property affected by the transaction;
- (c) a statement of the value of any property to which the transaction relates;
- (d) a statement of any consideration that has passed or is to pass between the parties to the transaction.

(4) Duty is payable on the statement as if it were a conveyance effecting the transaction to which it relates.

(4a) A statement under this section will, for the purposes of this Act, be taken to be an instrument executed by the person required to lodge the statement on the date of the change in legal or equitable ownership of property effected by the transaction to which the statement relates.

(5) Where a statement is lodged with the Commissioner under this section—

- (a) any instrument that relates to the same transaction is not chargeable with duty to the extent to which duty has been paid on the statement;

and

- (b) the statement will not be charged with duty to the extent that duty has been paid on any instrument that relates to the same transaction.

(6) If a statement relating to a transaction to which this section applies is not lodged with the Commissioner in accordance with this section within two months after a change in legal or equitable ownership of property is effected by the transaction—

- (a) each party to the transaction is guilty of an offence;

and

- (b) the Commissioner may make an assessment, on the basis of such information as is available to the Commissioner and such estimates as the Commissioner considers reasonable, of the duty that would have been payable if the statement had been lodged (and that duty will be recoverable from the parties to the transaction).

(7) A person who aids, abets, counsels or procures another person to enter into a transaction to which this section applies knowing that none of the parties to the transaction intends to lodge a statement under this section is guilty of an offence.

(8) A person who is guilty of an offence against this section is liable to a fine not exceeding \$10 000.

(9) If a statement relating to a transaction to which this section applies is lodged with the Commissioner but it is subsequently established to the satisfaction of the Commissioner that the transaction is not to be completed, the Commissioner may refund any duty paid on the statement.

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Leases

Agreement for lease to be charged as a lease

72. An agreement for a lease or with respect to the letting of any lands shall be chargeable with the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement.

Leases, how to be charged in respect of produce, etc.

73. (1) Where the consideration or any part of the consideration for which a lease is granted or agreed to be granted consists of any produce or other goods, the value of the produce or goods shall be deemed a consideration in respect of which the lease or agreement is chargeable with *ad valorem* duty.

(2) Where it is stipulated in any lease or agreement for a lease that the value of the produce or goods shall amount at least to, or shall not exceed, a given sum or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of the produce or goods shall, for the purpose of assessing the *ad valorem* duty, be estimated at the given sum or according to the permanent rate.

(3) A lease or agreement for a lease made either wholly or partially for any such consideration, if it contains a statement of the value thereof and is stamped in accordance with the statement, shall, so far as regards the subject matter of the statement, be deemed duly stamped, unless or until it is otherwise shown that the statement is incorrect and that the lease or agreement is in fact not duly stamped.

Duty in respect of certain kinds of lease

74. (1) A lease or agreement for a lease or with respect to the letting of any lands shall not be chargeable with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease or agreement of, or relating to, the same subject matter.

(2) A lease made for any consideration in respect of which it is chargeable with *ad valorem* duty and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of, or addition to, the property demised to him, or of any covenant relating to the subject matter of the lease, shall not be chargeable with any duty in respect of the further consideration.

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*Mortgages***Interpretation****76. In this Act—**

“mortgage” means a security by way of mortgage for the payment of any definite and certain sum of money advanced and lent at the time when the security is executed or previously due and owing, or forborne to be paid (being payable), or for the repayment of money to be lent, advanced or paid, or which may become due upon an account current, either alone or together with any sum already advanced or due, and includes—

(a) any conveyance of any real or personal property, or any estate or interest therein, in trust to be sold or otherwise converted into money, intended only as a security and redeemable before the sale or other disposal thereof, either pursuant to express stipulation or otherwise, except where the conveyance is made for the benefit of creditors generally or for the benefit of creditors specified who accept the provision thereby made for payment of their debts in full satisfaction thereof or who exceed five in number;

(b) any defeasance, declaration or other instrument for defeating or making redeemable or explaining or qualifying any conveyance of any real or personal property, or any estate or interest therein, apparently absolute but intended only as a security;

(c) any agreement, contract or bond, accompanied by a deposit of any muniments of title, to make a mortgage or any such conveyance or instrument as described above of or concerning any real or personal property comprised in the title deeds, or any estate or interest therein, or for pledging or charging them as a security;

and

(d) any equitable mortgage, that is to say, any agreement or memorandum, under hand only, relating to the deposit of any title deeds or instruments constituting, or being evidence of, a title to any property or creating a charge on property.

Payment of duty by return

76a. (1) In this section, “financial institution” means a financial institution within the meaning of the *Financial Institutions Duty Act, 1983*.

(2) The Commissioner may, upon an application in writing from a financial institution, authorize the financial institution to pay duty in respect of mortgages in accordance with this section.

(3) An authority under subsection (2)—

(a) must specify the class or classes of mortgage to which it relates;

(b) may be subject to conditions as to the manner and form in which endorsements are to be made in pursuance of the authority and such other conditions as the Commissioner thinks fit;

and

(c) may be revoked by the Commissioner at any time.

(4) A financial institution that holds an authority under subsection (2) may, subject to the conditions of the authority, endorse an instrument of mortgage with the amount of duty payable on the instrument.

(5) An instrument of mortgage endorsed pursuant to subsection (4) shall be deemed to be stamped under this Act with the amount of duty shown on the endorsement.

(6) A financial institution shall not later than 2.30 p.m. on Thursday of each week—

(a) lodge with the Commissioner a return stating the total of the amounts endorsed on instruments of mortgage by the financial institution during the week ended on the preceding Saturday;

and

(b) pay to the Commissioner a sum equal to that total.

(7) A financial institution shall at the time of making an endorsement under this section make a record of—

(a) the name of the mortgagor;

(b) the property to which the mortgage relates;

and

(c) the amount of duty endorsed on the instrument of mortgage,

and shall keep the record for at least 3 years.

(8) A financial institution that—

(a) contravenes or fails to comply with a provision of this section;

or

(b) knowingly endorses an instrument of mortgage with an amount of duty less than the amount payable under this Act,

is guilty of an offence.

Penalty: \$10 000 plus (if the offence results in avoidance of or delay in the payment of duty) twice the amount of that duty.

(9) A person, not being a financial institution that holds an authority under subsection (2), who endorses an instrument of mortgage in a manner which suggests or implies that the instrument is endorsed pursuant to this section is guilty of an offence.

Penalty: \$10 000 plus twice the amount of duty payable under this Act.

Where mortgage consists of several instruments

77. If several instruments are necessary to make a mortgage and duty would, but for this section, be chargeable on more than one of those instruments, the duty shall be chargeable upon the principal instrument only and the other instruments shall not be liable to any duty, and the parties, with the approval of the Commissioner, may decide which is the principal instrument.

Security for stock, how to be charged

78. A security for the transfer or retransfer of any stock shall be chargeable with the same duty as a similar security for a sum of money equal in amount to the value of the stock; and a transfer or assignment of any such security shall be chargeable with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of the stock.

Security for future advances, how to be charged

79. (1) A security by way of mortgage for the payment or repayment of money to be lent, advanced or paid or which may become due upon an account current, either alone or together with money previously due, is to be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.

(2) Where such total amount is unlimited, the security is to be available for such an amount only as the *ad valorem* duty denoted thereon extends to cover but, where any advance or loan is made in excess of the amount covered by that duty, the security shall, for the purpose of stamp duty, be deemed to be a new and separate instrument, bearing the date of the day on which the advance or loan is made.

(3) Notwithstanding any provision of the *Real Property Act, 1886*, no reconveyance or discharge of any mortgage given for an unlimited amount shall be registered unless the duty payable upon the highest amount advanced upon the security has been paid.

Security for repayment by periodical payments, how to be charged

80. A security for the payment of any rentcharge, annuity or other periodical payment, by way of repayment or in satisfaction or discharge of any loan, advance or payment intended to be so repaid, satisfied or discharged, shall be chargeable with the same duty as a similar security for the payment of the sum of money so lent, advanced or paid.

Transfers and further charges

81. No transfer of a duly stamped security and no security by way of further charge for money or stock added to money or stock previously secured by a duly stamped instrument shall be chargeable with any duty by reason of containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereon, or any new covenant, proviso, power, stipulation or agreement in relation thereto or any further assurance of the property comprised in the transferred or previous security.

Duty may be denoted in certain cases by adhesive stamps

81a. (1) Subject to subsection (2), the duty on a security by way of mortgage, bond, debenture or covenant securing the payment or repayment of an amount not exceeding \$4 000 may be denoted by an adhesive stamp affixed in accordance with the regulations.

(2) This section does not apply in respect of a security by way of mortgage for the payment or repayment of moneys that may become due on an account current unless—

(a) where the total amount secured or to be ultimately recoverable is limited—the amount so limited does not exceed \$4 000;

or

(b) where the total amount secured or to be ultimately recoverable is not limited—the total amount actually secured or recoverable does not exceed \$4 000.

Duty chargeable proportioned to value of South Australian property

81b. Notwithstanding any other provision of this Act, where—

(a) a security creates a charge upon property in South Australia and property outside South Australia, the duty chargeable under this Act in respect of the security shall be calculated by reference only to that part of the amount to be paid or repaid under the security that bears to the total amount to be paid or repaid the same proportion as the value of the property in South Australia bears to the total value of the property subject to the charge;

or

- (b) a security creates a charge upon property outside South Australia and not upon property in South Australia, the duty chargeable under this Act in respect of the security shall, subject to any exemption under this Act, be four dollars.

Duty paid upon one mortgage may be denoted as having been paid upon another mortgage

81c. (1) The Commissioner may, upon the application of a party to a mortgage upon which duty has been paid, authorize the whole or a part of the duty paid upon the mortgage to be denoted as having been paid upon some other mortgage or mortgages if he is satisfied, upon the basis of such evidence as he may require—

- (a) that the duty was paid upon the first mentioned mortgage instead of the other mortgage or mortgages as a result of an error on the part of a party to the mortgage or his agent;
- (b) that the parties to the first mentioned mortgage are the same as the parties to the other mortgage or mortgages;

and

- (c) that the first mentioned mortgage has not been acted upon or relied upon in any way as a security.

(2) An application under subsection (1) must—

- (a) be made in a form approved by the Commissioner;
- (b) be made not later than three months after the date on which duty was paid upon the first mentioned mortgage;

and

- (c) be accompanied by the prescribed charge.

(3) The Commissioner may, upon an application under subsection (1), if he thinks it just to do so, waive payment of the prescribed charge.

(4) The Commissioner may require any evidence given in support of an application under subsection (1) to be verified by statutory declaration.

(5) Duty shall not be denoted as having been paid upon the other mortgage or mortgages in pursuance of subsection (1) unless the original and every copy of the first mentioned mortgage stamped under this Act has been produced to the Commissioner and dealt with in accordance with the regulations.

(6) For the purposes of this section—

- (a) mortgagees that are related corporations shall be regarded as one and the same person;

and

- (b) corporations are related if they are deemed to be related by virtue of the provisions of the *Companies (South Australia) Code*.

* * * * *

Unregistered mortgages protected by caveats

82. (1) A caveat under the *Real Property Act, 1886*, to protect an interest arising under an unregistered mortgage is chargeable with duty.

(2) The amount of duty chargeable on a caveat to which subsection (1) applies is—

(a) if the mortgage to which the caveat relates has been stamped—\$4;

(b) if the mortgage to which the caveat relates has not been stamped—\$4 plus the amount of duty that would be payable on the mortgage if produced for stamping.

(3) If—

(a) stamp duty is paid on a caveat in respect of a mortgage that has not been stamped;

and

(b) the mortgage is subsequently produced for stamping,

the mortgage is not chargeable with duty to the extent to which duty in respect of the mortgage has been paid on the caveat.

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PART IIIA
SALES AND PURCHASES OF MARKETABLE SECURITIES BY
BROKERS AND DUTY THEREON

Interpretation

90a. In this Part, unless inconsistent with the context or some other meaning is clearly intended—

“broker” means a person, firm or corporation who or which is a member of the Australian Stock Exchange Limited:

“broker’s agent” means a person who is an agent or employee of a broker within the meaning of any corresponding Act and is carrying on business for, or on behalf of, that broker in this State:

“corresponding Act” means an enactment in force in a State other than this State or in a Territory of the Commonwealth that is declared by proclamation to be a corresponding Act for the purposes of this Part:

“dealer” means a broker or a broker’s agent within the meaning of this Act or any corresponding Act:

“odd lot” means a parcel of marketable securities that is, under the rules of the stock exchange on which the sale or purchase is effected, required to be bought or sold through an odd lot specialist:

“odd lot specialist” means a broker who is appointed by the Australian Stock Exchange Limited for the purposes of buying and selling odd lots:

“South Australian dealer” means a broker or a broker’s agent.

Application of Part

90b. This Part and the duty chargeable in accordance with the second schedule on the return referred to in section 90d apply and have effect to and in relation to a sale or purchase of a marketable security only where—

(a) the sale or purchase of the marketable security is made by or through a South Australian dealer;

(b) the consideration for the sale or purchase is in money or money’s worth not less than the unencumbered market value of the security;

(c) the security is quoted on, or permission to deal therein has been granted by, a stock exchange;

and

(d) no duty is charged against the transferor or the transferee under the second schedule in respect of the conveyance or transfer of the securities on the sale thereof.

Records of sales and purchases of marketable securities

90c. (1) Subject to subsections (3) and (4), a South Australian dealer shall, forthwith on a sale or purchase being made or being deemed to have been made, whether within or outside the State—

(a) pursuant to an order to sell or an order to purchase lodged with him in the State;

or

(b) on his own account or behalf,

being a sale or purchase to or in relation to which this Part applies, make a record relating to the sale or purchase showing—

- (c) the date of the sale or purchase;
- (d) the name of the principal (if any) for whom such sale or purchase was made;
- (e) the name of the dealer (if any) with whom the sale or purchase was effected;
- (f) the quantity and full description of the marketable security sold or purchased;
- (g) the selling or purchase price of such marketable security or, if more than one, of each marketable security and the total selling or purchase price of all;
- (h) the amount of stamp duty chargeable in accordance with the second schedule in respect of that sale or purchase on the return referred to in section 90d which relates to that sale or purchase;

and

- (i) such other particulars as are prescribed for the purposes of this section.

(2) For the purposes of subsection (1)—

- (a) a South Australian dealer who makes a purchase of a marketable security, whether on his own account or on behalf of another person, from any person who is not a dealer shall, notwithstanding that no order to sell was in fact lodged with him, be deemed to have also made a sale of the security pursuant to an order to sell lodged with him in the State by the person from whom he made the purchase;

and

- (b) a South Australian dealer who makes a sale of a marketable security, whether on his own account or on behalf of another person, to any person who is not a dealer shall, notwithstanding that no order to purchase was in fact lodged with him, be deemed to have also made a purchase of the security pursuant to an order to purchase lodged with him in the State by the person to whom he made the sale.

(3) Subsection (1) does not require a South Australian dealer to make a record—

- (a) in respect of a sale of a marketable security, where the sale is made pursuant to an order to sell lodged with him by, or on behalf of, another dealer;
- (b) in respect of the purchase of a marketable security, where the purchase is made pursuant to an order to purchase lodged with him by, or on behalf of, another dealer;

or

- (c) in respect of any sale or purchase, where the sale or, as the case may be, the purchase is of an odd lot by an odd lot specialist.

(4) Subsection (1) does not apply to the sale or purchase of a marketable security, the conveyance or transfer in respect of which would be exempt from duty.

(5) A South Australian dealer may, in any record kept by him pursuant to subsection (1), incorporate therein additional information for his own use.

(6) The record shall be kept by the South Australian dealer in a suitable and legible form for a period of not less than three years from the date of the sale or purchase.

(7) The Commissioner may require a South Australian dealer to make and keep such additional records relating to sales and purchases made by or through him of marketable securities as he considers necessary.

(8) A South Australian dealer who fails to make or keep a record as required by this section or who fails to make and keep such additional records as are required by the Commissioner under this section shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

* * * * *

Returns to be lodged and duty paid

90d. (1) Every South Australian dealer shall, not later than 2.30 p.m. on the Thursday of each week—

(a) lodge with the Commissioner a return in the prescribed form in accordance with this section;

and

(b) if any stamp duty is payable, but not paid, in respect thereof, pay to the Commissioner the stamp duty in respect of each sale and each purchase to which the return relates as prescribed by the second schedule.

(2) The return shall contain a certificate in the prescribed form relating to all sales and purchases, records relating to which have been made by the dealer under section 90c, being sales and purchases made during the week ended on the Saturday preceding the day on which the return is lodged and the total stamp duty payable on the return in respect of those sales and purchases, and shall contain a certificate signed by the dealer that the record required by section 90c has been duly made and such other particulars as are prescribed; but where there has been no sale or purchase made during that week, the South Australian dealer shall lodge with the Commissioner a "Nil" return.

(3) A South Australian dealer who fails to lodge a return as required under this section, or who lodges a return which is false in any material particular, shall be liable to a penalty not exceeding five hundred dollars and, in addition, as a further penalty, shall be liable to pay an amount not exceeding twice the amount of the duty which would have been payable had a return been lodged in accordance with the requirements of this Act.

(4) A South Australian dealer who fails to pay the duty chargeable on a return lodged by him under this section shall be liable to a penalty not exceeding five hundred dollars and, in addition, as a further penalty, shall be liable to pay an amount equivalent to twice the duty which was payable in accordance with the requirements of this Act.

Endorsement of instrument of transfer as to payment of duty

90e. (1) On making the record relating to a sale or purchase in accordance with section 90c(1), or on the making of a sale or purchase to which section 90c(1) does not apply by virtue of the operation of section 90c(4), the South Australian dealer shall either endorse the instrument of transfer in respect of the sale or purchase or ensure that it is endorsed with a statement to the effect that the stamp duty (if applicable) has been or will be paid, and shall affix his stamp and insert the date of the endorsement thereunder.

(2) A South Australian dealer who affixes his stamp under such an endorsement without making the appropriate record provided for in section 90c(1) shall be liable to a penalty not exceeding one thousand dollars.

(3) Where an instrument of transfer of marketable securities has affixed thereto, in accordance with the provisions of this section or in accordance with any corresponding Act, the respective stamps of the dealers by whom the sale and purchase of those securities were effected, the instrument shall be deemed to be duly stamped with *ad valorem duty*.

Power of dealer to recover duty paid by him

90f. Any South Australian dealer who, on lodging with the Commissioner a return pursuant to section 90d, pays any duty under this Act in respect of any sale or purchase of marketable securities to which the return relates may recover from the seller or purchaser for whom he made the sale or purchase, or is deemed to have made the sale or purchase, the amount of the duty so paid as a debt due to him and recoverable in a court of competent jurisdiction and may, in reimbursement of that amount, retain any moneys in his hands belonging to the seller or purchaser, as the case may be.

Transactions in South Australian marketable securities on the Stock Exchange of the United Kingdom and Ireland

90g. (1) In this section, unless the contrary intention appears—

“broker” means a person, firm or corporation who or which is a member of the U.K. and Ireland Stock Exchange:

“corporation” means a municipal or other corporation, company or society:

“market maker” means a person, firm or corporation who or which is recognized as a market maker according to the rules and practices of the U.K. and Ireland Stock Exchange:

“marketable security” means—

(a) a marketable security of a corporation incorporated in the State;

or

(b) a marketable security of a corporation incorporated outside Australia that is listed on a register of the corporation in the State:

“relevant transaction” means a transaction effecting a transfer from one person to another of a beneficial interest in a marketable security that is held in trust by a trustee:

“the U.K. and Ireland Stock Exchange” means The International Stock Exchange of the United Kingdom and the Republic of Ireland:

“trustee” means a person declared to be a trustee under subsection (2).

(2) The Governor may, by notice published in the *Gazette*—

(a) declare a person to be a trustee;

or

(b) vary or revoke a declaration previously made under this subsection.

(3) Where a trustee—

(a) is notified of a disposition by a beneficiary of an interest in a marketable security that the trustee holds in trust;

or

(b) is directed by a beneficiary to hold a marketable security on behalf of some other person,

the trustee shall be deemed to have effected a relevant transaction in relation to that marketable security.

(4) A trustee shall on or before the twenty-eighth day of each month—

(a) furnish to the Commissioner in such manner and form as the Commissioner requires a return setting out particulars of relevant transactions effected by the trustee during the preceding month;

and

(b) if any duty is payable, in respect of any such relevant transaction, pay to the Commissioner the duty in respect of each such relevant transaction prescribed by the second schedule.

(5) A trustee who fails to comply with any provision of this section is guilty of an offence.

Penalty: \$10 000 plus twice the amount of duty referred to in subsection (4)(b).

(6) Subsection (4) does not apply to or in respect of a relevant transaction where the disposition to which the relevant transaction relates—

(a) is made—

(i) by way of security otherwise than to secure the rights of a purchaser or intended purchaser under a contemplated sale;

or

(ii) in consequence of such a security being no longer required;

(b) is, in accordance with the rules of the U.K. and Ireland Stock Exchange, a stock loan transaction;

(c) is made or effected by a market maker as agent to a broker who acquires a beneficial interest in the marketable securities as principal and who, within 10 clear days (not including any day on which the U.K. and Ireland Stock Exchange is closed for business) after acquisition, disposes of the beneficial interest in those securities;

(d) is made or effected by a broker as principal within 10 such clear days after the broker acquired a beneficial interest in those marketable securities as principal—

(i) to a market maker as agent;

or

(ii) to another broker as principal who, within 10 such clear days after the acquisition, disposes of the beneficial interests in those securities;

(e) is made or effected by or to a person who is a South Australian dealer;

or

(f) is made or effected by a market maker as agent to another market maker as agent.

(7) Where in consequence of a relevant transaction—

(a) a beneficial interest in marketable securities is transferred from a broker to a market maker as agent or from a market maker as agent to a broker;

(b) a beneficial interest in marketable securities is transferred from a broker to another broker who acquires the interest as principal and who, within 10 clear days after acquisition (not including any day on which the U.K. and Ireland Stock Exchange is closed for business) disposes of the beneficial interest;

or

- (c) a beneficial interest in marketable securities is transferred from a broker to another broker as principal within 10 such clear days after the acquisition of the beneficial interest by the firstmentioned broker,

the amount payable under subsection (4) in respect of that relevant transaction shall be one-half of the amount that would otherwise be payable.

(8) A trustee shall keep accurate records of the relevant transactions effected by the trustee and shall retain those records for three years after completion of the relevant transactions to which they relate.

PART IV

ACQUISITION OF CERTAIN INTERESTS IN COMPANIES
AND UNIT TRUST SCHEMES DUTIABLE AS CONVEYANCES OF LAND**Interpretation**

91. (1) In this Part, unless the contrary intention appears—

“acquisition”, in relation to an interest or a land use entitlement in a private company or scheme, includes (without limiting the generality of the expression) any acquisition by which a person becomes entitled to an interest (or an increase in an interest) or a land use entitlement in the company or scheme by means of—

(a) the purchase, gift, issue or allotment of a share in the company or a unit in the scheme (other than the initial allotment of shares to a subscriber to a memorandum of the company or the initial allotment of units to a beneficiary on the creation of the unit trust scheme);

(b) the variation, abrogation or alteration of a right attaching to a share in the company or a unit in the scheme;

or

(c) the redemption, surrender or cancellation of a share in the company or a unit in the scheme,

and “to acquire” has a corresponding meaning:

“corresponding law” means a law of another State or of a Territory that is prescribed as a corresponding law for the purposes of the provision of this Part in which the expression appears:

“interest” means an interest (other than a land use entitlement) in a private company or scheme which, if the company or scheme were to be wound up immediately after the acquisition of the interest, would entitle the person acquiring the interest to participate (otherwise than as a creditor or other person to whom the company or scheme was liable at the time of the acquisition) in a distribution of property of the company or scheme:

“land use entitlement” means an interest in a private company or scheme which gives the person acquiring the interest an entitlement to the exclusive possession of real property in South Australia:

“majority interest” means an interest (other than a land use entitlement) in a private company or scheme which, if the company or scheme were to be wound up—

(a) in the case of an interest acquired by a single acquisition—immediately after that acquisition;

or

(b) in the case of an interest acquired by two or more acquisitions—immediately after the later or latest of those acquisitions,

would entitle the person who acquired the interest, or that person together with any related person, to participate (otherwise than as a creditor or other person to whom the company or scheme was liable at the time of the acquisition) in the distribution of property of the company or scheme to an extent greater than 50 per cent of the value of the property distributable to all the holders of interests in the company or scheme:

“majority shareholder”, in relation to a private company, means a person who would have a substantial shareholding in the company in accordance with section 136 of the *Companies (South Australia) Code* if—

(a) a reference in that section to the prescribed percentage were a reference to 50 per cent;

and

(b) the private company were a company within the meaning of Division 4 of Part IV of the *Companies (South Australia) Code*:

“mining tenement” means a right, permit, claim, lease or licence under the *Mining Act, 1971*, or the *Petroleum Act, 1940*:

“prior acquisition”, in relation to a private company or scheme, means the acquisition by a person or a related person of an interest in the company or scheme at any time during the period of two years immediately preceding the date of a relevant acquisition by the person of an interest in the company or scheme:

“prior land use entitlement”, in relation to a private company or scheme, means the acquisition by a person or a related person of a land use entitlement in the company or scheme at any time during the period of two years immediately preceding the date of the acquisition by the person of a land use entitlement in the company or scheme which requires the lodgment of a statement under section 96:

“private company” means a company incorporated under the *Companies (South Australia) Code* or a corresponding law in force in another State or a Territory none of the shares of which are listed for quotation on a recognized stock exchange within the meaning of the *Securities Industry (South Australia) Code*:

“private scheme” or “scheme” means a unit trust scheme—

(a) that is not the subject of a deed approved for the purposes of Division 6 of Part IV of the *Companies (South Australia) Code* or the corresponding provisions of a law in force in another State or a Territory;

or

(b) that is the subject of a deed that has been so approved but—

(i) no units have been issued to the public;

(ii) fewer than 50 persons are beneficially entitled to units under the scheme;

or

(iii) 20 or fewer persons are beneficially entitled to 75 per cent or more of the total issued units under the scheme:

“real property” includes any estate or interest in land (including a mining tenement), whether the land is situated in the State or elsewhere, but does not include the estate or interest of a mortgagee, chargee or other encumbrancee in land or an interest arising by virtue of a warrant, writ or lien:

“relevant acquisition”, in relation to a private company or scheme, means the acquisition by a person of an interest in the company or scheme which requires the lodgment of a statement under section 94:

“spouse” of a person includes a *de facto* husband or wife of the person who has been cohabiting continuously with the person for at least five years.

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

(a) natural persons are related persons if—

(i) they are members of a partnership within the meaning of the *Partnership Act, 1891*;

or

(ii) one is the spouse of the other or the relationship between them is that of parent and child;

(b) private companies are related persons if they are related corporations within the meaning of the *Companies (South Australia) Code*;

(c) trustees are related persons if any person is a beneficiary common to the trusts of which they are trustees;

(d) a natural person and a private company are related persons if the natural person is a majority shareholder, director or secretary in or of the company or in or of another private company that is a related corporation of the company within the meaning of the *Companies (South Australia) Code*;

(e) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust of which the trustee is a trustee;

and

(f) a private company and a trustee are related persons if—

(i) the company, or a majority shareholder, director or secretary in or of the company, is a beneficiary of the trust of which the trustee is a trustee;

or

(ii) a related corporation of the company (within the meaning of the *Companies (South Australia) Code*) is a beneficiary of the trust of which the trustee is a trustee.

(3) For the purposes of this Part, persons are not related persons in relation to the acquisition of an interest in a private company or scheme if the Commissioner is satisfied that the persons were not acting together to achieve a common purpose.

(4) For the purposes of this Part, if the acquisition of an interest in a private company or scheme is, or is to be, evidenced by the transfer of shares or units, the acquisition will be taken to occur on the date on which the transfer is executed.

(5) For the purposes of this Part, a person does not acquire an interest in a private company or scheme by virtue only of acquiring an option, right of pre-emption, or other right to acquire an interest in the private company or scheme.

(6) The following will not be regarded as land use entitlements for the purposes of this Part:

(a) an entitlement in respect of a dwelling that is part of a scheme consisting of two or more dwellings designed for separate occupation where the entitlement is conferred by ownership of a share in a private company or a unit in a private scheme;

(b) an entitlement that arises by virtue of participating in a retirement village scheme within the meaning of the *Retirement Villages Act, 1987*;

(c) any other prescribed entitlement.

Preliminary matters relating to private companies and schemes

92. (1) For the purposes of this section—

(a) a private company or scheme is a subsidiary of another private company or scheme (“the holding company or scheme”), if—

(i) in the case of a private company—the company is a subsidiary corporation of the holding company within the meaning of section 7 of the *Companies (South Australia) Code*;

or

(ii) in any case—the holding company or scheme would, by reason of the linking of ownerships of interests in private companies or schemes, be entitled (together with any related person) to participate in a distribution of property of the private company or scheme to an extent greater than 50 per cent of the value of property distributable to all persons who have interests in the private company or scheme in the event that the private company or scheme, and all other private companies or schemes (if any) interposed between it and the holding company or scheme in the chain of ownerships of interests, were to be wound up;

and

(b) a reference to property owned by a private company or scheme is—

(i) in the case of a private company—a reference to property owned by the company beneficially;

and

(ii) in the case of a private scheme—a reference to property owned by the trustee (in the capacity of trustee) of the unit trust scheme.

(2) For the purposes of this Part, a private company or scheme is entitled to property if—

(a) the property is owned by the company or scheme;

(b) the property is owned by a private company or scheme that is a subsidiary of the company or scheme;

or

(c) the property is held under a discretionary trust and the company or scheme, or a private company or scheme that is a subsidiary of the company or scheme, is an object of that trust.

(3) Subsection (2)(c) does not apply if the Commissioner is satisfied that it would be unreasonable to regard the company or scheme as being entitled to the particular property.

(4) The unencumbered value of property to which a private company or scheme is entitled at a particular date is the sum of—

(a) in the case of property owned by the private company or scheme—the unencumbered value of that property at that date;

and

(b) in the case of property owned by a subsidiary of the private company or scheme—the amount to which, if the subsidiary and all other private companies or schemes (if any) interposed between the subsidiary and the private company or scheme in the chain of ownerships of interests were to be

wound up on that date, the private company or scheme would be entitled (without regard to any liabilities of the subsidiary or any other private company or scheme in the chain of ownerships of interests) in respect of the unencumbered value at that date of property owned by the subsidiary at that date.

(5) For the purposes of this Part, the entitlement of a person (including another private company or scheme) to participate (otherwise than as a creditor or other person to whom the private company or scheme is liable) in the distribution of the property of a private company or scheme on a winding up of the private company or scheme is an entitlement to an amount calculated—

(a) as if the winding up were carried out in accordance with the memorandum and articles of association of the private company or the instrument constituting the scheme, and with any law relevant to the winding up of such a private company or such a scheme, respectively, as the memorandum, articles, instrument and law exist at the date of the winding up;

or

(b) as if the person had, immediately prior to the date of the winding up, exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the private company or scheme—

(i) to effect or compel an alteration to the memorandum or articles of association of the private company or to the instrument constituting the scheme;

(ii) to vary the rights conferred by shares in the private company or by units in the scheme;

or

(iii) to effect or compel the substitution or replacement of shares in the private company or units in the scheme with other shares in the private company or other units in the scheme,

in such manner as to maximise that amount,

whichever of the amounts under paragraph (a) or (b) results in the greater amount, unless the Commissioner determines, after consideration of the circumstances of the case, and where the calculation under paragraph (b) results in the greater amount, that the amount of the entitlement should be calculated under paragraph (a).

(6) Where—

(a) a person acquires an interest in a private company or scheme;

(b) the company or scheme is entitled to real property;

and

(c) the circumstances of the case are such that had the real property been conveyed by the company or scheme to the person at the time of the acquisition, the conveyance would have been exempt from *ad valorem* duty,

then—

(d) that property will not be taken into account for the purpose of determining whether a statement must be lodged under this Part in respect of the acquisition;

and

- (e) if such a statement must be lodged, the value of that property will not be taken into account for the purpose of determining the duty chargeable under this Part.
- (7) A private company or scheme does not own property beneficially by virtue only—
- (a) of having an option to purchase the property;
 - or
 - (b) of being a purchaser under a contract of sale (the contract not having been completed).

Acquisitions to which this Part does not apply

93. (1) This Part does not apply to or in relation to the acquisition by a person of an interest or a land use entitlement in a private company or scheme if—

- (a) the acquisition is by a person in the capacity of—
 - (i) a receiver or trustee in bankruptcy;
 - (ii) a liquidator;
 - or
 - (iii) an executor or administrator of the estate of a deceased person;
- (b) the acquisition occurred solely as the result of—
 - (i) an order of the Supreme Court under section 59c of the *Trustee Act, 1936*;
 - (ii) the making of a compromise or arrangement under Part VIII of the *Companies (South Australia) Code* which has been approved by the court;
 - (iii) the operation of the laws of survivorship;
 - or
 - (iv) the distribution of the estate of a deceased person, including an acquisition occurring as the result of—
 - (A) a will, codicil or an order of a court varying or modifying the application of the provisions of a will or codicil;
 - or
 - (B) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of the provisions of a law relating to the distribution of the assets of persons who died intestate;
- (c) the acquisition is by a person who has been the spouse (other than a *de facto* spouse) of the person from whom the interest or land use entitled is acquired and has occurred solely as the result of the dissolution of their marriage;
- (d) the acquisition is effected by an agreement, conveyance or transfer exempt from *ad valorem* duty under another provision of this Act, other than section 59b;
- (e) the acquisition is effected by an instrument that is deemed not to be a conveyance operating as a voluntary disposition *inter vivos* by virtue of section 71(5);

- (f) the acquisition occurs as part of—
- (i) the amalgamation of two or more bodies incorporated under an Act of the State, other than the *Companies (South Australia) Code*;
- or
- (ii) the transfer under or pursuant to an Act of the undertaking of a body incorporated under an Act of the State, other than the *Companies (South Australia) Code*;
- or
- (g) the acquisition is exempt from the operation of this Part by the regulations.

(2) Where—

- (a) a trustee acquires an interest or a land use entitlement in a private company or scheme;
- and
- (b) the acquisition of the interest or land use entitlement is included in a statement under this Part,

this Part does not apply to or in relation to—

- (c) any resultant acquisition by a beneficiary of the trust of an interest or land use entitlement in the private company or scheme;
- or
- (d) any subsequent transfer of the interest or land use entitlement from the trustee to a beneficiary of the trust.

(3) This Part does not apply to or in relation to an acquisition by a person of an interest or a land use entitlement in a private company or scheme if the Commissioner is satisfied—

- (a) that the acquisition occurred before the commencement of this Part;
- or
- (b) that the acquisition arises out of an agreement entered into before the commencement of this Part.

Statement of acquisition of certain interests in a private company or scheme

94. (1) If—

- (a) a person—
 - (i) acquires a majority interest in a private company or scheme;
 - (ii) acquires an interest which, together with any other interest acquired during the preceding period of two years, results in the person having a majority interest in a private company or scheme;
 - (iii) acquires an interest which, together with any other interest acquired during the preceding period of two years, and the interest of a related person acquired during the preceding period of two years, is a majority interest in a private company or scheme;

or

- (iv) having a majority interest (including an interest which, together with the interest of a related person, is a majority interest) acquires a further interest in a private company or scheme;

and

- (b) the private company or scheme is, at the time of the acquisition, entitled to real property—

- (i) the unencumbered value of which comprises not less than 80 per cent of the unencumbered value of all property to which it is entitled, whether in South Australia or elsewhere (other than property referred to in subsection (5));

and

- (ii) the unencumbered value of which, insofar as the real property is situated in South Australia, is not less than \$1 000 000,

the person must lodge with the Commissioner a statement in respect of the acquisition.

(2) Where—

- (a) shares or units in a private company or scheme are allotted to a person who already has an interest in the private company or scheme;
- (b) those shares or units are allotted to the person as part of an allotment of shares or units to all shareholders or unitholders in the private company or scheme in proportion to their respective interests in the company or scheme;

and

- (c) the allotment does not have the effect of varying, abrogating or altering the rights of the person as against the rights of the other shareholders or unitholders,

the person is not required, by virtue of that allotment of shares or units, to lodge a statement under this section.

(3) For the purposes of subsection (1)(a), if a person acquires an interest in a private company or scheme and within two years before or after the acquisition became or becomes entitled to a right to acquire a further interest in the company or scheme, and that right is exercised, the person will be taken to have acquired that further interest within the period of two years after the first mentioned acquisition, notwithstanding that the right is exercised after the expiration of that period.

(4) Subsection (3) does not apply in relation to the creation or exercise of a right of pre-emption.

(5) The following will not be taken into account under subsection (1)(b) for the purpose of determining the value of property to which a private company or scheme is entitled:

- (a) cash, whether in Australian currency or otherwise;
- (b) money on deposit with any financial institution, and negotiable instruments;
- (c) loans which by their terms are to be repaid on demand by the lender or within two years of the date of the loan;
- (d) loans to persons who, in relation to the private company or scheme, are related persons or loans to the spouse, child, parent, brother or sister of—
 - (i) in the case of a private company—a majority shareholder, director or secretary of the company;

OR

(ii) in the case of a private scheme—a trustee of, or beneficiary under, the scheme;

(e) any prescribed property,

other than where it is shown to the Commissioner's satisfaction that the acquisition of, or dealing with, the relevant property has not occurred for the purpose of defeating the object of this Part.

(6) A statement under this section must be lodged within two months after the interest is acquired, or within such longer period as the Commissioner may approve in writing.

(7) The statement must be in a form approved by the Commissioner and must contain the following information:

(a) in relation to the relevant acquisition of an interest—

- (i) the name or names and address or addresses of the person or persons who has or have acquired the interest;
- (ii) the date of the relevant acquisition;
- (iii) the interest acquired;
- (iv) the total interest of the person, or the person and any related person, in the private company or scheme at that date;
- (v) the unencumbered value of all real property in South Australia to which the private company or scheme was entitled at that date;
- (vi) the unencumbered value of all property to which the private company or scheme was entitled at that date;

(b) in relation to each prior acquisition of an interest—

- (i) the name or names and address or addresses of the person or persons who has or have acquired the interest;
- (ii) the date of the prior acquisition;
- (iii) the interest acquired;
- (iv) the unencumbered value of all real property in South Australia to which the private company or scheme was entitled at that date;
- (v) the unencumbered value of all property to which the private company or scheme was entitled at that date;
- (vi) the amount of duty paid in respect of the prior acquisition;

(c) such other information as may be required by the Commissioner.

(8) The information that must be supplied in relation to an interest referred to in subsection (7)(a)(iii) or (b)(iii) includes—

- (a) the maximum percentage of the property of the private company or scheme to which the person required to lodge the statement, or that person together with any related person, would be entitled on a winding up of the private company or scheme by virtue of the acquisition of that interest (and no other) immediately after the acquisition of the interest (otherwise than as a creditor or other person to whom the private company or scheme was liable at the time of the acquisition) in a distribution of the property of the private company or scheme;

and

(b) the basis and method of calculation of that percentage.

Assessment and payment of duty—private company or scheme

95. (1) This Act applies (and duty will be assessed) in relation to a statement lodged under section 94 as if the statement were a conveyance operating as a voluntary disposition *inter vivos* of property of a value equal to—

(a) where there have been no prior acquisitions of interests in the private company or scheme—the amount calculated by multiplying the unencumbered value of all real property in South Australia to which the private company or scheme is entitled at the date of the relevant acquisition by the percentage of the interest acquired by the relevant acquisition;

or

(b) where there have been one or more prior acquisitions of interests in the private company or scheme—the aggregate of—

(i) in respect of the relevant acquisition—the amount calculated by multiplying the unencumbered value of all real property in South Australia to which the private company or scheme is entitled at the date of the relevant acquisition by the percentage of the interest acquired by the relevant acquisition;

and

(ii) in respect of each prior acquisition—each amount calculated by multiplying the unencumbered value (as at the date of the prior acquisition) of all real property in South Australia to which the private company or scheme was entitled at the date of the prior acquisition by the percentage of the interest acquired by the prior acquisition.

(2) The duty chargeable under this section will be reduced by the sum of the duty, if any, paid—

(a) under this Part in respect of a prior acquisition;

(b) under a corresponding law in respect of the relevant acquisition or a prior acquisition;

and

(c) on any instrument which effects, acknowledges, evidences or records the acquisition of—

(i) the relevant acquisition;

or

(ii) any prior acquisition in respect of which duty under this Part has not previously been paid.

(3) If the Commissioner is satisfied that it would not be just and reasonable in the circumstances, the Commissioner may determine that an amount calculated in accordance with subsection (1)(b)(ii) and specified in the Commissioner's determination will not be aggregated for the purposes of this section.

(4) If duty is chargeable under this section on a statement in respect of a relevant acquisition acquired by a person and any prior acquisition acquired by a related person, the person and the related person are jointly and severally liable for the payment of the duty.

Statement of acquisition of land use entitlement

96. (1) If a person acquires a land use entitlement in a private company or scheme, the person must lodge with the Commissioner a statement in respect of the acquisition.

(2) A statement under this section must be lodged within two months after the interest is acquired, or within such longer period as the Commissioner may approve in writing.

(3) The statement must be in a form approved by the Commissioner and must contain the following information:

- (a) the name and address of the person who has acquired the land use entitlement;
 - (b) the title reference of the real property to which the land use entitlement applies;
 - (c) the date of acquisition of the land use entitlement;
 - (d) the unencumbered value of the real property to which the land use entitlement applies as at the date of acquisition;
 - (e) the same information as is specified in paragraphs (a), (b), (c) and (d) in respect of each prior land use entitlement acquired in relation to the private company or scheme by the person or a related person;
 - (f) the amount of duty paid in respect of the acquisition of each such prior land use entitlement;
- and
- (g) such other information as may be required by the Commissioner.

Assessment and payment of duty—land use entitlement

97. (1) This Act applies (and duty will be assessed) in relation to a statement lodged under section 96 as if the statement were a conveyance operating as a voluntary disposition *inter vivos* of property of a value equal to the unencumbered value of the real property the subject of the land use entitlement as at the date of acquisition aggregated with the unencumbered value of any real property which is the subject of any prior land use entitlement as at the date of acquisition of the prior land use entitlement.

(2) The duty chargeable under this section will be reduced by the sum of the duty, if any, paid—

- (a) under this Part in respect of a prior land use entitlement;
- (b) under a corresponding law in respect of the acquisition of the land use entitlement or any prior land use entitlement;

and

- (c) on any instrument which effects, acknowledges, evidences or records the acquisition of—
 - (i) the land use entitlement;or
 - (ii) any prior land use entitlement in respect of which duty under this Part has not previously been paid.

(3) If the Commissioner is satisfied that it would not be just and reasonable in the circumstances, the Commissioner may determine that a value referred to in subsection (1) will not be aggregated for the purposes of this section.

(4) If duty is chargeable under this section on a statement in respect of a land use entitlement acquired by a person and any prior land use entitlement acquired by a related person, the person and the related person are jointly and severally liable for the payment of the duty.

Special allowance for certain financial arrangements

98. (1) If—

(a) the Commissioner is informed at the time that a person lodges a statement under section 94 or 96 that the relevant acquisition or the acquisition of the land use entitlement (as the case may be) has been effected for the purpose of securing financial accommodation;

and

(b) the Commissioner is satisfied that the acquisition has been effected for that purpose,

the statement is not, insofar as it relates to that acquisition, chargeable with duty to the extent provided by subsection (2).

(2) The statement will be chargeable with duty at the expiration of the period of five years after the date of the particular acquisition (or such longer period as may be determined by the Commissioner in a particular case) unless, within that period (or such longer period)—

(a) the interest or land use entitlement is reacquired by the person from whom it was acquired;

or

(b) in the case of an acquisition on account of a mortgagee exercising a power of sale—the interest or land use entitlement is conveyed by the mortgagee to a third person in exercise of that power of sale.

(3) Sections 94 and 96 do not apply to the reacquisition by a person of an interest in a private company or scheme, or the reacquisition of a land use entitlement.

Valuation of real property

99. (1) The Commissioner may—

(a) require a person who is required to lodge statement under this Part to furnish a further statement in a form approved by the Commissioner concerning the unencumbered value of any real property, or such other evidence of that value as the Commissioner thinks fit;

and

(b) assess duty in accordance with that evidence of value.

(2) If the Commissioner is not satisfied with the evidence of value furnished under subsection (1), the Commissioner may assess the duty chargeable on the basis of a valuation made at the request of the Commissioner by a person appointed by the Commissioner.

Enforcement of Part

100. (1) A statement required to be lodged under section 94 or 96 will, for the purposes of this Act, be taken to be an instrument executed by the person required to lodge the statement on—

(a) in the case of a statement under section 94—the date of the relevant acquisition;

(b) in the case of a statement under section 96—the date of the acquisition of the land use entitlement.

(2) If a person who is required to lodge a statement under section 94 or 96 fails or refuses to lodge the statement within the time allowed by this Part—

- (a) the Commissioner may make an assessment, on the basis of such information as is available to the Commissioner and such estimates as the Commissioner considers reasonable, of the duty that would have been chargeable if the statement had been lodged (and the duty will be recoverable from the person who is required to lodge the statement);

and

- (b) the person is guilty of an offence.

Penalty: \$10 000.

(3) It is a defence to a charge against subsection (2) for failing to lodge a statement under this Part within the time allowed by this Part to prove that the defendant did not know, and could not reasonably be expected to have known, of the existence of circumstances that required him or her to lodge the statement.

Notice may be registered on title

101. (1) If, in relation to the acquisition of an interest or a land use entitlement in a private company or scheme—

- (a) a statement has been lodged with the Commissioner under this Part, or should have been so lodged;
- (b) the Commissioner has made an assessment of the duty chargeable under this Part in respect of the acquisition;

and

- (c) the assessment has not been paid or has not been paid in full,

the Commissioner may, in relation to all or any of the real property to which the private company or scheme is entitled in South Australia, deliver to the Registrar-General a notice, in a form determined by the Registrar-General, setting out the amount of the assessment, and any penalty that may be payable under this Act.

(2) On receipt of a notice under subsection (1), the Registrar-General will, in relation to any real property referred to in the notice, enter in the Register Book—

- (a) the amount of the assessment;

and

- (b) the amount of any penalty.

(3) While an entry referred to in subsection (2) is in the Register Book, the Registrar-General must not register an instrument affecting the real property to which the entry relates unless—

- (a) the instrument—

(i) was executed before the entry was made;

(ii) has been executed under or pursuant to an agreement entered into before the entry was made;

or

(iii) relates to an instrument registered before the entry was made;

- (b) the instrument is an instrument of a prescribed class;

- (c) the Commissioner consents to the registration in writing;

(d) the instrument is expressed to be subject to the operation of the notice under this section;

(e) the instrument is a duly stamped conveyance—

(i) that results from a sale of the real property under section 103;

or

(ii) that results from the exercise of a power of sale under a mortgage, charge or encumbrance in existence before the entry was made.

(4) An instrument registered under subsection (3)(a), (b) or (c) has effect, in relation to the entry, as if it had been registered before the entry was made.

(5) If an instrument is registered under subsection (3)(e), the entry will be taken to be cancelled by the registration of the instrument and the Registrar-General must make the appropriate entries to give effect to the cancellation.

(6) If the duty and any penalty in respect of which an entry has been made in the Register Book is paid, the Commissioner must deliver to the Registrar-General a notice to that effect.

(7) The Commissioner may, notwithstanding that the duty and any penalty in respect of which an entry has been made in the Register Book has not been paid, discharge or vary a notice given under subsection (1) (although the Commissioner may only vary a notice by releasing real property from the operation of the notice).

(8) On receipt of a notice under subsection (6) or (7), the Registrar-General will, according to the terms of the notice, cancel or vary any relevant entry in the Register Book (and the real property to which that notice relates then ceases to be subject to the operation of this section).

(9) Where the Commissioner delivers a notice to the Registrar-General under this section, the Commissioner must send a copy of the notice to the registered proprietor of the real property to which the notice relates with a direction that the registered proprietor must immediately send a copy of the notice to each person that the registered proprietor believes may be affected by the operation of this section.

(10) The registered proprietor must not fail to comply with a direction in a notice under subsection (9).

Penalty: \$1 000.

(11) Nothing in this section affects a person's ability to lodge with the Registrar-General a caveat relating to any real property referred to in a notice under this section.

Charge on real property

102. If an entry is made in the Register Book under section 101 in relation to the certificate of title of any real property, the duty and any penalty to which the relevant notice relates is a charge on the real property and the charge continues in force until the duty and penalty are paid, or the entry is cancelled (whichever first occurs).

Power of sale

103. (1) If—

(a) any duty and penalty have not been paid at the expiration of six months from the date of an assessment under this Part;

and

- (b) an entry has been made under section 101 in relation to the certificate of title of real property,
- the Commissioner may publish in the *Gazette* a notice in which the Commissioner—
- (c) sets out a brief description of the real property and the amount of duty and penalty payable;
- and
- (d) states that if the duty and penalty are not paid within three months from the publication of the notice, the Commissioner will apply to the Supreme Court for an order for the sale of the real property.
- (2) A copy of a notice under subsection (1) must be sent to the registered proprietor of the real property to which the notice relates, and to any other person with a registered interest in the property.
- (3) The Commissioner may, if the duty and penalty are not paid in full within the three month period referred to in subsection (1), apply to the Supreme Court for an order for the sale of the real property to which the notice under that subsection relates.
- (4) The Supreme Court may, on an application under subsection (3), make an order for the sale of the real property.
- (5) Any money received in respect of the sale of real property under subsection (4) will be applied as follows:
- (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;
- (b) secondly—in discharging any liabilities secured by any instrument registered before the entry was made under section 101(2), or that is taken to have such effect by virtue of section 101(4);
- (c) thirdly—in payment of the duty and penalty assessed under this Act;
- (d) fourthly—in discharging any other liabilities secured by registered instrument;
- (e) fifthly—in discharging any other liabilities secured by unregistered instrument of which the Commissioner has notice;
- (f) sixthly—in discharging any liability to the Crown for rates or taxes, or any other prescribed liability to the Crown in respect of the land;
- and
- (g) seventhly—in payment to the registered proprietor of the real property at the time of the sale.
- (6) Where real property is sold in pursuance of this section, a conveyance executed by an officer of the Supreme Court nominated by the Court will, on registration or enrolment, operate to vest title to the real property in the purchaser.
- (7) The title vested in the purchaser will be free of—
- (a) any charge under this Part;
- (b) all other liabilities discharged under subsection (5);
- and
- (c) any other liability that may exist on account of any mortgage, charge or encumbrance.

(8) The Registrar-General must, on production of a conveyance executed under subsection (6), register the conveyance and, notwithstanding *The Real Property Act, 1886*, production of the duplicate certificate of title will not be required (but, if the duplicate certificate of title is not produced, the Registrar-General will cancel the existing certificate of title and issue a new certificate in the name of the transferee).

Substituted service

104. If the Commissioner cannot, after making reasonable inquiries, ascertain the address of a person to whom a notice is to be sent under section 101 or 103, the Commissioner may effect service of the notice by—

(a) placing a copy of the notice in a newspaper circulating generally in the State;

and

(b) causing a copy of the notice to be left in a conspicuous place on the real property to which the notice relates.

Reassessment of duty in certain cases

105. (1) If a person, under or by virtue of an agreement, acquires an interest or a land use entitlement in a private company or scheme, and the agreement is subsequently rescinded, annulled or otherwise terminated (except by completion)—

(a) any obligation to lodge a statement under this Part on account of the acquisition, or to include the acquisition in a statement under this Part, ceases;

and

(b) if the acquisition has been included in a statement under this Part, the Commissioner may, on his or her own initiative or on application to the Commissioner in a form approved by the Commissioner, assess or reassess the liability to duty under this Part as if the interest or land use entitlement had never existed.

(2) If a private company or scheme, by virtue of an agreement, is entitled to property, and the agreement is subsequently rescinded, annulled or otherwise terminated (except by completion)—

(a) any obligation to lodge a statement under this Part on account of the ownership of that property by the company or scheme, or to include that property in a statement under this Part, ceases;

and

(b) if the property has been included in a statement under this Part, the Commissioner may, on his or her own initiative or on application to the Commissioner in a form approved by the Commissioner, assess or reassess the liability to duty under this Part as if the private company or scheme had never been entitled to the property.

(3) If, on a reassessment of duty under this section, the initial assessment of duty is altered—

(a) any amount overpaid must be immediately refunded to the person who paid the duty;

and

(b) any amount found to be owing must be paid by the person who lodged the relevant statement within two months after the person receives written notification of the amount payable (or within such longer period as the Commissioner may approve in writing).

Company to lodge a statement

105a. (1) Where—

(a) by a relevant acquisition, a person acquires a majority interest in a private company;

or

(b) a person requires a land use entitlement in a private company,

the company must lodge a statement under this section with the Commissioner.

(2) A statement under this section—

(a) must be lodged within two months after the majority interest or land use entitlement is acquired (or within such longer period as the Commissioner may approve in writing);

and

(b) must be in a form approved by the Commissioner.

(3) If a company that is required to lodge a statement under this section fails or refuses to lodge the statement within the time allowed under this section, the company is guilty of an offence.

Penalty: \$5 000.

(4) It is a defence to a charge against subsection (3) for failing to lodge a statement under this section within the time allowed under this section to prove that the defendant did not know, and could not reasonably be expected to have known, of the existence of circumstances that required the company to lodge the statement.

General ability to recover duty

105b. Nothing in this Part prevents a person who pays duty from recovering the amount of the payment from another person.

Specific ability of private company or scheme to pay duty

105c. (1) A private company or scheme may pay the duty chargeable under this Part on account of the acquisition by a person of an interest or land use entitlement in the company or scheme.

(2) If a private company or scheme makes a payment under subsection (1)—

(a) the payment will be taken to be made on behalf of the person who acquired the interest or land use entitlement;

(b) without derogating from the right of that person to lodge an objection or appeal, the company or scheme is also entitled to object or appeal against the Commissioner's assessment of duty;

and

(c) the amount paid may be deducted by the company or scheme from any money payable by the company or scheme to the person, or may be recovered by the company or scheme as a debt due to the company or scheme in a court of competent jurisdiction (although if an objection or appeal is lodged and as a result the amount of duty chargeable is reduced, the amount that may be deducted or recovered under this provision is adjusted accordingly).

(3) Notwithstanding any time limit that may apply under section 24, an objection or appeal under subsection (2)(b) may be lodged within 21 days after the private company or scheme makes a payment under subsection (1).

PART V

MISCELLANEOUS PROVISIONS

Spoiled or unused stamps

106. Subject to any regulations made under this Act, the Commissioner may, on the application of any person in possession of stamps or stamped material unused or rendered useless by being inadvertently spoiled, give to that person, in lieu of the stamps or stamped material so spoiled or unused, other stamps (of the same or another denomination) of the same value or, at his discretion, money of the same value, deducting the proper allowance on purchase of stamps of the same description; but the Commissioner may, if he thinks it just to do so, refrain from making any such deduction.

Transfers of marketable securities not to be registered unless duly stamped

106a. (1) A transfer of a marketable security to which Part IIIA does not apply but which is otherwise liable to duty under this Act shall not be registered, recorded or entered in the books of the corporation, company or society by which the security 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 therefor 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 (1b), deemed to have been duly stamped.

(1a) Notwithstanding any other provision of this Act, where marketable securities are transferred pursuant to a takeover scheme, the Commissioner may, if he thinks it expedient to do so, upon payment of the duty payable in respect of the instruments of transfer, denote payment of the duty on a statement in the prescribed form.

(1b) Where payment of duty is denoted on a statement pursuant to subsection (1a), each instrument of transfer to which the statement relates shall be deemed to have been duly stamped.

(2) A transfer of a marketable security to perfect a sale or purchase to which Part IIIA applies shall not be registered, recorded or entered in the books of the corporation, company or society by which the security was issued—

(a) unless a proper instrument of transfer has been delivered to the corporation, company or society;

and

(b) unless the transfer is, under section 90e(3), deemed to have been duly stamped.

(3) After a transfer of any marketable security has been registered, recorded or entered in the books of the corporation, company or society in this State, the instrument of transfer shall be retained in this State by the corporation, company or society for a period of not less than three years.

(4) If any corporation, company or society contravenes or fails to observe and comply with any of the provisions of this section, that corporation, company or society shall be guilty of an offence and shall, for each such offence, be liable to a penalty not exceeding one hundred dollars.

(5) The right or title of any transferee or subsequent holder of any marketable security shall not be invalidated by reason only that the transfer of the security was registered, recorded or entered in the books of a corporation, company or society in contravention of the provisions of this section.

Penalty for fraudulent misstatements

107. Any person making, or assisting in making, any false statement or any fraudulent alterations in any statement or document required under this Act with intent to evade the payment of duty shall be guilty of a misdemeanour and shall be liable to imprisonment for a period not exceeding three years and to a fine of two hundred dollars.

Penalties for felonies

108. (1) Any person who—

- (a) forges any die or stamp;
- (b) impresses any material with a forged die;
- (c) cuts, tears or in any way removes from any material any stamp with intent to make fraudulent use of the stamp or of any part thereof;
- (d) mutilates any stamp with intent to make fraudulent use of any part thereof;
- (e) fraudulently fixes or places upon any material, or upon any stamp, any stamp or part of a stamp which has been cut, torn or in any way removed from any other material or out of or from any other stamp;
- (f) erases or otherwise removes from any stamped material any name, sum, date or other matter or thing therein written with the intent that any fraudulent use should be made of the stamp upon the material;
- (g) knowingly sells or exposes for sale, or utters or uses, any forged stamp;
- (h) knowingly and without lawful excuse (the proof of which lawful excuse shall lie on the person accused) has in his possession any forged die or stamp, or any stamp or part of a stamp which has been fraudulently cut, torn or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date or other matter or thing has been fraudulently erased or otherwise removed,

shall be guilty of felony and liable to imprisonment, with or without hard labour, for a term of not less than one year and not more than seven years.

(2) Any person who causes to be done, or knowingly assists in doing, any of the acts mentioned in subsection (1)(a) to (h) shall be deemed to be guilty of the principal offence and shall be punishable accordingly.

Penalty for fraud

109. Any person who—

- (a) fraudulently removes or causes to be removed from any instrument any adhesive stamp, or fraudulently affixes to any instrument any adhesive stamp which has been removed from any other instrument, with intent that the stamp may be used again;
- (b) knowingly sells, offers for sale or utters any adhesive stamp which has been removed from any instrument, or utters any instrument having thereon any adhesive stamp which to his knowledge has been so removed;

or

(c) practises or is concerned in any fraudulent act, contrivance or device with intent to evade any duty under this Act,

shall be liable to a penalty of one hundred dollars and, in the last case, shall also forfeit the amount of the duty sought to be evaded.

* * * * *

Recovery of penalties

110. (1) Penalties incurred under this Act may be recovered in a summary way before any two justices or may be sued for by information in the Supreme Court in the name of the Attorney-General for South Australia, and may be recovered with full costs of suit.

(2) The Treasurer may, at his discretion, mitigate, stay or compound proceedings for any penalty and may reward any person who informs the Commissioner of any offence against this Act or assists in the recovery of any penalty.

Offences

110a. (1) An offence against this Act or any provision thereof may be prosecuted either summarily or upon information in the Supreme Court, but a person shall not be liable to be punished more than once in respect of the same offence.

(2) A summary prosecution for an offence against this Act may be commenced—

(a) within five years from the date of the alleged offence;

or

(b) if the Treasurer authorizes the prosecution, after the expiration of five years from that date.

Remedy for misappropriation

111. (1) The Supreme Court may, upon application by, or on behalf of, the Commissioner, grant a rule requiring any person who has received money payable by way of duty or penalty under this Act, or the executor or administrator of any such person, to show cause why he should not deliver to the Commissioner an account upon affidavit of any duty or sum of money received by that person, executor or administrator and why it should not be forthwith paid to the Commissioner.

(2) The Court may make absolute such a rule and enforce by attachment or otherwise the payment of any such duty or sum of money as appears to be due, together with costs.

Regulations

112. (1) The Governor may make such regulations and may authorize such forms as may be necessary from time to time for carrying this Act into effect and may, by any such regulation, impose a penalty not exceeding \$2 000 for any breach thereof.

(2) Every such regulation and form, when published in the *Gazette*, shall have the force of law.

(3) Every such regulation shall be laid before both Houses of Parliament forthwith if Parliament is sitting and, if not, then within thirty days after the commencement of the next session.

(4) Regulations made under this section may prescribe any matters necessary or convenient to be prescribed or which are required or, expressly or by implication, authorized or permitted to be prescribed for the purposes of this Act.

- (5) Without limiting the generality of subsection (4), the regulations may—
 - (a) be of general or limited application;
 - (b) require the use of forms approved by the Commissioner for documents required or authorized to be used for the purposes of this Act or the regulations;
 - (c) leave any other matter to be determined, varied or regulated according to the discretion of the Commissioner;and
 - (d) make different prescriptions according to prescribed circumstances.

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Exemption from stamp duty

114. (1) The Governor may, by proclamation, exempt any body or authority established by statute from the payment of duty under this Act.

(2) The Governor may, by subsequent proclamation, vary or revoke a proclamation under this section.

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SCHEDULES

SECOND SCHEDULE

Nature of Instrument	Amount of Duty \$
AGREEMENT or any MEMORANDUM of any AGREEMENT not under seal and not otherwise specifically charged with any duty, whether the same is only evidence of a contract or obligatory upon the parties from its being a written instrument	0.20

Exemptions—

1. Any agreement or memorandum for the hire of any labourer, artificer, manufacturer or menial servant.
2. Any agreement or memorandum made for, or relating to, the sale of any goods, wares or merchandise where the value does not exceed \$100, whether the same is only evidence of a contract or obligatory on the parties from its being a written instrument, including every schedule, receipt or other matter put or endorsed thereon or annexed thereto. This exemption shall be construed subject to section 31.
3. Any agreement or memorandum made between a master and any mariner of any ship or vessel for wages on any coastal voyage from port to port in the State of South Australia.
4. Any life, fire, personal accident, fidelity, guarantee, livestock, plate glass or marine insurance or assurance policy or cover note.
5. Storage notes for wheat in the Form A appended to this schedule or to like effect only.
6. Any agreement made before the thirtieth day of September, 1916, between any person, firm or company and the Government of the State or any Minister of the Crown authorizing the Government or any Minister of the Crown to handle and sell wheat on behalf of such person, firm or company.

ANNUAL LICENCE or MONTHLY RETURN to be taken out or lodged by any company, person or firm of persons, whether corporate or unincorporate, which carries on or proposes to carry on in South Australia any life, personal accident, fire, fidelity, guarantee, livestock, plate glass, marine or other assurance or insurance business and whether the head office or principal place of business of that company, person or firm is in South Australia or elsewhere—

- (a) in the case of an annual licence where the company, person or firm has received or in any manner charged in account (whether directly or by agents) premiums relating to life insurance within the period of 12 months preceding the year for which the licence is to be taken out—for every \$100 or fractional part of \$100 of those premiums 1.50
- (ab) in the case of a monthly return where the company, person or firm has received or in any manner charged in account (whether directly or by agents) premiums relating to policies of any kind (other than life insurance policies) within the month preceding the month in which the return is required to be lodged—for every \$100 or fractional part of \$100 of those premiums 8.00
- (b) Where the company, person or firm has not, prior to applying for an annual licence, transacted any assurance or insurance business—
 - (i) if the annual licence is required for the full period of twelve months 100.00
 - (ii) if the annual licence is required for a shorter period than twelve months, a proportionate part of 100.00

For the purposes of this item, subject to the exemptions mentioned hereunder—

- (2) the premiums referred to in paragraph (a) are net premiums and shall be counted so as to exclude any amount in respect of stamp duty on the annual licence received or charged on or after 1 January, 1986, any commission or discount and any portion of those premiums actually paid by way of reinsurance effected in South Australia with any other such company, person or firm;
- (2a) in the case of an annual licence to be taken out for the year commencing on 1 January, 1987, or a subsequent year, the amount of any premiums refunded during the period of 12 months preceding the year for which the annual licence is to be taken out (whether those premiums were received during that preceding period or earlier) shall be deducted from the amount of the premiums referred to in paragraph (a);
- (2b) the premiums referred to in paragraph (ab) must be counted so as to exclude any amount in respect of stamp duty received or charged on or after 1 January 1986, and any portion of those premiums actually paid by way of reinsurance effected in South Australia with any other such company, person or firm;
- (2c) in the case of a monthly return, there must be deducted from the amount of the premiums referred to in paragraph (ab) the amount of any refunds in respect of premiums (whenever received) made after the end of the month in respect of which duty was last paid under this item by the company, person or firm and before the commencement of the month in which the return is required to be lodged;

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- (3) no premiums received by any such company, person or firm for insurance risks outside South Australia, except life and personal accident insurance risks outside South Australia, shall be counted;
- (3a) in the case of a life insurance policy, any amount that is paid on or after 1 January, 1986, from an account established for investment to an account established for insurance of a risk shall be deemed to be a premium received under that policy for insurance of that risk;
- and
- (4) the duty in respect of any one licence under paragraph (a) shall not in any case be less than \$100.

Exemptions—

1. Premiums received or charged under any private guarantee fidelity insurance scheme promoted amongst and sustained solely for the benefit of the officers and servants of any particular public department, company, person or firm and not extended, either directly or indirectly, beyond such officers and servants.
2. Premiums received or charged under any scheme referred to in exemption 1 promoted amongst and sustained solely for the benefit of the officers and members of any registered friendly society or branch thereof and not extended, either directly or indirectly, beyond such officers and members.
3. Any premium or portion of a premium received or charged on or after 1 January, 1986, under a life insurance policy in respect of investment and not in respect of any risk insured by the policy.
4. Any premium received or charged under a policy in respect of a life or personal accident insurance risk where the principal place of residence of the policy owner is in the Northern Territory and the policy is registered in a registry kept in the Northern Territory pursuant to the *Life Insurance Act 1945* of the Commonwealth.
5. Any premium or portion of a premium received or charged on or after the first day of January, 1985, under a policy of workers compensation insurance where the premium or portion is referable to insurance against liability to pay workers compensation in respect of workers under the age of 25 years.
6. Any premium or portion of a premium received or charged on or after the first day of January, 1985, under a policy of insurance by a registered medical benefits organization within the meaning of the *National Health Act 1953* of the Commonwealth where the premium or portion is referable to insurance against medical, dental or hospital expenses.
7. Any premium or portion of a premium received or charged on or after 1 January, 1986, under any life insurance policy, being a policy for the payment of an annuity to the person insured.
8. Any premium or portion of a premium received or charged on or after 1 November, 1986, in respect of the insurance of the hull of a marine craft used primarily for commercial purposes or in respect of the insurance of goods carried by railway, road, air or sea or of the freight on such goods.

APPLICATION to Register a Motor Vehicle or APPLICATION to Transfer the Registration of a Motor Vehicle—

(A) Component payable in respect of Registration

Where the value of the motor vehicle (not being a tractor owned by a primary producer, a commercial motor vehicle or a trailer)—

(a) does not exceed \$1 000—for every \$100 or fractional part of \$100 of that value	1.00
(b) exceeds \$1 000, but does not exceed \$2 000	\$10.00 plus \$2.00 for every \$100 or fractional part of \$100 of the excess over \$1 000 of that value
(c) exceeds \$2 000, but does not exceed \$3 000	\$30.00 plus \$3.00 for every \$100 or fractional part of \$100 of the excess over \$2 000 of that value
(ca) exceeds \$3 000	\$60.00 plus \$4.00 for every \$100 or fractional part of \$100 of the excess over \$3 000 of that value

Where the value of the motor vehicle (being a tractor owned by a primary producer, a commercial motor vehicle or a trailer)—

(d) does not exceed \$1 000—for every \$100 or fractional part of \$100 of that value	1.00
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(e) exceeds \$1 000, but does not exceed \$2 000	\$10.00 plus \$2.00 for every \$100 or fractional part of \$100 of the excess over \$1 000 of that value
(f) exceeds \$2 000	\$30.00 plus \$3.00 for every \$100 or fractional part of \$100 of the excess over \$2 000 of that value

The duty on an application by a person beneficially entitled under the will or on the intestacy of a deceased person to the motor vehicle to which the application relates shall, irrespective of the value of the motor vehicle, be \$4, but in any other case the duty in respect of any one application shall not be less than \$5.

Exemptions from payment of this component—

1. Any application to register a motor vehicle made by a person who carries on the business of selling motor vehicles if the application is made by that person for the purpose of selling the motor vehicle to which the application relates to another person in the ordinary course of that business or for the purpose of demonstrating such motor vehicle to prospective purchasers thereof and such motor vehicle has not been previously registered (whether in this State or elsewhere in the Commonwealth).
2. Any application to register a motor vehicle that has been previously registered (whether in this State or elsewhere in Australia) or any application to transfer the registration of a motor vehicle that has been previously registered (whether in this State or elsewhere in Australia) to a dealer if the application is being made by that dealer for the purpose of the resale by him to another person of the motor vehicle to which the application relates and the resale is in the ordinary course of the business of the dealer.
3. Any application to register a motor vehicle or to transfer the registration of a motor vehicle made by a person or body who or which is entitled to registration, without fee, of the vehicle to which the application relates.
4. Any application to register or to transfer the registration of a trailer other than a trailer that is constructed or adapted solely or mainly for the carriage of goods and has an unladen mass of more than 2.5 tonnes.
5. Any application to register a motor vehicle or to transfer the registration of a motor vehicle made by the Crown or by any statutory body or authority which holds its assets for and on account of the Crown or by any person on behalf of the Crown or of any such body or authority.
- 5a. Any application to register a motor vehicle or to transfer the registration of a motor vehicle made under the scheme established for the registration of motor vehicles used for or in connection with Government or Government sponsored services and known as "the Continuous Government Registration Scheme".
6. Any application to register a motor vehicle or to transfer the registration of a motor vehicle to the extent that *ad valorem* stamp duty has already been paid on another instrument by which or by virtue of which the property in the motor vehicle was legally or equitably transferred to, or vested in, the applicant.
7. Any application to register or to transfer the registration of a motor vehicle made by an executor or administrator of, or by any person administering the estate of, a deceased person if the application is made only for the purpose of the transfer of the motor vehicle to a person beneficially entitled thereto or for the purpose of the sale of the motor vehicle in the course of winding up the estate.
8. Any application to transfer the registration of a motor vehicle made by an owner who has repossessed that motor vehicle pursuant to a hire-purchase agreement or made by an owner in pursuance of the return of the motor vehicle to that owner by the hirer voluntarily where the vehicle is the subject of a hire-purchase agreement or upon the termination of a hiring agreement (not being a hire-purchase agreement).
9. Any application to register or to transfer the registration of a motor vehicle in which seating for not less than twelve adult passengers is provided and which is to be used solely or predominantly for the carriage of passengers for hire or reward.
10. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of a council as defined in the *Planning and Development Act, 1966*, or a controlling authority referred to in Part XIX of the *Local Government Act, 1934*, or the Metropolitan County Board constituted under the *Food and Drugs Act, 1908*.
11. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of a person entitled under section 38 of the *Motor Vehicles Act, 1959*, to have that motor vehicle registered at a reduced registration fee.
- 11a. Any application to register a motor vehicle in the name of a person entitled under section 39 of the *Motor Vehicles Act 1959* to have that motor vehicle registered at a reduced registration fee.

- 12. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of a person who satisfies the Registrar of Motor Vehicles—
 - (a) that he is licensed under the law of another State or Territory of the Commonwealth to carry on the business of buying, selling or exchanging second-hand or used motor vehicles;
 - (b) that the application is being made by that person for the purpose of the resale by him to another person of the motor vehicle to which the application relates;
 and
 - (c) that such resale is in the ordinary course of the business of that person.
- 13. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of a person who satisfies the Registrar of Motor Vehicles—
 - (a) that he is the owner of the motor vehicle;
 - (b) that, in consequence of the loss by him of the use of one or both of his legs, he is permanently unable to use public transport;
 - (c) that the motor vehicle will be wholly or mainly used for transporting himself;
 and
 - (d) that he is not enjoying the benefit of this exemption in respect of any other motor vehicle currently owned by him.
- 14. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of a person who satisfies the Registrar of Motor Vehicles—
 - (a) that the motor vehicle is the subject of a hire-purchase agreement;
 and
 - (b) that he is a person to whom the hirer's rights under the agreement have passed by assignment,
 but, if *ad valorem* stamp duty has already been paid in respect of the assignment of such rights on the instrument by which, or by virtue of which, such rights were assigned, this exemption shall apply only to the extent of the amount of such duty so paid.
- 15. Any application to register a motor vehicle where—
 - (a) immediately before the date on which the application is made, the motor vehicle was registered in the name of the applicant under the law of this State;
 or
 - (b) the applicant satisfies the Registrar of Motor Vehicles that, immediately before the date on which the application is made—
 - (i) the motor vehicle was registered in the name of the applicant under the law of another State or a Territory of the Commonwealth;
 and
 - (ii) the applicant—
 - (A) was a resident of that State or Territory;
 - or
 - (B) carried on a business in that State or Territory.
- 16. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle into, the name of the East Torrens County Board of Health constituted under the *Health Act, 1935*.
- 17. Any application to transfer the registration of a motor vehicle made by a mortgagee—
 - (a) who has, in accordance with the *Consumer Transactions Act, 1972*, taken possession of the motor vehicle in pursuance of a consumer mortgage;
 or
 - (b) to whom the motor vehicle has been voluntarily returned by the mortgagor in pursuance of the *Consumer Transactions Act, 1972*.

(B) Component payable in respect of a Policy of Insurance

Where the application is for registration of the vehicle for a period of 12 months	15.00
Where the application is for registration of the vehicle for a period of 6 months	8.00

Exemptions from payment of this component—

- 1. Policy of insurance where the application for registration is made by a person or body who or which is entitled to registration of the motor vehicle to which the application relates without fee.
- 2. Policy of insurance where the application is for registration of a trailer other than a trailer that is constructed or adapted solely or mainly for the carriage of goods and has an unladen mass of more than 2.5 tonnes.
- 3. Policy of insurance where the application for registration is made by the Crown or by any statutory body or authority which holds its assets for and on account of the Crown or by any person on behalf of the Crown or of any such body or authority.

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- 3a. Policy of insurance where the motor vehicle is or is to be registered under the scheme established for the registration of motor vehicles used for or in connection with Government or Government sponsored services and known as "the Continuous Government Registration Scheme".
- 4. Policy of insurance where the application is for registration of a motor vehicle in which seating for not less than twelve adult passengers is provided and which is used solely or predominantly for the carriage of passengers for hire or reward.
- 5. Policy of insurance where the application for registration is made by a council as defined in the *Planning and Development Act, 1966*, or by a controlling authority referred to in Part XIX of the *Local Government Act, 1934*, or by the Metropolitan County Board constituted under the *Food and Drugs Act, 1908*.
- 6. Policy of insurance where the application for registration is made by a person entitled under section 38 of the *Motor Vehicles Act, 1959*, to have the motor vehicle in respect of which the application is made registered at a reduced fee.
- 6a. Policy of insurance where the application for registration is made by a person entitled under section 39 of the *Motor Vehicles Act 1959* to have the motor vehicle in respect of which the application is made registered at a reduced registration fee.
- 7. Policy of insurance where the application for registration is made by a person who satisfies the Registrar of Motor Vehicles—
 - (a) that he is the owner of the motor vehicle;
 - (b) that, in consequence of the loss by him of the use of one or both of his legs, he is permanently unable to use public transport;
 - (c) that the motor vehicle will be wholly or mainly used for transporting himself; and
 - (d) that he is not enjoying the benefit of this exemption in respect of any other motor vehicle currently owned by him.
- 8. Policy of insurance where the application for registration is made by a person who satisfies the Registrar of Motor Vehicles—
 - (a) that he is the owner of the motor vehicle;
 - (b) that he is entitled as the holder of—
 - (i) a State concession card issued by the Department of Community Welfare; or
 - (ii) a pensioner entitlement card issued under any Act or law of the Commonwealth,
 to travel on public transport in this State at reduced fares.

* * * * *

BILL OF EXCHANGE payable on demand other than a cheque or payment order to which either of the following two paragraphs applies 0.25

BILL OF EXCHANGE, being a cheque drawn on a registered financial institution within the meaning of the *Financial Institutions Duty Act, 1983*, on the Reserve Bank of Australia or on a bank that does not carry on business in South Australia 0.10

BILL OF EXCHANGE, being a payment order 0.10

* * * * *

BILL OF EXCHANGE and PROMISSORY NOTE drawn or made out of South Australia and duly stamped with *ad valorem* duty under the law of another State of the Commonwealth of Australia 0.10

BILL OF EXCHANGE and PROMISSORY NOTE (not being a bill or note referred to in the paragraph immediately preceding this paragraph) which is expressed to be payable at a fixed period of not more than one hundred and twenty days after date or sight—

In respect of each ten days and also of any fractional part of ten days of that period (a period expressed by reference to a month being reckoned on the basis of thirty days for a month), for every \$100 and also for any fractional part of \$100 of the amount or value of the money for which the bill or note is drawn or made 0.01

BILL OF EXCHANGE and PROMISSORY NOTE of any other kind (except a bank note)—
 For every \$100 and also for any fractional part of \$100 of the amount or value of the money for which the bill or note is drawn or made 0.12

Exemptions—

- 1. Bill, note, bond, debenture, coupon or interest warrant issued by, or on behalf of, or guaranteed by, the Government of South Australia.
- 2. Draft or order for the payment of money issued by any duly authorized officer of the Government on account of the Public Service.
- 3. Post office order or postal note.

4. Any cheque—

(a) drawn by the customer of a bank against an account kept with the bank;

or

(b) drawn by a building society under the *Building Societies Act 1990* or a credit union under the *Credit Unions Act 1989* pursuant to an agreement under which a customer's account may be debited with the sum ordered to be paid by the cheque,

where the customer is a body established for a charitable, educational, benevolent, religious, sporting, community or philanthropic purpose.

4a. Any payment order given by a body established for a charitable, educational, benevolent, religious, sporting, community or philanthropic purpose.

5. Draft or order drawn by any bank in South Australia upon any other bank in South Australia, not payable to bearer or to order and used solely for the purpose of settling or clearing any account between such banks.

6. Letter written by any bank in South Australia to any other bank in South Australia directing the payment of any sum of money, the same not being payable to bearer or to order and such letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf.

7. Letter of credit granted in South Australia authorizing drafts to be drawn out of South Australia.

8. Cheque drawn by any registered friendly society or by, or on behalf of, any community or subsidized hospital approved by the Chief Secretary.

*	*	*	*	*	*	*	*	*	*
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*	*	*	*	*	*	*	*	*	*

CONVEYANCE or TRANSFER on sale of any property (not otherwise charged), including contract or agreement for sale—

*	*	*	*	*	*	*	*	*	*
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(aa) In the case of the sale of any stock or marketable security (where any return lodged with the Commissioner pursuant to section 90d or any return furnished under section 90g does not relate to such sale)—

Where the value of the stock or marketable security is less than \$100—for every \$25 and any fractional part of \$25	0.14
Where the value of the stock or marketable security is \$100 or more—for every \$100 and any fractional part of \$100	0.60

*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*

(b) In any other case (not being a conveyance or transfer on sale of any stock or marketable security)—

Where the value of the property conveyed—

Does not exceed \$12 000 for every \$100 or fractional part of \$100 of the value	\$1.00
Exceeds \$12 000 but does not exceed \$30 000	\$120 plus \$2.00 for every \$100 or fractional part of \$100 of the excess over \$12 000 of that value
Exceeds \$30 000 but does not exceed \$50 000	\$480 plus \$3.00 for every \$100 or fractional part of \$100 of the excess over \$30 000 of that value

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Exceeds \$50 000 but does not exceed \$100 000	\$1 080 plus \$3.50 for every \$100 or fractional part of \$100 of the excess over \$50 000 of that value
Exceeds \$100 000	\$2 830 plus \$4.00 for every \$100 or fractional part of \$100 of the excess over \$100 000 of that value.

Exemption—

1. Conveyance or transfer of a mortgage or an interest in a mortgage.
2. Conveyance or transfer of any debenture, debenture stock, bond, note or other security of a government or of any municipal or other corporation, company or society (whether constituting a charge on the assets of the government, or of the municipal or other corporation, company or society or not).
3. Conveyance or transfer of a marketable security to or by a person who is a trustee under section 90g.
4. In the case of an amalgamation under the *Industrial Conciliation and Arbitration Act, 1972*, any conveyance or transfer of property by an amalgamating association to the association formed by the amalgamation.
5. In the case of an amalgamation under Part VIIIA or Part VIIIB of the *Conciliation and Arbitration Act 1904* of the Commonwealth, any conveyance or transfer of property by an amalgamating association or amalgamating associated body to the association with which it amalgamates or that is formed by the amalgamation.

* * * * *

CONVEYANCE operating as a voluntary disposition *inter vivos* of any property (including a statement under Part IV)—

Where the value of the property conveyed—

Does not exceed \$12 000 for every \$100 or fractional part of \$100 of the value	\$1.00
Exceeds \$12 000 but does not exceed \$30 000	\$120 plus \$2.00 for every \$100 or fractional part of \$100 of the excess over \$12 000 of that value
Exceeds \$30 000 but does not exceed \$50 000	\$480 plus \$3.00 for every \$100 or fractional part of \$100 of the excess over \$30 000 of that value
Exceeds \$50 000 but does not exceed \$100 000	\$1 080 plus \$3.50 for every \$100 or fractional part of \$100 of the excess over \$50 000 of that value
Exceeds \$100 000	\$2 830 plus \$4.00 for every \$100 or fractional part of \$100 of the excess over \$100 000 of that value.

Exemption—

- Conveyance operating as a voluntary disposition *inter vivos* by an employer of any property for the purpose of providing individual personal benefits, pensions or retiring allowances for his employees.
2. Conveyance or transfer of a mortgage.
3. Conveyance or transfer of a marketable security to or by a person who is a trustee under section 90g.

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4. In the case of an amalgamation under the <i>Industrial Conciliation and Arbitration Act, 1972</i> , any conveyance or transfer of property by an amalgamating association to the association formed by the amalgamation.	
5. In the case of an amalgamation under Part VIIIA or Part VIIIB of the <i>Conciliation and Arbitration Act 1904</i> of the Commonwealth, any conveyance or transfer of property by an amalgamating association or an amalgamating associated body to the association with which it amalgamates or that is formed by the amalgamation.	
CONVEYANCE for the partition or division of any property, being a conveyance of the kind referred to in section 71b(4), where the consideration for equality does not exceed \$200 or where there is no consideration for equality	4.00
CONVEYANCE for effectuating the appointment of a new trustee or the retirement of a trustee, not being a conveyance operating as a voluntary disposition <i>inter vivos</i>	2.00
* * * * *	
CONVEYANCE of any other kind not before charged	4.00
DEED (except as otherwise provided in this schedule)—	
For any deed where the consideration money therein expressed is not more than \$100	0.50
For every additional \$100 up to a total of \$800, a further sum of	0.50
For every deed or transfer of any kind not otherwise specified in this schedule	4.00
* * * * *	
INSTRUMENT of discharge or partial discharge of a mortgage or charge over land or an interest in land ... which duty may be denoted by an adhesive stamp.	4.00
* * * * *	
LEASE (not being a lease made subsequently to and in conformity with a duly stamped agreement for a lease) or AGREEMENT for a LEASE, or any written document for the tenancy or occupancy of any lands, tenements or hereditaments—	
Where a rate or average rate of rent per annum can be ascertained or estimated—	
For every \$100 or fractional part of \$100 of one years rent calculated at that rate or, if an average rate can be ascertained or estimated, at that average rate	1.00
Where a rate of rent per annum cannot be ascertained or estimated	4.00
Exemption—	
Lease or agreement for a lease, or any written document for the tenancy or occupancy of any lands, tenements or hereditaments, for a term not exceeding one year, where the rent reserved does not exceed the rate of \$52 per annum.	
2. Lease or agreement for lease of residential premises that are or are to be occupied by the lessee or prospective lessee as a place of residence.	
LEASE made subsequently to and in conformity with a duly stamped agreement for a lease	0.50
* * * * *	
MORTGAGE, BOND, DEBENTURE, COVENANT or WARRANT OF ATTORNEY to confess and enter up judgment—	
(a) Being a security for the payment or repayment of money, not being a security of a kind referred to in paragraph (c)—	
Where the money secured (excluding money to be advanced for the insurance of any property comprised in the security against damage by fire) does not exceed \$10 000 for every \$100 or fractional part of \$100 of that money	0.25
Where the money secured (excluding money to be advanced for the insurance of any property comprised in the security against damage by fire) exceeds \$10 000	\$25.00 plus \$0.35 for every \$100 or fractional part of \$100 of the excess over \$10 000 of that money
(b) Where any further money is added to the money already secured	The same duty as a principal security for such further money
(c) Being a mortgage of an existing mortgage of land used or to be used solely as a dwelling house constructed or in the course of construction on the land	4.00
Exemptions	
1. Every collateral or auxiliary or additional or substituted security, or security by way of further assurance for the above-mentioned purpose, where the principal or primary security is chargeable with duty as a mortgage, bond, debenture, covenant or warrant of attorney to confess and enter up judgment and is duly stamped as such.	
2. Every mortgage, bond, debenture or covenant securing the payment or repayment of an amount not exceeding four hundred dollars.	

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POWER OF ATTORNEY or other instrument in the nature thereof—

Any instrument not under seal	2.00
Any instrument under seal	4.00

Exemptions—

1. Any instrument for the sole purpose of appointing or authorizing any one person to vote as a proxy at any meeting at which votes may be given by proxy.
2. Any instrument or order for the receipt of any salary or wages.
3. Any instrument or order for the receipt of dividends or interest when made for the receipt of one payment only.

* * * * *

RETURN lodged with the Commissioner by a company, person or firm of persons under section 42aa—

There shall be paid by the person lodging the return a duty at such rate per centum of the amount of the premiums paid or payable in respect of each class of assurance or insurance to which the return relates as would have been payable if the assurance or insurance had been effected under a policy issued in this State.

RETURN lodged with the Commissioner by a South Australian dealer pursuant to section 90d—

There shall be paid by the dealer to the Commissioner a duty on each sale and each purchase to which the return relates in accordance with the following scale:

(a) In the case of the sale or purchase of marketable securities other than fixed interest securities—

Where the consideration for each sale or purchase is less than \$100—	
For every \$25 and any fractional part of \$25	0.07
Where the consideration for each sale or purchase is \$100 or more—	
For every \$100 and any fractional part of \$100	0.30

(b) In the case of the sale or purchase of fixed interest securities—

For every \$100 or fractional part of \$100 of the consideration for each sale or purchase	0.05
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Exemptions—

1. Any sale of marketable securities to which the return relates, which sale was made by a broker on his own account or behalf, where the marketable securities concerned were purchased by him on, or within 10 clear days (not including any day on which the Stock Exchange of which he is a member is closed) of, the day of the sale.
2. Any purchase of marketable securities to which the return relates, which purchase was made by a broker on his own account or behalf, where the marketable securities concerned were sold by him on, or within 10 clear days (not including any day on which the Stock Exchange of which he is a member is closed) of, the day of the purchase.

RETURN under section 90g—

Duty is payable in respect of each relevant transaction in accordance with the following scale:

Where the value of the marketable security comprised in the disposition—	
(a) is less than \$100 for every \$25 and any fractional part of \$25	0.14;
(b) is \$100 or more for every \$100 and any fractional part of \$100	0.60.

* * * * *

GENERAL EXEMPTIONS FROM ALL STAMP DUTIES

1. Wills, testamentary instruments and letters of administration and any instrument acknowledging, evidencing or recording any such instrument.
2. Certificates of title issued from the Lands Titles Office.
3. Customs bonds.
4. Administration bonds.
5. Bonds to the Crown.
6. Conveyances of bills, bonds, debentures or other securities issued by a public statutory body constituted under a law of the Commonwealth or of this or any other State or of any Territory of the Commonwealth, not being a prescribed statutory body or a statutory body of a prescribed class.
7. Bond on appointment of a special bailiff.
8. Memorandum of association, articles of association and rules and regulations of any incorporated company, association or society.
9. Marriage settlements.
10. Mortgage bonds guaranteed by the Government of South Australia.
11. Articles or indentures of apprenticeship and assignments of articles or indentures of apprenticeship.
12. Leases to the Crown and to any person on behalf of the Crown.

- 13. Power of attorney limited to a power to sign and seal leases from the Crown.
- 13a. Grant of land from the Crown.
- 13b. Conveyance, whether on sale or otherwise, to the Crown or to any person on behalf of the Crown (not being a surrender to the Crown, or any such person, of a lease or other interest in land in order that the Crown may grant to a person other than the surrenderor a lease of, or other interest in, the same land or any part thereof).
- 13c. Acquisition by a municipal or district council of land for the purposes of providing a public park, being an acquisition enabled or assisted by an advance under the *Public Parks Act, 1943*.
- 14. Conveyance on sale of any goods, wares, merchandise, horses, cattle, sheep or other movable chattels when the value does not exceed \$40.
* * * * *
- 15. Any transfer of any fire, personal accident, fidelity, guarantee, livestock, plate glass or marine insurance or assurance policy.
- 16. Any cemetery leases.
* * * * *
- 18. Bills, bonds, inscribed stock, debentures, deposit receipts and other securities issued by the Government of the State, and coupons or interest warrants issued in connection with any such bills, bonds, stock, debentures, deposit receipts or other securities, and any transfer of, or document relating to, the purchase or sale of any such bills, bonds, stock, debentures, deposit receipts or other securities.
- 19. Conveyance or transfer of any share or shares in the stock, funds or capital of, or of any debenture or debentures or bond or bonds issued by, any corporation, company or society by the personal representatives of a deceased person to any beneficiary who is entitled by virtue of the provisions of the will of such deceased person, or upon his intestacy, to have the share or shares or debenture or debentures or bond or bonds so conveyed or transferred to him.
- 20. Conveyance or transfer of any share or shares in the stock, funds or capital of, or of any debenture or debentures or bond or bonds issued by, any corporation, company or society if the conveyance or transfer is made for the purpose of effectuating the appointment of a new trustee or the retirement of a trustee and all duty chargeable on any instrument for the appointment of the new trustee or the retirement of the trustee, as the case may be, has been duly paid.
- 21. Conveyance or transfer of any share or shares in the stock, funds or capital of, or of any debenture or debentures or bond or bonds issued by, any corporation, company or society if the conveyance of transfer is made in pursuance of any deed of settlement or deed of gift and all duty chargeable on the deed of settlement or deed of gift, as the case may be, has been duly paid.
* * * * *
- 23. Any conveyance, transfer or mortgage to which a prescribed person is a party and which is executed or entered into in connection with the purchase or gift of any land on which the prescribed person resides or intends to reside shall be exempt from stamp duty on so much of the amount on which the duty is chargeable as does not exceed two thousand four hundred dollars, but a conveyance, transfer or mortgage shall not be exempt under this paragraph unless the Commissioner is satisfied by such evidence as he requires—
 - (a) that the purchase or gift is made for the purpose of enabling the prescribed person to become the owner, or lessee from the Crown, of a dwelling house in which he resides or intends to reside;
 - (b) that a conveyance, transfer or mortgage to which the prescribed person was a party and which was executed or entered into in connection with any other purchase or gift of land on which the prescribed person resided or intended to reside has not previously been exempt from stamp duty pursuant to this paragraph or any enactment relating to advances for homes.

In this paragraph—

“prescribed person” means—

- (a) a person who, during any war in which the Commonwealth is or was engaged, has served as a member of a naval, military or air force of the Commonwealth or of the United Kingdom or of any part of Her Majesty's dominions, whether or not he is still so serving at the time when he claims exemption under this paragraph;
- (b) a person who, during any such war, was employed in seagoing service on a ship registered in any territory under the dominion of Her Majesty the Queen, whether or not he is still so employed at the time when he claims exemption under this paragraph;
- (c) a person who has been on active service in the Korean war as a member of a naval, military or air force of the Commonwealth or of the United Kingdom or of any other part of Her Majesty's dominions, whether or not he is still on such service at the time when he claims exemption under this paragraph.

The expression “Korean war” in this paragraph means the war in Korea which commenced on the twenty-fifth day of June, 1950. For the purposes of this paragraph that war shall be deemed to end on the day on which a proclamation is issued by the Governor declaring that the Korean war has ceased;

- (d) a person who has been on active service as a member of a naval, military or air force of the Commonwealth or of the United Kingdom or of any other part of Her Majesty's dominions operating for the suppression of unlawful violence in Malaya, whether or not he is still on such service at the time when he claims exemption under this paragraph;
- (d1) a person who (whether before or after the commencement of the *Stamp Duties Act Amendment Act, 1965*) has been on active service as a member of a naval, military or air force of the Commonwealth or of the United Kingdom or of any other part of Her Majesty's dominions in any area outside Australia or in any naval, military or air force operation that is proclaimed to be an area or (as the case may be) a naval, military or air force operation for the purposes of this paragraph, whether or not he is still on such service at the time when he claims exemption under this paragraph;

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(e) the widow of any deceased person who during his lifetime served or was employed as mentioned in paragraph (a), (b), (c), (d) or (d1).

For the purposes of paragraphs (a) and (b), a war shall be deemed to continue from the commencement thereof until the day declared by the Governor by proclamation to be the day on which the war shall be deemed to cease. Notwithstanding the provisions of this paragraph, or of any proclamation made in pursuance thereof, the way which commenced on the third day of September, 1939, shall, for the purposes of any conveyance, transfer or mortgage executed or entered into after the commencement of the Stamp Duties Act Amendment Act, 1965, be deemed to have ceased on the thirty-first day of December, 1945:

"land" includes the fee simple of any land and the estate and interest of a lessee of land held under a Crown lease, and of a purchaser of land held under an agreement for sale and purchase granted by the Crown.

24. A conveyance or transfer of an interest in a marketable security to or from a South Australian dealer who is dealing with the interest as trustee as part of the Flexible Accelerated Security Transfer System operated by the Australian Stock Exchange Limited (but this exemption does not affect the imposition of duty on the sale or purchase of a marketable security).

In this paragraph—

"South Australian dealer" means a South Australian dealer as defined in Part IIIA.

25. A declaration of trust by the Public Trustee for the benefit of a child under the age of 18 years who has received a payment under the Criminal Injuries Compensation Act 1978.

FORM A

No. 19

We have this day received from , of , bags of wheat containing bushels lbs., to be stored subject to the following conditions:

We claim to have the offer, at market price, of all wheat stored with us. Should we purchase, our terms are twelve months storage free. After that time a charge will be made of per bushel per month. Should we not purchase, we will deliver to the storer, or his order, wheat of a quality equal to that originally received, either at the station where wheat was stored, or at the nearest shipping port, at our option, the storer paying all charges thereon, which can be ascertained from the agent at the time of delivery.

For Agent

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* * * * *

SCHEDULE OF TRANSITIONAL PROVISIONS

DIVISION I

(Transitional provision from Stamp Duties Act Amendment Act, 1988, s. 9)

9. Section 71e of the principal Act applies in relation to transactions entered into on or after 7th December, 1987, but no offence arises under subsection (6)(a) of that section in relation to a transaction entered into before the date of assent to this Act if the required statement is lodged with the Commissioner within two months after assent.

DIVISION II

(Transitional provision from Stamp Duties Act Amendment Act, 1989, s. 4)

4. The amendments effected by this Act apply to conveyances lodged with the Commissioner of Stamps for stamping on or after 1 February, 1988.

DIVISION III

(Transitional provision from Stamp Duties Act Amendment Act (No. 4), 1990, s. 7)

7. Where a company, person or firm of persons carried on general insurance business before the enactment of this Act, the company, person or firm—

(a) is required to lodge monthly returns only in relation to general insurance business carried on by it on or after 1 July, 1990;

and

(b) will be taken to have complied with the requirements of section 36(1) of the principal Act, as amended by this Act, in relation to the period from 1 July, 1990, until the enactment of this Act if the monthly returns required in relation to that period are lodged with the Commissioner not later than the fifteenth day of the month commencing after the enactment of this Act.

DIVISION IV

(Transitional provision from Stamp Duties Act Amendment Act (No. 4), 1990, s. 7)

7. Where a company, person or firm of persons carried on general insurance business before the enactment of this Act, the company, person or firm—

(a) is required to lodge monthly returns only in relation to general insurance business carried on by it on or after 1 July, 1990;

and

(b) will be taken to have complied with the requirements of section 36(1) of the principal Act, as amended by this Act, in relation to the period from 1 July, 1990, until the enactment of this Act if the monthly returns required in relation to that period are lodged with the Commissioner not later than the fifteenth day of the month commencing after the enactment of this Act.

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APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 10 of The Public General Acts of South Australia 1837-1975 at page 369.

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 1 November 1984. A schedule of these alterations was laid before Parliament on 13 November 1984.

Legislative history since 3 February 1976 (entries in bold type indicate amendments incorporated since the last reprint):

Section 2:	deleted in pursuance of the Acts Republication Act, 1967: see Summary of Provisions
Section 3:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 4:	definition of "adhesive stamp" inserted by 8, 1986, s. 2(a) definition of "authorized officer" inserted by 100, 1986, s. 3(a) definition of "die" substituted by 8, 1986, s. 2(b) definition of "discretionary trust" inserted by 36, 1990, s. 3(a) definition of "fixed interest security" inserted by 111, 1980, s. 3(a); repealed by 81, 1985, s. 3 definition of "impressed stamp" inserted by 8, 1986, s. 2(c) definition of "marketable security" amended by 111, 1980, s. 3(b); amended by 50, 1984, s. 3(1) (6th Sched.) definition of "money" substituted by 50, 1984, s. 3(1) (6th Sched.) definition of "records" inserted by 100, 1986, s. 3(b) definition of "savings bank" substituted by 50, 1984, s. 3(1) (6th Sched.) definition of "stamp" substituted by 8, 1986, s. 2(d) definition of "stamped" substituted by 8, 1986, s. 2(d) definition of "stock" amended by 50, 1984, s. 3(1) (6th Sched.) definition of "unit" inserted by 36, 1990, s. 3(b) definition of "unit trust scheme" inserted by 36, 1990, s. 3(b) amended by 50, 1984, s. 3(1) (6th Sched.)
Section 5(1) and (2):	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 5(3):	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 5(4):	amended by 50, 1984, s. 3(1) (6th Sched.)
Section 5a:	inserted by 111, 1980, s. 4
Section 5ab:	inserted by 81, 1985, s. 4; substituted by 52, 1989, s. 3
Section 5b:	inserted by 111, 1980, s. 4; amended by 50, 1984, s. 3(1) (6th Sched.)
Section 6:	amended by 50, 1984, s. 3(1) (6th Sched.); substituted by 100, 1986, s. 4
Section 6aa:	inserted by 100, 1986, s. 4
Section 6a:	inserted by 8, 1986, s. 3; amended by 2, 1987, s. 6(a)
Section 6b:	inserted by 2, 1987, s. 6(b)
Section 7(4):	amended by 50, 1984, s. 3(1) (6th Sched.)
Section 17:	repealed by 111, 1980, s. 5; inserted by 4, 1990, s. 2
Section 19(2):	amended by 50, 1984, s. 3(1) (6th Sched.)
Section 19a:	inserted by 111, 1980, s. 6
Section 20(1):	substituted by 111, 1980, s. 7(a)
Section 20(1a):	inserted by 111, 1980, s. 7(a)
Section 20(2):	amended by 111, 1980, s. 7(b)
Section 20(4) - (8):	inserted by 21, 1988, s. 3
Section 21(1):	redesignated as s. 21 in pursuance of the <i>Acts Republication Act, 1967</i>
Section 21(2) - (4):	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 22:	amended by 50, 1984, s. 3(1) (6th Sched.)
Section 23(1):	substituted by 100, 1986, s. 5(a)
Section 23(1a) and (1b):	inserted by 100, 1986, s. 5(a)
Section 23(2):	amended by 100, 1986, s. 5(b)
Section 23(3):	amended by 100, 1986, s. 5(c)
Section 24(2):	substituted by 21, 1988, s. 4(a)
Section 24(7):	substituted by 21, 1988, s. 4(b)
Section 24(10):	inserted by 21, 1988, s. 4(c)
Section 25:	amended by 50, 1984, s. 3(1) (6th Sched.); repealed by 100, 1986, s. 6
Section 26:	amended by 50, 1984, s. 3(1) (6th Sched.)
Sections 27a and 27b:	substituted by 100, 1986, s. 7
Section 27c:	amended by 50, 1984, s. 3(1) (6th Sched.); substituted by 100, 1986, s. 7
Section 27d:	substituted by 100, 1986, s. 7
Section 28 and heading:	repealed by 81, 1985, s. 5
Section 31(2) - (4):	amended by 50, 1984, s. 3(1) (6th Sched.)
Heading preceding section 31b	amended by 50, 1984, s. 3(1) (6th Sched.)
Section 31b(1):	amended by 50, 1984, s. 3(1) (6th Sched.); redesignated as s. 31b in pursuance of the <i>Acts Republication Act, 1967</i> definition of "bank" repealed by 50, 1984, s. 3(1) (6th Sched.) definition of "credit arrangement" repealed by 50, 1984, s. 3(1) (6th Sched.) definition of "credit business" repealed by 50, 1984, s. 3(1) (6th Sched.) definition of "discount transaction" repealed by 50, 1984, s. 3(1) (6th Sched.) definition of "guarantee" repealed by 50, 1984, s. 3(1) (6th Sched.) definition of "guarantor" repealed by 50, 1984, s. 3(1) (6th Sched.) definition of "interest" repealed by 50, 1984, s. 3(1) (6th Sched.) definition of "loan" amended by 101, 1976, s. 2(1)(a); repealed by 50, 1984, s. 3(1) (6th Sched.) definition of "prescribed rate" substituted by 95, 1982, s. 3(a); repealed by 50, 1984, s. 3(1) (6th Sched.) definition of "principal" repealed by 50, 1984, s. 3(1) (6th Sched.) definition of "rate of interest" repealed by 50, 1984, s. 3(1) (6th Sched.)

	definition of "registered credit union" substituted by 101, 1976, s. 2(1)(b); repealed by 50, 1984, s. 3(1) (6th Sched.)
	definition of "related corporation" amended by 50, 1984, s. 3(1) (6th Sched.)
Section 31b(1a):	substituted by 95, 1982, s. 3(b); repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 31b(2) - (10):	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 31c:	substituted by 89, 1983, s. 3; repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 31d(1):	amended by 89, 1983, s. 4(a)
Section 31d(2):	substituted by 89, 1983, s. 4(b)
Section 31e(2):	substituted by 89, 1983, s. 5
Section 31f(1):	amended by 101, 1976, s. 3; 50, 1984, s. 3(1) (6th Sched.); 81, 1985, s. 6(a); 52, 1989, s. 4(a); 74, 1991, s. 3
Section 31f(2):	amended by 89, 1983, s. 6; 81, 1985, s. 6(b), (c); 100, 1986, s. 8; 52, 1989, s. 4(b)
Section 31f(3):	amended by 81, 1985, s. 6(d); 52, 1989, s. 4(c)
Section 31f(4):	amended by 81, 1985, s. 6(e); 52, 1989, s. 4(d)
Section 31f(4a) - (5):	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 31g:	amended by 74, 1991, s. 4
Section 31g(a) - (c):	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 31i(1):	amended by 50, 1984, s. 3(1) (6th Sched.); 74, 1991, s. 5
Section 31i(1)(c) - (e):	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 31i(1)(f):	repealed by 81, 1985, s. 7(a)
Section 31i(1a):	inserted by 81, 1985, s. 7(b); amended by 52, 1989, s. 5
Section 31i:	repealed by 70, 1981, s. 3; inserted by 15, 1982, s. 3
Section 31i(1):	amended by 50, 1984, s. 3(1) (6th Sched.); 100, 1986, s. 9(1)(a)
Section 31i(3):	repealed by 50, 1984, s. 3(1) (6th Sched.); inserted by 100, 1986, s. 9(1)(b)
Section 31i(4) and (5):	repealed by 50, 1984, s. 3(1) (6th Sched.)
Heading preceding section 31m:	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 31m:	repealed by 50, 1984, s. 3(1) (6th Sched.); inserted by 100, 1986, s. 10; substituted by 74, 1991, s. 6
Section 31ma:	inserted by 89, 1983, s. 7; repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 31n:	amended by 89, 1983, s. 8; repealed by 50, 1984, s. 3(1) (6th Sched.); inserted by 100, 1986, s. 10
Section 31n(3):	amended by 74, 1991, s. 7(a)
Section 31n(6):	amended by 74, 1991, s. 7(b)
Section 31o:	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 31p:	repealed by 70, 1981, s. 4; inserted by 15, 1982, s. 4; repealed by 50, 1984, s. 3(1) (6th Sched.)
Sections 31q - 31t:	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 32:	definition of "assurance or insurance business" amended by 50, 1984, s. 3(1) (6th Sched.)
	definition of "general insurance business" inserted by 47, 1990, s. 3
	definition of "life insurance policy" inserted by 47, 1990, s. 3
	definition of "policy" amended by 50, 1984, s. 3(1) (6th Sched.)
	definition of "premium" inserted by 74, 1991, s. 8
Section 33:	substituted by 47, 1990, s. 4
Section 34:	amended by 50, 1984, s. 3(1) (6th Sched.); substituted by 47, 1990, s. 4
Section 34a:	repealed by 47, 1990, s. 4
Section 35:	amended by 111, 1980, s. 8; 50, 1984, s. 3(1) (6th Sched.); substituted by 47, 1990, s. 4
Section 36:	substituted by 50, 1984, s. 3(1) (6th Sched.); 47, 1990, s. 4
Section 37:	repealed by 100, 1986, s. 11; inserted by 47, 1990, s. 4
Section 38:	amended by 50, 1984, s. 3(1) (6th Sched.); repealed by 100, 1986, s. 11; inserted by 47, 1990, s. 4
Section 39:	substituted by 47, 1990, s. 4
Section 40:	inserted by 47, 1990, s. 4
Section 41:	substituted by 47, 1990, s. 4
Section 41(1):	amended by 74, 1991, s. 9
Section 42:	substituted by 47, 1990, s. 4
Section 42ab:	inserted by 8, 1986, s. 4
Section 42a:	definition of "applicant" substituted by 100, 1986, s. 12(a)
	definition of "commercial motor vehicle" inserted by 64, 1989, s. 3(a)
	definition of "dealer" substituted by 100, 1986, s. 12(b)
	definition of "list price" inserted by 100, 1986, s. 12(b)
	definition of "market value" inserted by 100, 1986, s. 12(b)
	definition of "new motor vehicle" inserted by 100, 1986, s. 12(c)
	definition of "optional equipment" inserted by 100, 1986, s. 12(c)
	definition of "primary producer" inserted by 64, 1989, s. 3(b)
	definition of "second-hand motor vehicle" inserted by 100, 1986, s. 12(d)
Section 42b(1):	substituted by 100, 1986, s. 13(a)
Section 42b(1aa):	inserted by 100, 1986, s. 13(a)
Section 42b(1a):	amended by 28, 1977, s. 2(a)
Section 42b(1b):	inserted by 28, 1977, s. 2(b); substituted by 33, 1990, s. 2(a)
Section 42b(1c):	inserted by 33, 1990, s. 2(a)
Section 42b(2):	amended by 28, 1977, s. 2(c)
Section 42b(4) - (6):	substituted by 100, 1986, s. 13(b)
Section 42b(6a) and (6b):	inserted by 74, 1991, s. 10
Section 42b(7):	repealed by 100, 1986, s. 13(b); inserted by 33, 1990, s. 2(b)
Section 42b(8):	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 42c:	repealed by 33, 1990, s. 3; inserted by 74, 1991, s. 11
Section 42d(1a):	amended by 50, 1984, s. 3(1) (6th Sched.); 100, 1986, s. 14; 33, 1990, s. 4
Section 42e:	amended by 33, 1990, s. 5
Sections 43 - 45a and heading:	repealed by 111, 1980, s. 9
Section 46:	definition of "bill of exchange" amended by 19, 1991, s. 2(a)
	definition of "payment order" inserted by 19, 1991, s. 2(b)
Section 46a:	inserted by 89, 1983, s. 9; amended and redesignated as s. 46a(1) by 19, 1991, s. 3
Section 46a(2):	inserted by 19, 1991, s. 3(b)

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Section 47:	amended by 50, 1984, s. 3(1) (6th Sched.)
Sections 47b - 47d:	repealed by 70, 1981, s. 5
Section 48(3):	amended by 70, 1981, s. 6; by 50, 1984, s. 3(1) (6th Sched.)
Section 48(5):	amended by 50, 1984, s. 3(1) (6th Sched.)
Section 48a(1):	amended by 101, 1976, s. 4(a); substituted by 95, 1982, s. 4(a)
Section 48a(2):	amended by 101, 1976, s. 4(a); 95, 1982, s. 4(b)
Section 48a(3):	repealed by 70, 1981, s. 7(a)
Section 48a(3a):	amended by 101, 1976, s. 4(a); repealed by 70, 1981, s. 7(a)
Section 48a(4):	amended by 101, 1976, s. 4
Section 48a(5):	amended by 95, 1982, s. 4(c)
Section 48a(5a) - (5d):	inserted by 70, 1981, s. 7(b)
Section 48a(5e):	inserted by 95, 1982, s. 4(d)
Section 48a(7):	inserted by 19, 1991, s. 4
Section 53 and heading:	repealed by 81, 1985, s. 8
Sections 54 - 59a and heading	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 59b and heading:	inserted by 27, 1978, s. 7
Section 59b(1):	substituted by 52, 1989, s. 6(a)
Section 59b(3):	amended by 50, 1984, s. 3(1) (6th Sched.); substituted by 52, 1989, s. 6(b)
Section 59b(5a):	inserted by 52, 1989, s. 6(c)
Section 60a:	substituted by 95, 1982, s. 5
Section 60a(1):	amended by 36, 1990, s. 4
Section 60a(4):	amended by 50, 1984, s. 3(1) (6th Sched.)
Section 61:	amended by 95, 1982, s. 6
Section 63:	repealed by 95, 1982, s. 7
Section 65:	amended by 95, 1982, s. 8
Section 66(1):	amended by 95, 1982, s. 9(a); redesignated as s. 66 in pursuance of the <i>Acts Republication Act, 1967</i>
Section 66(2) and (3):	substituted by 28, 1977, s. 3; repealed by 95, 1982, s. 9(b)
Section 66(4):	repealed by 95, 1982, s. 9(b)
Section 66a:	repealed by 33, 1990, s. 6
Section 66ab:	amended by 101, 1976, s. 5; 111, 1980, s. 10; 70, 1981, s. 8; repealed by 33, 1990, s. 6
Section 66b:	amended by 28, 1977, s. 4; repealed by 95, 1982, s. 10
Section 67:	repealed by 95, 1982, s. 10; inserted by 33, 1990, s. 6
Section 68(1):	amended by 95, 1982, s. 11(a); 50, 1984, s. 3(1) (6th Sched.); repealed by 33, 1990, s. 7
Section 68(2):	amended by 95, 1982, s. 11(b); repealed by 33, 1990, s. 7
Section 68(3):	amended by 95, 1982, s. 11(c)
Section 68(4):	amended by 95, 1982, s. 11(d)
Section 68(5):	amended by 95, 1982, s. 11(e)
Section 69:	repealed by 33, 1990, s. 8
Section 70:	substituted by 50, 1984, s. 3(1) (6th Sched.)
Section 71(3) and (4):	substituted by 111, 1980, s. 11
Section 71(4a):	inserted by 36, 1990, s. 5(a)
Section 71(5):	repealed by 66, 1979, s. 3; inserted by 111, 1980, s. 11; amended by 95, 1982, s. 12(a); 21, 1988, s. 5
Section 71(6):	amended by 54, 1976, s. 7; repealed by 66, 1979, s. 3; inserted by 111, 1980, s. 11
Section 71(7):	repealed by 66, 1979, s. 3; inserted by 111, 1980, s. 11
Section 71(8):	repealed by 66, 1979, s. 3; inserted by 111, 1980, s. 11; amended by 95, 1982, s. 12(b)
Section 71(9) and (10):	inserted by 111, 1980, s. 11
Section 71(11):	inserted by 111, 1980, s. 11; amended by 36, 1990, s. 5(b)
Section 71(11a):	inserted by 36, 1990, s. 5(c)
Section 71(12) - (14):	inserted by 111, 1980, s. 11
Section 71(15):	inserted by 111, 1980, s. 11; definition of "discretionary trust" repealed by 36, 1990, s. 5(d)
	definition of "public company" amended by 50, 1984, s. 3(1) (6th Sched.)
	definition of "unit" repealed by 36, 1990, s. 5(d)
	definition of "unit trust scheme" amended by 50, 1984, s. 3(1) (6th Sched.); repealed by 36, 1990, s. 5(d)
Section 71a:	amended by 111, 1980, s. 12; 50, 1984, s. 3(1) (6th Sched.)
Section 71b:	amended and redesignated as s. 71b(1) by 95, 1982, s. 13
Section 71b(2) - (5):	inserted by 95, 1982, s. 13(b)
Section 71c:	inserted by 66, 1979, s. 4
Section 71c(1):	amended by 81, 1985, s. 9(a), (b); 8, 1989, s. 3(a), (b); 52, 1989, s. 7(a)
Section 71c(1a):	inserted by 8, 1989, s. 3(c)
Section 71c(2):	amended by 95, 1982, s. 14; 81, 1985, s. 9(c)-(e); substituted by 52, 1989, s. 7(b)
Section 71c(2a):	inserted by 81, 1985, s. 9(f)
Section 71c(2b):	inserted by 52, 1989, s. 7(c)
Section 71c(3):	definition of "Housing Trust home" inserted by 8, 1989, s. 3(d)
Section 71c(4):	substituted by 52, 1989, s. 7(d)
Section 71ca:	inserted by 30, 1982, s. 3
Section 71cb:	inserted by 21, 1988, s. 6
Section 71d:	inserted by 111, 1980, s. 13
Section 71d(1) and (2):	substituted by 19, 1991, s. 5(a)
Section 71d(2a):	inserted by 19, 1991, s. 5(a)
Section 71d(4):	substituted by 19, 1991, s. 5(b)
Section 71d(5) and (6):	inserted by 19, 1991, s. 5(b)
Section 71e and heading:	inserted by 21, 1988, s. 7
Section 71e(4a):	inserted by 74, 1991, s. 12
Section 71e(10):	repealed by 33, 1990, s. 9
Section 75 and heading:	repealed by 81, 1985, s. 10
Heading preceding section 75aa:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 75aa:	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 76a:	inserted by 8, 1986, s. 5
Section 80:	amended by 95, 1982, s. 15

Section 81a:	inserted by 101, 1976, s. 6
Section 81b:	inserted by 111, 1980, s. 14
Section 81c:	inserted by 95, 1982, s. 16
Heading preceding section 82:	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 82:	repealed by 50, 1984, s. 3(1) (6th Sched.); inserted by 21, 1988, s. 8
Sections 82a and 83:	repealed by 50, 1984, s. 3(1) (6th Sched.)
Sections 84 - 84j:	repealed by 50, 1984, s. 3(1) (6th Sched.)
Sections 85 - 90 and heading:	repealed by 104, 1976, s. 4(2) (2nd Sched.)
Section 90a:	definition of "broker" amended by 52, 1989, s. 8(a) definition of "odd lot" inserted by 70, 1981, s. 9 definition of "odd lot specialist" inserted by 70, 1981, s. 9; amended by 52, 1989, s. 8(b)
Section 90b:	amended by 50, 1984, s. 3(1) (6th Sched.)
Section 90c(3):	amended by 70, 1981, s. 10
Section 90c(9):	repealed by 100, 1986, s. 15
Section 90e(3):	amended by 36, 1990, s. 6
Section 90g:	inserted by 8, 1986, s. 6
Section 90g(1):	definition of "broker" amended by 52, 1989, s. 9(c) definition of "jobber" repealed and definition of "market maker" inserted in its place by 52, 1989, s. 9(a) definition of "the U.K. Stock Exchange" repealed and definition of "the U.K. and Ireland Stock Exchange" inserted in its place by 52, 1989, s. 9(b)
Section 90g(6):	amended by 100, 1986, s. 16(a), (b); 52, 1989, s. 9(c)-(f)
Section 90g(7):	amended by 100, 1986, s. 16(c), (d); 52, 1989, s. 9(c), (g)
Section 90g(8):	substituted by 100, 1986, s. 16(e)
	Part IV comprising ss. 91 - 105c and heading inserted by 36, 1990, s. 7
Section 106:	amended by 50, 1984, s. 3(1) (6th Sched.)
Section 106a(1):	amended by 70, 1981, s. 11(a)
Section 106(1a) and (1b):	inserted by 70, 1981, s. 11(b)
Section 110a:	redesignated as s. 110a(1) by 100, 1986, s. 17
Section 110a(2):	inserted by 100, 1986, s. 17
Section 112(1):	amended by 74, 1991, s. 13(a)
Section 112(5):	inserted by 74, 1991, s. 13(b)
Section 113:	repealed by 50, 1984, s. 3(1) (6th Sched.)
Section 114:	inserted by 27, 1978, s. 8
First schedule:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Second schedule:	
AFFIDAVIT OR DECLARATION:	amended by 50, 1984, s. 3(1) (6th Sched.); repealed by 81, 1985, s. 11(a)
ANNUAL LICENCE:	amended by 65, 1983, s. 3; 8, 1986, s. 7(a); 100, 1986, s. 18(a), (b); 47, 1990, s. 5(1)(a), (b), (d)
Paragraph (1):	repealed by 47, 1990, s. 5(1)(c)
Exemption No. 3:	inserted by 111, 1980, s. 15(a); substituted by 100, 1986, s. 18(c)
Exemption No. 4:	inserted by 111, 1980, s. 15(a)
Exemption Nos. 5 and 6:	inserted by 81, 1985, s. 11(b)
Exemption No. 7:	inserted by 8, 1986, s. 7(b)
Exemption No. 8:	inserted by 100, 1986, s. 18(d)
APPLICATION - (A):	amended by 64, 1989, s. 4(a), (b)
Exemption No. 2:	amended by 100, 1986, s. 18(e)
Exemption No. 4:	substituted by 64, 1989, s. 4(c)
Exemption No. 5a:	inserted by 8, 1986, s. 7(c)
Exemption No. 11a:	inserted by 54, 1991, s. 5(a)
Exemption No. 12:	amended by 19, 1991, s. 6(a)
Exemption No. 13:	amended by 19, 1991, s. 6(b)
Exemption No. 14:	amended by 19, 1991, s. 6(c)
Exemption No. 15:	substituted by 19, 1991, s. 6(d)
Exemption No. 16:	substituted by 28, 1977, s. 5
Exemption No. 17:	inserted by reg. 139, 1982; substituted by 81, 1985, s. 11(c)
APPLICATION - (B):	amended by 47, 1990, s. 5(2)
Exemption No. 2:	substituted by 64, 1989, s. 4(d)
Exemption No. 3a:	inserted by 8, 1986, s. 7(d)
Exemption No. 6a:	inserted by 54, 1991, s. 5(b)
Exemption No. 8:	amended by 89, 1978, s. 3
Exemption No. 8(c):	repealed by 89, 1978, s. 3
BANK NOTE:	repealed by 111, 1980, s. 15(b)
BILL OF EXCHANGE payable on demand etc.:	amended by 70, 1981, s. 12(a); substituted by 89, 1983, s. 10(a); 19, 1991, s. 6(e)
BILL OF EXCHANGE, being a cheque:	inserted by 89, 1983, s. 10(a); amended by 50, 1984, s. 3(1) (6th Sched.)
BILL OF EXCHANGE, being a payment order:	inserted by 19, 1991, s. 6(f)
BILL OF EXCHANGE and PROMISSORY NOTE drawn or made:	amended by 70, 1981, s. 12(b)
BILL OF EXCHANGE and PROMISSORY NOTE of any other kind (except a bank note):	
Exemption No. 4:	substituted by 19, 1991, s. 6(g)
Exemption No. 4a:	inserted by 19, 1991, s. 6(g)

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BILL OF LADING	
OR SHIPPING NOTE:	
CONTRACT NOTE (not otherwise charged):	repealed by 81, 1985, s. 11(d)
CONTRACT NOTE:	repealed by 50, 1984, s. 3(1) (6th Sched.)
CONTRACT:	repealed by 50, 1984, s. 3(1) (6th Sched.)
CONVEYANCE OR TRANSFER:	repealed by 50, 1984, s. 3(1) (6th Sched.)
paragraph (a):	amended by 101, 1976, s. 7; 111, 1980, s. 15(c), (d); 95, 1982, s. 17(a)-(d); 89, 1983, s. 10(c); 50, 1984, s. 3(1) (6th Sched.); 81, 1985, s. 11(e), (g); 8, 1986, s. 7(e)
paragraph (aab):	repealed by 50, 1984, s. 3(1) (6th Sched.)
paragraph (ab):	repealed by 81, 1985, s. 11(f)
Exemption No. 1:	repealed by 89, 1983, s. 10(b)
Exemption No. 2:	substituted by 81, 1985, s. 11(h)
Exemption Nos. 3 - 5:	inserted by 81, 1985, s. 11(h)
CONVEYANCE operating:	inserted by 100, 1986, s. 18(f)
Exemption No. 2:	substituted by 101, 1976, s. 8; amended by 81, 1985, s. 11(i); 36, 1990, s. 8
Exemption Nos. 3 - 5:	inserted by 81, 1985, s. 11(j)
CONVEYANCE for the partition:	inserted by 100, 1986, s. 18(g)
CONVEYANCE for effectuating:	amended by 95, 1982, s. 17(e)
CONVEYANCE to which section 71d applies:	amended by 111, 1980, s. 15(e)
DOCUMENT or other INSTRUMENT:	inserted by 111, 1980, s. 15(f); repealed by 19, 1991, s. 6(h)
INSTALMENT PURCHASE AGREEMENT:	repealed by 95, 1982, s. 17(f)
LEASE (not being a lease...):	repealed by 50, 1984, s. 3(1) (6th Sched.)
Exemption No. 2:	amended by 111, 1980, s. 15(g)
LETTER OF ALLOTMENT:	inserted by 81, 1985, s. 11(k)
MORTGAGE:	repealed by 81, 1985, s. 11(l)
RECEIPTS:	amended by 101, 1976, s. 9
RETURN lodged with the Commissioner by a South Australian dealer:	repealed by 50, 1984, s. 3(1) (6th Sched.)
Exemption No. 1:	amended by 111, 1980, s. 15(h)
Exemption No. 2:	amended by 100, 1986, s. 18(h)
RETURN under section 90g:	amended by 100, 1986, s. 18(i)
TOTALIZATOR:	inserted by 8, 1986, s. 7(f)
TOTALIZATOR AGENCY BOARD:	repealed by 104, 1976, s. 4(2) (2nd. Sched.)
GENERAL EXEMPTIONS FROM ALL STAMP DUTIES:	repealed by 104, 1976, s. 4(2) (2nd. Sched.)
Exemption No. 1:	substituted by 111, 1980, s. 15(i)
Exemption No. 6:	substituted by 101, 1976, s. 10; 30, 1982, s. 4; 95, 1982, s. 17(g)
Exemption No. 13c:	inserted by 8, 1986, s. 7(g)
Exemption Nos. 14a and 14b:	repealed by 50, 1984, s. 3(1) (6th Sched.)
Exemption No. 23:	amended by 50, 1984, s. 3(1) (6th Sched.)
Exemption No. 24:	definition of "prescribed person" amended by 50, 1984, s. 3(1) (6th Sched.)
Exemption No. 25:	inserted by 52, 1989, s. 10
Third Schedule:	inserted by 74, 1991, s. 14
	repealed by 47, 1990, s. 6