



STAMP DUTIES (PENALTIES, REASSESSMENTS AND SECURITIES) AMENDMENT ACT 1992

No. 88 of 1992

SUMMARY OF PROVISIONS

Section

1. Short title
2. Commencement
3. Amendment of s. 4—Interpretation
4. Amendment of s. 10—Denotation of duty
5. Amendment of s. 12—Adhesive stamps to be cancelled
6. Substitution of s. 19
7. Amendment of s. 19a—Certain copies dutiable
8. Amendment of s. 20—Penalty for not duly stamping
9. Amendment of s. 23—Assessment of duty
10. Insertion of s. 23a
 - 23a. Reassessment of duty
11. Amendment of s. 24—Objections and appeals
12. Amendment of s. 27d—Power to retain instruments
13. Amendment of s. 31b—Interpretation
14. Amendment of s. 31d—Persons carrying on rental business to be registered
15. Amendment of s. 31f—Statement to be lodged by registered person
16. Repeal of s. 31g
17. Amendment of s. 31m—Default assessments
18. Amendment of s. 31n—Unregistered persons
19. Amendment of s. 41—Further duty by way of penalty
20. Amendment of s. 42aa—Duty on policies effected outside South Australia
21. Amendment of s. 42b—Stamp duty on application for motor vehicle registration
22. Amendment of s. 42c—Default assessments
23. Amendment of s. 49—Penalty on taking unstamped bill or promissory note
24. Amendment of s. 51—Bills or notes issued unstamped
25. Amendment of s. 59b—Returns to be lodged by companies
26. Amendment of s. 71—Instruments chargeable as conveyances operating as voluntary dispositions *inter vivos*
27. Amendment of s. 71e—Transactions otherwise than by dutiable instrument
28. Amendment of s. 76—Interpretation
29. Repeal of s. 76a
30. Substitution of s. 79
31. Substitution of s. 81b
32. Amendment of s. 90d—Returns to be lodged and duty paid

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33. Amendment of s. 90e—Endorsement of instrument of transfer as to payment of duty
 34. Amendment of s. 90g—Transactions in South Australian marketable securities on the Stock Exchange of the United Kingdom and Ireland
 35. Amendment of s. 91—Interpretation
 36. Amendment of s. 92—Preliminary matters relating to private companies and schemes
 37. Amendment of s. 93—Acquisitions to which this Part does not apply
 38. Amendment of s. 100—Enforcement of Part
 39. Amendment of s. 101—Notice may be registered on title
 40. Amendment of s. 102—Charge on real property
 41. Amendment of s. 103—Power of sale
 42. Amendment of s. 109—Penalty for fraud
 43. Repeal of s. 110
 44. Amendment of Second Schedule
 45. Transitional provision



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ELIZABETHAE II REGINAE

A.D. 1992

No. 88 of 1992

An Act to amend the Stamp Duties Act 1923.

[Assented to 10 December 1992]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Stamp Duties (Penalties, Reassessments and Securities) Amendment Act 1992*.

(2) The *Stamp Duties Act 1923* is referred to in this Act as “the principal Act”.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

(a) by striking out the definition of “**duty**” and substituting the following definition:

“**duty**” means duty (including penalty duty) chargeable under this Act;

and

(b) by striking out “Division 6 of Part IV of the *Companies (South Australia) Code*” from paragraph (ba) of the definition of “**marketable security**” and substituting “Division 5 of Part 7.12 of the *Corporations Law*”.

Amendment of s. 10—Denotation of duty

4. Section 10 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) Duty may be denoted by endorsement on the instrument on which the duty is chargeable if the endorsement is made in accordance with an authority granted by the Commissioner under this section.

(3) The Commissioner may, in his or her discretion, grant an authority to endorse instruments with stamp duty.

(4) An authority, if granted—

- (a) must specify the class or classes of instruments to which it relates; and
- (b) may be subject to conditions as to the manner and form in which endorsements are to be made under the authority and such other conditions as the Commissioner thinks fit; and
- (c) may be varied or revoked by the Commissioner at any time.

(5) An instrument endorsed in accordance with an authority is taken to have been stamped with the amount of duty shown by the endorsement.

(6) A person who holds an authority must, at periodic intervals stated in the authority—

- (a) lodge with the Commissioner a return—
 - (i) stating the total of the amounts endorsed under the authority during a preceding period to be determined in accordance with the authority; and
 - (ii) containing such other information as may be required by the conditions of the authority or by the Commissioner; and
- (b) pay to the Commissioner a sum equal to the total amount endorsed under the authority during the period to which the return relates.

(7) If a person who holds an authority under this section fails to lodge a return, or to pay duty, within the time prescribed by the authority, that person is liable to penalty duty of—

- (a) \$50; or
- (b) 10% of the duty payable in respect of the return period for each month up to the time the obligation to lodge the return and pay the duty is fully complied with,

whichever is the greater (but the Commissioner may remit penalty duty payable under this subsection wholly or in part).

(8) A person who—

- (a) contravenes or fails to comply with a provision of this section; or
- (b) knowingly endorses an instrument with an amount of duty less than the amount with which the instrument is chargeable; or

(c) contravenes or fails to comply with a condition on which an authority was granted under this section,

is guilty of an offence.

Penalty: \$5 000 and, if the offence results in avoidance of duty, twice the amount of duty avoided.

(9) A person who, without being authorised to endorse instruments under this section, endorses an instrument in a way that suggests or implies that the instrument is endorsed under this section is guilty of an offence.

Penalty: \$5 000 plus twice the amount of duty chargeable on the instrument.

Amendment of s. 12—Adhesive stamps to be cancelled

5. Section 12 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) A person who is required to cancel an adhesive stamp must not fail to do so in accordance with this Act.

Penalty: \$50.

Substitution of s. 19

6. Section 19 of the principal Act is repealed and the following section is substituted:

All facts to be truly set forth

19. (1) All the facts and circumstances affecting the liability of an instrument to duty must be fully and truly stated—

(a) in the instrument itself;

or

(b) in a statement produced to the Commissioner prior to the stamping of the document.

(2) Any facts or circumstances affecting the liability of an instrument included in a statement under subsection (1) must, if the Commissioner so requires, be verified by a statutory declaration.

(3) If—

(a) an instrument is produced to the Commissioner for stamping;

(b) the instrument does not fully and truly state the facts and circumstances affecting its liability to duty;

and

- (c) the instrument is not accompanied by a statement fully and truly stating the facts and circumstances affecting its liability to duty,

the parties to the instrument, and any person professionally engaged to have the instrument stamped, are each guilty of an offence.

Penalty: \$10 000.

- (4) It is a defence to a charge of an offence against subsection (3)—

- (a) if the defendant is a party to the instrument—to prove that the defendant reasonably relied on some other person to ensure that the requirements of that subsection were satisfied;
- (b) if the defendant is a person who was professionally engaged to have the instrument stamped—to prove that the defendant reasonably relied on information supplied by a party to the instrument.

(5) A fact or circumstance affects the liability of an instrument to duty if it affects the amount of the duty chargeable on the instrument.

Amendment of s. 19a—Certain copies dutiable

7. Section 19a of the principal Act is amended by inserting “duty” after “chargeable with duty and penalty” in subsection (1).

Amendment of s. 20—Penalty for not duly stamping

8. Section 20 of the principal Act is amended—

- (a) by inserting after subsection (1) the following subsection:

(1aa) If duty or further duty becomes chargeable on an instrument in consequence of an event occurring after its execution, the instrument may be stamped without penalty within 2 months after that event;

- (b) by striking out from subsection (1a) “subsection (1)” and substituting “subsection (1) or (1aa)”;

- (c) by striking out from subsection (1a) “a penalty” and substituting “penalty duty”;

- (d) by inserting “duty” after “penalty” in subsection (2);

- (e) by striking out subsection (3) and substituting the following subsection:

(3) The Commissioner may, at any time, remit any penalty duty, or part of any penalty duty, payable under this section;

and

- (f) by striking out from subsection (4) “subsection (1)” and substituting “subsection (1) or (1a)”.

Amendment of s. 23—Assessment of duty

9. Section 23 of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) An instrument on which duty has been assessed by the Commissioner cannot be stamped except in accordance with that assessment unless the Commissioner reassesses duty on the instrument.

Insertion of s. 23a

10. The following section is inserted after section 23 of the principal Act:

Reassessment of duty

23a. (1) Where the Commissioner is of the opinion—

- (a) that a mistake of fact has occurred in an assessment of duty under this Act;
- (b) that incorrect, misleading or incomplete information has been provided to the Commissioner in respect of the assessment of duty under this Act;

or

- (c) that a reassessment of duty is necessary in order to recover duty that has not, but should have been, paid;

the Commissioner may reassess duty payable under this Act.

(2) A reassessment may be made whether or not duty has been paid.

(3) A reassessment of duty under this section must be made within 5 years after the date of the original assessment unless the Commissioner has reason to suspect fraud or deliberate evasion of duty, in which case it may be made at any time.

(4) If the reassessment arises from some failure on the part of the person liable to pay the duty, or that person's agent, to provide information that should have been provided for the purposes of the original assessment, and further duty is payable as a result of the reassessment, penalty duty equivalent to twice the amount of that further duty also becomes payable.

(5) If duty is decreased as a result of a reassessment, the Commissioner must refund any amount of overpaid duty together with interest on that amount, from the date of payment of the duty, at the rate fixed under subsection (6).

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

- (a) fix a rate of interest for the purposes of subsection (5); or
- (b) vary a rate of interest previously fixed under this subsection.

(7) Notice of a reassessment of duty under this section must be given personally or by post to the person liable to pay the duty, or to that person's agent (but a reassessment is not invalidated by a failure to give the notice).

(8) Any duty payable by a person as a result of a reassessment under this section must be paid within two months after a notice is given under subsection (7).

(9) The Commissioner may require any person who is liable to pay duty on a reassessment under this section to produce to the Commissioner, at the time the duty is paid, any instrument (or a copy of any instrument) affected by the reassessment (and the Commissioner may, on receipt of that instrument (or copy), stamp or further stamp the instrument (or copy), or cancel any stamp).

(10) A person must not fail to comply with a requirement under subsection (9).

Penalty: \$5 000.

(11) Where, as a result of a reassessment of duty under this section, an instrument is chargeable with additional duty, the instrument will, from the date of the reassessment, be taken to be insufficiently stamped until the additional duty is paid.

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

(13) A decision of the Commissioner that an instrument is not chargeable with duty will be taken to be an assessment of duty for the purposes of this section.

Amendment of s. 24—Objections and appeals

11. Section 24 of the principal Act is amended by inserting after subsection (10) the following subsection:

(11) In this section—

“assessment” includes—

(a) a reassessment;

or

(b) the imposition of additional or further duty under this Act.

Amendment of s. 27d—Power to retain instruments

12. Section 27d of the principal Act is amended by striking out “, together with any penalty,”.

Amendment of s. 31b—Interpretation

13. Section 31b of the principal Act is amended—

(a) by inserting the following definitions:

“bailee” means a person who has, or is entitled to, possession of goods under a contractual or non-contractual bailment;

“bailment plan” means an arrangement under which—

(a) a financier provides financial accommodation for a business carried on by a trader;

(b) the financier retains or acquires title to trading stock as security for the financial accommodation provided; and

(c) the trader has possession of the trading stock by virtue of a contractual or non-contractual bailment;

“bailor” means a person who confers a right to possession of goods on another under a contractual or non-contractual bailment;

“contractual bailment” means a contract or agreement under which a person who owns, or is entitled to the possession of, goods confers on another a right to possession or use of the goods but does not include a contract or agreement under which a right to the possession or use of goods is conferred incidentally to a lease of, or licence to occupy, land;;

(b) by striking out “or things in action” from the definition of “goods” and substituting “, things in action or books”;

(c) by striking out “section 7 (5) of the *Companies (South Australia) Code*” from the definition of “related Corporation” and substituting “section 50 of the *Corporations Law*”;

(d) by striking out the definition of “rental business” and substituting the following definition:

“rental business” means—

(a) the business of conferring rights to the possession or use of goods under a contractual bailment;

(b) the business of acquiring the rights of the bailor under a contractual bailment;

(c) the business of providing financial accommodation under a bailment plan;

or

(d) the business of guaranteeing the obligations of a bailee under a contractual bailment or a bailment plan,

but does not include business of a class exempted by regulation from the ambit of this definition.

Amendment of s. 31d—Persons carrying on rental business to be registered

14. Section 31d of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) Where a person is convicted of an offence against subsection (1), the court may, in addition to any other penalty that may be imposed, order the person to pay penalty duty equal to twice the amount of duty that would have been payable if at the material time he or she had been a registered person and lodged with the Commissioner, in relation to the business in respect of which the offence was committed, a statement as required by section 31f.

Amendment of s. 31f—Statement to be lodged by registered person

15. Section 31f of the principal Act is amended—

(a) by inserting at the end of subsection (1) (a) "(including amounts received for services incidental or related to that business)";

and

(b) by striking out subsection (6) and substituting the following subsections:

(5) The amount to be shown on the statement includes any amounts received under a contractual bailment if—

(a) the contractual bailment was entered into in South Australia; or

(b) any negotiations leading to the formation of the contractual bailment took place in South Australia; or

(c) the goods were delivered in South Australia to the person who obtained the right to their possession or use under the contractual bailment.

(6) A registered person who fails to lodge a statement as and when required by this section is guilty of an offence.

Penalty: \$5 000.

Repeal of section 31g

16. Section 31g of the principal Act is repealed.

Amendment of s. 31m—Default assessments

17. Section 31m of the principal Act is amended by striking out subsections (4) and (5) and substituting the following subsections:

(4) Where a person is liable to pay duty by virtue of an assessment under this section, the person is in addition liable to pay penalty duty equal to twice the amount of the duty that has been so assessed.

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

Amendment of s. 31n—Unregistered persons

18. Section 31n of the principal Act is amended by striking out subsections (4) and (5) and substituting the following subsections:

(4) A person who fails to furnish a return as and when required by subsection (3) is guilty of an offence.

Penalty: \$1 000.

(5) A person who fails to pay duty as and when required by this section is in addition liable to pay penalty duty equal to twice the amount of duty payable.

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

Amendment of s. 41—Further duty by way of penalty

19. Section 41 of the principal Act is amended—

- (a) by striking out from subsection (1) “liable to pay further duty, by way of penalty, of an amount equal to twice the amount of that duty” and substituting “in addition liable to pay penalty duty equal to twice the amount of duty that has been so assessed”;
- (b) by striking out from subsection (2) “liable to pay further duty, by way of penalty,” and substituting “in addition liable to pay penalty duty”;

and

- (c) by striking out subsection (4) and substituting the following subsection:

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

Amendment of s. 42aa—Duty on policies effected outside South Australia

20. Section 42aa of the principal Act is amended by striking out subsection (4) and substituting the following subsections:

(4) A company, person or firm that fails to lodge a return as and when required by this section is guilty of an offence.

Penalty: \$1 000.

(4a) A company, person or firm that fails to pay duty as and when required by this section is in addition liable to pay penalty duty equal to twice the amount of duty payable.

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

Amendment of s. 42b—Stamp duty on application for motor vehicle registration

21. Section 42b of the principal Act is amended by striking out subsections (6a) and (6b) and substituting the following subsections:

(6a) Where additional duty is payable on an assessment under subsection (4), the applicant is in addition liable to pay penalty duty equal to twice the amount of the duty that has been so assessed.

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

Amendment of s. 42c—Default assessments

22. Section 42c of the principal Act is amended by striking out subsections (4) and (5) and substituting the following subsections:

(4) Where a person is liable to pay duty by virtue of an assessment under this section, the person is in addition liable to pay penalty duty equal to twice the amount of duty that has been so assessed.

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

Amendment of s. 49—Penalty on taking unstamped bill or promissory note

23. Section 49 of the principal Act is amended—

- (a) by striking out “without causing it to be duly stamped after receiving it shall be liable to a penalty not exceeding forty dollars” and substituting “must cause it to be duly stamped”;

and

- (b) by inserting the following item at the foot of the section:

Penalty: \$100.

Amendment of s. 51—Bills or notes issued unstamped

24. Section 51 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

- (1) A person must not issue, endorse, transfer, use, negotiate, present for payment or pay any bill of exchange, promissory note, coupon or interest warrant chargeable with duty unless it has been duly stamped.

Penalty: \$100.

Amendment of s. 59b—Returns to be lodged by companies

25. Section 59b of the principal Act is amended—

- (a) by striking out from paragraph (b) of the definition of “**exempt entry**” in subsection (1) “an instrument of transfer which is a sufficient instrument of transfer under Division 8 of Part IV of the *Companies (South Australia) Code*” and substituting “a document which is a sufficient transfer of marketable securities under Part 7.13 of the *Corporations Law*”;
- (b) by striking out from subsection (3) (a) “section 262 (5) of the *Companies (South Australia) Code*” and substituting “section 214 (7) of the *Corporations Law*”;

and

- (c) by striking out subsections (8) and (9) and substituting the following subsections:

(8) Where the Commissioner has reason to believe or suspect that a company has contravened or failed to comply with a requirement of this section, the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner’s opinion, represents unpaid duty.

(8a) Where the Commissioner makes an assessment under subsection (8)—

- (a) the Commissioner must cause notice in writing of the assessment to be served on the company which is in default;

and

- (b) the company is 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 (8c).

(8b) A company liable to pay duty as a result of an assessment under subsection (8) which 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 (8).

(8c) Where a company is liable to pay duty by virtue of an assessment under subsection (8), the company is in addition liable to pay penalty duty equal to twice the amount of the duty that has been so assessed.

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

Amendment of s. 71—Instruments chargeable as conveyances operating as voluntary dispositions *inter vivos*

26. Section 71 of the principal Act is amended—

(a) by striking out from subsection (4a) "Division 6 of Part IV of the *Companies (South Australia) Code*" and substituting "Division 5 of Part 7.12 of the *Corporations Law*";

and

(b) by striking out "*Companies (South Australia) Code*" from the definition of "public company" in subsection (15) and substituting "*Corporations Law*".

Amendment of s. 71e—Transactions otherwise than by dutiable instrument

27. Section 71e of the principal Act is amended by striking out from subsection (2) (c) "Part VIII of the *Companies (South Australia) Code*" and substituting "Part 5.1 of the *Corporations Law*".

Amendment of s. 76—Interpretation

28. Section 76 of the principal Act is amended by striking out the definition of "mortgage" and substituting the following definitions:

"liability" means a present, future or contingent monetary liability;

"mortgage" means—

(a) an instrument creating, acknowledging, evidencing or recording a legal or equitable interest in, or charge over, real or personal property by way of security for a liability; or

(b) an instrument creating, acknowledging, evidencing or recording a liability in respect of which an instrument of title is or is to be pledged or deposited by way of security,

(and includes an instrument that would, assuming the fulfilment of a condition to which the instrument is subject, fall into one of the above categories).

Repeal of s. 76a

29. Section 76a of the principal Act is repealed.

Substitution of s. 79

30. Section 79 of the principal Act is repealed and the following section is substituted:

Mortgage securing future and contingent liabilities

79. (1) A mortgage that extends to future or contingent liabilities is, if limited to a particular amount, chargeable with duty as if it were a security for that amount.

(2) A mortgage that extends to future or contingent liabilities is, if not limited to a particular amount, chargeable with duty as follows:

- (a) the mortgage is chargeable, in the first instance, with duty on the basis of an estimate of the highest amount to be secured (to be made on the assumption that all contingencies to which the mortgage or the liability is subject will actually happen); and
- (b) if the amount of the liability secured by the mortgage subsequently exceeds the amount for which the mortgage has been previously stamped, the mortgage becomes chargeable with further duty as from the date when the liability was first exceeded and the amount of that further duty is to be calculated as follows:
 - (i) a fresh estimate is to be made in accordance with this section of the highest amount to be secured; and
 - (ii) duty is then to be calculated on the basis of that estimate and in all other respects as if the mortgage were a new and separate instrument made on the date when the liability was first exceeded; and
 - (iii) the further duty is then to be calculated by subtracting the amount of duty already paid from the amount of duty calculated under subparagraph (ii),

(but this paragraph does not apply if the liability is wholly or partly denominated in a foreign currency and the amount for which the mortgage has been previously stamped is exceeded solely because of fluctuations in the rate of exchange).

(3) If a mortgage is chargeable with duty under subsection (2), the parties must, on submitting the mortgage for stamping or further stamping, make a fair estimate of the highest amount to be secured (to be made on the assumption that all contingencies to which the mortgage or the liability is subject will actually happen).

(4) The Commissioner may accept the parties' estimate of the highest amount to be secured or, if dissatisfied with that estimate, substitute the Commissioner's own estimate of that amount, for the purposes of determining the amount of duty or further duty with which the mortgage is chargeable.

(5) The Commissioner has a discretion, in the case of a mortgage securing a contingent liability, to permit the mortgage to be stamped for an amount that is less than the full amount of that liability, but, if the contingency subsequently happens, further duty becomes chargeable on the mortgage as from the date of the happening of the contingency and the amount of that further duty is to be calculated as follows:

- (a) duty is to be calculated on the mortgage on the basis of the full amount of the liability as if the mortgage were a new and separate instrument made on the date of the happening of the contingency; and

(b) the further duty is then to be calculated by subtracting the amount of duty already paid from the amount of duty calculated under paragraph (a).

(6) If a mortgage for an unlimited amount is registered under the *Real Property Act 1886*, a discharge of the mortgage may not be registered unless the instrument of discharge is endorsed with a certificate by the mortgagee, an officer, agent or employee of the mortgagee, or some other person approved for the purposes of this subsection by the Commissioner—

(a) stating the highest amount that was secured during the currency of the mortgage; and

(b) stating that the mortgage has been duly stamped.

(7) If a certificate under subsection (6) is false, the mortgagee and the person by whom the certificate was signed are each guilty of an offence.

Penalty: Imprisonment for 2 years.

(8) In this section references to an amount secured or to be secured by a mortgage are, if the mortgage secures both principal and interest or principal, interest, and rates taxes or other recurrent charges in respect of land, to be read as references to the principal only.

Substitution of s. 81b

31. Section 81b of the principal Act is repealed and the following section is substituted:

81b. (1) A security that creates a charge on property in South Australia and property outside South Australia may, subject to this section, be stamped for less than the full amount *ad valorem* duty otherwise appropriate to the amount secured.

(2) The amount for which the security is stamped must however be sufficient to satisfy the following formula:

$$\frac{A_1}{A_2} \geq \frac{V_1}{V_2}$$

Where

A_1 is the amount for which the security is stamped

A_2 is the amount on which *ad valorem* duty would, apart from this section, be chargeable

V_1 is the value of property situated in South Australia

V_2 is the total value of the property subject to the security.

(3) A security stamped under this section is available as a security on property situated in South Australia for such amount only as the *ad valorem* duty denoted on the security extends to cover.

(4) If a security does not create a charge on property in South Australia it may be stamped with a stamp indicating that no *ad valorem* duty is payable.

Amendment of s. 90d—Returns to be lodged and duty paid

32. Section 90d of the principal Act is amended by striking out subsections (3) and (4) and substituting the following subsections:

(3) A South Australian dealer who—

(a) fails to lodge a return as required under this section;

or

(b) lodges a return which is false in a material particular,

is guilty of an offence.

Penalty: \$500.

(4) Where the Commissioner has reason to believe or suspect that a South Australian dealer has contravened or failed to comply with a requirement of this section, the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents unpaid duty.

(5) Where the Commissioner makes an assessment under subsection (4)—

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

and

(b) the dealer is 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 (7).

(6) A dealer 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 (4).

(7) Where a dealer is liable to pay duty by virtue of an assessment under subsection (4), the dealer is in addition liable to pay penalty duty equal to twice the amount of the duty that has been so assessed.

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

Amendment of s. 90e—Endorsement of instrument of transfer as to payment of duty

33. Section 90e of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) A South Australian dealer who affixes his or her stamp under such an endorsement without making the appropriate record under section 90c (1) is guilty of an offence.

Penalty: \$1 000.

Amendment of s. 90g—Transactions in South Australian marketable securities on the Stock Exchange of the United Kingdom and Ireland

34. Section 90g of the principal Act is amended by striking out subsection (5) and substituting the following subsections:

(5) A trustee who fails to furnish a return as and when required by this section is guilty of an offence.

Penalty: \$10 000.

(5a) A trustee who fails to pay duty as and when required by this section is in addition liable to pay penalty duty equal to twice the amount of duty payable.

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

Amendment of s. 91—Interpretation

35. Section 91 of the principal Act is amended—

(a) by striking out the definition of “majority shareholder” in subsection (1) and substituting the following definition:

“majority shareholder” in relation to a private company, means a person who would have a substantial shareholding in the company in accordance with section 708 of the *Corporations Law* 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 Part 6.7 of the *Corporations Law*;

(b) by striking out the definition of “private company” in subsection (1) and substituting the following definition:

“private company” means a company incorporated under the *Corporations Law* none of the shares of which are listed on an authorized stock exchange under the *Corporations Law*;

(c) by striking out paragraph (a) of the definition of “private scheme” and substituting the following paragraph:

(a) that is not the subject of a deed approved for the purposes of Division 5 of Part 7.12 of the *Corporations Law*;

- (d) by striking out paragraph (b) of subsection (2) and substituting the following paragraph:
- (b) private companies are related persons if they are related bodies corporate within the meaning of the *Corporations Law*;
- (e) by striking out from subsection (2) (d) “a related corporation of the company within the meaning of the *Companies (South Australia) Code*” and substituting “a related body corporate of the company within the meaning of the *Corporations Law*”;
- and
- (f) by striking out subparagraph (ii) of subsection (2) (f) and substituting the following subparagraph:
- (ii) a related body corporate of the company (within the meaning of the *Corporations Law*) is a beneficiary of the trust of which the trustee is a trustee.

Amendment of s. 92—Preliminary matters relating to private companies and schemes

36. Section 92 of the principal Act is amended by striking out subparagraph (i) of subsection (1) (a) and substituting the following subparagraph:

- (i) in the case of a private company—the company is a subsidiary of the holding company within the meaning of the *Corporations Law*;

Amendment of s. 93—Acquisitions to which this Part does not apply

37. Section 93 of the principal Act is amended—

- (a) by striking out from subsection (1) (b) (ii) “Part VIII of the *Companies (South Australia) Code*” and substituting “Part 5.1 of the *Corporations Law*”;

and

- (b) by striking out from subsection (1) (f) “*Companies (South Australia) Code*” twice occurring, and substituting, in each case, “*Corporations Law*”.

Amendment of s. 100—Enforcement of Part

38. Section 100 of the principal Act is amended by inserting after subsection (3) the following subsections:

(4) Where a person is liable to pay duty by virtue of an assessment under subsection (2), the person is in addition liable to pay penalty duty equal to twice the amount of duty that has been so assessed.

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

Amendment of s. 101—Notice may be registered on title

39. Section 101 of the principal Act is amended—

- (a) by inserting after “penalty” in subsection (1) “duty”;
- (b) by inserting after “penalty” in subsection (2) (b) “duty”;

(c) by striking out from subsection (6) “and any penalty”;

and

(d) by striking out from subsection (7) “and any penalty”.

Amendment of s. 102—Charge on real property

40. Section 102 of the principal Act is amended—

(a) by striking out “and any penalty”;

and

(b) by striking out “and penalty are” and substituting “is”.

Amendment of s. 103—Power of sale

41. Section 103 of the principal Act is amended—

(a) by striking out from subsection (1) (a) “and penalty have not been” and substituting “is not”;

(b) by striking out from subsection (1) (c) “and penalty”;

(c) by striking out from subsection (1) (d) “and penalty are” and substituting “is”;

(d) by striking out from subsection (3) “and penalty are” and substituting “is”;

and

(e) by striking out from subsection (5) (c) “and penalty”.

Amendment of s. 109—Penalty for fraud

42. Section 109 of the principal Act is amended—

(a) by striking out “shall be liable to a penalty of one hundred dollars and, in the last case, shall also forfeit the amount of duty sought to be evaded” and substituting “is guilty of an offence”;

and

(b) by inserting the following item at the foot of that section:

Penalty: \$10 000 plus an amount equal to twice the amount of any duty sought to be evaded.

Repeal of s. 110

43. Section 110 of the principal Act is repealed.

Amendment of Second Schedule

44. The Second Schedule to the principal Act is amended—

(a) by striking out the item commencing “AGREEMENT or any MEMORANDUM OF any AGREEMENT”;

(b) by striking out "Exceeds \$100 000" from paragraph (b) of the item commencing "Conveyance or Transfer on sale" and substituting "Exceeds \$100 000 but does not exceed \$1 000 000";

(c) by inserting at the end of paragraph (b) of the item commencing "Conveyance or Transfer on sale":

Exceeds \$1 000 000.....\$38 830 plus \$4.50 for every \$100 or fractional part of \$100 of the excess over \$1 000 000 of that value.;

(d) by striking out "Exceeds \$100 000" from the item commencing "Conveyance operating as a voluntary disposition *inter vivos*" and substituting "Exceeds \$100 000 but does not exceed \$1 000 000";

(e) by inserting, in sequence, in the item commencing "Conveyance operating as a voluntary disposition *inter vivos*":

Exceeds \$1 000 000.....\$38 830 plus \$4.50 for every \$100 or fractional part of \$100 of the excess over \$1 000 000 of that value.;

(f) by making the following amendments to the item commencing "MORTGAGE, BOND, DEBENTURE, COVENANT or WARRANT OF ATTORNEY":

(i) strike out paragraphs (a), (b) and (c) and substitute the following paragraphs:

(a) subject to paragraphs (b) and (c), the rate of duty is—

(i) if the secured liability does not exceed \$4 000—\$10.00;

(ii) if the secured liability exceeds \$4 000 but does not exceed \$10 000—\$10.00 plus \$0.25 for every \$100 or fractional part of \$100 over \$4 000;

(iii) if the secured liability exceeds \$10 000—\$25.00 plus \$0.35 for every \$100 or fractional part of \$100 over \$10 000,

(but any amount representing the premium on an insurance policy over property subject to the security is to be excluded);

(b) if a mortgage is a mortgage of an existing mortgage over land used or to be used solely as the site of a residential building, the duty is \$10.00.

(c) a bond, debenture, or covenant securing a contingent liability is liable to *ad valorem* duty based on the amount presently secured at the time of stamping if the Commissioner is satisfied of the genuineness of the contingency;

(ii) insert the following exemption after *Exemption 2*—

3. A deed of cross guarantee entered into between a company and its subsidiaries in pursuance of a class order under section 313(6) of the *Corporations Law* or a mortgage, bond, debenture or covenant securing a liability under such a deed of cross guarantee.

(g) by inserting under the heading "General Exemptions From All Stamp Duties" the following item:

1a. Agreement or memorandum of agreement made on or after 1 September 1992, not under seal, and not otherwise specifically charged with duty.

Transitional provision

45. (1) Subject to this section, the amendments made by this Act do not affect the amount of duty chargeable on an instrument executed, or a transaction completed, before the commencement of this Act.

(2) If—

(a) a mortgage executed before the commencement of this Act is extended or renewed after the commencement of this Act; or

(b) a liability that is secured by a mortgage executed before the commencement of this Act is incurred after the commencement of this Act (except a liability that accrues in respect of a liability that was incurred before the commencement of this Act, or a liability that takes effect in substitution for an earlier liability and does not—when incurred—exceed the amount of the earlier liability); or

(c) after the commencement of this Act the time for payment or repayment of a liability secured by a mortgage executed before the commencement of this Act is extended or deferred,

duty is chargeable under the principal Act as amended by this Act as if the mortgage were a new and separate instrument executed on the date of the extension or renewal, the date when the fresh liability was incurred, or the date when the time for payment or repayment of the liability was extended or deferred (as the case requires), but allowance must be made for duty paid on the mortgage before that date.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor