



ANNO TRICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1990

No. 36 of 1990

An Act to amend the Stamp Duties Act, 1923.

[Assented to 3 May 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Stamp Duties Act Amendment Act (No. 3), 1990*.
- (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.

Interpretation

3. Section 4 of the principal Act is amended—

(a) by inserting after the definition of “die” the following definition:

“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;

and

(b) by inserting after the definition of “stock” the following definitions:

“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.

Value of property conveyed or transferred

4. Section 60a of the principal Act is amended by inserting after “a reference in this Act” in subsection (1) “(other than in Part IV)”.

Instruments chargeable as conveyances operating as voluntary dispositions *inter vivos***5. Section 71 of the principal Act is amended—**

(a) by inserting after subsection (4) the following subsection:

(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.;

(b) by inserting after “Notwithstanding any other provisions of this Act” in subsection (11) “but subject to subsection (11a)”;

(c) by inserting after subsection (11) the following subsection:

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

and

(d) by striking out from subsection (15) the definitions of “discretionary trust”, “unit” and “unit trust scheme”.

Endorsement of instrument of transfer as to payment of duty

6. Section 90e of the principal Act is amended by inserting after “duly stamped” in subsection (3) “with *ad valorem* duty”.

Insertion of new Part IV

7. The following Part is inserted after section 90g of the principal Act:

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 Registrar 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).

Amendment of second schedule

8. The second schedule to the principal Act is amended by inserting "(including a statement under Part IV)" at the end of the heading "CONVEYANCE operating as a voluntary disposition *inter vivos* of any property".

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

D. B. DUNSTAN, Governor