



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 100 of 1986

An Act to amend the Stamp Duties Act, 1923.

[Assented to 11 December 1986]

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. 2), 1986".

(2) The Stamp Duties Act, 1923, is in this Act referred to as "the principal Act".

Commencement.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Amendment of
s. 4—
Interpretation.

3. Section 4 of the principal Act is amended—

(a) by inserting after the definition of "adhesive stamp" the following definition:

"authorized officer" means an authorized officer under section 6 (4);;

and

(b) by inserting after the definition of "money" the following definition:

"records" means records of any kind (whether in documentary or other form);.

Repeal of s. 6 and
substitution of
new sections.

4. Section 6 of the principal Act is repealed and the following sections are substituted:

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.

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

Actions by or against the Commissioner.

5. Section 23 of the principal Act is amended—

Amendment of s. 23—

(a) by striking out subsection (1) and substituting the following subsections:

Assessment of duty.

(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.;

(b) by striking out from subsection (2) “the instrument” first occurring and substituting “an instrument”;

and

(c) by striking out from subsection (3) “the instrument” first occurring and substituting “an instrument”.

6. Section 25 of the principal Act is repealed.

Repeal of s. 25.

7. Sections 27a, 27b, 27c and 27d of the principal Act are repealed and the following sections are substituted:

Repeal of ss. 27a, 27b, 27c and 27d and substitution of new sections.

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 enforce-

Power to obtain information and evidence.

ment 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.

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—

Warrant to search and enter premises.

- (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.

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.

Power to retain instruments.

Amendment of
s. 31f—
Requirement to
lodge statement
in respect of
rental business.

8. Section 31f of the principal Act is amended by striking out from paragraph (b) of subsection (2) "\$20 000" and substituting "\$15 000".

Amendment of
s. 31f—
Passing on of
rental duty.

9. (1) Section 31f of the principal Act is amended—

(a) by striking out from subsection (1) "Except as provided in this section," and substituting "Subject to this section,";

and

(b) by inserting after subsection (2) the following subsection:

(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.

(2) The proclamation first made under 31f of the principal Act as amended by this section shall apply both prospectively and in relation to the antecedent period commencing on the commencement of the Sixth Schedule to the Statute Law Revision Act, 1984.

Insertion of new
ss. 31m and 31n.

10. The following sections are inserted after section 31f of the principal Act:

Commissioner
may assess duty
payable.

31m. (1) Where a registered person fails to lodge a statement of rent as required by section 31f or by an agreement under section 31k, the Commissioner may, on the basis of estimates, assess the amount of duty that is payable in respect of the rental business carried on by the person during the relevant period and shall give notice in writing of that assessment to the person.

(2) A registered person shall on or before the date specified in a notice of assessment pay to the Commissioner the amount of duty specified in the notice.

Penalty: \$500 plus twice the amount of duty specified in the notice.

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 rent to that person under an agreement between them for 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 of rent 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.

11. Sections 37 and 38 of the principal Act are repealed.

Repeal of ss. 37
and 38.

12. Section 42a of the principal Act is amended—

Amendment of
s. 42a—
Interpretation.

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

“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;;

(b) by striking out the definition of “dealer” and substituting the following definitions:

“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 distrib-

utor 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;

(c) by inserting after the definitions of “motor vehicle” and “trailer” the following definitions:

“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;

and

(d) by inserting after the definition of “policy of insurance” the following definition:

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

13. Section 42b of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsections:

(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

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

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 reg-
istration, of a motor vehicle shall state in the application the
value of the motor vehicle as at the date of the application.;

and

(b) by striking out subsections (4), (5), (6) and (7) and substituting
the following subsections:

(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 Commis-
sioner, 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 sub-
section (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.

14. Section 42d of the principal Act is amended by striking out from
subsection (1a) "seven days" and substituting "30 days".

Amendment of
s. 42d—
Power to refund
duty overpaid.

15. Section 90c of the principal Act is amended by striking out subsec-
tion (9).

Amendment of
s. 90c—
Records of sales
and purchases of
marketable
securities.

16. Section 90g of the principal Act is amended—

(a) by striking out from paragraph (c) of subsection (6) "2 clear days"
and substituting "10 clear days";

(b) by striking out from paragraph (d) of subsection (6) "2 such clear
days" twice occurring and substituting, in each case, "10 such
clear days";

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

(c) by striking out from paragraph (b) of subsection (7) "2 clear days" and substituting "10 clear days";

(d) by striking out from paragraph (c) of subsection (7) "2 such clear days" and substituting "10 such clear days";

and

(e) by striking out subsection (8) and substituting the following subsection:

(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.

Amendment of
s. 110a—
Offences.

17. Section 110a of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(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.

Amendment of
second schedule.

18. The second schedule to the principal Act is amended—

(a) by inserting after paragraph (2) of the item commencing "ANNUAL LICENCE to be taken out" the following paragraph:

(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);;

(b) by inserting after paragraph (3) of the item commencing "ANNUAL LICENCE to be taken out" the following paragraph:

(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;;

(c) by striking out exemption No. 3 to the item commencing "ANNUAL LICENCE to be taken out" and substituting the following exemption:

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.;

- (d) by inserting after exemption No. 7 to the item commencing "ANNUAL LICENCE to be taken out" the following exemption:
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.;
- (e) by inserting after "a motor vehicle" twice occurring in exemption No. 2 to paragraph (A) of the item commencing "APPLICATION to Register a Motor Vehicle or APPLICATION to Transfer the Registration of a Motor Vehicle—" the passage "that has been previously registered (whether in this State or elsewhere in Australia)";
- (f) by inserting after exemption No. 2 to the item commencing "CONVEYANCE or TRANSFER on sale of any property (not otherwise charged), including contract or agreement for sale—" the following exemptions:
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.;
- (g) by inserting after exemption No. 2 to the item commencing "CONVEYANCE operating as a voluntary disposition *inter vivos* of any property—" the following exemptions:
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 an amalgamating associated body to the association with which it amalgamates or that is formed by the amalgamation.;
- (h) by striking out "two clear days" from exemption No. 1 to the item commencing "RETURN lodged with the Commissioner

by a South Australian dealer pursuant to section 90d—" and substituting "10 clear days";

and

- (i) by striking out "two clear days" from exemption No. 2 to the item commencing "RETURN lodged with the Commissioner by a South Australian dealer pursuant to section 90d—" and substituting "10 clear days".

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

D. B. DUNSTAN, Governor