

Version No. 001
Duties Act 2000

Act No. 79/2000

Version incorporating amendments as at 1 July 2001

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Duties Act 2000
Act No. 79/2000

Version incorporating amendments as at 1 July 2001

The Parliament of Victoria enacts as follows:

CHAPTER 1
PRELIMINARY

1. Purpose

The main purpose of this Act is to create and charge a number of duties.

2. Commencement

This Act comes into operation on 1 July 2001.

3. Definitions

(1) In this Act—

"acquisition statement", in Part 2 of Chapter 3, means a statement referred to in section 80(1);

"advance", in Chapter 7, has the meaning given by section 150;

"allotment statement", in Part 4 of Chapter 3, means a statement referred to in section 101;

"approved" means approved by the Commissioner;

"associated person" means a person who is associated with another person in accordance with any of the following provisions—

- (a) persons are associated persons if they are related persons;

S. 3
amended by
No. 46/2001
s. 3(2) (ILA
s. 39B(1)).

- (b) natural persons are associated persons if they are partners in a partnership to which the **Partnership Act 1958** applies;
- (c) private companies are associated persons if common shareholders have a majority interest in each private company;
- (d) trustees are associated persons if any person is a beneficiary common to the trusts (not including a public unit trust) of which they are trustees;
- (e) a private company and a trustee are associated persons if a related body corporate of the company (within the meaning of the Corporations Law) is a beneficiary of the trust (not including a public unit trust) of which the trustee is a trustee—

and, for the purposes of Part 2 of Chapter 3, a public company and a subsidiary of a public company are taken to be associated persons;

"Australian register" has the same meaning as in the Corporations Law;

"Australian Stock Exchange" means Australian Stock Exchange Limited (A.C.N. 008 624 691);

S. 3(1) def. of "Australian Stock Exchange" substituted by No. 46/2001 s. 3(1)(b).

"authorised deposit-taking institution" has the same meaning as in the Banking Act 1959 of the Commonwealth;

S. 3(1) def. of "authorised deposit-taking institution" inserted by No. 46/2001 s. 3(1)(a).

"**calf**" means any cattle less than 6 weeks of age;

"**cattle**" means bull, cow, ox, steer, heifer or buffalo;

"**charge**" includes impose;

"**collateral mortgage**" means a mortgage that secures all or part of the same advance as another mortgage, security instrument or mortgage package that has been duly stamped under this Act or a corresponding Act;

S. 3(1) def. of "collateral mortgage" inserted by No. 46/2001 s. 3(1)(a).

"**commercial hire business**" has the meaning given by section 126;

"**commercial vehicle**" means—

- (a) a motor vehicle or trailer within the meaning of the **Road Safety Act 1986** constructed or adapted principally for the carriage of goods but does not include a motor vehicle of the kind known as a utility, a station wagon or a panel van; or
- (b) a vehicle without motive power of its own and constructed or adapted principally for the carriage of goods and for being drawn by a motor vehicle within the meaning of that Act;

"**Commissioner**" means the Commissioner of State Revenue referred to in section 62 of the **Taxation Administration Act 1997**;

"**complying approved deposit fund**" means an entity that is a complying approved deposit fund in accordance with section 43 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth;

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s. 3

S. 3(1) def. of
"complying
super-
annuation
fund"
amended by
No. 46/2001
s. 3(1)(c).

"complying superannuation fund" means an entity that is a complying superannuation fund in accordance with section 42 or 42A of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth and an exempt public sector superannuation scheme and in section 40 includes a complying approved deposit fund and an eligible rollover fund;

"co-operative" has the same meaning as in the **Co-operatives Act 1996**;

"co-operative housing society" has the same meaning as in the meaning of the **Co-operative Housing Societies Act 1958**;

"corporation" means a body corporate, whether incorporated in this State or elsewhere;

"corresponding Act" means an Act of another State or of a Territory corresponding to this Act;

S. 3(1) def. of
"cost"
repealed by
No. 48/2001
s. 5(a).

* * * * *

"counterpart" includes a duplicate;

"Crown leasehold" means a lease under the **Land Act 1958** or any other Act or enactment in respect of which a Crown grant in fee-simple is by law directed or authorised to be made to the lessee on payment of all sums (whether referred to as rent or otherwise) reserved by the lease and on compliance with the other covenants of the lease;

"de facto spouse" means a person who is living with a person of the opposite sex as if they were married although they are not;

"discretionary trust" means a trust under which the vesting of the whole or any part of the capital of the trust estate, or the whole or any part of the income from that capital, or both—

- (a) is required to be determined by a person either in respect of the identity of the beneficiaries or the quantum of interest to be taken, or both; or
- (b) will occur if a discretion conferred under the trust is not exercised; or
- (c) has occurred but under which the whole or any part of that capital or the whole or any part of that income, or both, will be divested from the person or persons in whom it is vested if a discretion conferred under the trust is exercised;

"dutiable property" has the meaning given by section 10;

"dutiable proportion", for a mortgage, means the proportion of the amount secured by the mortgage worked out under section 159;

S. 3(1) def. of "dutiable proportion" inserted by No. 46/2001 s. 3(1)(a).

"dutiable transaction" has the meaning given by section 7(2);

"dutiable value"—

- (a) of dutiable property has the meaning given by section 20;

(b) of a motor vehicle has the meaning given by section 219;

"eligible first home owner" has the meaning given by section 61;

"eligible pensioner" has the meaning given by section 58;

"eligible rollover fund" means an entity that is an eligible rollover fund in accordance with section 242 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth and includes an entity the trustee of which is satisfied will be an eligible rollover fund within 12 months after the date on which a liability to duty arises (or would otherwise arise);

"entitled", in Chapter 3, means beneficially entitled;

"execute", in relation to an instrument not under seal, means sign;

"farm machinery" means—

- (a) a harvester, binder, tractor, plough or other agricultural implement; or
- (b) a boat;
- (c) fishing equipment;

(d) any other goods of a class commonly used for the purposes of primary production that are determined by the Commissioner to be farm machinery for

the purposes of sections 132(j) and 170—

where the goods are acquired for the purposes of primary production;

"friendly society" means a body that was a society within the meaning of the Friendly Societies (Victoria) Code immediately before the transfer date within the meaning of the **Financial Sector Reform (Victoria) Act 1999** or is a friendly society for the purposes of the Life Insurance Act 1995 of the Commonwealth;

"general insurance" has the meaning given by section 176;

"general insurer" has the meaning given by section 184;

"GST" has the same meaning as it has in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth except that it includes notional GST of the kind for which payments may be made under Part 3 of the **National Taxation Reform (Consequential Provisions) Act 2000** by a person that is a State entity within the meaning of that Act;

"heavy trailer" means a trailer or semi-trailer within the meaning of the **Road Safety Act 1986** with an MRC exceeding 4.5 tonnes;

"hire of goods" has the meaning given by section 129;

"hire purchase agreement" has the meaning given by section 130(2);

"hiring charges" has the meaning given by section 135;

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S. 3(1) def. of
"industrial
organisation"
inserted by
No. 46/2001
s. 3(1)(a).

"industrial organisation" means an association of employees or employers registered as an organisation under the Workplace Relations Act 1996 of the Commonwealth;

"instrument" includes a written document and a written statement;

"insurance" includes assurance;

"insurance intermediary" has the same meaning as in the Insurance (Agents and Brokers) Act 1984 of the Commonwealth;

"interest" includes an estate or proprietary right;

S. 3(1) def. of
"lease"
repealed by
No. 48/2001
s. 5(a).

* * * * *

S. 3(1) def. of
"liability date"
inserted by
No. 46/2001
s. 3(1)(a).

"liability date", for a mortgage, means the date the mortgage is liable under section 152 for mortgage duty;

"licensed motor car trader" has the same meaning as in the **Motor Car Traders Act 1986**;

"life insurance" has the meaning given by section 198;

"life insurer" has the meaning given by section 202;

"managed investment scheme" means a managed investment scheme within the meaning of Chapter 5C of the Corporations Law, and includes a public unit trust scheme;

"marketable securities" means the following—

-
- (a) shares referred to in section 10(1)(b);
 - (b) units referred to in section 10(1)(c);
 - (c) an interest in shares or units referred to in paragraph (a) or (b);

"mortgage"—

- (a) subject to paragraph (b), has the meaning given by section 149;
- (b) for the purposes of section 251A and the definitions of "mortgage-backed security" and "pool of mortgages" means a mortgage of any estate or interest in land, including a leasehold estate or interest in land, whether the land is situated in Victoria or elsewhere, and includes a charge over any such land;

S. 3(1) def. of "mortgage" substituted by No. 46/2001 s. 3(1)(d).

"mortgage-backed security" means—

- (a) an entitlement or interest of a person in—
 - (i) a right or entitlement of a mortgagee or any other right or entitlement in respect of a mortgage or pool of mortgages; or
 - (ii) money payable by a mortgagor under a mortgage or pool of mortgages (whether or not on the same terms and conditions as apply under the mortgage)—

S. 3(1) def. of "mortgage-backed security" inserted by No. 46/2001 s. 3(1)(a).

whether or not the person is entitled to a transfer or assignment of the mortgage or pool of mortgages; or

- (b) an instrument that—
- (i) is a debenture, promissory note, bill of exchange, stock, bond, note or other document creating, evidencing or acknowledging indebtedness; and
 - (ii) is issued or made by a corporation—

the payments under which are derived by the corporation substantially, or to the extent declared under sub-section (2)(c), from the receipts, whether of capital or income, from a mortgage or pool of mortgages; or

- (c) an entitlement, interest or instrument of a class declared under sub-section (2)(a); or
- (d) an instrument by which an interest in or mortgage or charge over an entitlement, interest or instrument mentioned in paragraph (a), (b) or (c) is created—

but does not include—

- (e) a mortgage (other than a mortgage referred to in paragraph (d)); or
 - (f) a transfer of a mortgage; or
 - (g) a declaration of trust; or
 - (h) an entitlement, interest or instrument of a class declared under sub-section (2)(b);
-

"mortgage package" has the meaning given by section 160;

"motor vehicle" means—

- (a) a motor vehicle within the meaning of the **Road Safety Act 1986**; or
- (b) a heavy trailer;

"MRC" has the same meaning as in the Schedule to the Road Transport Charges (Australian Capital Territory) Act 1993 of the Commonwealth;

"passenger car" means—

- (a) a motor vehicle constructed principally for the carriage of passengers; or
- (b) a motor vehicle that—
 - (i) is designed principally for the conveyance of not more than 8 adults; and
 - (ii) is constructed either on a truck chassis or with special features for off-road operation—

but does not include—

- (c) a motor cycle; or
- (d) a motor vehicle having a utility or panel van type body in which the forward part of the body form and the greater part of the mechanical equipment are the same as those in a passenger car manufactured by the manufacturer of the motor vehicle; or
- (e) a motor vehicle constructed for the carriage of passengers and equipped to seat more than 8 adults (including the driver);

Duties Act 2000
Act No. 79/2000

S. 3(1) def. of
"person"
amended by
No. 46/2001
s. 3(1)(e).

"person" includes an unincorporated association and a partnership;

Note: **"person"** also includes a body corporate—see section 38 of the **Interpretation of Legislation Act 1984**.

"pooled superannuation trust" means an entity that is a pooled superannuation trust in accordance with section 44 of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth;

S. 3(1) def. of
"pool of
mortgages"
inserted by
No. 46/2001
s. 3(1)(a).

"pool of mortgages" means a pool or collection of assets—

- (a) that consists solely of mortgages; or
- (b) that consists substantially, or to the extent declared under sub-section (2)(d), of mortgages or of money paid under mortgages, or both, and may include—
 - (i) cash;
 - (ii) investments of a kind referred to in section 4(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (ia), (j), (k) or (o) of the **Trustee Act 1958** as in force immediately before the commencement of section 4 of the **Trustee and Trustee Companies (Amendment) Act 1995**;
 - (iii) assets of a class of assets declared under sub-section (2)(e);

"premium", in relation to general insurance, has the meaning given by section 177;

"primary production" means the use of land primarily for—

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- (a) cultivation for the purpose of selling the produce of cultivation; or
 - (b) the maintenance of animals or poultry for the purpose of selling them or their natural increase or bodily produce; or
 - (c) the keeping of bees for the purpose of selling their honey; or
 - (d) commercial fishing, including the preparation for commercial fishing or the storage or preservation of fish or fishing gear; or
 - (e) the cultivation or propagation of plants, seedlings, mushrooms or orchids;

"private company" means a corporation that is not limited by shares, or whose shares are not quoted on the Australian Stock Exchange or a recognised stock exchange;

"private corporation", in Part 2 of Chapter 3, has the meaning given by section 71;

"private unit trust scheme" means a unit trust scheme that is not a public unit trust scheme;

"public unit trust scheme" means a unit trust scheme—

- (a) any of the units of which are listed for quotation on the Australian Stock Exchange or on a recognised stock exchange; or
- (b) that is a managed investment scheme within the meaning of Chapter 5C of the Corporations Law or an undertaking to which Division 11 of Part 11.2 of the Corporations Law applies and in respect of which—

- (i) some or all of the units have been offered to the public; and
- (ii) no fewer than 50 persons hold units in it; or
- (c) that, in the opinion of the Commissioner, will satisfy paragraph (a) or (b) within 12 months after the Commissioner gives written notice of that opinion to a person who has requested the Commissioner to express that opinion in relation to the unit trust scheme;

"receiving body", in Chapter 4, has the same meaning as in the Financial Sector (Transfers of Business) Act 1999 of the Commonwealth.

S. 3(1) def. of "recognised stock exchange" amended by No. 46/2001 s. 3(1)(f).

"recognised stock exchange" means—

- (a) a stock exchange that is a member of the Fédération Internationale des Bourses de Valeurs; or
- (b) Bendigo Stock Exchange Ltd (A.C.N. 087 708 898); or
- (c) Newcastle Stock Exchange Limited (A.C.N. 000 902 063); or
- (d) a stock exchange prescribed as a recognised stock exchange for the purposes of this Act;

S. 3(1) def. of "referrable point" inserted by No. 46/2001 s. 3(1)(a).

"referrable point", for the dutiable proportion of a mortgage, means the document or approved method used to work out the dutiable proportion under section 159;

"registered insurer" means an insurer registered under Part 2 of Chapter 8;

"registered operator" has the same meaning as in the **Road Safety Act 1986**;

"registered used car dealer" means a person registered under Part 2 of Chapter 9;

"related body corporate" has the same meaning as in the Corporations Law;

"related person" means a person who is related to another person in accordance with any of the following provisions—

- (a) natural persons are related persons if one of them is a relative of the other;
- (b) private companies are related persons if they are related bodies corporate within the meaning of the Corporations Law;
- (c) a natural person and a private company are related persons if the natural person is a majority shareholder or director of the company or of another private company that is a related body corporate of the company within the meaning of the Corporations Law;
- (d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust) of which the trustee is a trustee;
- (e) a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust) of which the trustee is a trustee;

"relative" in relation to a natural person, means a person who is—

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- (a) a child or remoter lineal descendant of the person or of the spouse of the person;
- (b) a parent or remoter lineal ancestor of the person or of the spouse of the person;
- (c) a brother or sister of the person or of the spouse of the person;
- (d) the spouse of the person or a spouse of any person referred to in paragraph (a), (b) or (c);
- (e) a child of a brother or sister of the person or of the spouse of the person;
- (f) a brother or sister of a parent of the person or of a parent of the spouse of the person;

"responsible entity" of a managed investment scheme, has the same meaning as in the Corporations Law;

"right" to shares or units means any right (whether actual, prospective or contingent) of a person to have shares or units issued by a company or trust to the person, whether or not on payment of money or for other consideration;

"shares" includes rights to shares;

"special dealer" means a person who would be a motor car trader within the meaning of the **Motor Car Traders Act 1986** but for the fact that the motor vehicles in which the person trades are not motor cars within the meaning of that Act;

"special hiring agreement" has the meaning given by section 133;

"spouse" includes de facto spouse;

"stamp" means duty stamp whether impressed by machine imprint or adhesive;

"Territory" means Territory of the Commonwealth;

"transfer" includes an assignment, a conveyance, an exchange and a buy-back of shares in accordance with Division 2 of Part 2J.1 of the Corporations Law;

"unencumbered value" of dutiable property has the meaning given by section 22;

"unit" in a unit trust scheme means—

- (a) a right or interest (whether described as a unit or a sub-unit or otherwise) of a beneficiary under the scheme; or
- (b) a right to any such right or interest;

"unit trust scheme" means any arrangements 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, income or distribution of assets arising from the acquisition, holding, management or disposal of any property whatever pursuant to the trust;

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S. 3(1) def. of "variation" repealed by No. 48/2001 s. 5(a).

"Victorian company" means a company incorporated or taken to be incorporated under the Corporations Law of Victoria, and includes a body corporate that is incorporated under any other Act of Victoria

and that is not a company incorporated or taken to be incorporated under the Corporations Law of another State or of a Territory.

S. 3(2)
inserted by
No. 46/2001
s. 3(2).

- (2) The Governor in Council, by order published in the Government Gazette, may declare—
- (a) a class of entitlements, interests or instruments to be mortgage-backed securities;
 - (b) a class of entitlements, interests or instruments not to be mortgage-backed securities;
 - (c) the extent to which payments are derived by a corporation from the receipts of a mortgage or pool of mortgages;
 - (d) the extent to which a pool of assets consists of mortgages or money paid under mortgages, or both, to be a pool of mortgages;
 - (e) a class of assets to be assets included in a pool of mortgages.

4. *Division of Act into Chapters*

- (1) This Act is divided into Chapters, Parts and Divisions.
 - (2) If a provision of this Act refers to a Chapter by number, the reference must, unless the context otherwise requires, be construed as a reference to the Chapter designated by that number in this Act.
 - (3) If a provision of this Act refers to a Part by a number, the reference must, unless the context
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otherwise requires, be construed as a reference to the Part designated by that number of the Chapter in which the reference occurs.

5. *Taxation Administration Act 1997*

This Act is to be read together with the **Taxation Administration Act 1997** which provides for the administration and enforcement of this Act and other taxation laws.

6. *Act binds the Crown*

- (1) This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
 - (2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.
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CHAPTER 2
TRANSACTIONS CONCERNING DUTIABLE
PROPERTY

PART 1—INTRODUCTION AND OVERVIEW

7. Imposition of duty on certain transactions concerning dutiable property

- (1) This Chapter charges duty on—
- (a) a transfer of dutiable property; and
 - (b) the following transactions—
 - (i) a declaration of trust relating to dutiable property the specification of which forms part of the declaration of trust or part of the transaction constituted by the declaration of trust;
 - (ii) a surrender of an estate in land in Victoria, other than a surrender of a lease, a discharge of a mortgage or a redemption of units in a unit trust scheme;
 - (iii) a vesting of dutiable property by a court order or an order of the Registrar of Titles;
 - (iv) the enlargement of a term into a fee-simple under section 153 of the **Property Law Act 1958**; or
 - (v) the granting of a lease of land in Victoria for which any consideration other than the rent reserved is paid or agreed to be paid, and in which any covenant or agreement for the future transfer or sale of the fee-simple on the

occurrence of any contingency
whatever is expressed or implied; or

- (vi) any other transaction that results in a change in beneficial ownership of dutiable property (other than a change in beneficial ownership of an estate in land as a result of the issue, transfer, redemption or cancellation of units in a unit trust scheme).

(2) Such a transfer or transaction is a "**dutiable transaction**" for the purposes of this Act.

(3) Despite sub-section (1), the assignment of a term referred to in section 153 of the **Property Law Act 1958** is not a dutiable transaction.

(3A) Despite sub-section (1), a transfer of marketable securities, or a transaction referred to in sub-section (1)(b) in respect of marketable securities, that takes place or occurs on or after 1 July 2003 is not a dutiable transaction.

S. 7(3A)
inserted by
No. 48/2001
s. 6(1).

(4) In this Chapter—

"declaration of trust" means any declaration (other than by a will or testamentary instrument) that any identified property vested or to be vested in the person making the declaration is or is to be held in trust for the person or persons, or the purpose or purposes, mentioned in the declaration although the beneficial owner of the property, or the person entitled to appoint the property, may not have joined in or assented to the declaration.

8. Imposition of duty on dutiable transactions that are not transfers

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- (1) The duty charged by this Chapter on a dutiable transaction referred to in section 7(1)(b) is to be charged as if each such dutiable transaction were a transfer of dutiable property.
- (2) Accordingly, for the purpose of charging duty under this Chapter, in relation to a dutiable transaction specified in Column 1 of the following Table—
 - (a) the property specified in Column 2 opposite the dutiable transaction is taken to be the property transferred (and a reference in this Act to property transferred includes a reference to such property); and
 - (b) the person specified in Column 3 opposite the dutiable transaction is taken to be the transferee of the dutiable property (and a reference in this Act to a transferee includes a reference to such a person); and
 - (c) the transfer of the dutiable property is taken to have occurred at the time specified in Column 4 opposite the dutiable transaction (and a reference in this Act to the time at which a transfer occurs includes a reference to such a time).

S. 8(2) Table amended by No. 46/2001 s. 4.

TABLE

<i>Column 1</i> <i>Dutiable transaction</i>	<i>Column 2</i> <i>Property transferred</i>	<i>Column 3</i> <i>Transferee</i>	<i>Column 4</i> <i>When transfer occurs</i>
declaration of trust	the property vested in the declarant as is subjected to the trust	the person declaring the trust	when the declaration becomes effective
surrender	the surrendered estate	the person to whom the property is surrendered	when the surrender takes place

Duties Act 2000
Act No. 79/2000

s. 9

<i>Column 1</i> <i>Dutiable transaction</i>	<i>Column 2</i> <i>Property transferred</i>	<i>Column 3</i> <i>Transferee</i>	<i>Column 4</i> <i>When transfer occurs</i>
vesting by court order	the vested property	the person in whom the property is vested	when the order takes effect
vesting by order of the Registrar of Titles	the vested property	the person in whom the property is vested	when the order takes effect
enlargement of interest into fee-simple	the estate in fee simple	the person in whom the term was previously vested	when the interest is enlarged
granting of lease with covenant for future transfer or sale	the property leased	the lessee	when the lease is granted
any other transaction that results in a change in beneficial ownership of dutiable property	the property the beneficial ownership of which is changed (but only to the extent of the change in beneficial ownership)	the person who obtains the beneficial ownership or whose beneficial ownership is increased	when beneficial ownership changes

9. *What form must a dutiable transaction take?*

- (1) A dutiable transaction may be effected or evidenced—
 - (a) wholly in writing; or
 - (b) partly in writing and partly orally; or
 - (c) wholly orally as evidenced by whole or part performance.
- (2) A dutiable transaction may be effected or recorded by any means, including electronic means.

10. What is "dutiabale property"?

- (1) "**Dutiabale property**" is any of the following—
- (a) each of the following estates in land in Victoria—
 - (i) an estate in fee-simple;
 - (ii) a Crown leasehold estate;
 - (iii) a term referred to in section 153 of the **Property Law Act 1958** that may be enlarged into a fee-simple under that section;
 - (iv) a leasehold estate, if the lease is of a kind referred to in section 7(1)(b)(v);
 - (b) shares—
 - (i) in a Victorian company; or
 - (ii) in a corporation incorporated outside Australia that are kept on the Australian register kept in Victoria;
 - (c) units in a unit trust scheme, being units—
 - (i) registered on a register kept in Victoria; or
 - (ii) that are not registered on a register kept in Australia, but in respect of which the manager (or, if there is no manager, the trustee) of the unit trust scheme is a Victorian company or is a natural person resident in Victoria;
 - (d) goods in Victoria held or used in connection with a dutiabale transaction in respect of any estate in land elsewhere referred to in this section, including goods used in connection with a business carried on or in connection

with the land, but not including the following—

- (i) goods that are stock-in-trade;
 - (ii) materials held for use in manufacture;
 - (iii) goods under manufacture;
 - (iv) goods held or used in connection with land used for primary production;
 - (v) livestock;
- (e) an interest—
- (i) under the will or codicil of a deceased person disposing of property elsewhere referred to in this section; or
 - (ii) in or under the estate of a deceased person comprising property elsewhere referred to in this section;
- (f) an interest of a purchaser of an estate in land elsewhere referred to in this section under an agreement to purchase the estate;
- (g) an interest in shares referred to in paragraph (b) or in units referred to in paragraph (c).
- (2) Despite sub-section (1), the following marketable securities are not dutiable property—
- (a) shares, or units in a unit trust scheme, that are quoted on the Australian Stock Exchange or a recognised stock exchange;
 - (b) an interest in shares or units referred to in paragraph (a), whether or not the interest is quoted on the Australian Stock Exchange or a recognised stock exchange.

11. *When does a liability for duty arise?*

- (1) A liability for duty charged by this Chapter arises when a dutiable transaction occurs.
- (2) However, if a dutiable transaction is effected by a written instrument, liability for duty charged by this Chapter arises when the instrument is first executed.

12. *Who is liable to pay the duty?*

Duty charged by this Chapter is payable by the transferee, unless this Chapter requires another person to pay the duty.

13. *The liability of joint tenants*

For the purpose of assessing duty charged by this Chapter, joint tenants of dutiable property are taken to hold the dutiable property as tenants in common in equal shares.

14. *Necessity for written instrument or written statement*

- (1) If a dutiable transaction that is liable to ad valorem duty under this Chapter is not effected by a written instrument, the transferee must make a written statement in the approved form.
- (2) The written statement must be made within 3 months after the liability arises.
- (3) If a dutiable transaction is completed or evidenced by a written instrument within 3 months after the date on which the dutiable transaction occurs, the requirement to lodge a statement and pay duty in respect of the statement may be satisfied by the lodgement of, and payment of duty on, the written instrument within 3 months after the date on which the dutiable transaction occurs.

15. *Lodging written instrument or statement with Commissioner*

A transferee who is liable to pay duty in respect of a dutiable transaction must, within 3 months after

the liability arises, lodge with the Commissioner—

- (a) the written instrument that effects the dutiable transaction or, if there is more than one such written instrument, each one of them as provided by section 10; or
- (b) the written statement made in compliance with section 14.

16. *When must duty be paid?*

A tax default does not occur for the purposes of the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to pay the duty arises.

17. *No double duty*

If a dutiable transaction is effected by more than one instrument, one instrument is to be stamped with the duty payable on the dutiable transaction and each other instrument is to be denoted with a statement of the amount, and date of payment, of the duty.

18. *What is the rate of duty?*

Duty is charged on the dutiable value of the dutiable property the subject of the dutiable transaction at the relevant rate set out in Part 3.

19. *Concessions and exemptions from duty*

Concessions and exemptions from duty charged by this Chapter are dealt with in Part 5.

PART 2—DUTIABLE VALUE

20. *What is the "dutable value" of dutiable property?*

The "**dutable value**" of dutiable property that is the subject of a dutiable transaction is the greater of—

- (a) the consideration (if any) for the dutiable transaction (being the amount of a monetary consideration or the value of a non-monetary consideration); and
- (b) the unencumbered value of the dutiable property.

21. *What is the consideration for the transfer of dutiable property?*

- (1) The consideration for the transfer of dutiable property is taken to include the amount or value of all encumbrances, whether certain or contingent, subject to which the dutiable property is transferred.
- (2) The consideration for the transfer of the interest of a transferee under an uncompleted agreement for the sale or transfer of dutiable property is taken to include the balance of the amount or value of the consideration that would be required from the transferee under the agreement in order to complete it in accordance with its terms.
- (3) The consideration for the transfer of land on the sale of that land does not include any amount paid or payable in respect of the construction of a building to be constructed on that land on or after the date on which the contract of sale was entered into.

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- (4) The consideration for the transfer of land that is a lot on a plan of subdivision within the meaning of the **Subdivision Act 1988** on a sale of that lot is taken not to include an amount, attributable exclusively to that lot, in respect of refurbishment of that lot carried out on or after the date on which the contract of sale was entered into and before the date of the transfer if—
- (a) the transferor is the first registered proprietor within the meaning of the **Transfer of Land Act 1958** of that lot; and
 - (b) the transfer of that lot to the transferee is the first transfer of the lot after registration of the plan of subdivision; and
 - (c) the transferee has not entered into a contract for refurbishment of the lot, other than in respect of the refurbishment referred to above; and
 - (d) the transfer, when presented to or lodged with the Commissioner, is accompanied by—
 - (i) a copy of the building permit, or building approval or permit; and
 - (ii) a copy of the contract with the transferee for the refurbishment; and
 - (iii) a statutory declaration in the approved form by the transferor as to the prescribed matters and as to whether or not the transferor has entered into any agreement with the transferee in respect of works (other than refurbishment) to be undertaken in relation to the lot before the transfer; and
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- (iv) if the Commissioner requires, a statutory declaration in the approved form by the transferee declaring that the transferee has not entered any contract, other than the contract referred to in sub-paragraph (ii), for the refurbishment of the lot; and
- (v) if the Commissioner requires, a statutory declaration in the approved form by the person that issued the building permit of building approval or permit.

(5) In this section—

"refurbishment" means building work for which a building permit has been issued under the **Building Act 1993**, being work for the conversion of an existing building for which such a permit or approval is required.

22. *What is the "unencumbered value" of dutiable property?*

- (1) The **"unencumbered value"** of dutiable property is the amount for which the property might reasonably have been sold in the open market at the time the dutiable transaction occurred free from any encumbrance to which the property was subject at that time.
- (2) In determining the amount for which land or goods might reasonably have been sold free from encumbrances, there must be disregarded subject to sub-section (3), any interest, agreement or arrangement (other than an encumbrance) granted or made in respect of the land or goods, that has the effect of reducing the value of the land or goods.

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- (3) An interest, agreement or arrangement referred to in sub-section (2) is not to be disregarded if the Commissioner is satisfied that it was not granted or made as a part of an arrangement or scheme with a collateral purpose of reducing the duty otherwise payable on the transfer of the land or goods.
- (4) In considering whether or not he or she is satisfied for the purposes of sub-section (3), the Commissioner may have regard to—
- (a) the duration of the interest, agreement or arrangement before the transfer; and
 - (b) whether the interest, agreement or arrangement has been granted to or made with an associate, a related corporation or a trustee of the transferor or transferee; and
 - (c) whether there is any commercial efficacy to the granting of the interest or the making of the agreement or arrangement other than to reduce duty; and
 - (d) any other matters he or she considers relevant.
- (5) In computing for the purposes of this Chapter the unencumbered value of any marketable securities of a company, there must be disregarded any provision in the constitution of the company which, or the operation of which, restricts or would restrict the sale or disposition or reduces or would reduce the unencumbered value of the marketable securities, and the marketable securities are to be valued as if no such provision existed.

S. 22(5)
inserted by
No. 46/2001
s. 5.

S. 22(6)
inserted by
No. 46/2001
s. 5.

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- (6) Despite anything to the contrary in this section, the Commissioner may adopt as the unencumbered value of any marketable securities of a company the net benefit that, in the opinion of the Commissioner, the holder of the marketable securities would receive after payment of all income taxes in respect of the marketable securities in the event of the company being voluntarily wound up at the time the dutiable transaction occurred, whether or not any such winding up was intended or contemplated at that time.

23. *Arrangements that reduce the dutiable value of marketable securities*

- (1) In computing for the purposes of this Chapter the unencumbered value of any marketable securities of a company, the Commissioner may include the value of any assets formerly owned or controlled by the company if—
- (a) those assets were transferred to the ownership or control of the transferee of the marketable securities or to an associated person of the transferee before the transfer of the marketable securities; and
 - (b) those assets are necessary for the continuing operation of the company after the transfer of the marketable securities; and
 - (c) the value of the marketable securities was reduced following the transfer of ownership or control of assets because the proceeds of that transfer were not retained by the company.

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- (2) In determining whether assets are necessary for the continuing operation of a company the Commissioner may take into account—
- (a) whether or not the assets were removed from the company's premises after the transfer of ownership or control;
 - (b) whether or not the assets continued to be used by the company under an arrangement with the transferee.
- (3) This section does not apply if the Commissioner is satisfied that the transfer of ownership or control of assets—
- (a) was part of the normal business operations of the transferee; or
 - (b) was not part of a scheme or arrangement devised for the principal purpose of minimising duty chargeable under this Chapter on the transfer of marketable securities.

24. *Aggregation of certain dutiable transactions*

- (1) Dutiable transactions relating to separate items of dutiable property referred to in section 10(1)(a) or (d) or section 10(1)(e) as it relates to dutiable property referred to in section 10(1)(a) or (d), or separate parts of such property are to be aggregated and treated as a single dutiable transaction if—
- (a) they occur within 12 months; and
 - (b) the transferee is the same or the transferees are associated persons; and
 - (c) the dutiable transactions together form, evidence, give effect to or arise from what is, substantially, one arrangement relating to all of the items or parts of the dutiable property.

S. 24(2A)
inserted by
No. 46/2001
s. 6.

(2) Dutiable transactions are not to be aggregated under this section if the Commissioner is satisfied that it would not be just and reasonable to do so in the circumstances.

(2A) Dutiable transactions are not to be aggregated under this section if the Commissioner is satisfied that—

- (a) each item or part of dutiable property to which the arrangement referred to in sub-section (1) relates is—
 - (i) an estate in land referred to in section 9(1)(ga), (h) or (ha) of the **Land Tax Act 1958**; or
 - (ii) goods in Victoria held or used in connection with land referred to in sub-paragraph (i); or
 - (iii) property referred to in section 10(1)(e) as it relates to property referred to in sub-paragraph (i) or (ii); and
- (b) following the series of dutiable transactions giving effect to or arising from the arrangement referred to in sub-section (1), the land referred to in paragraph (a) will continue to be used for primary production.

S. 24(2B)
inserted by
No. 46/2001
s. 6.

(2B) A transferee of a dutiable transaction referred to in sub-section (2A) must make a written declaration to the Commissioner, at or before the time at which an instrument or statement relating to the transaction is lodged for stamping—

- (a) disclosing details known to the transferee of all of the items or parts of the dutiable property included or to be included in the arrangement referred to in sub-section (1); and

(b) that following the series of dutiable transactions giving effect to or arising from the arrangement, the land will continue to be used for primary production.

(2C) A declaration required by sub-section (2B) must be in the approved form.

**S. 24(2C)
inserted by
No. 46/2001
s. 6.**

(3) The dutiable value of aggregated dutiable property is the sum of the dutiable values of the items or parts of the dutiable property as at the time at which each dutiable transaction occurs.

(4) The amount of duty payable in accordance with this section is to be reduced by the amount of any ad valorem duty paid on a prior dutiable transaction that is, or prior dutiable transactions that are, aggregated in accordance with this section.

(5) Duty may be apportioned to the instruments effecting or evidencing the dutiable transactions, or may be charged in accordance with section 17, as determined by the Commissioner.

(6) A transferee to whom this section applies must disclose to the Commissioner, in writing, at or before the time at which an instrument or statement relating to the dutiable transactions is lodged for stamping, details known to the transferee of—

(a) all of the items or parts of the dutiable property included or to be included in the arrangement referred to in sub-section (1); and

(b) the consideration for each item or part of that dutiable property.

Penalty: 100 penalty units.

25. Apportionment—dutiable property and other property

- (1) If a dutiable transaction relates to dutiable property and property that is not dutiable property, it is chargeable with duty under this Chapter only to the extent that it relates to dutiable property.
- (2) If a dutiable transaction relates to different types of dutiable property for which different rates of duty are chargeable under this Chapter, the dutiable transaction is chargeable with duty under this Chapter as if a separate dutiable transaction had occurred in relation to each such type of dutiable property.

26. Partitions of marketable securities

In determining the duty to be paid on any dutiable transaction that gives effect to a partition or division of any marketable securities the Commissioner must, before assessing the duty (if any) payable on the transaction, deduct from the value of those marketable securities the value of the beneficial interest in those marketable securities held prior to the transaction by the transferee.

27. Partitions of land

In determining the duty to be paid on any dutiable transaction that gives effect to a partition or division of any estate in land, the Commissioner must, before assessing the duty (if any) payable on the transaction, deduct from the value of that estate the value of the beneficial interest in that estate held prior to the transaction by the transferee.

PART 3—RATES OF DUTY

28. *General rate*

- (1) The rate of duty chargeable on a dutiable transaction is chargeable to the nearest whole dollar of the amount determined as follows or, if that amount is an amount of dollars and fifty cents, to the nearest whole dollar below that amount—

Dutiable value of the dutiable property the subject of the dutiable transaction	Rate of duty
Not more than \$20 000	1·4% of the dutiable value
More than \$20 000 but not more than \$115 000	\$280 plus 2·4% of that part of the dutiable value that exceeds \$20 000
More than \$115 000 but not more than \$870 000	\$2560 plus 6% of that part of the dutiable value that exceeds \$115 000
More than \$870 000	5·5% of the dutiable value

- (2) This rate applies unless other provision is made by this Chapter¹.

29. *Marketable securities*

The rate of duty chargeable on dutiable transactions in respect of marketable securities is 60 cents per \$100, or part, of the dutiable value of the marketable securities.

PART 4—SPECIAL PROVISIONS

30. *Interim payment of duty*

- (1) If the full dutiable value of dutiable property the subject of a dutiable transaction cannot, in the Commissioner's opinion, be immediately ascertained, the Commissioner may make an assessment by way of estimate under section 11(2) of the **Taxation Administration Act 1997**.
- (2) The written instrument or the written statement required by section 14 may be stamped "interim stamp only".
- (3) When the full dutiable value has been ascertained, the Commissioner must reassess the duty payable on the dutiable transaction.
- (4) If no further duty is payable, the interim stamp is to be cancelled and any amount paid in excess of the amount assessed is to be refunded.
- (5) If further duty is payable, liability for the further duty arises when the notice of assessment issues, despite section 11.
- (6) On payment of the balance of the duty (and any interest or penalty tax), the written instrument or the written statement required by section 14 is to be stamped with the amount of the balance and marked to indicate that duty has been duly paid.

31. *Sub sales of land*

- (1) If—
 - (a) a person ("**the vendor**") agrees to transfer any dutiable property referred to in section 10(1)(a) or (d) ("**the agreement**") to another person ("**the first purchaser**") (whether or not the agreement provides for

that other person to nominate another person as purchaser); and

- (b) the transfer executed by the vendor transfers the whole or any part of the property not to the first purchaser but to another person ("**the transferee**") who has acquired, whether directly or indirectly, the whole or any part of the rights and interest under the agreement of the first purchaser in the property—

the transfer is not chargeable with duty in respect of the transfer from the vendor to the transferee but is separately and distinctly chargeable with duty in respect of—

- (c) the value of the property in the agreement (whether or not the agreement has been discharged by performance, novation or agreement or has otherwise ceased to exist); and
- (d) the value of the property transferred to the transferee; and
- (e) if the transferee did not acquire those rights and interest directly from the first purchaser, the value of the property in each other transaction or agreement as a result of which the rights and interest of the first purchaser in the property were acquired.
- (2) For the purposes of sub-section (1), the value of the property is—
- (a) if there was a consideration for the agreement or transaction in respect of which duty is chargeable—
- (i) that consideration; or
- (ii) the amount for which the property might reasonably have been sold if it

had been sold, free from encumbrances, in the open market on the date of the agreement or transaction in respect of which duty is chargeable—

whichever is the greater; and

- (b) in any other case, the amount for which the property might reasonably have been sold, free from encumbrances, in the open market on the date of the agreement or transaction in respect of which duty is chargeable.
- (3) A transfer referred to in sub-section (1) is not separately and distinctly chargeable with duty in accordance with that sub-section if—
- (a) the agreement was entered into by the first purchaser—
 - (i) as agent for another person and with the authority in writing of the transferee to enter into the transaction on behalf of the transferee; or
 - (ii) in anticipation of the incorporation of the transferee and, at the time of the transfer, the first purchaser or a relative of the first purchaser holds a bona fide beneficial interest in the transferee or in a holding company (within the meaning of the Corporations Law) of the transferee; or
 - (iii) as trustee for the transferee under a trust recorded in writing on or before the entering into of the agreement; or
 - (b) the transferee is a body corporate and the first purchaser was a director of the body corporate when the agreement was entered into; or
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- (c) the transferee is a relative of the first purchaser; or
 - (d) the first purchaser was a related corporation of the transferee when the agreement was entered into; or
 - (e) a transfer executed in respect of the agreement would be exempt from duty under another provision of this Act.
- (4) Duty charged under sub-section (1)(c), (d) or (e) in relation to an agreement or transaction is payable by the person acquiring rights or an interest under the agreement or transaction.
- (5) A transferee who pays duty in respect of a transaction or agreement payable under this section by another person, may recover the amount of that duty as a debt due to the transferee from the person.
- (6) For the purposes of this section but without limiting the ways in which a person may be taken to acquire the rights and interest of another person in property, a person who has rights or an interest in property ("**the first person**") acquires the rights and interest of another person ("**the second person**") in that property if, as a direct or indirect result of an agreement, arrangement or understanding involving those persons (with or without other persons)—
- (a) the second person acquires rights or an interest in the property; and
 - (b) the rights or interest of the first person in the property are increased.

32. *Transfers arising from mortgages of land*

- (1) The mortgagor and the mortgagee are jointly and severally liable to pay the duty chargeable on a transfer by way of mortgage of dutiable property
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that is land registered under the **Transfer of Land Act 1958**.

- (2) If the Commissioner is satisfied that—
- (a) duty has been paid in accordance with this section on a transfer of dutiable property to which this section applies; and
 - (b) the dutiable property has been re-transferred to the mortgagor (or a person to whom the land has been transmitted by death or bankruptcy) and the mortgagor (or person) is the registered proprietor of the land—

the Commissioner must refund the ad valorem duty paid on the transfer less the amount of duty that would have been payable on a mortgage under Chapter 7 (Mortgages).

- (3) For the purposes of this section, a transfer by way of mortgage of land registered under the **Transfer of Land Act 1958** means a transfer as a result of which the transferee becomes the registered proprietor of an estate in fee simple in the land but holds that estate, as against the transferor, by way of security.

PART 5—EXEMPTIONS AND CONCESSIONAL RATES OF DUTY

Division 1—Trusts

33. *Change in trustees*

(1) In this section—

"new trustee" means a trustee appointed in substitution for a trustee or trustees or a trustee appointed in addition to a trustee or trustees;

"special trustee" means—

- (a) a trustee company within the meaning of the **Trustee Companies Act 1984**;
 - (b) a corporation constituted under the law of another State or a Territory that, in the Commissioner's opinion, corresponds to a trustee company referred to in paragraph (a);
 - (c) the trustees of a fund that is a complying superannuation fund within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth or that, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the execution of—
 - (i) an instrument appointing a new trustee; or
 - (ii) an instrument by which a trustee retires without a new trustee being appointed in place of the retiree.
- (2) No duty is chargeable under this Chapter in respect of a transfer of dutiable property to a

S. 33(3)
substituted by
No. 46/2001
s. 7(1).

special trustee because of the retirement of a trustee or the appointment of a new trustee.

(3) No duty is chargeable under this Chapter in respect of a transfer of dutiable property to a person other than a special trustee if the Commissioner is satisfied that the transfer is made solely—

(a) because of the retirement of a trustee or the appointment of a new trustee, or other change in trustees; and

(b) in order to vest the property in the trustees for the time being entitled to hold it.

S. 33(4)
substituted by
No. 46/2001
s. 7(1).

(4) If the Commissioner is not satisfied as mentioned in sub-section (3), the transfer is chargeable with duty, unless sub-section (5) applies.

(5) No duty is chargeable under this Chapter in respect of a transfer of property as a consequence of—

(a) the retirement of a responsible entity of a managed investment scheme; or

(b) the appointment of a new responsible entity of a managed investment scheme—

if the Commissioner is satisfied that the only beneficial interest acquired by a person in relation to the property as a result of the transfer is a beneficial interest acquired by the replacement or new responsible entity solely because of its appointment as responsible entity for the scheme.

34. Property vested in an apparent purchaser

- (1) No duty is chargeable under this Chapter in respect of—
 - (a) a declaration of trust made by an apparent purchaser in respect of identified dutiable property—
 - (i) vested in the apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property; or
 - (ii) to be vested in the apparent purchaser upon trust for the real purchaser, if the Commissioner is satisfied that the money for the purchase of the dutiable property has been or will be provided by the real purchaser; or
 - (b) a transfer of dutiable property from an apparent purchaser to the real purchaser in a case where dutiable property is vested in an apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property.
- (2) In this section, "**purchase**" includes an allotment.

35. *Transfers to and from a trustee or nominee*

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property (other than marketable securities²) that is made by the transferor to a trustee or nominee to be held solely as trustee or nominee of the transferor without any change in the beneficial ownership of the dutiable property or made by way of re-transfer to the transferor.
- (2) A reference in sub-section (1) to a change in beneficial ownership of dutiable property does not

include a reference to the creation of a trustee's right of indemnity from the property.

36. *Property passing to beneficiaries*

S. 36(1)
amended by
No. 46/2001
s. 7(2)(a).

(1) No duty is chargeable under this Chapter in respect of a transfer for no consideration of dutiable property to a beneficiary made under and in conformity with a trust, subject to sub-sections (2) and (3).

(2) Sub-section (1) applies only to the extent that the property being transferred is property that the Commissioner is satisfied is—

S. 36(2)(a)
substituted by
No. 46/2001
s. 7(2)(b).

(a) wholly or substantially the same as the property that became an asset of the trust and that—

(i) duty charged by this Act has been paid upon the property becoming an asset of the trust; or

(ii) no duty was chargeable upon the property becoming an asset of the trust; or

(b) dutiable property representing the proceeds of re-investment of property referred to in paragraph (a); or

(c) property to which both paragraphs (a) and (b) apply.

S. 36(3)
substituted by
No. 46/2001
s. 7(3).

(3) Sub-section (1) applies only if the transferee was, or became, a beneficiary at the time at which duty became chargeable.

37. *Establishment of a trust relating to unidentified property and non-dutiable property*

- (1) Duty of \$200 is chargeable in respect of an instrument executed in Victoria that declares a trust over Victorian property none of which is dutiable property.
- (2) Duty of \$200 is chargeable in respect of an instrument executed in Victoria that declares that property, although not identified in the instrument, when vested in the person executing the instrument is to be held in trust for a person or persons or a purpose or purposes mentioned in the instrument.
- (3) It is immaterial whether or not the beneficial owner or person entitled to appoint the property has joined in or assented to the instrument.
- (4) A liability for duty charged by this section arises when the instrument is executed.
- (5) Duty charged by this section is payable by the person declaring the trust.

38. Exemptions from duty under section 37

- (1) No duty is chargeable under section 37 in respect of a declaration of trust made in consideration of marriage if—
 - (a) the parties to the marriage and their children (or any of them) are the sole beneficiaries; or
 - (b) if there are other beneficiaries, the Commissioner is satisfied that the marriage is the sole and real consideration for the declaration of trust.

- (2) No duty is chargeable under section 37 in respect of a declaration of trust if—

- (a) the Commissioner is satisfied that the declaration of trust has been made because of the breakdown of a marriage; and
 - (b) the settlor is or was a party to the marriage; and
 - (c) no person other than a party to the marriage or a child of a party to the marriage is a beneficiary of the trust.
- (3) No duty is chargeable under section 37 in respect of a declaration of trust over property to be held on trust solely for—
- (a) a religious, charitable or educational purpose; or
 - (b) a corporation or body of persons established for a religious, charitable or educational purpose.

Division 2—Superannuation

39. *Instruments relating to superannuation*

The following instruments are exempt from duty—

- (a) an instrument that establishes, or that amends provisions governing, a fund or trust that—
 - (i) at the time of the instrument is; or
 - (ii) within 12 months after the instrument takes effect, in the opinion of the trustees, will be—

a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund;

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- (b) an instrument under which an employer agrees to participate in or contribute to a fund that—
 - (i) at the time the employer agrees to participate or contribute is; or
 - (ii) within 12 months after that time, in the opinion of the trustees, will be—
a complying superannuation fund;
 - (c) an instrument that is executed in order to set out or vary the terms of custodial arrangements concerning a fund or trust that—
 - (i) at the time of the instrument is; or
 - (ii) within 12 months after the instrument takes effect, in the opinion of the trustees, will be—
a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund (whether or not the instrument contains any other terms).

40. *Transfer of property from one superannuation fund to another*

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property from one superannuation fund to another if the Commissioner is satisfied that—
 - (a) the transfer is made from a complying superannuation fund or from a fund that was a complying superannuation fund within the period of 12 months before the transfer was made; and
 - (b) the transfer is made to a complying superannuation fund or to a superannuation

- fund that, in the opinion of the trustees, will be a complying superannuation fund within 12 months after the transfer is made; and
- (c) the transfer occurs in connection with a person's ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, the fund from which the dutiable property is transferred and the person's becoming a member of, or otherwise becoming entitled to benefits in respect of, the fund to which the dutiable property is transferred.
- (2) An application to the Commissioner for the purposes of this section is to be accompanied by the following—
- (a) a brief explanation of the background to the transfer and the entitlements to be extinguished and created;
- (b) copies of the governing rules of the complying superannuation funds concerned;
- (c) a statement of the property to be transferred;
- (d) a copy of each instrument relating to the transfer;
- (e) a statutory declaration from a trustee (or a director of a corporate trustee) of each of the superannuation funds concerned stating that, in the opinion of the trustee (or director), the fund will be a complying superannuation fund within 12 months after the transfer occurs.
- (3) The Commissioner may require further information for the purposes of this section.
- (4) In this section, "**complying superannuation fund**" includes a complying approved deposit fund and an eligible rollover fund.
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41. *Transfers to trustees or custodians of superannuation funds or trusts*

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property to a trustee or custodian of a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund, or a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the transfer takes effect, where there is no change in the beneficial ownership of the property.
- (2) A transfer of property to or from a trustee or custodian of a pooled superannuation trust in exchange for the issue or redemption of units in the trust does not, for the purposes of this section, effect a change in the beneficial ownership of the property.
- (3) A transfer of property to a trustee or custodian of a complying superannuation fund, a complying approved deposit fund or an eligible rollover fund by a beneficiary of the fund does not, for the purposes of this section, effect a change in the beneficial ownership of the property.

Division 3—Other General Exemptions and Concessions

42. *Deceased estates*

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property not made for valuable consideration by the legal personal representative of a deceased person to a beneficiary, being—
 - (a) a transfer made under and in conformity with the trusts contained in the will of the

deceased person or arising on an intestacy;
or

(b) a transfer of property the subject of a trust for sale contained in the will of the deceased person.

(2) No duty is chargeable under this Chapter in respect of the vesting of any dutiable property by virtue of section 13 of the **Administration and Probate Act 1958**.

43. *Marriage and de facto relationships*

(1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property made in consideration of marriage if—

- (a) the parties to the marriage and their children (or any of them) are the sole beneficiaries; or
- (b) if there are other beneficiaries, the Commissioner is satisfied that the marriage is the sole and real consideration for the transfer—

and the transfer is made before the marriage or after the marriage in pursuance of a written agreement made before the marriage.

(2) No duty is chargeable under this Chapter in respect of the re-transfer to the original transferor of a transfer referred to in sub-section (1) because of the marriage not taking place.

(3) No duty is chargeable under this Chapter in respect of a transfer of dutiable property from one person to another person, or from two people to one of them, or from one person to themselves and another person if—

(a) both people are married to each other or are de facto spouses of each other; and

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- (b) no other person takes or is entitled to take an interest in the property under the transfer.

44. *Breakdown of marriage and defacto relationships*

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property from one person to another person, or from two people to one of them, or from one person to themselves and another person if—
- (a) both people have been married to each other or de facto spouses of each other; and
 - (b) the Commissioner is satisfied that the transfer has been made because of the breakdown of the marriage or de facto relationship; and
 - (c) no other person takes or is entitled to take an interest in the property under the transfer.
- (2) No duty is chargeable under this Chapter in respect of a declaration of trust or a transfer of dutiable property to a trustee if—
- (a) the Commissioner is satisfied that the declaration of trust or the transfer has been made because of the breakdown of a marriage; and
 - (b) the transferor is or was a party to the marriage; and
 - (c) no person other than a party to the marriage or a child of a party to the marriage is a beneficiary of the trust.

45. *Charities and friendly societies*

No duty is chargeable under this Chapter in respect of a transfer of dutiable property to, or a declaration of trust over dutiable property to be held on trust for—

- (a) a religious, charitable or educational purpose; or
- (b) a corporation or body of persons established for a religious, charitable or educational purpose; or
- (c) a friendly society.

46. Co-operatives

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property to a co-operative that—
 - (a) has as its primary activity the providing of any community service or benefit; and
 - (b) was, before it was incorporated under the **Co-operatives Act 1996**, an unincorporated club, association or body operating to provide sporting or recreational facilities for its members and not carried on for the pecuniary profit of its members—

being property that, immediately before the co-operative was incorporated, was held by or on behalf of the unincorporated club, association or body.

- (2) No duty is chargeable under this Chapter in respect of a transfer of dutiable property—
 - (a) because of, or to give effect to, section 335 of the **Co-operatives Act 1996** (mergers of co-operatives); or
 - (b) because of, or to give effect to, section 386 of the **Co-operatives Act 1996** in respect of a transfer of engagements; or

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- (c) because of, or to give effect to, section 386 of the **Co-operatives Act 1996** in respect of a merger if the co-operative formed by the merger is a non-trading co-operative within the meaning of that Act.

47. *Government bodies and diplomats*

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property to—
- (a) the Crown in right of Victoria; or
 - (b) a Council within the meaning of the **Local Government Act 1989**; or
 - (c) the Municipal Association of Victoria; or
 - (d) the Western Metropolitan Market Trust; or
 - (e) an authority within the meaning of the **Water Act 1989**; or
 - (f) any person on behalf of any of the above persons.
- (2) No duty is chargeable under this Chapter in respect of a transfer of dutiable property to—
- (a) the representative in Australia of the government of another country; or
 - (b) a foreign consul; or
 - (c) a trade commissioner of any part of the British Commonwealth.

48. *Bankruptcies and administrations*

No duty is chargeable under this Chapter in respect of—

- (a) a transfer of dutiable property because of—
 - (i) the appointment of a receiver or trustee in bankruptcy; or
 - (ii) the appointment of a liquidator; or

- (b) the vesting of any dutiable property in a liquidator by an order under section 474(2) of the Corporations Law; or
- (c) a transfer of dutiable property for no consideration to a former bankrupt from the estate of the former bankrupt; or
- (d) the vesting of any dutiable property by a vesting order made under section 51 of the **Trustee Act 1958**.

S. 48A
inserted by
No. 46/2001
s. 8.

48A. *Amalgamation of industrial organisations*

No duty is chargeable under this Chapter in respect of a transfer of dutiable property made under, or in accordance with, the rules of an industrial organisation, if the transfer is made to another industrial organisation as a consequence of the amalgamation of two or more industrial organisations.

49. *Reductions in capital*

No duty is chargeable under this Chapter in respect of a transfer of dutiable property to a shareholder of a company if—

- (a) the transfer is made in the course of a distribution of the assets of the company because of the reduction of the capital of the company (other than a reduction of capital made because of the redemption of redeemable preference shares); and
 - (b) the Commissioner is satisfied that the transfer does not arise from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of this exemption.
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50. *Adjustment of dutiable value of transfer on company wind-up*

- (1) Subject to this section, if a transfer of dutiable property is made to a shareholder of a company in the course of a distribution of assets because of the winding-up of the company, the dutiable value of the transfer is to be reduced by—
 - (a) if the shareholder is not a creditor of the company—the value of the shareholder's entitlement in the undistributed assets of the company immediately before the transfer; or
 - (b) if the shareholder is a creditor of the company—the amount (if any) by which the value of the shareholder's entitlement in the undistributed assets of the company immediately before the transfer exceeds the amount owed by the company to the shareholder as a creditor.
- (2) If—
 - (a) a transfer of dutiable property is made to a shareholder of a company in the course of a distribution of assets because of the winding-up of the company; and
 - (b) the dutiable property is property referred to in section 10(1)(a); and
 - (c) the winding-up is a voluntary winding-up—the dutiable value of the transfer is to be reduced in accordance with sub-section (1) only if the Commissioner is satisfied that the company is not being wound up as part of an arrangement or scheme devised with the collateral purpose of reducing the duty otherwise payable on the transfer.

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- (3) In considering whether or not he or she is satisfied for the purpose of sub-section (2), the Commissioner may have regard to—
- (a) the duration of the shareholder's shareholding in the company;
 - (b) whether or not the shareholder held shares in a related corporation of the company that owned the dutiable property before it was owned by the company;
 - (c) the period for which the dutiable property has been owned by the company or a related corporation of the company;
 - (d) any dealing in shares of the company or a related corporation of the company—
 - (i) by the shareholder or a related corporation of the shareholder;
 - (ii) by a previous owner of the dutiable property;
 - (e) whether there is any commercial efficacy to an arrangement or scheme of transactions involving any one or more of—
 - (i) the company;
 - (ii) the shareholder;
 - (iii) a related corporation of the company or the shareholder;

 - (iv) a substantial shareholder (within the meaning of Part 6.7 of the Corporations Law) of a person referred to in subparagraph (i), (ii) or (iii)—
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in relation to the winding up, other than to reduce the duty otherwise payable on the transfer;

- (f) any other matters he or she considers relevant.

Division 4—Exemptions and Concessions in relation to Land

51. *Crown grants and public rights of way*

No duty is chargeable under this Chapter in respect of—

- (a) a grant by the Crown in right of Victoria of any Crown lands; or
- (b) the dedication of a free and perpetual right of way to the use of the public.

52. *Government bodies*

No duty is chargeable under this Chapter in respect of a transfer of dutiable property referred to in section 10(1)(a) to—

- (a) the Minister administering the **Crown Land (Reserves) Act 1978**; or
- (b) the Minister administering the **Planning and Environment Act 1987**; or
- (c) the Director of Housing; or
- (d) a Corporation within the meaning of the **Transport Act 1983**; or
- (e) a person on behalf of a public department of Victoria or the Commonwealth.

53. *Defence service homes*

No duty is chargeable under this Chapter in respect of a transfer of dutiable property referred

to in section 10(1)(a) by the Director of Defence Service Homes—

- (a) to a purchaser within the meaning of section 4 of the Defence Service Homes Act 1918 of the Commonwealth; or
- (b) to the personal representative of such a purchaser.

54. *Joint tenants and tenants in common*

No duty is chargeable under this Chapter in respect of a transfer of dutiable property referred to in section 10(1)(a)—

- (a) by joint tenants to themselves as tenants in common in equal shares; or
- (b) by tenants in common in equal shares to themselves as joint tenants.

55. *Foreclosures of mortgages*

No duty is chargeable under this Chapter in respect of the vesting of dutiable property referred to in section 10(1)(a) by a decree or order of a court or the Registrar of Titles because of the foreclosure of a mortgage.

56. *Transfers of farms to relatives or charities*

- (1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property if the Commissioner is satisfied that—
 - (a) the dutiable property is an estate in fee simple in land referred to in section 9(1)(ga), (h) or (ha) of the **Land Tax Act 1958**; and
 - (b) the transferor is a person referred to in subsection (2); and
 - (c) the transferee is a person referred to in subsection (3); and

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- (d) the transfer does not arise from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of this section.
- (2) The transferor must be—
- (a) a natural person; or
 - (b) a trustee for a natural person; or
 - (c) a company all the shares in which are owned by natural persons who are relatives of each other.
- (3) The transferee must be—
- (a) a relative of a natural person referred to in sub-section (2); or
 - (b) a trustee under a fixed trust, the beneficiaries of which are limited to—
 - (i) a present or future relative of a natural person referred to in sub-section (2); or
 - (ii) a charitable institution; or
 - (iii) a present or future relative of a natural person referred to in sub-section (2) and a charitable institution; or
 - (iv) a present or future relative of a natural person referred to in sub-section (2) and a natural person referred to in sub-section (2); or
 - (v) a charitable institution and a natural person referred to in sub-section (2); or
 - (vi) a present or future relative of a natural person referred to in sub-section (2), a natural person referred to in sub-section (2) and a charitable institution; or
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- (c) a trustee under a discretionary trust the terms of which do not allow the distribution of the whole or any part of the capital of the trust that comprises land referred to in section 9(1)(ga), (h) or (ha) of the **Land Tax Act 1958** to any person or body other than a person or body referred to in paragraph (b); or
- (d) a natural person referred to in sub-section (2)(c).

(4) In this section—

"charitable institution" means a corporation or body of persons associated for charitable purposes;

"fixed trust" means a trust under which the identity of the beneficiaries and the quantum of their interests are ascertained.

57. Subsequent transfer not dutiable if duty paid on lease

If duty is paid under this Chapter in respect of a dutiable transaction referred to in section 7(1)(b)(v) (lease with covenant for future transfer), no duty is chargeable under this Chapter in respect of the subsequent transfer of the land in accordance with the terms of the lease.

Division 5—Pensioner and First Home Owner Exemptions and Concessions

58. Who is an eligible pensioner?

- (1) A person is an "**eligible pensioner**" for the purposes of this Division if the Commissioner is satisfied that the person—
 - (a) is an eligible beneficiary within the meaning of the **State Concessions Act 1986**; and
 - (b) is a bona fide purchaser of an estate in fee simple in land for adequate consideration; and
 - (c) intends to reside in a dwelling on the land as a principal place of residence; and
 - (d) has not received an exemption, refund or rebate of duty in respect of a transfer—
 - (i) under section 59 or 60; or
 - (ii) under section 71A of the **Stamps Act 1958**.
- (2) Two or more persons together are eligible beneficiaries in respect of a transfer if each of them satisfies the criteria set out in sub-section (1).

59. *Eligible pensioner exemption or concession where dwelling exists at the time of transfer*

- (1) No duty is chargeable under this Chapter in respect of a transfer to an eligible pensioner of dutiable property being an estate in fee simple in land, if—
 - (a) at the time of the transfer there is a dwelling on the land; and
 - (b) the dutiable value of the dutiable property does not exceed \$100 000.
 - (2) An eligible pensioner is entitled to a concession from duty under this Chapter in respect of a transfer to the eligible pensioner of dutiable property being an estate in fee simple in land, if—
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- (a) at the time of the transfer there is a dwelling on the land; and
 - (b) the dutiable value of the dutiable property exceeds \$100 000 but does not exceed \$130 000.
- (3) The concession is an amount calculated in accordance with the formula—

$$\frac{28\,600}{3} - \frac{22P}{300}$$

where P is the dutiable value of the dutiable property.

60. *Eligible pensioner exemption or concession where dwelling is constructed after transfer*

- (1) No duty is chargeable under this Chapter in respect of a transfer to an eligible pensioner of dutiable property being an estate in fee simple in land, if—
 - (a) at the time of the transfer there is not a dwelling on the land; and
 - (b) a dwelling is constructed on the land within 3 years after that time; and
 - (c) the aggregate of the dutiable value of the dutiable property and the cost of the construction of the dwelling does not exceed \$100 000.
- (2) An eligible pensioner is entitled to a concession from or partial refund of duty under this Chapter in respect of a transfer to the eligible pensioner of dutiable property being an estate in fee simple in land, if—
 - (a) at the time of the transfer there is not a dwelling on the land; and

-
- (b) a dwelling is constructed on the land within 3 years after that time; and
- (c) the aggregate of the dutiable value of the dutiable property and the cost of the construction of the dwelling exceeds \$100 000 but does not exceed \$130 000.
- (3) If the aggregate amount referred to in sub-section (2)(c) does not exceed \$115 000, the concession or refund is an amount calculated in accordance with the formula—

$$D \times \frac{22(130\,000 - P)}{(7 \cdot 2P - 60\,000)}$$

where—

D is the amount of duty paid or payable (but for this Division) on the transfer;

P is the aggregate amount referred to in sub-section (2)(c).

- (4) If the aggregate amount referred to in sub-section (2)(c) exceeds \$115 000 but does not exceed \$130 000, the concession or refund is an amount calculated in accordance with the formula—

$$D \times \frac{11(130\,000 - P)}{3(3P - 217\,000)}$$

where—

D is the amount of duty paid or payable (but for this Division) on the transfer;

P is the aggregate amount referred to in sub-section (2)(c).

61. *Who is an eligible first home owner?*

- (1) A person is an "**eligible first home owner**" for the purposes of this Division if the Commissioner is satisfied that—

Duties Act 2000
Act No. 79/2000

- (a) the person is a bona fide purchaser of an estate in fee simple in land for adequate consideration; and
- (b) the person intends to reside in a dwelling on the land as a principal place of residence; and
- (c) the person has a dependent child and had a dependent child at the time when, or within 11 months after—
 - (i) if there was a dwelling on the land when the contract of sale of the land was entered into—the date on which the contract of sale was entered into; or
 - (ii) if there was no dwelling on the land when the contract of sale of the land was entered into—the earlier of—
 - (A) the date on which the contract for the construction of the dwelling was entered into; and
 - (B) the date on which the building of the dwelling commenced; and
- (d) having regard to any information the Commissioner considers sufficient, the person's taxable income during the current financial year is not likely to exceed—
 - (i) \$39 000 if the person has only one dependent child; or
 - (ii) \$40 000 if the person has 2 or more dependent children; and
- (e) the person has not previously held an estate in fee simple in land on which was erected a dwelling which was used as a principal place of residence by that person anywhere in Australia.

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- (2) A person and his or her spouse together are eligible first home owners if each of them satisfies the criteria set out in sub-section (1).
 - (3) For the purposes of sub-section (2), a reference in sub-section (1)(d) to a person's income is taken to be a reference to the sum of the incomes of the person and his or her spouse.
 - (4) In this section—
"dependent child", in relation to a person, means a child under the age of 18 years in the custody, care and control of, and ordinarily resident with, the person.

62. *Eligible first home owner exemption or concession where dwelling exists at the time of transfer*

- (1) No duty is chargeable under this Chapter in respect of a transfer to an eligible first home owner of dutiable property being an estate in fee simple in land, if—
 - (a) at the time of the transfer there is a dwelling on the land; and
 - (b) the dutiable value of the dutiable property does not exceed \$115 000.
- (2) An eligible first home owner is entitled to a concession from duty under this Chapter in respect of a transfer to the eligible home owner of dutiable property being an estate in fee simple in land, if at the time of the transfer there is a dwelling on the land, and—
 - (a) if there was a dwelling on the land at the time the contract of sale of the land was entered into—the dutiable value of the dutiable property exceeds \$115 000 but does not exceed \$165 000; or

(b) if the dwelling was constructed after the time the contract of sale of the land was entered into—the aggregate of the dutiable value of the dutiable property and the cost of construction of the dwelling exceeds \$115 000 but does not exceed \$165 000.

(3) If sub-section (2)(a) applies, the concession is an amount calculated in accordance with the formula—

$$8448 - \frac{256P}{5000}$$

where P is the dutiable value of the property.

(4) If sub-section (2)(b) applies, the concession is an amount calculated in accordance with the formula—

$$D \times \frac{256(165\,000 - P)}{100(3P - 217\,000)}$$

where—

D is the amount of duty paid or payable (but for this Division) on the transfer.

P is the aggregate amount referred to in sub-section (2)(b).

63. *Eligible first home owner exemption or concession where dwelling is constructed after transfer*

(1) No duty is chargeable under this Chapter in respect of a transfer to an eligible first home owner of dutiable property being an estate in fee simple in land, if—

(a) at the time of the transfer there is not a dwelling on the land; and

(b) a dwelling is constructed on the land within 3 years after that time; and

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- (c) the aggregate of the dutiable value of the dutiable property and the cost of the construction of the dwelling does not exceed \$115 000.
- (2) An eligible first home owner is entitled to a concession from or partial refund of duty under this Chapter in respect of a transfer to the eligible first home owner of dutiable property being an estate in fee simple in land, if—
- (a) at the time of the transfer there is not a dwelling on the land; and
- (b) a dwelling is constructed on the land within 3 years after that time; and
- (c) the aggregate of the dutiable value of the dutiable property and the cost of the construction of the dwelling exceeds \$115 000 but does not exceed \$165 000.
- (3) The concession or refund is an amount calculated in accordance with the formula—

$$D \times \frac{256(165\,000 - P)}{100(3P - 217\,000)}$$

where—

D is the amount of duty paid or payable (but for this Division) on the transfer.

P is the aggregate amount referred to in subsection (2)(c).

64. Double duty for false or misleading statements

- (1) If a person—
- (a) represents to a tax officer that duty is not chargeable, or that the person is entitled to a

concession or refund of duty, because of this Division; and

- (b) is convicted of an offence against section 57 of the **Taxation Administration Act 1997** as a consequence—

the person is liable, by way of further penalty, to pay an amount equal to double the amount of duty that, but for the offence, would have been payable, less any amount of duty that the person did pay.

- (2) The penalty in sub-section (1) is in addition to any penalty tax or interest that may be payable under the **Taxation Administration Act 1997**.

Division 6—Exemptions and Concessions in relation to Marketable Securities

65. *Co-operatives and co-operative housing societies*

No duty is chargeable under this Chapter in respect of a transfer of marketable securities—

- (a) in a co-operative, if the transfer is made for a consideration of not less than the unencumbered value of the marketable securities; or
- (b) in a co-operative housing society.

66. *Loans and temporary transfers*

- (1) No duty is chargeable under this Chapter in respect of—
- (a) a transfer of marketable securities that is made as a security, other than a transfer to secure the rights of a purchaser or intended purchaser of the marketable securities under a contemplated sale; or
- (b) a re-transfer of marketable securities referred to in paragraph (a) to the original transferee.

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- (2) No duty is chargeable under this Chapter in respect of a transfer of marketable securities that is made for the sole purpose of—
- (a) vesting the marketable securities in the transferee for sale and delivery; or
 - (b) qualifying the transferee as nominee director to act and vote on behalf of a holding company as it directs; or
 - (c) re-transferring marketable securities to a holding company referred to in paragraph (b).

67. *Nominee transactions—unquoted marketable securities*

No duty is chargeable under this Chapter in respect of a transfer of marketable securities between any of the following persons—

- (a) the beneficial owner;
- (b) a trustee or nominee of the beneficial owner;
- (c) a custodian of a trustee or nominee of the beneficial owner;
- (d) a sub-custodian of a custodian of a trustee or nominee of the beneficial owner—

but only if—

- (e) there is no change in the beneficial ownership of the marketable securities; and
- (f) if the transferee is a person referred to in paragraph (b), (c) or (d)—the transferee is to hold the marketable securities solely for another person referred to in paragraph (a), (b) or (c) and there is no contemplation of the marketable securities being held for any other person; and

- (g) if the transferor is a person referred to in paragraph (b), (c) or (d)—the marketable securities were held by the person solely for another person referred to in paragraph (a), (b) or (c) and, since the time when the marketable securities were first transferred or issued to the transferor, no person has held the marketable securities other than solely for a person referred to in paragraph (a), (b) or (c).

68. *Share buy-backs*

No duty is chargeable under this Chapter in respect of a dutiable transaction arising because of a buy-back of shares in accordance with Division 2 of Part 2J.1 of the Corporations Law, unless the buy-back is effected by the purchaser under one or more agreements, understandings or arrangements that the purchaser will issue marketable securities.

69. *Reduction of duty—payment in non-Australian jurisdiction*

- (1) The amount of duty chargeable under this Chapter in respect of a transfer of marketable securities is to be reduced by the amount of duty of a similar kind paid in relation to the transfer in accordance with the law of a place outside Australia.
- (2) In this section, a reference to a transfer of marketable securities includes a reference to a dealing or arrangement affecting marketable securities by means of a dutiable transaction other than a transfer.
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CHAPTER 3
CERTAIN TRANSACTIONS TREATED AS
TRANSFERS³

PART 1—INTRODUCTION AND OVERVIEW

70. *Introduction and overview*

This Chapter charges duty on certain transactions that are not dutiable transactions under Chapter 2.

**PART 2—ACQUISITION OF INTERESTS IN CERTAIN
LANDHOLDERS**

Division 1—Land-rich Private Corporations

71. *Meaning of "private corporation"*

A private company or private unit trust scheme is, for the purposes of this Part, a "**private corporation**".

72. *When is a private corporation "land-rich"?*

- (1) A private corporation is "**land-rich**" if—
 - (a) it has land holdings in Victoria whose unencumbered value is \$1 000 000 or more; and
 - (b) its land holdings in all places, whether within or outside Australia, comprise 80% or more of the unencumbered value of all its property.
- (2) In calculating the unencumbered value of the property of a private corporation for the purposes of this section, property of any of the following kinds is not counted—
 - (a) cash, whether in Australian or other currency;
 - (b) money on deposit with an authorised deposit-taking institution (within the meaning of the Banking Act 1959 of the Commonwealth), negotiable instruments or debt securities;
 - (c) loans that, according to their terms, are to be repaid on demand by the lender or within 12 months after the date of the loan;

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- (d) if the private corporation concerned is a private company, loans to persons who, in relation to the company or to a majority shareholder or director of the company, are associated persons;
- (e) if the private corporation concerned is a private unit trust scheme, loans to persons who, in relation to a trustee or beneficiary of the scheme, are associated persons;
- (f) prescribed property—
unless the Commissioner, being satisfied that the property concerned was not acquired solely or mainly for the purpose of avoiding duty under this Part, notifies the private corporation concerned that the property will be counted for the purposes of such a calculation.
- (3) In addition to the property that is not to be counted under sub-section (2), property is not to be counted in calculating the unencumbered value of all of the property of a private corporation for the purposes of this section if the private corporation is unable to satisfy the Commissioner that the property was obtained otherwise than to reduce, for the purposes of this Division, the ratio of its land holdings in all places, whether within or outside Australia, to the unencumbered value of all its property.
- (4) In determining whether or not a private corporation is land-rich for the purposes of an acquisition of an interest in that corporation by a person from a lineal ancestor or lineal descendant of that person, the land holdings of the corporation are taken for the purpose of sub-section (1)(b) not to include land held by the

corporation that is primarily used for primary production.

73. *Land holdings of private corporations*

- (1) For the purposes of this Part, a **"land holding"** is any interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor or a profit à prendre. An interest in land, however—
 - (a) is not a land holding of a private company unless the interest of the private company in the land is a beneficial interest; and
 - (b) is not a land holding of a unit trust scheme unless the interest is held by the trustees in their capacity as trustees of the scheme.
- (2) This section is in aid of, but does not limit, the operation of any provision of this Part providing for constructive ownership of interests.
- (3) For the purposes of this Part, the vendor and the purchaser under an uncompleted agreement for the sale of land are taken to be separately entitled to the whole of the land.

74. *Constructive ownership of land holdings and other property: subsidiaries*

- (1) In addition to any interest in land or other property that it may hold in its own right, a private corporation is taken, for the purposes of this Part, to hold an interest (the value of which, for duty purposes, is to be calculated in accordance with sub-section (2)) in land or other property held by a subsidiary of the private corporation.
 - (2) The value, for duty purposes, of the interest in land or other property that a private corporation is taken, by the operation of sub-section (1), to hold by virtue of a holding of a subsidiary (**"the actual landholder"**) is that portion of the land or other
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property's unencumbered value to which the private corporation would be entitled on a winding-up of—

- (a) the actual landholder; and
 - (b) every subsidiary of the private corporation that stands between the private corporation and the actual landholder in the ownership chain.
- (3) For the purposes of this Part, a private company ("**Company A**") is the subsidiary of another private company ("**Company B**") if Company A is a subsidiary, within the meaning of the Corporations Law, of Company B.
- (4) For the purposes of this Part, a private company is the subsidiary of a unit trust scheme if the trustees of the scheme, in their capacities as trustees of the scheme, have a majority interest in the private company.
- (5) For the purposes of this Part, a unit trust scheme is the subsidiary of a private corporation if the corporation has a majority interest in the scheme.

75. *Constructive ownership of land holdings and other property: discretionary trusts*

- (1) A person or a member of a class of persons in whose favour, by the terms of a discretionary trust, capital the subject of the trust may be applied—
- (a) in the event of the exercise of a power or discretion in favour of the person or class; or
 - (b) in the event that a discretion conferred under the trust is not exercised—

is, for the purposes of this section, a beneficiary of the trust.

- (2) A beneficiary of a discretionary trust is taken to own or to be otherwise entitled to the property the subject of the trust, unless the Commissioner, being satisfied that the application of this sub-section in the particular case would be inequitable, determines otherwise.
- (3) For the purposes of this Part, any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust—
 - (a) that is; or
 - (b) any trustee of which (in the capacity of trustee) is—

a beneficiary of it, unless the Commissioner, being satisfied that the application of this sub-section in the particular case would be inequitable, determines otherwise.
- (4) Sub-section (3) extends to apply to property that is the subject of a discretionary trust only by the operation of that sub-section.
- (5) In this section, "**person**" includes a private corporation.

Division 2—Acquisitions of Interests in Private Corporations

76. What are "interests" and "majority interests" in private corporations?

- (1) A person has an interest in a private corporation if the person has an entitlement (otherwise than as a creditor or other person to whom the corporation is liable) to a distribution of property from the corporation on a winding up of the corporation or otherwise.

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- (2) A person who, by virtue of sub-section (1), has an interest in a private corporation has a majority interest in the corporation if the person, in the event of a distribution of all the property of the corporation immediately after the interest was acquired, would be entitled to more than 50% of the property distributed.
- (3) An interest in a private corporation is not counted for the purposes of this section if—
- (a) the interest concerned is an interest in a private company acquired before 15 November 1987 or acquired on or after that date as the result of an agreement entered into before that date; or
 - (b) the interest concerned was acquired at a time when the private corporation did not hold land in Victoria.
- (4) In this section, "**person**" includes a private corporation.

77. How may an interest be acquired?

For the purposes of this Part, an interest in a land-rich private corporation may be acquired by means of—

- (a) the purchase, gift, allotment or transfer of any share or unit in a private corporation; or
- (b) the variation, abrogation or alteration of a right attaching to any such share or unit; or
- (c) the redemption, surrendering or cancellation of any such share or unit; or
- (d) the variation or alteration of a right of a holder of any such share or unit, including

S. 77
amended by
No. 46/2001
s. 9(1)(c).

S. 77(c)
amended by
No. 46/2001
s. 9(1)(a).

S. 77(d)
inserted by
No. 46/2001
s. 9(1)(b).

on payment of a call on partially paid-up shares; or

S. 77(e)
inserted by
No. 46/2001
s. 9(1)(b).

- (e) in the case of a company limited by guarantee, becoming a member of the company, removing a person from membership of the company or altering members' rights—

or by any combination of the means referred to in paragraphs (a), (b), (c), (d) or (e).

Division 3—Charging of Duty

78. *When does a liability for duty arise?*

A liability for duty charged by this Part arises when a relevant acquisition is made.

79. *What is a "relevant acquisition"?*

For the purposes of this Division, a person who—

- (a) acquires an interest in a land-rich private corporation—
- (i) that is of itself a majority interest in the corporation; or
 - (ii) that, when aggregated with other interests in the corporation held by the person or an associated person, results in an aggregation that amounts to a majority interest in the corporation; or
- (b) having a majority interest, or an interest described in paragraph (a)(ii), in a land-rich private corporation, acquires a further interest in the corporation—

has made a relevant acquisition.

80. *Acquisition statements*

Duties Act 2000
Act No. 79/2000

- (1) A person who has made a relevant acquisition must prepare an acquisition statement and lodge it with the Commissioner within 3 months after the date of the relevant acquisition.
- (2) The acquisition statement must contain the following information—
 - (a) the name and address of the person who has acquired the interest;
 - (b) the date of the relevant acquisition;
 - (c) particulars of the interest acquired;
 - (d) particulars of the total interest of the person and any associated person in the private corporation at that date;
 - (e) the unencumbered value of all land holdings in Victoria of the private corporation as at the date of the relevant acquisition and as at the date of acquisition of each interest acquired in the corporation during the 3 years prior to the date of the relevant acquisition;
 - (f) the unencumbered value of the property of the private corporation at the date of the relevant acquisition;
 - (g) the amount of duty paid under this Act or under a law of another Australian jurisdiction in respect of each earlier acquisition of an interest referred to in paragraph (e);
 - (h) any other information the Commissioner requires for the purposes of this Chapter.

S. 80(1)
amended by
No. 46/2001
s. 9(2).

81. *When must duty be paid?*

A tax default does not occur for the purposes of the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to pay the duty arises.

82. *Who is liable to pay the duty?*

- (1) Duty chargeable under this Part is payable by the person who makes the relevant acquisition, except as provided by sub-section (2).
- (2) If a relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person or persons are jointly and severally liable for payment of the duty.

83. *How duty is charged on relevant acquisitions*

- (1) If an acquisition statement does not disclose any acquisitions during the 3 years preceding the relevant acquisition, duty is chargeable, at the rate specified under this Act for a transfer of dutiable property, on the amount calculated by multiplying the unencumbered value of all land holdings of the private corporation in Victoria (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired in the relevant acquisition.
- (2) If an acquisition statement discloses one or more acquisitions during the 3 years preceding the relevant acquisition, duty is chargeable, at the rate specified under this Act for a transfer of dutiable property, on the aggregate of amounts severally calculated, in the manner provided by sub-section (1), in respect of each interest required to be disclosed in the statement.

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- (3) Duty payable under this section is to be reduced by the sum of the duty paid or payable under this Act in respect of the acquisition, during the 3 years preceding the relevant acquisition, by the person or any associated person of an interest in the same private corporation, but only in proportion to the extent to which the duty paid or payable is attributable to the amount of the duty payable under this section.
- (4) Duty payable under this section is to be reduced by an amount (if any) calculated in accordance with the following formula—

$$\frac{A}{B} \times C$$

where—

A is the unencumbered value of the land holdings in Victoria of the private corporation at the time the dutiable acquisition was made; and

B is the unencumbered value of all property of the private corporation at that time; and

C is the sum of—

- (a) the duty under this Act paid or payable in respect of—
- (i) a dutiable transaction in relation to the shares or units; or
 - (ii) a capital reduction or a rights alteration under Part 3 by which an interest in the private corporation was acquired; or
 - (iii) an allotment under Part 4 by which an interest in the private corporation was acquired; and

- (b) any duty of a like nature so paid or payable under a law of another State or of a Territory.
- (5) If a relevant acquisition is made owing to the aggregation of the interests of associated persons, but the Commissioner is satisfied that the associated persons acquired their respective interests independently and for no common purpose, the Commissioner may assess and charge duty on the relevant acquisition without aggregating the interests of the person who made it with the interests of associated persons.
- (6) This section is subject to section 87, the other provisions of Division 4 and clause 6 in Schedule 1.

Division 4—General and Supplemental

84. *Exempt acquisitions*

- (1) An acquisition by a person of an interest in a private corporation is an exempt acquisition—
 - (a) if the land the subject of the interest concerned could have been acquired by the person in a manner that does not result in a liability to pay ad valorem duty under Chapter 2 (other than an acquisition consisting of a change in beneficial ownership of the land as a result of the issue, transfer, redemption or cancellation of units in a unit trust scheme); or
 - (b) if the interest was acquired in the person's capacity as—
 - (i) a receiver or trustee in bankruptcy; or
 - (ii) a liquidator; or

S. 84(1)(a)
amended by
No. 46/2001
s. 9(3).

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- (iii) an executor or administrator of the estate of a deceased person; or
 - (c) if the interest was acquired solely as the result of the making of a compromise or arrangement under Part 5.1 of the Corporations Law that has been approved by the court, not being a compromise or arrangement that the Commissioner is satisfied was made with the intention of defeating the operation of this Chapter; or
 - (d) if the interest concerned is acquired solely from a pro rata increase in the interests of all shareholders or unitholders.
- (2) An acquisition by a person of an interest in a private corporation is an exempt acquisition if the Commissioner, being satisfied that the application of this Part to the acquisition in the particular case would not be just and reasonable, so determines.

85. *Maximisation of entitlements on distribution of property*

- (1) This section applies to any calculation, for the purposes of this Part (other than section 74), of the entitlement of a person ("**the interested person**") to participate in a distribution of the property of a private corporation, whether on a winding up of the private corporation or otherwise.
- (2) A calculation is to be made based, firstly, on a distribution carried out in accordance with the constitution of the private corporation, and with any law relevant to the distribution, as in force at the time of distribution, and the entitlement of the interested person is to be evaluated accordingly.
- (3) Next, a calculation is to be made based on a distribution carried out after the interested person,

and any other person whom the interested person has power to direct with respect to such a distribution or who is, in relation to the interested person, an associated person, had exercised all powers and discretions exercisable by them by reason of having acquired an interest in the private corporation concerned—

- (a) to effect or compel an alteration to the constitution of the private corporation; and
- (b) to vary the rights conferred by shares or units in the private corporation; and
- (c) to effect or compel the substitution or replacement of shares or units in the private corporation with other shares or units in it—

in such a manner as would maximise the value of the entitlement, and the entitlement of the interested person is to be evaluated accordingly.

- (4) The results obtained by an evaluation of the interested person's entitlement in accordance with sub-sections (2) and (3) are then to be compared, and whichever evaluation results in a greater entitlement is the correct evaluation, for the purposes of this Part, of the entitlement, unless the Commissioner, being satisfied that the application of this sub-section in the particular case would be inequitable, determines otherwise.

86. *Valuation of property*

- (1) The provisions of this Act that apply to the ascertainment of the value of transfers chargeable with ad valorem duty apply in the same way to an acquisition statement under this Part and the value of land holdings mentioned in it.
- (2) For the purposes of this Part, in determining the amount for which property might reasonably have been sold free from encumbrances, there must be

disregarded, subject to sub-section (3), any interest, agreement or arrangement (other than an encumbrance) granted or made in respect of the property that has the effect of reducing the value of the property.

- (3) An interest, agreement or arrangement referred to in sub-section (2) is not to be disregarded if the Commissioner is satisfied that it was not granted or made as a part of an arrangement or scheme with a collateral purpose of reducing the duty otherwise payable on the transfer of the property.
- (4) In considering whether or not he or she is satisfied for the purposes of sub-section (3), the Commissioner may have regard to—
- (a) the duration of the interest, agreement or arrangement before the transfer of the property; and
 - (b) whether the interest, agreement or arrangement has been granted to or made with an associate, a related corporation or a trustee of the transferor or transferee; and
 - (c) whether there is any commercial efficacy to the granting of the interest or the making of the agreement or arrangement other than to reduce duty; and
 - (d) any other matters he or she considers relevant.

87. *Phasing-in of duty*

If the unencumbered value of land holdings in Victoria of a private corporation exceeds \$1 million but does not exceed \$1.5 million, the duty chargeable under this Part is to be calculated in accordance with the following formula—

$$\left(\frac{A - \$1\,000\,000}{\$500\,000}\right) \times B + \left(1 - \left\{\frac{A - \$1\,000\,000}{\$500\,000}\right\}\right) \times C$$

where—

- A is the unencumbered value of the land holdings in Victoria of the private corporation at the time the relevant acquisition was made; and
- B is the duty that, apart from this section, would be chargeable under this Part; and
- C is the duty that would have been payable under Chapter 2 on the dutiable value of the shares or units comprised in the relevant acquisition had those shares or units been transferred at the time of the relevant acquisition.

88. *Agreements for sale or transfer of land*

(1) If—

- (a) at the time of acquisition of an interest by any person in a land-rich private corporation that necessitates the lodgement of an acquisition statement under Division 3, the corporation was the vendor under an uncompleted agreement for the sale or transfer of land; and
- (b) the agreement is subsequently completed—

the Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the corporation.

(2) If—

- (a) at the time of acquisition of an interest by any person in a land-rich private corporation that requires the lodgement by any person of an acquisition statement under Division 3, the private corporation was the purchaser

under an uncompleted agreement for the sale or transfer of land; and

- (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion—

the Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the corporation.

- (3) In this section—

"land rich private corporation" includes a subsidiary of the corporation.

89. *Duty concessions—acquisitions securing financial accommodation*

- (1) If the person lodging an acquisition statement under this Part in relation to the acquisition of an interest in a land-rich private corporation—

(a) informs the Commissioner at the time the statement is lodged that the acquisition is effected for the purpose of securing financial accommodation; and

(b) the Commissioner is satisfied that the acquisition is effected for that purpose—

the statement, in so far as it relates to that acquisition, is not chargeable with duty, except as provided by sub-section (2).

- (2) The statement is chargeable with duty at the expiration of the period of 5 years after the date of the acquisition (or the longer period determined by the Commissioner in the particular case) if the interest concerned is not—

(a) re-acquired by the person from whom it was acquired; or

(b) in the case of an acquisition by way of mortgage, conveyed by the mortgagee to a third person in exercise of the mortgagee's power of sale—

within that period (or that longer period).

(3) Section 80 does not apply to the re-acquisition by a person of the interest concerned.

**PART 3—ENTITLEMENTS ARISING FROM CAPITAL
REDUCTIONS OR RIGHTS ALTERATIONS**

90. Definitions

(1) In this Part—

"capital reduction" means—

- (a) the redemption, surrender or cancellation of a share (including cancellation as part of a buy-back of shares in accordance with Division 2 of Part 2J.1 of the Corporations Law); or
- (b) a reduction in the paid up value of a share;

"company" means a Victorian company that is—

- (a) a public company within the meaning of the Corporations Law; and
- (b) not listed on the Australian Stock Exchange or a recognised stock exchange;

"dutable entitlement" means a voting share entitlement in respect of whose acquisition a statement is required, under section 94, to be lodged;

"person" includes persons who are associated persons;

"rights alteration", in relation to voting shares, means a variation, abrogation or alteration of rights relating to the shares;

"voting shares" has the same meaning as in section 9 of the Corporations Law.

- (2) For the purposes of this Part, if voting shares acquired by associated persons severally do not, but taken in the aggregate would, confer an entitlement to which this Part applies, the voting shares acquired by the associated persons are taken to be aggregated and are taken to confer the entitlement on the associated person who last acquired any of those voting shares.
- (3) If, by sub-section (2), an entitlement to voting shares is taken to exist as the aggregate of voting shares of associated persons, the associated persons are jointly and severally liable for payment of the duty chargeable on the statement required to be lodged under this Part.
- (4) Voting shares are not to be aggregated in accordance with sub-section (2) if the Commissioner is satisfied that the associated persons concerned acquired their several shares independently and for no common purpose.

91. *When does a liability for duty arise?*

A liability for duty charged by this Part arises when a dutiable entitlement is acquired.

92. *When must duty be paid?*

A tax default does not occur for the purposes of the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to pay the duty arises.

93. *Who is liable to pay the duty?*

Duty chargeable under this Part is payable by the person who acquires a dutiable entitlement.

94. *Entitlement to voting shares arising from capital reduction or rights alteration*

(1) If—

(a) a person becomes entitled to at least 50% of the voting shares of a company by means of capital reduction or rights alteration, or both; or

(b) a person who is entitled to at least 50% of the voting shares of a company becomes entitled to at least 10% more of the voting shares over a period of not more than 12 months by means of capital reduction or rights alteration, or both—

the person must lodge a statement with the Commissioner in respect of the entitlement.

(2) The statement must be lodged within 3 months after the entitlement arises.

(3) A statement is not required to be lodged under this section in respect of an entitlement that arises on or after 1 July 2003.

S. 94(3)
inserted by
No. 48/2001
s. 6(2).

95. *Content of statement*

The statement required to be lodged under this Part by a person is to contain the following information—

(a) the name and address of the person;

(b) the name of the company;

(c) the date on which each relevant capital reduction or rights alteration, or both, occurred;

(d) if the person's entitlement has arisen—

(i) from capital reduction—the total of the unencumbered value, immediately prior to each relevant capital reduction, of the shares the subject of the capital reduction; or

- (ii) from rights alteration—the total of the unencumbered value, immediately prior to each relevant rights alteration, of the shares the subject of the rights alteration; or
- (iii) from capital reduction and rights alteration—the aggregate of the totals under sub-paragraphs (i) and (ii);
- (e) the total consideration paid to the person in relation to all relevant capital reductions or rights alterations, or both;
- (f) any other information required by the Commissioner for the purposes of this Chapter.

96. *Assessment of duty*

A statement required to be lodged under this Part by a person is chargeable with duty at the rate of 60 cents for every \$100, or part, of the higher of—

- (a) the total or aggregate obtained under section 95(d); and
 - (b) the total amount under section 95(e).
-

PART 4—ALLOTMENT OF SHARES BY DIRECTION

97. *Application of Part*

- (1) This Part applies to an allotment of shares to any person by a Victorian company at another person's direction, in discharge of an obligation to that other person, whether that obligation arises as consideration for the purchase of property by the company or otherwise.
- (2) This Part does not apply to—
 - (a) an allotment of shares by a Victorian company that is listed on the Australian Stock Exchange or a recognised stock exchange;
 - (b) an allotment of shares at another person's direction if the direction is given by the underwriter in any contract for underwriting shares upon the first issue of the shares by the company;
 - (c) an allotment of shares that takes place on or after 1 July 2003.

S. 97(2)(b)
amended by
No. 48/2001
s. 6(3)(a).

S. 97(2)(c)
inserted by
No. 48/2001
s. 6(3)(b).

98. *When does a liability for duty arise?*

A liability for duty charged by this Part arises when the relevant shares are allotted.

99. *When must duty be paid?*

A tax default does not occur for the purposes of the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to pay the duty arises.

100. *Who is liable to pay the duty?*

Duty chargeable under this Part is payable by the person to whom the relevant shares are allotted.

101. *Acquisition of shares by allotment*

- (1) A person to whom any shares are allotted in an allotment to which this Part applies must lodge a statement with the Commissioner in respect of the allotment.
- (2) The statement must be lodged within 3 months after the shares are allotted.

102. *Allotment statement*

An allotment statement required to be lodged by a person is to contain the following information—

- (a) the name and address of the person;
- (b) the name of the relevant company;
- (c) the date on which the shares were allotted to the person;
- (d) any other information required by the Commissioner for the purposes of this Chapter.

103. *Assessment of duty*

An allotment to which this Part applies is chargeable with duty at the rate of duty set out in section 29 in respect of a transfer of marketable securities on the dutiable value of the shares.

CHAPTER 4
FINANCIAL SECTOR (TRANSFERS OF BUSINESS)

104. *Imposition of duty*

This Chapter charges duty in respect of the transfer of dutiable property to a receiving body under Part 3 of the Financial Sector (Transfers of Business) Act 1999 of the Commonwealth.

105. *When does a liability for duty arise?*

A liability for duty charged by the Chapter arises when the dutiable property becomes the property of the receiving body⁴.

106. *Who is liable to pay the duty?*

Duty chargeable under this Chapter is payable by the receiving body.

107. *Statement on transfer of property*

- (1) A receiving body to whom dutiable property is transferred under Part 3 of the Financial Sector (Transfers of Business) Act 1999 of the Commonwealth must lodge a statement with the Commissioner.
- (2) The statement must specify the dutiable property transferred and the dutiable value of the dutiable property at the time it becomes the property of the receiving body.
- (3) The statement must be lodged within 3 months after the dutiable property becomes the property of the receiving body.

108. *Assessment of duty*

A statement required to be lodged under this Chapter by a receiving body is chargeable with duty at the rate of duty set out in section 28 or 29, as the case requires, on the dutiable value of the

property as if the transfer of the dutiable property to the receiving body were a dutiable transaction.

109. Exemption

Duty is not chargeable under this Chapter in respect of a transfer of dutiable property if the transfer is of a class that, under guidelines approved for the time being by the Minister, is a class of transfer in respect of which duty is not chargeable.

Duties Act 2000
Act No. 79/2000

s. 110

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Chapter 5
(Headings
and ss 110–
124) repealed
by No.
48/2001
s. 5(b).

CHAPTER 6 HIRE OF GOODS

PART 1—INTRODUCTION AND OVERVIEW

125. *Imposition of duty*

This Chapter charges duty on the hire of goods if the person hiring out the goods is a commercial hire business.

126. *What is a commercial hire business?*

- (1) A "**commercial hire business**" is a person who hires out goods as a business.
- (2) It is immaterial whether or not the hiring out of the goods is the principal business or is ancillary to some other form of business, and whether or not any such principal or ancillary business is carried on wholly or partly outside Victoria.

127. *Hire of goods to which this Chapter applies— jurisdictional nexus*

- (1) This Chapter applies to the hire of goods only if the goods are used solely or predominantly in Victoria during any return period in respect of which a liability to duty is required to be determined.
- (2) A motor vehicle, however—
 - (a) if it is the subject of an equipment financing arrangement, is taken to be used, at all times in the course of that arrangement, in the State or Territory under whose law it is registered; and
 - (b) if it is not the subject of an equipment financing arrangement but is hired, is taken to be used at all times in the course of the

hire (unless it becomes the subject of an equipment financing arrangement), in the State or Territory in which the motor vehicle is initially delivered under the hire.

- (3) If goods hired under a hire of goods are not used or to be used solely or predominantly in any particular State or Territory, the goods are taken to be predominantly used or to be used in Victoria if, under the hire of goods, the goods are initially delivered in Victoria.
- (4) For the purposes of this section, goods are predominantly used or to be used in Victoria if they are used or to be used more in Victoria than in any other single State or Territory.

128. *What are "goods"?*

For the purposes of this Chapter, "**goods**" includes all chattels personal and fixtures severable from realty, but does not include money, livestock or things in action.

129. *What is a "hire of goods"?*

- (1) A "**hire of goods**" is an arrangement under which goods are or may be used at any time by a person other than the person hiring out the goods, unless the arrangement is excluded under section 132.
- (2) There are 2 kinds of hire of goods, namely—
 - (a) an equipment financing arrangement; and
 - (b) an ordinary (that is, any other) hire of goods.

130. *What is an "equipment financing arrangement"?*

- (1) An "**equipment financing arrangement**" is a hire of goods that consists of—
 - (a) a hire purchase agreement; or
 - (b) some other agreement for a term of not less than 9 months.

- (2) A **"hire purchase agreement"** is a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but does not include any agreement by which the property in the goods comprised in the agreement passes at the time of the agreement or on or at any time before the delivery of the goods.

131. *What form may a hire of goods take?*

A hire of goods may take any form. It is immaterial whether or not a hire of goods is effected or evidenced by an instrument in writing.

132. *Exclusions from the definition of "hire of goods"*

A hire of goods does not include any of the following—

- (a) an arrangement that gives a person a right to use goods that is conferred incidentally with a lease of, or a licence to occupy or use, land if—
 - (i) there is no apportionment of consideration between the right to use the goods and the right to occupy or use the land; and
 - (ii) duty is chargeable under Chapter 5 (Lease instruments) in respect of the lease;
 - (b) an arrangement for the hire of an aircraft, ship or vessel, or for the hire of an engine or other component part of an aircraft, ship or vessel;
 - (c) an arrangement for the provision of goods to a trader for the purpose of displaying or demonstrating the goods pending their sale or hire to a third party;
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- (d) an arrangement comprising a "wet hire" (that is, an arrangement under which an operator is provided by or at the direction of the person hiring out the goods to operate the goods for the hirer);
 - (e) an arrangement for the use of goods the provision of which is incidental and ancillary to the provision of a service if the provision of the goods is solely to enable the contractual provision of the service;
 - (f) an arrangement made between related bodies corporate;
 - (g) an arrangement under which a motor vehicle is subleased by an employee to an employer in connection with the employee's remuneration or other employment benefits;
 - (h) an arrangement for the use, by a person who is partially or totally incapacitated, of an invalid aid or prosthetic device or of any similar aid, device or appliance;
 - (i) a credit contract within the meaning of the Consumer Credit (Victoria) Code under which the amount of credit does not exceed \$35 000;
 - (j) a hire purchase agreement relating to the use of farm machinery or a commercial vehicle where the purchaser is a natural person;

 - (k) an arrangement relating to the use of—
 - (i) a book; or
 - (ii) an electricity, gas or water meter; or
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- (iii) a caravan that is to remain on site.

133. *Special hiring agreements*

A "**special hiring agreement**" is a written agreement for the hire of goods—

- (a) that describes the goods in such a way (for example, by reference to the make and model of each item) as to enable the nature or character of the goods to be clearly and readily identified, including the number of items; and
- (b) that does not include—
- (i) an agreement under which the goods may, at any time, be replaced in whole or in part by other goods, except to the extent that the agreement allows replacement if the goods—
 - (A) are lost, destroyed or stolen; or
 - (B) fail or malfunction in the normal course of operation or use; or
 - (C) are temporarily replaced during the servicing, maintenance or repair of the goods; or
 - (D) are otherwise not fit for the purpose for which they are hired; or
 - (ii) an agreement under which other goods, whether of the same or a different type, may be additionally provided.

134. *What is the rate of duty?*

- (1) The duty chargeable on a hire of goods is 0.75% of the total amount of the hiring charges.
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- (2) The maximum amount of duty chargeable in respect of a special hiring agreement is \$10 000.

135. What are "hiring charges"?

- (1) "**Hiring charges**" are payments made to the person who hires out the goods by or on behalf of the hirer, for (or that arise as an incident of) the hire of the goods.
- (2) The following charges are included as hiring charges—
- (a) payments for damage waiver or for damage excess;
 - (b) late return fees.

136. Payments exempted from "hiring charges"

- (1) The following charges are not included as hiring charges—
- (a) payments for delivery, repositioning, erection, installation, maintenance or cleaning of the goods;
 - (b) refundable cash deposits or bonds (unless appropriated as hiring charges);
 - (c) insurance premiums payable by the hirer;
 - (d) duty paid or payable under this Act or a corresponding Act;
 - (e) payments for the sale of goods (such as fuel, replacement parts or theft replacement);
 - (f) any GST payable on the supply to which the hire of goods relates;
 - (g) any payment of a type prescribed by the regulations.
- (2) No duty is chargeable under this Chapter on a payment by the hirer under a hire of goods if title

to the goods passes to the hirer as a consequence of the payment.

137. *Credit for duty paid in another Australian jurisdiction*

S. 137(1)
amended by
No. 46/2001
s. 10.

- (1) The duty chargeable under this Chapter on a hire of goods is to be reduced by the amount of duty paid on the hire under a corresponding Act.
- (2) Despite sub-section (1), the duty on a special hiring agreement that is chargeable with the maximum amount of duty of \$10 000 cannot be reduced below \$6000.

138. *Splitting or redirection of hiring charges (anti-avoidance provision)*

The Commissioner may include, as part of the amount received as hiring charges, any of the following—

- (a) any payments under the arrangement that are not hiring charges, including charges referred to in section 136, that the Commissioner is satisfied have been increased for the purpose of minimising duty under this Chapter;
- (b) any payments that would be hiring charges except for the fact that they are paid to a person other than the person who hires out the goods.

139. *Ascertainment and disclosure of place of use of goods*

- (1) A person who hires out goods may, in determining the person's liability to duty, rely on a statement of the hirer as to where the goods will be solely or predominantly used in the course of the hire or, in the case of an unregistered motor vehicle, where the motor vehicle will be registered during the course of the hire, unless the person knows that the statement is false.

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- (2) A person who hires out goods is not bound to inquire as to any change in the place of use of the goods or, in the case of a motor vehicle, the place of its registration.
 - (3) If goods are solely or predominantly used or, in the case of a motor vehicle, are registered in a place other than the place advised by the hirer in a statement referred to in sub-section (1), the Commissioner may assess or reassess the duty payable according to the actual place of sole or predominant use of the goods or, in the case of a motor vehicle, the place of its registration.
 - (4) A failure to pay duty on the hire of goods by a person who hires out the goods in due reliance on a statement referred to in sub-section (1), is not a tax default for the purposes of the **Taxation Administration Act 1997**, if the duty is paid within 3 months after the issue of a notice of assessment of the duty.
 - (5) A hirer who knowingly falsely represents to the person who hires out goods (or to any person acting for that person) that the goods will be used solely or predominantly outside Victoria is guilty of an offence.

Penalty: 100 penalty units.

**PART 2—REGISTRATION OF COMMERCIAL HIRE
BUSINESSES AND PAYMENT OF DUTY**

140. *Commercial hire businesses must be registered*

- (1) A commercial hire business must be registered under this Part if, in any month, the total amount of the hiring charges received in the month exceeds \$6000.
- (2) An application for registration must be made within 21 days after the end of the month in which the \$6000 threshold is first exceeded.

Penalty: 100 penalty units.

141. *Registration of commercial hire businesses*

- (1) The Commissioner must register a commercial hire business that applies in the approved form for registration under this Part.
- (2) The Commissioner may register a commercial hire business that has not applied for registration.
- (3) The Commissioner must give written notice to the commercial hire business of the registration.

142. *Cancellation of registration of commercial hire business*

- (1) A registered commercial hire business that ceases to hire out goods as a business must—
 - (a) give written notice of that fact to the Commissioner; and
 - (b) lodge the return required to be lodged under this Part; and
 - (c) pay the duty payable in connection with the return on or before the 21st day of the month after which the notice is given.

Penalty: 100 penalty units.

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- (2) The Commissioner is to cancel the registration of a commercial hire business on receipt of a notice under sub-section (1).
 - (3) The Commissioner may cancel a commercial hire business's registration under this Part if the Commissioner has reason to believe that registration is no longer required by the commercial hire business. The registration must not be cancelled until at least 30 days after written notice of intention to cancel the registration has been given by the Commissioner to the commercial hire business.
 - (4) A cancellation of registration has effect from the day specified for the purpose by the Commissioner in a written notice of cancellation given to the commercial hire business.

143. *Register of commercial hire businesses*

- (1) The Commissioner must keep a register of the commercial hire businesses who are registered under this Part.
- (2) Anyone may inspect the register without charge at the Commissioner's principal office during the hours that the office is open to the public.

144. *Duty base*

- (1) Duty under this Chapter is to be assessed on the total amount of the hiring charges received in a month by the commercial hire business.
- (2) The Commissioner may, however, by notice in writing approve a different basis of calculation of hiring charges if it appears to the Commissioner that duty payable on that basis will, over a period of time, approximate the duty payable in accordance with sub-section (1). An amount calculated under any method so approved is taken for duty purposes, while the approval remains in

force, to be the amount of hiring charges received. Such an approval may be revoked by the Commissioner at any time by notice in writing to the commercial hire business concerned.

- (3) A registered commercial hire business can, with the Commissioner's written consent, change the basis (as between a receipts basis and an approved basis) from month to month but it cannot change the basis within a month.
- (4) If consent is given under sub-section (3), the Commissioner may assess or reassess the duty payable in any period prior to the change of basis to include any hiring charges that would not be accounted for, or to exclude any hiring charges that would be accounted for twice, because of the change of basis.

145. *Lodgement of returns and payment of duty*

- (1) A commercial hire business must, on or before the 21st day of each month—
 - (a) lodge a return with the Commissioner; and
 - (b) pay to the Commissioner the appropriate amount of duty calculated in accordance with section 134 in respect of the previous month, subject to the duty-free threshold in sub-section (2).
- (2) A duty-free threshold of \$6000 per month applies in respect of hiring charges received from hires that are not special hiring agreements (that is, duty is payable only on such part of the total amount of those charges as exceeds \$6000).
- (3) The Commissioner may by notice in writing approve of the lodgement by a commercial hire business of returns in respect of a period of more than one month, and in such a case—

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- (a) the return must be lodged, and the duty paid, on or before the 21st day of the month following the last month to which the return relates; and
 - (b) the duty payable on the return is the sum of the duties payable on a monthly basis in accordance with this section for each month to which the return relates.
- (4) A commercial hire business may elect to pay the duty payable on a special hiring agreement by lodging a statement under section 147. In that event, returns under this section in respect of the agreement are not necessary.
- (5) If, in relation to a special hiring agreement—
- (a) a commercial hire business makes an election under sub-section (4); and
 - (b) the special hiring agreement is terminated before the expiry of the term expressed in the agreement—

the commercial hire business may request a reassessment of duty as if the duty had been paid on a return under this section.

146. *Statement of special hiring agreement*

- (1) A commercial hire business may make out a written statement in respect of a special hiring agreement if the total amount of hiring charges paid or payable for the hire of the goods is not less than \$1 333 333.
- (2) The statement must include the following—
 - (a) the name and address of each party;
 - (b) a description of the goods;
 - (c) the commencement date and the term of the hire;

S. 146(1)
amended by
No. 46/2001
s. 11.

- (d) the total of the hiring charges paid or payable over the term of the hire;
 - (e) the intervals at which the hiring charges are paid or payable.
- (3) The statement must be made out not later than—
- (a) the time when the commercial hire business receives the first (or only) payment of hiring charges; or
 - (b) the time when the hiring charges become payable—
- whichever first occurs.

147. Lodgement of statement and payment of duty

If a statement is made out in accordance with section 146, the commercial hire business must—

- (a) lodge the statement with the Commissioner; and
- (b) pay to the Commissioner the appropriate rate of duty calculated under section 134 in respect of hiring charges for the whole period of the hire—

within 3 months after the statement is made out.

CHAPTER 7
MORTGAGES

PART 1—INTRODUCTION AND OVERVIEW

148. *Imposition of duty*

This Chapter charges duty on instruments that are mortgages. Duty chargeable under this Chapter is called "**mortgage duty**".

S. 148
amended by
No. 46/2001
s. 12(1)(a).

148A. *Mortgage duty abolished from July 2004*

Despite anything to the contrary in this Chapter, mortgage duty is not chargeable—

S. 148A
inserted by
No. 48/2001
s. 7.

- (a) on a mortgage first executed, or that first affects property in Victoria, on or after 1 July 2004; or
- (b) in respect of an advance or further advance on or after 1 July 2004 under a mortgage first executed, or that first affects property in Victoria, before that day.

149. *What is a "mortgage"?*

For the purposes of this Chapter, an instrument is a "**mortgage**" if it is—

- (a) a security by way of mortgage or charge over property wholly or partly in Victoria at the liability date; or
- (b) a security by way of a transfer of property wholly or partly in Victoria held in trust to be sold or otherwise converted into money and redeemable before the sale or conversion, except if the transfer is for the benefit of creditors who accept it in full satisfaction of debts owed to them; or

S. 149(a)
amended by
No. 46/2001
s. 12(1)(b)(i).

S. 149(b)
amended by
No. 46/2001
s. 12(1)(b)(ii).

Duties Act 2000
Act No. 79/2000

s. 150

S. 149(c)
amended by
No. 46/2001
s. 12(1)(b)(iii).

(c) any transfer, assignment or disposition of any estate or interest in property wholly or partly in Victoria that is apparently absolute but intended only as a security; or

S. 149(d)
amended by
No. 46/2001
s. 12(1)(b)(iv).

(d) an instrument that, on the deposit of documents of title, authority to control title or a pledge to provide that control, to property wholly or partly in Victoria becomes a mortgage or evidences the terms of a mortgage.

150. *What is an advance?*

(1) For the purposes of this Chapter, an "**advance**" is the provision or obtaining of funds by way of financial accommodation by means of—

(a) a loan that is—

(i) an advance of money; or

(ii) the payment of money for or on account of, or on behalf of, or at the request of, any person; or

(iii) a forbearance to require the payment of money owing on any account; or

(iv) any transaction in any form that in substance effects a loan of money; or

(b) a bill facility that is one or more agreements, understandings or arrangements because of which a bill of exchange or promissory note—

(i) is drawn, accepted, endorsed or made; and

(ii) is held, negotiated or discounted to obtain funds—

whether or not the funds are obtained from the person who draws, accepts, endorses or

makes the bill of exchange or promissory note or from a person who is a party to any such agreement, understanding or arrangement.

- (2) An advance includes a contingent liability referred to in section 158.

151. *Who is liable to pay the duty?*

The person liable to pay mortgage duty is the mortgagor or the person who gives the mortgage.

152. *When does a liability arise?*

- (1) A mortgage is liable to duty on the date of its first execution.
- (2) A mortgage is liable to duty on the making of an advance or further advance by which the amount secured by the mortgage exceeds the amount secured by it at the date a liability to duty last arose in respect of it under this or a corresponding Act.
- (3) An instrument of security that does not affect property in Victoria at the date of first execution but that affects land in Victoria at any time within 12 months after that date becomes liable to duty as a mortgage on the date on which it first affects the land, unless it is duly stamped under a corresponding Act.
- (4) An instrument that, on the deposit of documents of title, authority to control title or a pledge to provide that control, to property in Victoria, becomes a mortgage or evidences the terms of a mortgage is liable to duty as a mortgage on the deposit of the documents or instruments or the provision of authority to control title or a pledge to provide such control.

S. 152(2)
amended by
No. 46/2001
s. 12(1)(c).

S. 152(3)
substituted by
No. 46/2001
s. 12(2).

S. 152(4)
amended by
No. 46/2001
s. 12(3).

153. *When must duty be paid?*

A tax default does not occur for the purposes of the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to pay the duty arises.

154. *How is mortgage duty charged?*

- (1) The amount of duty chargeable on a mortgage is determined by the amount secured by it as calculated under Part 2.
- (2) The amount of duty is—
 - (a) \$4 if no amount is secured by the mortgage or if the amount secured is not more than \$10 000; or
 - (b) if the amount secured by the mortgage exceeds \$10 000, \$4 for the first \$10 000 and \$0.80 for every \$200, or part, by which the amount secured exceeds \$10 000.
- (3) The amount of duty chargeable on a mortgage in respect of an advance or further advance is—
 - (a) determined on the amount secured by it as calculated under Part 2; and
 - (b) the amount of duty applicable as provided in sub-section (2).

S. 155
substituted by
No. 46/2001
s. 13.

155. *Extent mortgage is enforceable*

- (1) A mortgage or mortgage package on which duty is imposed under this Act or a corresponding Act is enforceable only to the extent of the amount secured by the mortgage or mortgage package in respect of which duty has been paid under this Act or a corresponding Act.
 - (2) Sub-section (1) does not apply if the property affected by a mortgage or mortgage package
-

("secured property") is partly in and partly outside Victoria if—

- (a) duty has been paid on the total advances under the mortgage or mortgage package when the mortgage duty paid is taken with the duty paid under a corresponding Act; and
- (b) the proportion of secured property in Victoria used to determine mortgage duty liability is—
 - (i) based on a referable point for the dutiable proportion of the mortgage; and
 - (ii) not incorrect by more than 5%.

156. *Where is property located?*

- (1) For the purposes of this Chapter, property in the following forms is taken to be located in the place specified—
 - (a) shares in or securities of a body corporate, in the place of incorporation of the body corporate;
 - (b) units in a unit trust scheme—
 - (i) in the place where the register on which the units are registered is kept; or
 - (ii) in the place of residence of the manager or responsible entity of the unit trust scheme, if the register on which the units are registered is not kept in Australia;
 - (c) debt securities of a Government of a State or Territory, in the State or Territory concerned.
- (2) The place of incorporation of a body corporate that is a company is the State or Territory under

s. 156

Duties Act 2000
Act No. 79/2000

the Corporations Law of which the company is registered.

PART 2—CALCULATING THE AMOUNT SECURED BY A MORTGAGE

157. Secured amount

- (1) A mortgage is chargeable with duty assessed on the amount of advances actually secured by it and recoverable under it.
- (2) If duty of \$4 is paid or taken to be paid in respect of a mortgage, the mortgage is taken to be stamped in respect of an amount of advances of \$10 000.
- (3) For the purpose of sub-section (1), if—
 - (a) a mortgage has been duly stamped for an amount of advances secured by the mortgage; and
 - (b) a further advance secured by the mortgage is made; and
 - (c) the total amount of advances secured by the mortgage exceeds the amount for which the mortgage has been duly stamped—

the amount of advances secured by the mortgage is the amount by which the amount of advances secured by the mortgage exceeds the amount for which the mortgage has been duly stamped.
- (4) If several mortgages over the same property are executed to secure the same advance—
 - (a) only one is chargeable with duty under this Chapter; and
 - (b) the Commissioner may denote the payment of the duty on the other mortgages.
- (5) If the duty chargeable on a mortgage depends on duty paid on another instrument, the

S. 157(1)
substituted by
No. 46/2001
s. 14(1).

S. 157(2)
amended by
No. 46/2001
s. 14(2).

S. 157(3)
substituted by
No. 46/2001
s. 14(3).

Commissioner may denote the payment of the duty so paid on the mortgage.

158. *Contingent liabilities*

S. 158(1)
amended by
No. 46/2001
s. 14(4)(a).

- (1) A mortgage used or capable of being used, whether directly or indirectly, to recover the whole or any part of an amount contingently payable in connection with an advance—
- (a) by a guarantor or indemnifying party under a guarantee or indemnity; or
 - (b) by another party under another instrument of a different kind—

is chargeable with duty as if the whole or part of the amount of the contingent liability secured by the mortgage were a separate advance secured by the mortgage.

- (2) A reference in sub-section (1) to a contingent liability is a reference to a contingent liability limited to the amount of any advance by a party referred to in sub-section (1) and does not include a reference to any other kind of contingent liability.
- (3) This section—
- (a) does not apply if the Commissioner is satisfied that there is no connection between the mortgage and any advance by any party to the arrangements;
 - (b) does not require duty to be paid more than once in respect of an advance.

159. *Mortgages over property not wholly within Victoria*

Duties Act 2000
Act No. 79/2000

(1) Duty chargeable in respect of a mortgage over property that is partly within Victoria and partly outside Victoria is to be assessed as if the amount secured by it were only the dutiable proportion.

(2) The dutiable proportion is to be calculated in accordance with the following formula—

$$DP = AS \times \frac{V}{T}$$

where—

DP is the dutiable proportion;

AS is the amount secured by the mortgage on which duty is charged at the liability date;

V is the value of the property in Victoria affected by the mortgage;

T is the value of all property affected by the mortgage, excluding property within a Territory or outside Australia

(3) The dutiable proportion is to be calculated by reference to the values of the properties according to any referable point specified in sub-section (4).

(4) A referable point is any of the following prepared within 12 months preceding the liability date—

- (a) an independent valuation of the secured property;
- (b) a statement of the mortgagee based on information obtained by the mortgagee in determining to make the advance to the mortgagor;
- (c) property valuations used by the mortgagor in preparing an annual return to be lodged under the Corporations Law;
- (d) financial reports of the mortgagor certified by an independent auditor as presenting a

S. 159(2)
amended by
No. 46/2001
s. 14(4)(b).

S. 159(4)
amended by
No. 46/2001
s. 14(4)(c).

true and fair view of the company's financial position;

(e) agreed valuations for property that form the basis of policies of insurance of the mortgagor;

(f) any other approved method.

(5) If there are 2 or more referable points in relation to a mortgage, the referable point is the later or latest of those referable points.

(6) The referable point is the same referable point used or to be used to determine liability to duty at the liability date under a corresponding Act.

(7) Evidence of the location and percentage value of any property is to be made by either party to the mortgage by way of a statement in the approved form.

(8) A mortgage or a statement made under sub-section (7) may be endorsed with duty on the basis of evidence contained in the statement.

(9) If a statement is endorsed under sub-section (8), the mortgage may be endorsed at any time—

(a) as being stamped to the amount evidenced by the duty paid on the statement; and

(b) by showing—

(i) the percentage of the property in Victoria securing the advance; and

(ii) the total amount secured by the mortgage.

S. 159(6)
amended by
No. 46/2001
s. 14(4)(c).

S. 159(9)(b)(i)
amended by
No. 46/2001
s. 14(4)(d)(i).

S. 159(9)(b)(ii)
amended by
No. 46/2001
s. 14(4)(d)(ii).

160. *Advances secured by mortgage package*

Duties Act 2000
Act No. 79/2000

- (1) If—
- (a) at a liability date, 2 or more security instruments secure or partly secure the same money; and
 - (b) at least one of the instruments is a security affecting property wholly or partly outside Victoria; and
 - (c) at least one of the instruments is a mortgage—
- the instruments are known as a "**mortgage package**".
- (2) Also, a "**mortgage package**" may include—
- (a) a mortgage executed after the liability date if the Commissioner is satisfied that the mortgage was intended to be part of the package; and
 - (b) a mortgage previously collateral to an earlier advance under some or all of the other mortgages in the package.
- (3) Mortgage duty must be assessed in accordance with the Part on the mortgage package as if the instruments comprising the mortgage package were one mortgage first executed on the day the last instrument to be executed was executed.
- (4) If 2 or more mortgages over property within Victoria form part of the security for a mortgage package, one of those mortgages must be stamped with the mortgage duty paid in Victoria for the mortgage package and the other mortgages must be stamped as collateral mortgages.
- (5) Evidence of the location and percentage value of any property is to be made by either party to the mortgage by way of the statement referred to in

S. 160(1)
substituted by
No. 46/2001
s. 14(5).

S. 160(2)
substituted by
No. 46/2001
s. 14(5).

S. 160(3)
substituted by
No. 46/2001
s. 14(5).

S. 160(4)
substituted by
No. 46/2001
s. 14(5).

S. 160(5)
substituted by
No. 46/2001
s. 14(5).

section 159(7).

- (6) If a person makes an application for the stamping of a mortgage referred to in sub-section (1) and one or more of the other intended mortgages in the mortgage package has not yet been executed, the executed mortgage, until all the intended mortgages are executed, when stamped is security only for that amount of the advance to which the proportion of the property secured by all the executed mortgages bears to the total of the property expressed to secure the advance.
- (7) The Commissioner may endorse the executed mortgage to indicate the proportion of the advance secured by the mortgage pending the execution of the other intended mortgages.
- (8) If a mortgage secures the same advance as a mortgage package in respect of which duty has been paid under this Chapter and the mortgage is not part of a mortgage package, the mortgage is taken to be a collateral mortgage in respect of that advance.

161. *Stamping before advance*

S. 161(1)
amended by
No. 46/2001
s. 14(6)(a)(i).

- (1) A mortgage may be stamped before an advance whether or not an earlier advance has been made.
- (2) A mortgage referred to in section 159 or 160 may be stamped to secure any amount exceeding that to which it is already stamped based on the dutiable proportion at the time of stamping.
- (3) A mortgage stamped under sub-section (2) is—
 - (a) duly stamped; and
 - (b) not required to be stamped in accordance with section 159 again until an advance brings the total amount secured above the amount to which it is already stamped.

-
- (4) Section 160(6) applies to a mortgage package stamped before an advance.

S. 161(4)
amended by
No. 46/2001
s. 14(6)(a)(ii).

162. *Security*

- (1) A stamped mortgage or a collateral mortgage that was, but is no longer, part of the same mortgage package and no longer secures the same money secured by that package is not security for any other money unless duty in respect of the other money has been paid.
- (2) The withdrawal of a mortgage from a mortgage package will not affect the amount to which the remaining mortgage or mortgages are security for.

163. *Exchange of information*

The Commissioner may provide information relating to any statement in respect of any mortgage package or mortgage referred to in section 159(1) to any person the Commissioner considers is connected with the administration of this Chapter or the corresponding provisions of a corresponding Act.

164. *Collection of duty and endorsement of instruments*

The Commissioner, or a person authorised by the Commissioner, may—

- (a) collect any duty payable under this Chapter;
and

- (b) endorse mortgages with a stamp showing—

- (i) the percentage of property in Victoria securing the advance; and

S. 164(b)(i)
amended by
No. 46/2001
s. 14(6)(b).

- (ii) the total amount secured by the mortgage.

S. 165
substituted by
No. 46/2001
s. 15.

165. *Collateral securities*

Mortgage duty is not chargeable in respect of that part of an amount secured by a collateral mortgage that is secured by—

- (a) a mortgage or security instrument that has been duly stamped under this Act or a corresponding Act; or
 - (b) a mortgage package that has been duly stamped under section 160 or a corresponding Act.
-

PART 3—DUTY CONCESSIONS

166. *Refinancing of loans*

(1) In this section—

"refinancing mortgage" means a mortgage that secures the amount of the balance outstanding immediately before the execution of that mortgage under an earlier duly stamped mortgage to the same borrower (whether over the same property or a property previously owned by the borrower) that is discharged or to be discharged as part of the arrangements for the new mortgage.

(2) For the purposes of sub-section (1), mortgages are created to secure an advance to the same borrower if, either directly by the mortgages themselves or indirectly through one or more collateral arrangements, the same person obtains the advances secured by them.

(3) A refinancing mortgage is taken to have been stamped with ad valorem duty as a mortgage in respect of the amount required to discharge the earlier mortgage (being an amount in relation to which the earlier mortgage was duly stamped), except as provided by sub-section (5).

S. 166(3)
amended by
No. 46/2001
s. 16.

(4) If an advance is refinanced by more than one lender, so that mortgages given to the lenders together secure the balance outstanding under an earlier mortgage, the definition of "refinancing mortgage" in sub-section (1) is to be construed as though—

(a) the reference to a mortgage securing the outstanding balance were a reference to the aggregate of such mortgages; and

- (b) each lender were the holder of a refinancing mortgage.
- (5) If, as provided by sub-section (4), each of a number of lenders is the holder of a refinancing mortgage, a refinancing mortgage held by each lender is taken to have been duly stamped with ad valorem duty as a mortgage in respect of an amount equal to the same proportion of the amount required to discharge the earlier mortgage as the amount secured by that mortgage bears to the total amount secured by the refinancing mortgages held by all the lenders.
- (6) If each of 2 or more refinancing mortgages severally secures the same advance—
- (a) the provisions of sub-section (3) or (5), as the case may be, apply to such one of the mortgages as the Commissioner determines; and
- (b) no duty is chargeable in respect of any of the others (insofar as it is a refinancing mortgage) but the Commissioner may denote any of them in the approved manner.
- (7) For the purposes of section 165—
- (a) a refinancing mortgage that is taken, by the operation of sub-section (3) or (5), to be duly stamped is in either case a stamped mortgage; and
- (b) duty is taken to have been paid on it to the extent provided by whichever of those sub-sections applies.
- (8) Duty at the rate of \$0.80 per \$200 or part of \$200 is payable on the amount by which the advance made under a refinancing mortgage (not being a mortgage on which, by virtue of sub-section (6)(b), no duty is chargeable) exceeds—
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-
- (a) the amount required to discharge the earlier mortgage; or
 - (b) the proportion of that amount referred to in sub-section (5), in the case of a refinancing to which sub-section (4) applies.
- (9) If the number of original borrowers is reduced, the remaining borrower or borrowers is or are taken to be the same borrower or the same person for the purposes of sub-section (1) or (2).

167. *Eligible mortgages under concession schemes*

- (1) Subject to this section, no duty is chargeable under this Chapter on an eligible mortgage.
- (2) An "**eligible mortgage**" is—
 - (a) a mortgage given by an eligible pensioner or an eligible first home owner securing an advance used or proposed to be used—
 - (i) for the purchase of an estate in fee simple in land, if he or she is entitled under Division 5 of Part 5 of Chapter 2 to an exemption or concession from duty on the transfer of the land; or
 - (ii) for the construction of a dwelling on that land; or
 - (b) a re-financing mortgage (within the meaning of section 166) in respect of a mortgage referred to in paragraph (a).
- (3) This section applies only to that part of the amount secured by an eligible mortgage that is used or proposed to be used for the purpose of purchasing the land or the construction of a dwelling on the land.

- (4) For the purposes of assessing duty in respect of any further advances secured by an eligible mortgage, duty is taken to have been paid on the part of the amount secured that is referred to in sub-section (3).
- (5) If a person—
- (a) represents to a tax officer that a mortgage is not chargeable with duty, or is chargeable with less duty, because of this section; and
 - (b) is convicted of an offence against section 57 of the **Taxation Administration Act 1997** as a consequence—
- the person is liable, by way of further penalty, to pay an amount equal to double the amount of duty that, but for the offence, would have been payable, less any amount of duty that the person did pay.
- (6) The penalty in sub-section (5) is in addition to any penalty tax or interest that may be payable under the **Taxation Administration Act 1997**.
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PART 4—EXEMPTIONS

Chapter 7
Pt 4 (Heading)
substituted by
No. 46/2001
s. 17.

168. *Exempt mortgages and supporting instruments*

- (1) This Chapter does not apply to—
 - (a) a mortgage executed before 4 January 1965;
or
 - (b) a mortgage that is not chargeable with duty under this Act.
- (2) Other instruments that are exempt from payment of mortgage duty are—
 - (a) a mortgage made or given by—
 - (i) a registered co-operative society or registered co-operative housing society;
or
 - (ii) a body that is permitted to use the expression "credit union" under section 66 of the Banking Act 1959 of the Commonwealth;
 - (b) a mortgage given by a corporation or body of persons incorporated or associated for a religious, charitable or educational purpose;
 - (c) a mortgage or foreign security made or given by—
 - (i) a Government of the Commonwealth or of another State or of a Territory; or
 - (ii) a public statutory authority constituted under the law of Victoria, other than a declared public statutory authority under sub-section (3); or

- (iii) a public statutory authority constituted under the law of the Commonwealth or of another State or of a Territory; or
 - (iv) the Municipal Association of Victoria;
 - (d) a lien on a crop registered under Part VII of the **Instruments Act 1958**;
 - (e) a lien on wool or mortgage of stock registered under Part VIII of the **Instruments Act 1958**;
 - (f) a mortgage given to the Victorian WorkCover Authority;
 - (g) a mortgage given to a recognised institution within the meaning of the **Trustee Act 1958**, being a mortgage of a mortgage or a mortgage by way of deposit of a mortgage.
- (3) For the purposes of sub-section (2)(c)(ii), the Governor in Council, by Order published in the Government Gazette, may declare a public statutory authority constituted under the law of Victoria to be a declared public statutory authority.

169. *Mortgages associated with certain credit contracts*

- (1) If—
- (a) a mortgage secures an amount advanced under a consumer credit contract and no other advances; and
 - (b) the total amount advanced under the consumer credit contract does not exceed \$35 000—
- the mortgage is exempt from mortgage duty.

(2) If—

- (a) a mortgage secures an amount advanced under a consumer credit contract and another advance; and
- (b) the total amount advanced under the consumer credit contract does not exceed \$35 000—

mortgage duty is not chargeable on the mortgage in relation to the amount advanced under the consumer credit contract.

(3) If—

- (a) a mortgage secures an amount advanced under a consumer credit contract (whether or not it also secures any other advance); and
- (b) the total amount advanced under the consumer credit contract exceeds \$35 000—

the whole of the amount advanced under the consumer credit contract comprises or forms part of the advances secured by the mortgage.

(4) An exemption provided by sub-section (1) or (2) is not available to the extent to which the consumer credit is provided for the purposes of—

- (a) the acquisition of a private dwelling house or land on which to erect a private dwelling house; or
- (b) the erection of a private dwelling house or the addition of accommodation to a private dwelling house.

(5) In this section—

"consumer credit" means credit regulated under the Consumer Credit Code;

"Consumer Credit Code" means—

- (a) the provisions of the Code by that name set out in the Appendix to the Consumer Credit (Queensland) Act 1994 of Queensland, as applied and in force in any State or Territory; or
- (b) the provisions of an Act of a State or Territory that are in the same, or substantially the same, terms as that Code;

"private dwelling house" means—

- (a) a building that is designed, or is designed principally, as a separate residence for one family or person; or
- (b) an apartment, flat or other part of a building that is so designated.

170. *Farm machinery and commercial vehicles*

Mortgage duty is not chargeable on so much of an advance to a natural person for the acquisition of farm machinery or a commercial vehicle as is secured by the mortgage.

171. *Certain debentures and related instruments*

- (1) Mortgage duty is not chargeable on a mortgage solely securing the repayment of advances arising from the issue by a financial corporation or a related corporation of a debenture.
- (2) Mortgage duty is not chargeable on a mortgage in respect of advances arising from the issue by a financial corporation or a related corporation of a debenture if the mortgage secures in part the repayment of those advances.

(3) This section applies to a debenture issued, or a mortgage executed, by a related corporation only in so far as the debenture is issued, or the mortgage is executed, for the purposes of raising funds to be used for a financial corporation.

(4) In this section—

"financial corporation" means a corporation whose sole or principal business is providing finance to the public, including making loans to the public;

"related corporation", in relation to a particular financial corporation means a corporation that is, with respect to the financial corporation, a related body corporate within the meaning of the Corporations Law.

PART 5—MISCELLANEOUS

172. *Payment of duty on mortgages associated with debenture issues*

- (1) This section applies if—
 - (a) a corporation is or will be under a liability to repay money received or to be received by it in respect of its debentures; and
 - (b) the repayment is secured by a mortgage; and
 - (c) the corporation is a party to an instrument of trust relating to the debentures.
- (2) If the corporation and the trustee for the debenture holders give a written undertaking in the approved form to the Commissioner—
 - (a) a mortgage solely securing the repayment of money received or to be received by the corporation in respect of its debentures is not liable to mortgage duty; and
 - (b) a mortgage securing in part the repayment of such money is not liable to mortgage duty in respect of advances arising from the issue of debentures.
- (3) The undertaking binds the corporation and the trustee to lodge with the Commissioner, in July each year, a statutory declaration setting out, in the following categories, the total amount subscribed for in Victoria in respect of the corporation's debentures during the year ending on the previous 30 June (but not including amounts repayable at call or in less than 30 days) and to pay duty in the following amounts—

Money repayable at or after the expiration of not less than 30 days and not more than 3 months \$0.40 for every \$2000, or part

Money repayable at or after the expiration of not less than 3 months and not more than 6 months \$0.80 for every \$2000, or part

Money repayable at call after a specified period is taken to be money repayable at the expiration of that period.

- (4) If a person resident or domiciled in Victoria becomes the holder of a debenture referred to in this section that was subscribed for outside Victoria, the debenture is chargeable, on the date on which that person becomes the holder of the debenture, with an amount of duty under this Part equal to the amount of duty that would be chargeable under this Part (other than under this sub-section) if the debenture had been issued on that date unless ad valorem duty has been paid or is payable in another State or in a Territory in respect of the issue of, or subscription for, the debenture.
- (5) In this section, a reference to an amount subscribed for in respect of debentures includes a reference to an amount represented by debentures issued on the conversion or renewal of an existing holding of debentures or other marketable securities.

173. *Unregistered mortgages protected by caveats (anti-avoidance provision)*

- (1) A caveat under the **Transfer of Land Act 1958** in which an estate or interest is claimed under an unregistered mortgage is chargeable with duty if

the mortgage is chargeable, but not stamped, with mortgage duty.

- (2) The amount of duty is the same amount as is chargeable on the mortgage.
- (3) The person liable to pay the duty is the mortgagor.
- (4) Duty is not chargeable in respect of the caveat if the Commissioner is satisfied that a sum equal to the amount payable under sub-section (2) has been paid on the mortgage to which the caveat relates, or on some other instrument pursuant to the arrangement to which the mortgage relates.
- (5) If the caveat has been stamped with ad valorem duty, a mortgage under which an estate or interest is claimed in the caveat may be stamped as a collateral security.
- (6) This section does not apply to a caveat lodged in respect of a mortgage that is exempt from mortgage duty under Part 4.

174. *Stamping counterpart or collateral instrument if mortgage is lost, destroyed or cannot be produced*

- (1) A counterpart of a mortgage or a collateral security for an amount secured by a mortgage is taken to be the mortgage and may accordingly be stamped or upstamped for mortgage duty purposes if, on application by or on behalf of a person who is a party to the mortgage, the Commissioner is satisfied that—
 - (a) the mortgage has been lost or destroyed; or
 - (b) because of being deposited in the Office of Titles or from other reasonable cause, the mortgage cannot conveniently be produced.

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- (2) For the purposes of sub-section (1), a reproduction of a mortgage or a collateral security for an amount secured by a mortgage is taken to be a counterpart of that mortgage if it is purported to be signed by the Registrar of Titles.
- (3) In this section, "**reproduction**" has the same meaning as in section 53 of the **Evidence Act 1958**.
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CHAPTER 8
INSURANCE

PART 1—INTRODUCTION AND OVERVIEW

175. *Imposition of duty*

- (1) This Chapter charges duty in respect of insurance in accordance with this section.
 - (2) Part 2 charges duty on the amount of the premium paid in relation to a contract of insurance that effects general insurance (whether or not it also effects other kinds of insurance).
 - (3) The amount of duty is required to be paid each time a premium is paid in relation to a contract of insurance that effects general insurance.
 - (4) Part 3 charges duty on policies of life insurance.
 - (5) Part 4 charges duty as set out in section 209.
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PART 2—GENERAL INSURANCE

Division 1—Duty in respect of General Insurance

176. *What is general insurance?*

- (1) "**General insurance**" is any kind of insurance that is applicable to—
 - (a) property in Victoria; or
 - (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, Victoria—or both.
- (2) "**General insurance**" includes insurance effected in respect of trauma or a disabling or incapacitating injury, sickness, condition or disease.
- (3) "**General insurance**" does not include life insurance or insurance that is exempt from duty by Division 5.

177. *What is a premium in relation to general insurance?*

- (1) "**Premium**", in relation to general insurance, means the total consideration given to an insurer or an insurance intermediary by or on behalf of the insured person to effect insurance without deductions for any amounts paid or payable, or allowed or allowable, by way of commission to the insurance intermediary.
- (2) "**Premium**" includes a fire service levy paid or payable in connection with insurance by an insurer or any other person.
- (3) "**Premium**" does not include—

- (a) an amount paid to an insurance intermediary by the insured person as a fee, provided that the amount can be clearly identified as a fee; or
 - (b) an amount of duty under this or a corresponding Act.
- (4) It is immaterial where the amount is paid or where the insurance is effected.

178. *When is a premium paid?*

- (1) A premium, or an instalment of a premium, is paid for the purposes of this Chapter when the first of the following events occurs—
- (a) the premium or instalment is received by the insurer; or
 - (b) an account of the insurer is credited with the amount of the premium or instalment.
- (2) A premium or instalment of a premium (apart from the case where the premium or instalment is received directly by an insurer) is taken to have been received by an insurer if it is received by another person on the insurer's behalf.

179. *What duty is payable?*

The amount of duty chargeable on the premium paid in relation to a contract of insurance is 10% of the amount of the premium.

180. *Who is liable to pay the duty?*

The general insurer is liable to pay the duty, except as provided by section 181.

181. *Circumstances in which duty is payable by the insured person*

-
- (1) This section applies to a person who obtains, effects, or renews any general insurance as an insured person with a person who is not a registered insurer.
 - (2) A person to whom this section applies must, within 21 days after the end of the month in which the premium relating to the insurance is paid to an insurer (not being a registered insurer) or insurance intermediary—
 - (a) lodge a return with the Commissioner containing the particulars and information as to the premium and the insurance that the Commissioner requires; and
 - (b) pay to the Commissioner as duty the amount calculated in accordance with section 179.
 - (3) A person to whom this section applies is taken to have complied with this section if the person's duty under this section is discharged by another person acting on the person's behalf.

182. *Records to be kept*

A person to whom section 181 applies must keep records that contain information as to—

- (a) the nature and location of the property insured; and
- (b) the nature and location of each risk, contingency or event insured; and
- (c) the amount of the premiums paid in relation to each contract of insurance.

183. *Refunds where premiums are returned*

- (1) A general insurer or a person to whom section 181 applies is entitled to a refund of duty if the general

insurer refunds, or there is refunded to the person, the whole or a part of a dutiable premium in respect of the contract of insurance for which duty has been paid.

- (2) The refund is the duty paid on the amount of the premium refunded.
- (3) A general insurer to whom duty is refunded may apply the amount of the refund to offset any other payment required to be made under this Act by the general insurer.

Division 2—How Duty is Paid by a General Insurer

184. *Who is a general insurer?*

A "**general insurer**" is a person—

- (a) who writes general insurance; and
- (b) who does so otherwise than as an insurance intermediary; and
- (c) who is authorized under the Insurance Act 1973 of the Commonwealth to carry on insurance business.

S. 184(c)
substituted by
No. 46/2001
s. 18(a).

185. *General insurers must be registered*

A general insurer must be registered under this Part.

Penalty: 100 penalty units.

186. *Application for registration*

The Commissioner must register a general insurer who applies in the approved form for registration under this Part.

187. *Cancellation of registration by the Commissioner*

- (1) The Commissioner may, by written notice, cancel a general insurer's registration under this Part—

- (a) if the insurer's registration under the Insurance Act 1973 of the Commonwealth is terminated; or
- (b) if the insurer is made bankrupt or, being a company, is wound up; or
- (c) if the insurer is convicted of an offence under an Act imposing duty; or
- (d) if the insurer's registration was made in error or because of a false or misleading statement made in relation to the application for registration; or
- (e) if the Commissioner is of the opinion that the insurer has ceased to write general insurance; or
- (f) for any other reason the Commissioner thinks sufficient.

- (2) A cancellation of registration has effect from the date specified for the purpose by the Commissioner in the notice of cancellation.

188. *Cessation of business and cancellation of registration by the general insurer*

- (1) A registered insurer who ceases to write general insurance in Victoria—
 - (a) must, within 14 days after so ceasing—
 - (i) give written notice of that fact to the Commissioner; and
 - (ii) lodge the return required to be lodged under this Part; and
 - (b) must pay the duty payable in connection with the return on or before the 21st day of the month after which the notice is given.

Penalty: 100 penalty units.

- (2) The notice cancels the insurer's registration under this Part on the day on which it is received by the Commissioner.

189. Register of general insurers

- (1) The Commissioner must keep a register of the general insurers who are registered under this Part.
- (2) Anyone may inspect the register without charge at the Commissioner's principal office during the hours that the office is open to the public.

190. Monthly returns and payment of duty

A registered insurer must, on or before the 21st day of each month—

- (a) lodge a return with the Commissioner showing the total amount of all premiums for insurance paid to the registered insurer in the preceding month; and
- (b) pay to the Commissioner as duty the amounts determined in accordance with section 179.

191. Recovery of duty by registered insurer

- (1) A registered insurer may require a person by whom a premium is payable to the insurer to pay the insurer an amount equal to the duty chargeable.
- (2) The requirement is duly made if it is contained in a written request that is given to the person and that specifies the amount of the duty.
- (3) If the amount is not paid, the insurer may recover it as a debt.

**Division 3—Apportionment of Premiums and Other
Amounts between States and Territories**

192. *Application of Division*

- (1) This Division applies to a contract of insurance that insures—
 - (a) property in Victoria as well as property in another place; or
 - (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, Victoria as well as within, or partly within, another place—or both.
- (2) It is the intention of this Division—
 - (a) to provide the means for apportioning premiums paid and other amounts in relation to a contract of insurance having regard to the principle in section 176(1); and
 - (b) to avoid multiple duty as between the States and Territories; and
 - (c) to give each State and Territory its appropriate share of duty by means of the apportionment.

193. *Schedule of Apportionment*

- (1) The Commissioner may, from time to time, adopt a Schedule of Apportionment for the purpose of apportioning premiums and other amounts in relation to insurance in accordance with this Part.
- (2) The Schedule of Apportionment may be developed in consultation with any person the Commissioner considers suitable.

194. *Apportionment in practice*

- (1) A premium or an amount is to be apportioned in accordance with the Schedule of Apportionment adopted for the time being, except as provided by this section.
- (2) A general insurer or an insured person may apply in writing to the Commissioner to apportion a premium or an amount on a basis other than that provided by the Schedule of Apportionment. The Commissioner may apportion the premium or amount on the other basis.
- (3) In particular, if the Commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance has been properly apportioned for each risk insured, the Commissioner may determine the apportionment, reassess the liability to duty and charge duty accordingly.

Division 4—Apportionment of Premiums and Other Amounts as between Different Types of Insurance

195. *Apportionment between different types of insurance*

- (1) This Division applies to apportionment between different types of insurance that are relevant to determining liability for duty, such as general insurance, life insurance and insurance that is exempt from duty. It does not apply to the apportionment of a premium or another amount between Victoria and another place. Division 3 deals with that kind of apportionment.

 - (2) If the Commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance that effects different types of
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insurance has been properly apportioned, the Commissioner may determine the apportionment, reassess the liability to duty and charge duty accordingly.

Division 5—Exempt Insurance

196. *What insurance is exempt from duty?*

The following insurances are exempt from duty under this Chapter—

- (a) medical benefits insurance, being insurance effected by a contract of insurance that is issued by an organisation registered under Part VI of the National Health Act 1953 of the Commonwealth and that provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided;
- (b) accident compensation or workers compensation insurance, being insurance—
 - (i) effected by a contract of insurance that is issued by an authorised insurer for the purposes of the **Accident Compensation (WorkCover Insurance) Act 1993**; or
 - (ii) undertaken by the Victorian WorkCover Authority for the purpose of providing accident insurance within the meaning of section 20A of the **Accident Compensation Act 1985**; or
 - (iii) that indemnifies an employer against liability in relation to workers compensation under the **Workers Compensation Act 1958** or under any other Act or at common law or otherwise; or

- (iv) that indemnifies the Victorian WorkCover Authority against liability under Part IV of the **Accident Compensation Act 1985**; or
 - (v) that indemnifies a self-insurer within the meaning of the **Accident Compensation Act 1985** against liability in relation to workers compensation under that or any other Act or at common law or otherwise;
- (c) insurance of—
- (i) the physical hull of a floating vessel used primarily for commercial purposes;
 - (ii) goods or merchandise, or the freight of goods or merchandise, carried by land, sea or air;
- (d) reinsurance (being a contract or contracts between 2 parties by which one party indemnifies the other against liability or payment under a contract or contracts of insurance or reinsurance) in respect of which duty has been paid under this Act or a corresponding Act;
- (e) insurance against damage by hail to cereal or fruit crops;
- (f) a private fidelity guarantee insurance scheme promoted amongst and sustained solely for the benefit of the members, officers and employees, or a class of members, officers and employees, of a government department, public authority, body corporate, individual or firm and not extending beyond such members, officers and employees;
- (g) insurance undertaken by—
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- (i) a friendly society; or
 - (ii) any other person that, in the opinion of the Commissioner, undertakes only a class of insurance business that a friendly society undertakes and undertakes that business substantially in the same way and for the same purpose as does a friendly society.

Division 6—Miscellaneous

197. *Effect on contract of insurance of failure to comply with this Chapter*

A failure to comply with this Chapter does not render a contract of insurance illegal or invalid.

PART 3—LIFE INSURANCE

Division 1—Duty in respect of Life Insurance

198. *What is life insurance?*

(1) "**Life insurance**" is any insurance or assurance in respect of—

- (a) a life or lives; or
- (b) an event or contingency relating to or depending on a life or lives—

of a person who is, or persons who are, domiciled in Victoria at the time the insurance policy is issued, but does not include insurance against accident.

(2) "**Insurance against accident**" is any insurance under which payment is agreed to be made on the death of a person only from accident or violence or otherwise from a natural cause or as compensation for personal injury.

199. *Obligation to make out and execute policies of life insurance*

Within 3 months after a person receives or takes credit for a premium or consideration for a contract of life insurance, the person must—

- (a) make out and execute a policy of life insurance in respect of that contract; and
- (b) ensure that the policy is duly stamped.

Penalty: 2 penalty units and double the amount of duty that would have been payable on the policy.

200. *What duty is payable?*

- (1) The amount of duty chargeable on a policy of life insurance, other than a temporary or term insurance policy, is—
 - (a) if the sum insured does not exceed \$200—nil;
 - (b) if the sum insured exceeds \$200 but does not exceed \$2000—12 cents per \$200, or part, of the sum insured;
 - (c) if the sum insured exceeds \$2000—\$1.20 plus 24 cents per \$200, or part, of the sum insured that exceeds \$2000.
- (2) The amount of duty chargeable on a temporary or term insurance policy is 5% of the first year's premium on the policy.
- (3) In determining the sum insured by a policy of life insurance, any additional amount payable under the policy in the event of the insured dying as the result of an accident is to be disregarded.

201. *Who is liable to pay the duty?*

The person issuing the policy of life insurance is liable to pay the duty.

Division 2—Approved Life Insurers

202. *Who is a life insurer?*

A "**life insurer**" is a person—

- (a) who writes life insurance; and
- (b) who does so otherwise than as an insurance intermediary; and
- (c) who is registered under the Life Insurance Act 1995 of the Commonwealth.

S. 202(c)
amended by
No. 46/2001
s. 18(b).

203. Approval of life insurers

- (1) A life insurer may apply in the approved form for registration as an approved life insurer.
- (2) On an application under sub-section (1), the Commissioner may register a person as an approved life insurer.

204. Cancellation of registration by the Commissioner

- (1) The Commissioner may, by written notice, cancel an approved life insurer's registration under this Part—
 - (a) if the insurer's registration under the Life Insurance Act 1995 of the Commonwealth is cancelled; or
 - (b) if the insurer is made bankrupt or, being a company, is wound up; or
 - (c) if the insurer is convicted of an offence under an Act imposing duty; or
 - (d) if the insurer's registration was made in error or because of a false or misleading statement made in relation to the application for registration; or
 - (e) if the Commissioner is of the opinion that the insurer has ceased to write life insurance; or
 - (f) for any other reason the Commissioner thinks sufficient.
- (2) A cancellation of registration has effect from the date specified for the purpose by the Commissioner in the notice of cancellation.

S. 204(1)(a)
substituted by
No. 46/2001
s. 18(c).

205. *Cessation of business and cancellation of registration by the insurer*

- (1) An approved life insurer who ceases to write life insurance in Victoria—
 - (a) must, within 14 days after so ceasing—
 - (i) give written notice of that fact to the Commissioner; and
 - (ii) lodge the return required to be lodged under this Part; and
 - (b) must pay the duty payable in connection with the return on or before the 21st day of the month after which the notice is given.

Penalty: 100 penalty units.

- (2) The notice cancels the insurer's registration under this Part on the day on which it is received by the Commissioner.
- (3) Section 59 of the **Taxation Administration Act 1997** does not apply to an approved life insurer who fails or refuses to give notice or lodge a return under sub-section (1)(a).

206. *Register of approved life insurers*

- (1) The Commissioner must keep a register of approved life insurers.
- (2) Anyone may inspect the register without charge at the Commissioner's principal office during the hours that the office is open to the public.

207. *How duty is paid by approved life insurers*

- (1) An approved life insurer must, on or before the 14th day of each month—
 - (a) lodge a return with the Commissioner in respect of the policies of life insurance

issued by the insurer in the preceding month;
and

- (b) pay to the Commissioner the duty payable by the life insurer on those policies.
- (2) A policy in respect of which duty is paid in accordance with sub-section (1) is taken to be duly stamped.

Division 3—Exemptions

208. *Exemptions from life insurance duty*

No duty is chargeable under this Part on—

- (a) a cover note in respect of which a duly stamped policy is issued within 3 months after the issue of the cover note;
 - (b) a policy of reinsurance.
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PART 4—TRANSPORT ACCIDENT CHARGES

209. *Imposition of duty*

This Part charges duty on transport accident charges applicable to motor vehicles under Part 7 of the **Transport Accident Act 1986**.

210. *Who is liable to pay the duty?*

Duty under this Part is payable by the Transport Accident Commission.

211. *Rate of duty*

The rate of duty is 10%.

212. *How is duty paid?*

The Transport Accident Commission must, on or before Wednesday in each week—

- (a) lodge a return with the Commissioner showing the total amount of transport accident charges paid into the Transport Accident Fund during the week ending on the preceding Saturday; and
- (b) pay to the Commissioner the duty payable on those charges under this Part.

213. *Refund of duty if transport accident charge is refunded*

The Transport Accident Commission is entitled to a refund of duty if it refunds the whole or part of a transport accident charge in respect of which duty has been paid under this Part.

CHAPTER 9 MOTOR VEHICLE DUTY

PART 1—INTRODUCTION AND OVERVIEW

214. *Imposition of duty*

- (1) This Chapter charges duty on—
 - (a) an application for registration of a motor vehicle under the **Road Safety Act 1986** if—
 - (i) the vehicle has not previously been registered under that Act; or
 - (ii) the person in whose name the vehicle is to be registered differs from the person in whose name the vehicle was last registered under that Act; and
 - (b) an application for transfer of registration of a motor vehicle under the **Road Safety Act 1986**.
- (2) This Chapter also charges duty in the circumstances set out in Part 4.

215. *Lodgement of statement of dutiable value*

- (1) A person who is required by law to make or lodge an application for registration or transfer of registration of a motor vehicle under the **Road Safety Act 1986** must lodge with the application a statement of the dutiable value of the motor vehicle, unless the application is not chargeable with duty under this Chapter.
- (2) A person (other than a registered used car dealer) who—

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- (a) acquires a motor car within the meaning of the **Motor Car Traders Act 1986** from a registered used car dealer; and
 - (b) lodges an application for transfer of registration of the motor car under the **Road Safety Act 1986**—

must also lodge with the application a copy of the agreement for sale of the motor car supplied to the person under section 41 of the **Motor Car Traders Act 1986**, unless the application is not chargeable with duty under this Chapter.

216. *Who is liable to pay the duty?*

- (1) Duty on an application for registration of a motor vehicle is payable by the applicant for registration.
- (2) Duty on an application for transfer of registration of a motor vehicle is payable by the acquirer of the vehicle.
- (3) A person who—
 - (a) acquires a motor vehicle from a registered used car dealer; and
 - (b) pays to the dealer the amount of duty chargeable under this Chapter on the application for transfer of registration of the vehicle to the person—

is relieved from any further liability for duty in respect of the application for transfer of registration.

217. *When does duty become payable?*

Duty becomes payable on the making or lodging of the application for registration or transfer of registration of the motor vehicle.

218. *What is the rate of duty?*

The rate of duty is—

- (a) on an application for registration of a motor vehicle that has not previously been registered in Victoria or elsewhere—
 - (i) for a passenger car the dutiable value of which exceeds \$35 000 but does not exceed \$45 000—\$8 per \$200, or part, of the dutiable value of the motor vehicle;
 - (ii) for a passenger car the dutiable value of which exceeds \$45 000—\$10 per \$200, or part, of the dutiable value of the motor vehicle;
 - (iii) in any other case—\$5 per \$200, or part, of the dutiable value of the motor vehicle;
- (b) in any other case—\$8 per \$200, or part, of the dutiable value of the motor vehicle.

219. *What is the dutiable value of a motor vehicle?*

- (1) Subject to sub-section (2), the "**dutiable value**" of a motor vehicle is—
 - (a) the consideration in money or money's worth given for the acquisition of the vehicle; or
 - (b) the price at which the vehicle might reasonably be sold, free from encumbrances, in the open market—whichever is the greater.
- (2) The dutiable value of a motor vehicle that—

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- (a) is a taxi-cab within the meaning of the **Transport Act 1983**; and
 - (b) is specially converted to provide wheelchair access to and egress from the vehicle; and
 - (c) is capable of carrying at least one occupied wheelchair; and
 - (d) has not previously been registered in Victoria or elsewhere—

is the value determined in accordance with subsection (1) less \$24 000 or such other amount as is prescribed.

220. *Prohibition on registration of motor vehicles*

- (1) The registration authority must not register a motor vehicle unless—
 - (a) a statement of the dutiable value of the vehicle is lodged in accordance with section 215 and duty is duly paid on the application; or
 - (b) the application for registration of the vehicle is not chargeable with duty under this Chapter.
- (2) In this section "**registration authority**" means the person who has the responsibility for the registration of motor vehicles in Victoria.

PART 2—REGISTERED USED CAR DEALERS

221. *Registration*

- (1) The Commissioner, on written application by a licensed motor car trader or a special dealer, must register the trader or dealer as a registered used car dealer and give the trader or dealer a code number.
- (2) The Commissioner must give written notice of registration to the trader or dealer.
- (3) Registration has effect on and from the date specified in the notice under sub-section (2).

222. *Cessation of business and cancellation of registration*

- (1) A registered used car dealer who—
 - (a) ceases to be a licensed motor car trader or special dealer (as the case may be); or
 - (b) wishes to cease being registered under this Part—

must give written notice to the Commissioner before or forthwith on so ceasing and must lodge the return required to be lodged under this Part and pay the amount required to be paid on that return under section 225(1)(b) (if any), on or before the 21st day of the month following the month in which the notice is given.

- (2) The Commissioner may cancel the registration of a registered used car dealer under this Part—
 - (a) on receipt of a notice under sub-section (1); or
 - (b) if the Commissioner is satisfied that the dealer has ceased to be a licensed motor car trader or special dealer (as the case may be).

223. *Register of used car dealers*

- (1) The Commissioner must keep a register of registered used car dealers.
- (2) Anyone may inspect the register without charge at the Commissioner's principal office during the hours that office is open to the public.

224. *Endorsement of code number on application*

- (1) This section applies if—
 - (a) a person acquires a motor vehicle from a registered used car dealer; and
 - (b) the motor vehicle is registered under the **Road Safety Act 1986**; and
 - (c) the acquirer pays to the registered used car dealer the duty payable on the application for transfer of registration of the motor vehicle.
- (2) If this section applies, the registered used car dealer must endorse on the application for transfer of registration—
 - (a) the dealer's code number; and
 - (b) a statement that the acquirer has paid to the registered used car dealer the duty payable on the application and the amount of duty paid.

Penalty: 100 penalty units.

225. *Monthly returns and payment of duty*

- (1) A registered used car dealer must, on or before the 21st day of each month—
 - (a) lodge a return with the Commissioner; and
 - (b) pay to the Commissioner any amounts received from acquirers of motor vehicles during the preceding month in respect of duty payable under this Chapter on

applications for transfer of registration of those vehicles.

- (2) A "nil" return must be lodged if nothing has happened in the preceding month to require the registered used car dealer to pay an amount under this section.
- (3) The Commissioner may require a return under this section to be verified in the approved manner.

226. *Penalty tax and interest payable by dealer in some circumstances*

If—

- (a) a person acquires a motor vehicle from a registered used car dealer; and
- (b) the acquirer pays to the registered used car dealer the duty payable on the application for transfer of registration of the vehicle; and
- (c) a tax default occurs because the registered used car dealer fails to pay an amount in respect of the duty to the Commissioner in accordance with section 225(1)(b)—

any penalty tax and interest payable under the **Taxation Administration Act 1997** in respect of the tax default is payable by the registered used car dealer.

227. *Further penalty for failure to lodge or late lodgement*

- (1) If a registered used car dealer does not comply with section 225, the registered used car dealer is liable to a penalty of—
 - (a) an amount equal to the amount referred to in section 225(1)(b) and interest on that amount at the rate of 20% per annum from the day on which the payment under that section was required; or

(b) \$25—

whichever is the greater.

- (2) The penalty imposed by sub-section (1) is in addition to the dealer's liability for any amount under section 225(1)(b) and any penalty tax and interest payable under the **Taxation Administration Act 1997**.
- (3) The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit the penalty imposed by sub-section (1) by any amount.

228. *Unauthorised endorsement of code number*

- (1) A person must not endorse the code number of a registered used car dealer on an application for transfer of registration of a motor vehicle unless the person is required to do so by or under this Part.

Penalty: 100 penalty units.

- (2) A person must not endorse on an application for transfer of registration a statement that the acquirer has paid to a registered used car dealer any duty payable on that application unless the acquirer has paid the duty to the registered used car dealer.

Penalty: 100 penalty units.

- (3) A person must not endorse on an application for transfer of registration an amount of duty other than the amount of duty actually paid by the acquirer to the registered used car dealer.

Penalty: 100 penalty units.

- (4) Section 52 of the **Taxation Administration Act 1997** does not apply to the endorsement on an application for transfer of registration of a motor vehicle—

- (a) of the code number of a registered used car dealer; or
 - (b) of a statement that the acquirer of the vehicle has paid duty to the dealer; or
 - (c) of the amount of duty paid by the acquirer to the dealer.
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PART 3—EXEMPTIONS

229. *Ownership by devolution of title and deceased estates*

- (1) No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle made by a person who is beneficially entitled to the vehicle following the death of the person in whose name the vehicle was registered in Victoria.
- (2) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle made by a surviving spouse or de facto spouse who has acquired the vehicle through an entitlement to the whole or part of the estate of the deceased spouse or de facto spouse.
- (3) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle made by the executor or administrator of a deceased estate for the purpose of—
 - (a) subsequently transferring the vehicle to a person who is beneficially entitled to it; or
 - (b) enabling the subsequent sale of the vehicle in the course of winding up the estate.

230. *Registered used car dealers—trading stock, demonstrator vehicles and driver education*

- (1) No duty is chargeable under this Chapter on an application by a registered used car dealer who carries on a business of dealing in motor vehicles for transfer of registration of a motor vehicle—

- (a) in the course of, and for the purpose of carrying on that business; and
 - (b) solely for the purpose of the sale of the motor vehicle.
- (2) No duty is chargeable under this Chapter on an application by a registered used car dealer who carries on a business of dealing, for the purpose of sale by retail, in motor vehicles for transfer of registration of a motor vehicle—
- (a) in the course of, and for the purpose of carrying on that business and solely or primarily for the purpose of either or both of the following—
 - (i) the sale of the motor vehicle;
 - (ii) the use of the motor vehicle for the purpose of the sale of another motor vehicle of the same class; or
 - (b) solely or primarily for the purpose of the provision of the motor vehicle to a secondary educational institution for use for driver education purposes.

231. *Licensed motor car traders—trading stock, demonstrator vehicles and driver education*

- (1) No duty is chargeable under this Chapter on an application by a licensed motor car trader who carries on a business of dealing in motor vehicles for registration of a motor vehicle—
- (a) in the course of, and for the purpose of carrying on that business; and
 - (b) solely for the purpose of the sale of the motor vehicle.

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- (2) No duty is chargeable under this Chapter on an application by a licensed motor car trader who carries on a business of dealing, for the purpose of sale by retail, in motor vehicles for registration of a motor vehicle—
- (a) in the course of, and for the purpose of carrying on that business and solely or primarily for the purpose of either or both of the following—
 - (i) the sale of the motor vehicle;
 - (ii) the use of the motor vehicle for the purpose of the sale of another motor vehicle of the same class; or
 - (b) solely or primarily for the purpose of the provision of the motor vehicle to a secondary educational institution for use for driver education purposes.

232. *Applications by interstate licensed motor car traders*

- (1) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle made by a person who holds a licence under a law of another State or a Territory that corresponds to the **Motor Car Traders Act 1986** but does not hold a licence under that Act.
- (2) Sub-section (1) does not apply unless the application is made in the course of carrying out the business to which the licence relates.

233. *Exemption if no registration fee payable*

No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle made by a person if a fee would not be payable under the **Road Safety Act 1986** or regulations under that Act on a

transfer of the registration of the vehicle to that person.

234. *Corporate windings up and reductions in capital*

No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle made by a shareholder of a company in the course of a distribution of assets of the company because of the winding up or the reduction of the capital of the company.

S. 234A
inserted by
No. 46/2001
s. 19.

234A. *Amalgamation of industrial organisations*

- (1) No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle made to effect a transfer of the vehicle from an industrial organisation to another industrial organisation as a consequence of the amalgamation of two or more industrial organisations.
- (2) Sub-section (1) applies only if the transfer is made under, or in accordance with, the rules of the transferring industrial organisation.

S. 234B
inserted by
No. 46/2001
s. 19.

234B. *Financial sector (transfers of business)*

No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle made as a consequence of the vehicle becoming an asset of a receiving body under Part 3 of the Financial Sector (Transfers of Business) Act 1999 of the Commonwealth.

235. *Marriage and de facto relationships and their breakdown*

- (1) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle made to effect a transfer of the vehicle from one person to another person if—

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- (a) any of the following applies—
- (i) both people are married to each other;
 - (ii) both people have been married to each other and the Commissioner is satisfied that the transfer was made because of the breakdown of the marriage;
 - (iii) both people are de facto spouses of each other;
 - (iv) both people have been de facto spouses of each other and the Commissioner is satisfied that the transfer was made because of the breakdown of the de facto relationship; and
- (b) no other person takes or is entitled to take an interest in the vehicle under the transfer.
- (2) No duty is chargeable under this Chapter on an application for registration or transfer of registration of a motor vehicle made by a person if the Commissioner is satisfied that—
- (a) the application is made solely to transfer the vehicle to a trustee; and
 - (b) the transfer has been made because of the breakdown of a marriage; and
 - (c) the transferor is or was a party to the marriage; and
 - (d) no person other than a party to the marriage or a child of a party to the marriage is a beneficiary of the trust.

236. *Minors and trustees*

- (1) No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle made—

- (a) by a person for whom, when a minor, the vehicle was acquired by another person as nominee or trustee; and
 - (b) to give effect to the transfer of the vehicle from the nominee or trustee to the person after ceasing to be a minor.
- (2) No duty is chargeable under this Chapter on an application for transfer of registration of a motor vehicle made—
- (a) solely because of the appointment or retirement of a trustee or other change in trustees; and
 - (b) in order to vest the vehicle in the trustees for the time being entitled to hold the vehicle.

237. *Vehicles previously registered in the same name interstate*

No duty is chargeable under this Chapter on an application for registration of a motor vehicle by a person if—

- (a) the vehicle was last registered by the person outside Victoria but within Australia; and
 - (b) the Commissioner is satisfied that the vehicle was not registered outside Victoria for the purpose of avoiding duty under this Chapter.
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PART 4—DUTY ON CHANGE OF USE OR CHANGE OF OWNERSHIP

238. *Duty on statement of change of use*

- (1) This section imposes duty if—
 - (a) there is a change in the predominant use of a motor vehicle the last application for registration or transfer of registration of which was not chargeable with duty under this Act because of the use of the vehicle; and
 - (b) an application for registration or transfer of registration of the vehicle in Victoria is not made in connection with the change of use; and
 - (c) duty would have been chargeable on an application referred to in paragraph (b) had that application been made.
- (2) Within 14 days after there is a change in the predominant use of a motor vehicle of the kind referred to in sub-section (1), the registered operator of the vehicle must—
 - (a) lodge with the Commissioner a statement of the change in the use; and
 - (b) pay duty at the rate of \$8 per \$200, or part, of the dutiable value of the vehicle at the time the change occurred.
- (3) If a registered operator does not comply with sub-section (2), the registered operator is liable to a penalty of—
 - (a) an amount equal to the amount of duty referred to in sub-section (2)(b) and interest on that amount at the rate of 20% per annum

from the day on which the payment of the duty was required; or

(b) \$25—

whichever is the greater.

S. 238(4)
amended by
No. 46/2001
s. 31.

- (4) The penalty imposed by sub-section (3) is in addition to the registered operator's liability for the duty under sub-section (2)(b) and any penalty tax and interest payable under the **Taxation Administration Act 1997**.
- (5) The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit the penalty imposed by sub-section (3) by any amount.

239. Duty on statement of acquisition

- (1) This section imposes duty on the acquisition of a motor vehicle if an application for transfer of registration of the vehicle is not made within the time required for the lodgement of that application under the **Road Safety Act 1986** or regulations under that Act.
- (2) If a person acquires a motor vehicle and does not make an application for transfer of registration of the vehicle within the time required for the lodgement of that application under the **Road Safety Act 1986** or regulations under that Act, the person must, within 7 days after the expiry of that time—
- (a) lodge with the Commissioner a statement of the acquisition; and
- (b) pay duty at the rate of \$8 per \$200, or part, of the dutiable value of the vehicle at the time of the acquisition.

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- (3) If an application referred to in sub-section (2) is subsequently made and duty is paid on the application or the application is not chargeable with duty, the person is entitled to a refund of duty paid on the statement under sub-section (2).
- (4) The amount of duty refundable under sub-section (3) is—
- (a) if the application is not chargeable with duty—the whole amount of duty paid under sub-section (2); or
 - (b) if the application is chargeable with duty—the lesser of the amount of duty paid under sub-section (2) and the amount of duty payable on the application.
- (5) A person who does not comply with sub-section (2) is liable to a penalty of—
- (a) an amount equal to the amount of duty referred to in sub-section (2)(b) and interest on that amount at the rate of 20% per annum from the day on which the payment of the duty was required; or
 - (b) \$25—
- whichever is the greater.
- (6) The penalty imposed by sub-section (5) is in addition to the person's liability for the duty under sub-section (2)(b) and any penalty tax and interest payable under the **Taxation Administration Act 1997**.
- (7) The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit the penalty imposed by sub-section (5) by any amount.
-

PART 5—REFUND OF DUTY

240. *Entitlement to refund*

- (1) A person is entitled to a refund of duty paid by the person on an application for registration or transfer of registration of a motor vehicle if—
- (a) no duty is chargeable on the application; or
 - (b) after the duty is paid the application is refused; or
 - (c) after the duty is paid—
 - (i) the proposed acquisition of the motor vehicle does not proceed; and
 - (ii) the motor vehicle has been returned to the person from whom it was proposed to be acquired; and
 - (iii) all money refundable as a result of the acquisition not proceeding have been refunded to the person who proposed to acquire the vehicle.
- (2) A person is entitled to a refund of that part of the duty paid by the person on an application for registration or transfer of registration of a motor vehicle that is overpaid.
-

CHAPTER 10
MISCELLANEOUS DUTIES

PART 1—SALE OF CATTLE

241. *Imposition of duty*

This Part charges duty—

- (a) on a statement written out or caused to be written out under section 92(1)(a) of the **Livestock Disease Control Act 1994** by the owner or the owner's agent on the sale of cattle, calves or cattle carcasses; and
- (b) on a return furnished by an approved agent to the Commissioner under section 95(1)(a) of that Act.

242. *What is the rate of duty?*

- (1) The rate of duty is—
 - (a) in respect of the sale of cattle—5 cents per \$20, or part—
 - (i) of the amount of the purchase money for one head of cattle sold singly; or
 - (ii) of the total amount of the purchase money for any number of cattle sold in one lot;
 - (b) in respect of the sale of calves—15 cents for each calf sold;
 - (c) in respect of the sale of cattle carcasses, if the carcass is purchased on a weight sale basis after the animal has been slaughtered—
 - (i) 90 cents for each carcass that does not weigh more than 250 kilograms; and

(ii) \$1.30 for each carcase that weighs more than 250 kilograms.

(2) The maximum amount of duty chargeable in respect of any one head of cattle (whether sold singly or as part of a lot) is \$5.

243. *What is the purchase money?*

(1) The purchase money for a sale is taken not to include an amount in respect of any GST payable on the supply to which the sale relates.

(2) In calculating the purchase money for a sale, it is immaterial whether payment of the purchase money is made in full at the time of the sale or is to be made by instalments or is otherwise deferred.

PART 2—SALE OF SHEEP AND GOATS

244. *Imposition of duty*

This Part charges duty—

- (a) on a statement written out or caused to be written out under section 92(1A)(a) of the **Livestock Disease Control Act 1994** by the owner or the owner's agent on the sale of sheep or goats or sheep or goat carcasses; and
- (b) on a return furnished by an approved agent to the Commissioner under section 95(1A)(a) of that Act.

245. *What is the rate of duty?*

The rate of duty is 12 cents for each sheep, goat or carcass sold.

PART 3—SALE OF PIGS

246. *Imposition of duty*

This Part charges duty—

- (a) on a statement written out or caused to be written out under section 92(2)(a) of the **Livestock Disease Control Act 1994** by the owner or the owner's agent on the sale of pigs or pig carcasses; and
- (b) on a return furnished by an approved agent to the Commissioner under section 95(2)(a) of that Act.

247. *What is the rate of duty?*

- (1) Subject to sub-section (2), the rate of duty is 2 cents per \$5, or part—
 - (a) of the amount of the purchase money for one pig sold singly; or
 - (b) of the total amount of the purchase money for any number of pigs sold in one lot.
- (2) The maximum amount of duty in respect of the sale of any one pig (whether sold singly or as part of a lot) is 16 cents.

248. *What is the purchase money?*

- (1) The purchase money for a sale is taken not to include an amount in respect of any GST payable on the supply to which the sale relates.
- (2) In calculating the purchase money for a sale, it is immaterial whether payment of the purchase money is made in full at the time of the sale or is to be made by instalments or is otherwise deferred.

CHAPTER 11
GENERAL EXEMPTIONS FROM DUTY

249. *Security for payment of tax*

- (1) No duty is chargeable under this Act in respect of a mortgage given to or executed by the Commissioner to secure the payment of tax as a result of the Commissioner postponing or extending the time for the payment of tax.
- (2) In this section—
"tax" means—
 - (a) tax within the meaning of the **Taxation Administration Act 1997**; or
 - (b) land tax.

250. *Corporate reconstructions*

- (1) An instrument or a transfer of dutiable property is exempt from duty under this Act to the extent determined by the Minister if it is an instrument or transfer of a class that, under guidelines approved for the time being by the Minister, is a class of instrument or transfer arising out of a bona fide corporate reconstruction.
- (2) If duty under this Act has been paid on an instrument or transfer referred to in subsection (1), the Commissioner must refund any duty paid that, by reason of the exemption, is not payable.
- (3) The Minister must, before 31 October in each year, cause to be laid before each House of the Parliament a report of exemptions and partial exemptions approved and refunds made under this section in the preceding financial year, including—

- (a) the name of each corporation that has had the benefit of an exemption, partial exemption or refund; and
- (b) the amount of duty that would have been chargeable but for the exemption or partial exemption and the amount of any refund.

251. *Managed investment schemes*

The following are exempt from duty under this Act—

- (a) a transfer of property from—
 - (i) a responsible entity of a managed investment scheme; or
 - (ii) a person who held the property as a trustee of a prescribed interest scheme within the meaning of the Corporations Law as in force immediately before 1 July 1998 when the scheme became a registered scheme within the meaning of Division 11 of Part 11.2 of the Corporations Law—

to a custodian or agent of the responsible entity as custodian or agent of the scheme in which the transferor held the property;
- (b) a transfer of property from the custodian of the responsible entity of a managed investment scheme to the responsible entity;
- (c) an instrument that—
 - (i) amends, varies or replaces an instrument that establishes or governs a managed investment scheme; and

-
- (ii) does not transfer, or have the effect of transferring, any property to a person who does not hold units in the scheme; and
 - (iii) does not have the effect of reducing the number of persons who hold units in the scheme;
- (d) a declaration—
- (i) made by a trustee in respect of property that, immediately before the trust is declared, is held by the trustee as trustee of the prescribed interest scheme within the meaning of the Corporations Law as in force immediately before 1 July 1998; and
 - (ii) to hold the property on trust for the responsible entity of the managed investment scheme.

251A. *Mortgage-backed securities*

- (1) No duty is chargeable under this Act in respect of a mortgage over the interest of a person in a pool of mortgages relating to debt securities that are mortgage-backed securities issued by the person to secure the repayment of financial accommodation provided to the person.
- (2) No duty is chargeable under this Act in respect of a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages in connection with creating, issuing, marketing or securing a mortgage-backed security.
- (3) No duty is chargeable under this Act in respect of—
 - (a) the issue or making of a mortgage-backed security; or

S. 251A
inserted by
No. 46/2001
s. 20.

- (b) the transfer or assignment of or other dealing with a mortgage-backed security; or
 - (c) the discharge, cancellation or termination of a mortgage-backed security.
- (4) No duty is chargeable under this Act in respect of a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages for the purpose of creating, issuing, marketing or securing a mortgage-backed security—
- (a) to a person entitled to a mortgage-backed security or a trustee or agent for such a person; or
 - (b) by or to a person who issues, makes or endorses a mortgage-backed security; or
 - (c) to a person who provides security (whether as a guarantor, surety or otherwise) to a person entitled to a mortgage-backed security or a trustee or agent for such a person—

if the mortgage is executed on or after 1 July 2001.

S. 251B
inserted by
No. 46/2001
s. 20.

251B. *Instruments issued for the purpose of creating, issuing or marketing mortgage-backed securities*

No duty is chargeable under this Act in respect of an instrument that, in the Commissioner's opinion, was executed for the purpose of creating, issuing or marketing mortgage-backed securities.

CHAPTER 12
ADMINISTRATION AND ENFORCEMENT

PART 1—STAMPING INSTRUMENTS

252. *Provision of stamps*

The Commissioner may provide stamps or any other equipment that may be required for—

- (a) stamping instruments; or
- (b) otherwise denoting the payment of duty—

in accordance with the provisions of this Act.

253. *Limitation on use of designated stamps*

- (1) A person must not use a stamp that by its terms is limited to an instrument of a specified kind for an instrument of a different kind.

Penalty: 100 penalty units.

- (2) An instrument of a specified kind for which a particular stamp is specified is taken not to be duly stamped unless it is stamped with the stamp so specified.

254. *Form of stamps to be used*

- (1) An instrument that is required to be stamped by this Act is to be stamped by means of an impressed stamp.
- (2) However, another form of stamping may be used if its use is authorised by this Act or the Commissioner.

255. *Stamping of instruments*

The Commissioner must stamp an instrument in respect of which duty is chargeable under this Act or that effects or evidences a dutiable transaction and that has been lodged with the Commissioner if the duty, and any interest or penalty tax under Part 5 of the **Taxation Administration Act 1997**, is paid in full.

256. *When is an instrument duly stamped?*

An instrument is duly stamped if it is stamped in accordance with this Act.

257. *Adhesive stamps*

- (1) An adhesive stamp may be used to stamp the following instruments—
 - (a) a transfer of shares of a corporation or company that is not the legal or beneficial owner of land in Victoria, if the monetary consideration for the transfer is not less than the unencumbered value of the shares;
 - (b) a transfer of units in a unit trust scheme if the monetary consideration for the transfer is not less than the unencumbered value of the units;
 - (c) a lease or an assignment of a lease;
 - (d) a mortgage securing an amount not exceeding \$10 000.
- (2) An instrument that may be stamped by use of an adhesive stamp is not duly stamped unless—
 - (a) an adhesive stamp for the appropriate amount of duty is attached to the instrument; and

(b) the adhesive stamp is cancelled by marking the date of its cancellation on its face in such a way as to render it incapable of being used for any other instrument.

(3) Subject to sub-section (4), a person must not remove an adhesive stamp that has been attached to an instrument and cancelled.

Penalty: 100 penalty units.

(4) The Commissioner may remove an adhesive stamp that has been attached to an instrument and cancelled after an application for a refund of the duty denoted by the stamp has been approved.

258. *Licences to deal in stamps*

(1) The Commissioner may, on any terms and conditions he or she determines, grant a licence to a person to sell stamps.

(2) The licence must include the name and address of the licensee.

(3) The Commissioner may sell stamps to a licensee at the commission discount determined by the Commissioner.

(4) The Commissioner may re-purchase any stamps sold to a licensee if the licensee no longer requires them.

(5) The Commissioner may cancel a licence granted under this section at any time by giving notice of the cancellation to the licensee.

(6) A person who is not licensed under this section must not sell or deal in stamps.

Penalty: 20 penalty units.

259. Refunds—spoiled and unused stamps

- (1) A person may apply to the Commissioner for a refund of the value of adhesive stamps that have become spoiled or useless.
- (2) The spoiled or useless stamps must be produced to the Commissioner.
- (3) If an adhesive stamp is erroneously placed on a document, an application for a refund may be made as if the stamp were spoiled.

260. Reassessments—failed instruments

- (1) An instrument that fails its intended operation and becomes useless is not chargeable with duty under this Act.
- (2) The Commissioner must make a reassessment of duty in respect of such an instrument if an application for a reassessment is made within—
 - (a) 3 years after the initial assessment; or
 - (b) 12 months after the instrument has failed—whichever is the later.
- (3) The instrument in respect of which the application is made must be produced to the Commissioner unless the Commissioner dispenses with its production.

S. 261
amended by
No. 46/2001
s. 21.

261. Instruments to be separately charged with duty in certain cases

An instrument that contains, gives effect to, or relates to, two or more distinct matters or transactions is to be separately and distinctly charged with duty in respect of each such matter or transaction, as if each matter was expressed in a separate instrument.

262. Execution of instruments

For the purposes of this Act, an instrument described in column 1 of the Table is taken to be executed when it is executed by the parties specified in column 2 opposite that instrument.

TABLE

<i>Column 1</i> <i>Instrument type</i>	<i>Column 2</i> <i>Executing parties</i>
Transfer of land under the Transfer of Land Act 1958	Transferor and transferee
Conveyance of land (general law)	Grantor
Transfer of marketable securities	Transferor and transferee
Mortgage	Mortgagor or person who gives the mortgage
Lease	Lessor and lessee (whether both execute the original lease or one executes the original and the other executes a counterpart)
Assignment of lease	Assignor
Declaration of trust	Settlor

263. Counterparts and replicas

- (1) The Commissioner may stamp a counterpart or replica of an instrument chargeable with duty under this Act if the Commissioner is satisfied that—
 - (a) the instrument chargeable with duty has been duly stamped; or
 - (b) that the correct duty has been paid on the instrument chargeable with duty.

(2) The stamp on a counterpart or replica must indicate that the correct duty has been paid on the instrument of which it is a counterpart or replica.

(3) In this section—

"replica" means an instrument that—

(a) is executed to replace; and

(b) contains the same terms as, but no other terms than, those contained in—

a previously executed instrument that has been lost, spoiled or destroyed.

PART 2—AUTHORISATION OF RETURNS SYSTEMS

264. *Authorised persons*

- (1) The Commissioner may, by written notice, authorise specified persons, or persons of a specified class, to be authorised persons in relation to a specified class of instruments or transactions that are, or but for an exemption would be, chargeable with duty under this Act. **S. 264(1) amended by No. 46/2001 s. 22(1).**
- (2) An authorisation may be given on the initiative of the Commissioner or on application. **S. 264(2) substituted by No. 46/2001 s. 22(2).**
- (3) The Commissioner may vary or cancel an authorisation by written notice. **S. 264(3) inserted by No. 46/2001 s. 22(2).**

264A. *Application for authorisation*

- (1) An application for an authorisation under this Part must be made to the Commissioner in the approved form. **S. 264A inserted by No. 46/2001 s. 23.**
- (2) The Commissioner may grant or refuse an application for an authorisation under this Part.

264B. *Conditions of authorisation*

- (1) An authorisation under this Part is subject to any conditions specified by the Commissioner in the notice of authorisation or by subsequent written notice. **S. 264B inserted by No. 46/2001 s. 23.**
- (2) The conditions of an authorisation may include—
- (a) conditions as to the means by which returns are to be lodged or payments are to be made;
 - (b) conditions requiring the payment of interest, calculated at the interest rate determined in accordance with section 25 of the **Taxation**

Administration Act 1997, on any amounts that are not paid at the times they are required to be paid in accordance with the authorisation.

- (3) If an authorisation is given under this Part to a specified person or persons of a specified class, the conditions of the authorisation are binding on that person or persons of that class and that person or a person of that class is guilty of an offence if any of the conditions is contravened.

Penalty: 100 penalty units in the case of a body corporate;

20 penalty units in any other case.

S. 264C
inserted by
No. 46/2001
s. 23.

264C. *Gazettal or service of notices*

A written notice under this Part may be given by—

- (a) publishing it in the Government Gazette; or
- (b) serving it on the person to whom it relates.

265. *Endorsement of instruments by authorised persons*

- (1) An authorised person may endorse in the approved manner—
- (a) an instrument in the class of instruments; or
 - (b) an instrument effecting or evidencing a transaction in the class of transactions—
- in relation to which the person is authorised.
- (2) If duty is chargeable on the instrument or transaction, the endorsement must specify the amount of duty chargeable.
- (3) An instrument is taken—
- (a) to be duly stamped to the amount of duty shown on the endorsement; or

S. 265(3)
substituted by
No. 46/2001
s. 24(1).

(b) to be duly stamped as exempt from duty if the endorsement states that the instrument or transaction is exempt—

but without affecting liability for the payment of duty in relation to the instrument or transaction under this Act.

(4) An authorised person must keep a record in the approved form of endorsements made under this section.

(5) An authorised person must not knowingly—

(a) endorse an instrument with an amount of duty less than the amount with which it is chargeable under this Act; or

(b) otherwise endorse an instrument except in the approved manner.

(6) If an authorised person contravenes sub-section (5), the Commissioner may recover in a court of competent jurisdiction as a debt due to the State an amount equal to double the amount that would have been payable by the authorised person under section 266 had the correct amount of duty been endorsed on the instrument.

S. 265(5)
amended by
No. 46/2001
s. 24(2).

S. 265(6)
inserted by
No. 46/2001
s. 24(3).

266. *Payment of duty by authorised persons*

(1) An authorised person must, in accordance with this section—

(a) lodge a return with the Commissioner specifying the total of all amounts of duty endorsed on instruments by the authorised person under section 265; and

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

Penalty: 20 penalty units plus an amount equal to double the amount that would have

been payable if the provision had been complied with.

- (2) The return is to be lodged, and the sum paid, at the intervals, and in respect of the periods, determined by the Commissioner.

267. *Offset of overpaid amounts*

- (1) This section applies if an authorised person pays a sum to the Commissioner in respect of a period that is greater than the total amount of duty chargeable on each instrument, or on the transactions effected or evidenced by each instrument, endorsed by the authorised person during that period because the authorised person—
- (a) miscalculated the amount of duty with which an instrument or transaction is chargeable; or
 - (b) made a mistake adding up the total of all amounts endorsed on the instruments.
- (2) The authorised person may reduce the sum payable in respect of the next or a subsequent period (being a period within 3 years after the date on which the overpayment was made) by the amount overpaid.
- (3) An authorised person who reduces an amount under this section must lodge a statement with the Commissioner at the time of making the reduction giving details of the overpayment.
- (4) If the overpayment was caused by miscalculating the amount of duty chargeable on an instrument or transaction, the authorised person—
- (a) must re-endorse the instrument in the approved manner with the correct amount of duty; and

-
- (b) if the authorised person has charged to, or recovered from, another person an amount in respect of the overpayment—must reimburse that person for the amount charged or recovered.

268. *Unauthorised endorsement*

- (1) An authorised person must not endorse an instrument in a class of instruments in relation to which the person is not authorised.

Penalty: 100 penalty units.

- (2) A person who is not an authorised person must not endorse an instrument in any manner that indicates that the person is an authorised person.

Penalty: 100 penalty units.

PART 3—ENFORCEMENT**269. *Registration of instruments***

A person must not register in a register of legal or beneficial interests in dutiable property an instrument that effects a dutiable transaction or an instrument chargeable with duty unless—

- (a) it is duly stamped; or
- (b) it is stamped by the Commissioner or in a manner approved by the Commissioner; or
- (c) it is marked "interim stamp only" in accordance with section 30 or 121.

S. 269(b)
amended by
No. 46/2001
s. 25.

S. 269(c)
inserted by
No. 46/2001
s. 25.

Penalty: 100 penalty units.

270. *Registration of transfer of shares in private companies*

- (1) A private company must not enter in its records a transfer of shares on which duty is charged under this Act unless—
 - (a) a transfer has been delivered to the private company; and
 - (b) the transfer is duly stamped.

Penalty: 100 penalty units.

- (2) For the purposes of this section, a private company is entitled to assume that an instrument is duly stamped if—
 - (a) it bears any of the following—
 - (i) an impressed stamp;
 - (ii) an adhesive stamp, unless the company is the legal or beneficial owner of land in Victoria;

-
- (iii) an endorsement under section 265;
 - (iv) an endorsement in accordance with an approval under section 39 of the **Taxation Administration Act 1997**;
 - (v) an exempt stamp; or
- (b) it is accompanied by a current exemption certificate.

271. Registration of transfer of units

- (1) The trustee or manager of a unit trust scheme must not enter in its records a transfer of units on which duty is charged under this Act unless—
- (a) a proper instrument of transfer has been delivered to the trustee or manager; and
 - (b) the instrument is duly stamped.

Penalty: 100 penalty units.

- (2) For the purposes of this section, the trustee or manager of a unit trust scheme is entitled to assume that an instrument is duly stamped if—
- (a) it bears any of the following—
 - (i) an impressed stamp;
 - (ii) an adhesive stamp;
 - (iii) an endorsement under section 265;
 - (iv) an endorsement in accordance with an approval under section 39 of the **Taxation Administration Act 1997**;
 - (v) an exempt stamp; or
 - (b) it is accompanied by a current exemption certificate.

- (3) A reference in this section to the trustee or manager of a unit trust scheme includes a reference to the responsible entity, or to a custodian or agent of the responsible entity, of a managed investment scheme that is not registered under Chapter 5C of the Corporations Law.

272. Receipt of instruments in evidence

- (1) An instrument that effects a dutiable transaction or is chargeable with duty under this Act is not available for use in law or equity for any purpose and may not be presented in evidence in a court or tribunal exercising civil jurisdiction unless—
- (a) it is duly stamped; or
 - (b) it is stamped by the Commissioner or in a manner approved by the Commissioner.
- (2) A court or tribunal may admit in evidence an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, and that does not comply with sub-section (1)—
- (a) if the instrument is after its admission transmitted to the Commissioner in accordance with arrangements approved by the court or tribunal; or
 - (b) if (where the person who produces the instrument is not the person liable to pay the duty) the name and address of the person so liable is forwarded, together with the instrument, to the Commissioner in accordance with arrangements approved by the court or tribunal.

-
- (3) A court or tribunal may admit in evidence an unexecuted counterpart of an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, if the court or tribunal is satisfied that—
- (a) the instrument of which it is a counterpart is duly stamped, or is stamped in a manner approved by the Commissioner; or
 - (b) the counterpart is duly stamped under section 263.

273. Commissioner may obtain Valuer-General valuation

- (1) If—
- (a) a taxpayer provides any information to the Commissioner as to the value of any land that is relevant to an assessment of duty under this Act; and
 - (b) the Commissioner considers that the value of the land is understated—
- the Commissioner may refer the matter to the Valuer-General for valuation of the land.
- (2) The taxpayer must pay the cost of a valuation by the Valuer-General under subsection (1) if—
- (a) the Valuer-General's valuation of the land exceeds the valuation provided by the taxpayer by 15% or more; and
 - (b) the taxpayer does not object to the assessment of duty based on the valuation or, if the taxpayer does object, the valuation of the land as determined on objection, appeal or review exceeds the valuation provided by the taxpayer by 15% or more.

274. Ascertainment of value of certain items

Duties Act 2000
Act No. 79/2000

If it is necessary for the purpose of assessing duty under this Act to ascertain the value of—

- (a) any estate or annuity or interest for the life of any person; or
- (b) any estate or annuity or interest determinable on or subject to any contingency or the happening of any event; or
- (c) any estate or annuity or interest in remainder expectant on the death of any person or expectant on or subject to any contingency or the happening of any event—

regard may be had in ascertaining the value of any such property to the death of the person having the life estate or annuity or interest or the happening of the contingency or event at any time before the assessment of duty is actually made.

275. *Impounding of instruments*

- (1) The Commissioner may impound any instrument that ought to be but is not stamped or is insufficiently stamped.
- (2) The Commissioner may retain any impounded instrument until the duty or any interest or penalty tax, or all such amounts, have been paid.

276. *Injunction to prevent unregistered businesses trading*

The Supreme Court, on application by the Commissioner, may grant an injunction restraining a person who is required to be registered under this Act in respect of a business carried on by the person from carrying on such a business unless the person is so registered.

Duties Act 2000
Act No. 79/2000

s. 277

* * * * *

Chapter 12
Pt 4
(Heading and
ss 277–281)
repealed by
No. 46/2001
s. 26.

CHAPTER 13
GENERAL

282. *Payments from Consolidated Fund*

If the Commissioner is authorised or required to pay an amount under this Act, the amount is to be paid from the Consolidated Fund which is appropriated by this section to the necessary extent.

283. *Regulations*

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or that is necessary to be prescribed to give effect to this Act.
 - (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
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CHAPTER 14
REPEALS, CONSEQUENTIAL AMENDMENTS AND
TRANSITIONAL PROVISIONS

284. *Repeal of Stamps Act 1958*

The **Stamps Act 1958** is repealed.

285. *Consequential amendments*

An Act specified in the heading to an item in Schedule 1 is amended as set out in that item.

286. *Transitional provisions*

Schedule 2 has effect.

SCHEDULES

SCHEDULE 1

Section 285

CONSEQUENTIAL AMENDMENTS

1. *Co-operatives Act 1996*

- 1.1 Section 33 is **repealed**.
- 1.2 In sections 335(4), 386(4) and 386(5) **omit** "to stamp duty or".

2. *Hire-Purchase Act 1959*

- 2.1 In section 2(1), in the definition of "rental business duty", for "section 131AC of the **Stamps Act 1958**" **substitute** "Chapter 6 of the **Duties Act 2000**".
- 2.2 In the First Schedule, for "**Stamps Act 1958**" **substitute** "**Duties Act 2000**".

3. *Livestock Disease Control Act 1994*

- 3.1 In section 92(1)(b), (1A)(b) and (2)(b), for "payable under the **Stamps Act 1958**" **substitute** "chargeable under the **Duties Act 2000**".
- 3.2 In section 93(1), (1A) and (2), for "stamp duties payable under the **Stamps Act 1958**" **substitute** "duty chargeable under the **Duties Act 2000**".
- 3.3 In section 93(4), for "swine stamp duty" **substitute** "swine duty".
- 3.4 In section 94, for "**Stamps Act 1958**" **substitute** "**Duties Act 2000**".
- 3.5 In section 95(1)(b), (1A)(b) and (2)(b), for "stamp duty payable under the **Stamps Act 1958**" **substitute** "duty chargeable under the **Duties Act 2000**".
- 3.6 In section 96, for "**Stamps Act 1958**" **substitute** "**Duties Act 2000**".

4. Marketable Securities Act 1970

- 4.1 In section 3(1) the definition of "broker" is **repealed**.
4.2 In section 8(4) the definition of "broker's agent" is **repealed**.

5. Municipal Association Act 1907

For section 12 **substitute—**

"12. Association does not require registration as a general insurer under Duties Act 2000

Despite section 185 of the **Duties Act 2000**, the Association is not required to be registered under Part 2 of Chapter 8 of that Act."

5A. Road Safety Act 1986

In sections 5AB(1)(j) and 9A(1), for "**Stamps Act 1958**" **substitute "Duties Act 2000"**.

Sch. 1 item 5A
inserted by
No. 46/2001
s. 28.

6. Taxation Administration Act 1997

- 6.1 After section 4(b) **insert—**
"(ba) **Duties Act 2000** and regulations made under that Act;".
- 6.2 At the end of section 9(3)(b) **insert—**
"; or
(c) the reassessment is authorised to be made more than 3 years after the initial assessment by another taxation law."
- 6.3 After section 10(3) **insert—**
"(3A) The Commissioner may, if he or she thinks fit, permit any error in an instrument or statement to be corrected."
- 6.4 After section 43 **insert—**
"43A. Stamping of instruments
If—
(a) an approval under this Part provides for an exemption from a requirement for the stamping of an instrument; and
(b) the instrument is endorsed in accordance with the conditions of the approval—

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the instrument is taken to be duly stamped but without affecting liability for the payment of tax in relation to the instrument under the relevant taxation law."

6.5 In section 49, after sub-section (2) **insert**—

"(3) If—

- (a) the Commissioner extends the time for the payment of tax, being duty payable on an instrument; and
- (b) the instrument is not stamped before the end of the extension period—

the instrument may be stamped on payment of the unpaid duty and any applicable interest and penalty tax.

- (4) If the Commissioner accepts the payment of duty on an instrument by instalments, the instrument is not taken to be duly stamped until the total duty payable on the instrument has been paid.
- (5) In this section, a reference to an instrument includes a reference to a statement or return that records matters in respect of which duty is chargeable."

6.6 After section 100 **insert**—

"100A. Objections concerning the value of land

- (1) If an objection concerns the value of any land, the Commissioner must refer the matter to the Valuer-General for valuation of the land.
- (2) The objector must pay the cost of the valuation under sub-section (1) if—
 - (a) the objector had provided any information to the Commissioner as to the value of the land; and
 - (b) the Valuer-General's valuation exceeds the value provided by the objector by 15% or more; and
 - (c) the valuation as determined on the objection, or on appeal or review, exceeds the value provided by the objector by 15% or more.

7. Taxation (Interest on Overpayments) Act 1986

In section 3(1)—

Sch. 1 item
6.6 inserted
by No.
46/2001 s. 27.

-
- (a) in the definition of "objection"—
- (i) at the end of paragraph (d) **omit** "or";
 - (ii) paragraph (f) is **repealed**;
- (b) in the definition of "relevant tax" paragraph (f) is **repealed**.

8. Taxation (Reciprocal Powers) Act 1987

In section 3(1), in the definition of "State Taxation Act", for paragraph (b) **substitute**—

"(b) **Duties Act 2000**";.

9. Valuation of Land Act 1960

In section 3(5)(c), for paragraph (i) **substitute**—

"(i) where the valuation is required for determining, for the purposes of the **Duties Act 2000** or any corresponding previous enactment, the value of any land that is the subject of settlement or gift or for taxation purposes; or".

10. Victorian Funds Management Corporation Act 1994

In section 36, for "duty under the **Stamps Act 1958** would be payable on an instrument entered into for the purposes of a transaction" **substitute** "duty would be chargeable under the **Duties Act 2000** in respect of a transaction, or an instrument executed for the purposes of a transaction,".

SCHEDULE 2

Section 286

TRANSITIONAL PROVISIONS**1. Definitions**

In this Schedule—

"**commencement day**" means 1 July 2001;

"**former Act**" means the **Stamps Act 1958**.

2. Savings and transitional regulations

The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.

3. Application of Interpretation of Legislation Act 1984

Except where the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.

4. Instruments

This Act applies to instruments first executed on or after the commencement day.

5. Provisions relating to Chapter 2 (Transactions concerning dutiable property)

- (1) The duty charged by Chapter 2 is charged on dutiable transactions that occur on or after the commencement day, except as provided by this clause.
- (2) Section 24 extends to dutiable transactions at least one of which occurred before the commencement day and at least one of which occurred on or after the commencement day if they occurred within 12 months and the other provisions of section 24 are satisfied.
- (3) However, sub-clause (2) does not apply so as to aggregate transactions that occurred before the commencement day and that would not have been aggregated under the law in force immediately before that day.

Sch. 2 cl. 4
amended by
No. 46/2001
s. 29(1).

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(3A) Despite sub-clause (2), section 68 of the former Act continues to apply to a dutiable transaction or series of dutiable transactions that take place on or after 1 July 2001 if the agreement giving rise to that transaction or series of transactions was entered into before 1 July 2001.

Sch. 2 cl. 5(3A) inserted by No. 46/2001 s. 29(2).

(4) Section 35 extends to—

(a) a transfer of dutiable property to a trustee or nominee; and

(b) the payment of duty on that transfer—

before the commencement day if the transfer back to the transferor occurs on or after that day.

(5) Without limiting clause 12, the reference in section 36(2)(a)(i) to duty charged by this Act includes a reference to duty charged by the former Act.

(6) Despite anything to the contrary in section 28, the rate of duty chargeable on a transfer of land that is made as a result of an agreement entered into before 21 April 1998 is chargeable to the nearest whole dollar of the amount determined as follows or, if that amount is an amount of dollars and fifty cents, to the nearest whole dollar below that amount—

Sch. 2 cl. 5(6) inserted by No. 46/2001 s. 29(3).

Dutiable value of the land	Rate of duty
Not more than \$20 000	1·4% of the dutiable value
More than \$20 000 but not more than \$100 000	\$280 plus 2·4% of that part of the dutiable value that exceeds \$20 000
More than \$100 000 but not more than \$760 000	\$2200 plus 6% of that part of the dutiable value that exceeds \$100 000
More than \$760 000	\$41 800 plus 5·5% of the dutiable value that exceeds \$760 000

6. Provisions relating to Chapter 3 (Certain transactions treated as transfers)

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- (1) The duty that is charged by Chapter 3 is charged on an acquisition that occurs on or after the commencement day except as provided by this clause.
- (2) For the purposes of sections 80(2)(e) and 83—
 - (a) if an acquisition of an interest in a private corporation occurs in a month specified in column 1 of the Table, the period of 3 years specified in sections 80(2)(e) and 83 is taken instead to be the period specified opposite that month in column 2;

TABLE

<i>Column 1</i>	<i>Column 2</i>
<i>Month of acquisition</i>	<i>Specified period</i>
July 2001	24 months
August 2001	25 months
September 2001	26 months
October 2001	27 months
November 2001	28 months
December 2001	29 months
January 2002	30 months
February 2002	31 months
March 2002	32 months
April 2002	33 months
May 2002	34 months
June 2002	35 months.

- (b) a reference to duty paid under this Act includes a reference to duty paid under the former Act; and
- (c) a reference to duty paid under those sections is a reference to duty paid under Subdivision (7) of Division 3 of Part II of the former Act.

Sch. 2
cl. 6(2)(c)
amended by
No. 46/2001
s. 29(4).

Sch. 2 cl. 6(3)
substituted by
No. 46/2001
s. 29(5).

- (3) However, sub-clause (2) and Chapter 3 do not apply so as to aggregate, for the purpose of determining whether a relevant acquisition has been made or whether duty is chargeable

under this Act, interests that were acquired before the commencement day and that would not have been aggregated under the law as in force at the time the interests were acquired.

7. Provisions relating to the abolition of stamp duty on leases

Sch. 2 cl. 7
substituted by
No. 48/2001
s. 8.

- (1) If stamp duty under the former Act has been paid on any lease or agreement for a lease for any definite term of not less than 2 years and the lease is determined before the expiration of the full term in respect of which duty was paid, the Commissioner must, on application within 3 years after the determination, refund to the lessee or (where the lease has been transferred or assigned) to the transferee or assignee an amount equal to the difference between the stamp duty paid and the stamp duty that would have been payable if the lease had been expressed to expire at the date of determination.
- (2) Sub-clause (1) does not apply if the Commissioner is satisfied that, at any time after the determination of the lease, the lessee or an associate of the lessee has occupied the leased property, or substantially the same property, with the agreement (express or implied) of the lessor (other than as a result of the sale of the property to the lessee or associate).
- (3) An application for a refund under this clause must be accompanied by—
 - (a) the lease or agreement for a lease on which stamp duty was paid; and
 - (b) a declaration by the applicant stating that neither the lessee nor any associate of the lessee has occupied or will occupy the leased property, or substantially the same property, after the determination of the lease (other than as a result of the sale of the property to the lessee or associate).
- (4) A person must not knowingly make a false declaration under sub-clause (3)(b).
Penalty: 300 penalty units in the case of a body corporate;

60 penalty units in any other case.

(5) In this section—

"determination" includes surrender and forfeiture.

8. Provisions relating to Chapter 6 (Hire of goods)

- (1) The duty chargeable by Chapter 6 is charged on a hire of goods that is entered into on or after the commencement day.
- (2) A person who, immediately before the commencement day, is registered under section 131AB of the former Act is taken to be registered under Part 2 of Chapter 6.

9. Provisions relating to Chapter 7 (Mortgages)

- (1) The duty charged by Chapter 7 is charged on—
 - (a) a mortgage that is first executed on or after the commencement day; and
 - (b) an advance or a further advance that is made on or after the commencement day on a mortgage first executed before the commencement day.
- (2) Subject to sub-clause (4), a mortgage duly stamped or not subject to duty under the former Act immediately before the commencement day is on that day taken to be duly stamped under this Act.
- (3) A mortgage that is not duly stamped under the former Act immediately before the commencement day is on that day taken to be chargeable with duty under Chapter 7.
- (4) Despite sub-clause (2), a mortgage first executed before the commencement day that secures amounts liable or contingently liable under a bill facility referred to in section 150(1)(b) is chargeable with duty under Chapter 7 on or after that day on the amount by which the advances secured by it exceeds the amount secured or contingently secured by it on 30 June 2001.
- (5) Despite sub-clause (3), if—
 - (a) an advance was made under a mortgage before the commencement day, being a mortgage over property partly within and partly outside Victoria; and
 - (b) the mortgage is not stamped before the commencement day—

Sch. 2
cl. 9(1)(b)
amended by
No. 46/2001
s. 29(6)(a).

Sch. 2 cl. 9(2)
amended by
No. 46/2001
s. 29(6)(b).

Sch. 2 cl. 9(4)
inserted by
No. 46/2001
s. 29(7).

Sch. 2 cl. 9(5)
inserted by
No. 46/2001
s. 29(7).

duty on the mortgage is to be determined in accordance with section 137DA of the former Act as in force immediately before the commencement day.

10. Provisions relating to Chapter 8 (Insurance)

- (1) The duty charged by Chapter 8 is charged on—
 - (a) the amount of a premium paid in relation to a contract that effects general insurance; or
 - (b) a policy of life insurance—if the contract or policy is effected or renewed on or after the commencement day.
- (2) A person who, immediately before the commencement day, is registered under section 96 of the former Act is taken to be registered under Part 2 of Chapter 8.
- (3) A person who, immediately before the commencement day, is an approved insurer under section 111D of the former Act is taken to be registered under section 203.

11. Provisions relating to Chapter 9 (Motor vehicle duty)

A person who, immediately before the commencement day, is registered under section 137AG of the former Act is taken to be registered under Part 2 of Chapter 9.

12. Duty paid under the former Act

If an assessment or reassessment of duty under this Act is required to take into consideration another amount of duty paid, a reference in this Act to duty includes a reference to duty within the meaning of the former Act that has been paid in accordance with that Act.

13. Stamping under the former Act

An instrument is duly stamped for the purposes of this Act if, immediately before the commencement day, it was duly stamped for the purposes of the former Act.

14. Exemptions from duty under the former Act

If, by a provision of an Act other than the former Act, a transaction or instrument was not chargeable with duty under the former Act immediately before the commencement day, the transaction or instrument is not chargeable with duty under this Act, unless the contrary intention appears.

15. Continuation of former Act and regulations

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If a provision of the former Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to that provision—

- (a) any other provision of the former Act necessary to give effect to that continued provision; and
- (b) any regulation made under the former Act for the purposes of that continued provision.

Sch. 2 cl. 16
inserted by
No. 46/2001
s. 30.

16. *Authorised persons*

- (1) A person who, immediately before the commencement day, was an authorized person under section 40A of the former Act is taken to be an authorised person under section 264.
 - (2) A condition to which the authorization of a person under section 40A was subject immediately before the commencement day is taken to be a condition specified on the person's authorisation by the Commissioner under section 264B.
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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 5 October 2000

Legislative Council: 1 November 2000

The long title for the Bill for this Act was "to create and charge a number of duties, to repeal the **Stamps Act 1958**, to make consequential amendments to other Acts and for other purposes."

The **Duties Act 2000** was assented to on 28 November 2000 and came into operation on 1 July 2001: section 2.

2. Table of Amendments

This Version incorporates amendments made to the **Duties Act 2000** by Acts and subordinate instruments.

Duties (Amendment) Act 2001, No. 46/2001

Assent Date: 27.6.01

Commencement Date: Ss 3–31 on 1.7.01: s. 2(2)

Current State: This information relates only to the provision/s amending the **Duties Act 2000**

State Taxation Acts (Taxation Reform Implementation) Act 2001, No. 48/2001

Assent Date: 27.6.01

Commencement Date: Ss 5–6(3), 7, 8 on 1.7.01: s. 2(3)

Current State: This information relates only to the provision/s amending the **Duties Act 2000**

3. Explanatory Details

¹ S. 28(2): The rate of duty chargeable on dutiable transactions in respect of marketable securities is dealt with in section 29. Concessional rates of duty chargeable on certain dutiable transactions are dealt with in Part 5 of this Chapter.

² S. 35(1): Transfers of marketable securities to or from trustees or nominees are dealt with in section 67.

³ Chapter 3: This Chapter charges duty on certain transactions that are not "dutiable transactions" under Chapter 2. Duty is chargeable under Part 2 of this Chapter on the acquisition by a person of an interest consisting of certain shareholdings in a private company, or unitholdings in a private unit trust scheme, whose property in either case consists, to the prescribed extent, of land holdings.

The duty is chargeable at the general rate for a dutiable transaction under Chapter 2, rather than at the rate applicable to transfers of shares and units. An acquisition statement must be lodged when a majority interest is acquired or increased. Duty on an acquisition statement is chargeable only on interests acquired within a 3-year period. In certain cases the obligation to pay duty at the higher rate is phased-in (see section 87).

Duty is chargeable—

under Part 3 on transactions by which corporate capital is reduced by redemption, surrender or cancellation of shares or reduction of share value or alteration of share rights;

under Part 4 on the allotment of shares by direction.

⁴ S. 105: Section 10(4) of the **Financial Sector Reform (Victoria) Act 1999**, No. 37/1999 provides that property transferred under Part 3 of the Financial Sector (Transfers of Business) Act 1999 of the Commonwealth ("the Commonwealth Act") becomes the property of the receiving body when the certificate of transfer issued under section 18 of the Commonwealth Act comes into force under Division 3 of Part 3 of the Commonwealth Act.