

Duties Bill

Circulation Print

EXPLANATORY MEMORANDUM

General

The object of this Bill is to replace the **Stamps Act 1958** with a modern statute expressed in clear language and with a more contemporary conceptual foundation. With this Bill liability to pay duty is shifted from the execution of a paper instrument, to the completion of a transaction which may or may not be reduced to writing. In line with current business practice, furthermore, there are specific provisions that recognise the increasing number of inter-state transactions and which ensure that the various States or Territories do not levy duty in respect of the same transaction.

The Bill is based on provisions that are broadly uniform across Australia; New South Wales and the Australian Capital Territory having passed duties legislation and most other Australian jurisdictions proposing to do so in the near future.

The existing stamp duties are replaced by the following duties—

- duty on transfers and transactions concerning dutiable property (Chapter 2);
- an anti-avoidance provision, charging duty at the rate applicable to transfers of land on the acquisition by a person of an interest consisting of certain shareholdings in a private company, or unitholdings in a unit trust scheme, which has substantial land holdings (Chapter 3);
- financial sector (transfer of business) duty (Chapter 4);
- lease instruments duty (Chapter 5);
- hire of goods duty (Chapter 6);
- mortgages duty (Chapter 7);

- insurance duty (Chapter 8);
- motor vehicle duty (Chapter 9);
- miscellaneous duty on the sale of cattle, calves, sheep, goats, pigs and carcasses (Chapter 10).

The proposed Act will be a "taxation law" for the purposes of the **Taxation Administration Act 1997** and is to be read together with that Act.

Exemptions from duty are contained throughout the Bill, rather than being located in Schedules, as they are in the **Stamps Act 1958**.

CHAPTER 1—PRELIMINARY

Chapter 1 contains clauses 1 to 6. It sets out the name of the proposed Act, provides for its commencement on 1 July 2001, explains its purpose, provides for the definition of certain words and expressions used throughout the proposed Act, and contains other provisions of an introductory nature.

Clause Notes

- Clause 1 states the purpose of the Bill.
- Clause 2 provides that the Bill will come into operation on 1 July 2001.
- Clause 3 provides definitions of words and expressions used in the Bill.
- Clause 4 outlines the arrangement of the Bill.
- Sub-clause (1) provides that the Bill is divided into Chapters, Parts and Divisions.
- Sub-clause (2) provides that if a provision of the Bill refers to a Chapter by number, the reference is ordinarily to be construed as a reference to the Chapter designated by the number.
- Sub-clause (3) sets out a provision similar to sub-clause (2) in relation to the construction of a reference to a Part by number.
- Clause 5 provides that the Bill once enacted is to be read together with the **Taxation Administration Act 1997**. That Act deals with matters of administration and enforcement of taxation laws.
- Clause 6 Sub-clause (1) provides that the Bill binds the Crown.
- Sub-clause (2) provides that nothing in the Bill makes the Crown liable to be prosecuted for an offence.

CHAPTER 2—TRANSACTIONS CONCERNING DUTIABLE PROPERTY

Chapter 2 contains clauses 7 to 69. Duty under the Chapter is charged on transfers of dutiable property and on the following transactions—

- a declaration of trust over dutiable property;
- a surrender of an estate in land;
- a vesting of dutiable property by a court order or an order of the Registrar of Titles;
- the conversion of long term leases into fee simple under section 153 of the **Property Law Act 1958**;
- the granting of a lease with provision for future transfer or sale where consideration is paid or agreed to be paid; and
- 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.

Such transfers or transactions are called dutiable transactions for the purposes of the proposed Act.

The Chapter provides an exhaustive list of property, which will be regarded as "dutiable property".

A liability to duty arises when a dutiable transaction occurs, or if effected in writing, when the instrument is first executed. Duty charged by the Bill is payable by either the transferee on a transfer or by the party specified in relation to other dutiable transactions as provided for in the Chapter.

As not all transactions need to be effected by a written instrument, a liability may be satisfied either by stamping the written instrument which effects the transaction, or in the case of a transaction not reduced to writing, by a written statement.

To avoid penalty consequences, the instrument must be lodged and duty paid within 3 months after the liability to pay duty arises. If multiple instruments effect the transaction, only one is to be stamped with duty and the remainder denoted in respect of the stamping. Duty is charged on the dutiable value of the dutiable property that is the subject of the dutiable transaction at the rates of duty specified. "Dutiable value" is defined as the greater of the consideration for a dutiable transaction or the unencumbered value of the

relevant "dutiable property". What constitutes "consideration" and "unencumbered value" is clearly set out. Amounts paid or payable in respect of a transferee's improvements after settlement of the contract will also not be subject to duty in respect of those improvements. The Commissioner has discretion to ignore any arrangement for the purpose of reducing the value of marketable securities being transferred or otherwise dealt with.

The Chapter treats as a single transaction the aggregate of dutiable transactions relating to land or goods which pass with land if the transactions that give effect to or arise from this are substantially the one transaction. They must occur within 12 months and involve the same transferee, or if there is more than one transferee, the transferees must be associated persons. The Commissioner has discretion to disaggregate the transaction on being satisfied that related parties acquired their interests in the property independently of each other.

Provision is made for the apportionment of consideration between dutiable and other property as well as between different types of dutiable property.

The Chapter also clarifies existing practice where the dutiable value of dutiable property is unascertainable by permitting the Commissioner to make an assessment by way of estimate until the full dutiable value is ascertainable. A reassessment and refund must be made where appropriate.

Liability to duty is imposed in respect of sub sales of land which are not effected by transfer. The following circumstances are excepted: a written agency exists, the trustee holds the property under a bare trust, the transaction is in anticipation of the incorporation of a transferee company, common company directors are involved, relatives or related corporations are involved, or the dutiable transaction would be otherwise exempt under the Act.

Existing policy is clarified by providing that a refund must be made upon re-transfer to a mortgagor (the prior transferor), if ad valorem duty was paid on a transfer of a fee simple estate in land, and the transferee held the fee simple estate in land by way of security for a loan. Mortgage duty is payable in these circumstances and not land transfer duty.

Part 5 contains a number of exemptions from duty including certain transfers of trust property, instruments relating to managed investment schemes and certain transactions relating to superannuation and deceased estates. The Bill maintains all existing exemptions under the **Stamps Act 1958** in relation to transfers of land, shares and units, including equality of partition, spouses and de facto partners, joint tenancy to tenants in common and for inter-generational farm transfers.

Division 5 of Part 5 also makes provision for first home buyer and pensioner exemptions and concessions.

Clause Notes

PART 1—INTRODUCTION AND OVERVIEW

Clause 7 imposes duty on certain transactions concerning dutiable property.

Sub-clause (1) charges duty on a transfer of dutiable property, and on other transactions, including—

- a declaration of trust over dutiable property;
- a surrender of an estate in land;
- a vesting of dutiable property by a court order or an order of the Registrar of Titles;
- the conversion of a long term lease into a fee-simple under section 153 of the **Property Law Act 1958**;
- the granting of a lease with provision for future transfer or sale where consideration is paid or agreed to be paid; and
- 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.

Sub-clause (2) provides that such a transfer or transaction is a "dutiable transaction".

Sub-clause (3) provides that the assignment of a long term lease referred to in section 153 of the **Property Law Act 1958** is not a dutiable transaction. Such an assignment would be dutiable under Chapter 5.

Sub-clause (4) provides a definition of "declaration of trust".

- Clause 8 imposes duty on dutiable transactions that are not transfers.
- Sub-clause (1) provides that duty under this Chapter is charged on the transactions referred to in clause 7(1) as if each were a transfer of dutiable property.
- Sub-clause (2) sets out a table for charging duty on dutiable transactions that are transfers, which outlines for each dutiable transaction: the property transferred, the transferee of the dutiable property and the time that the transfer of the property is taken to have occurred.
- Clause 9 sets out the form which a dutiable transaction can take.
- Sub-clause (1) provides that a dutiable transaction may be effected either wholly in writing, partly in writing and partly orally or wholly orally as evidenced by whole or part performance.
- Sub-clause (2) provides that a dutiable transaction may be effected by any means, including electronically.
- Clause 10 defines "dutiable property".
- Sub-clause (1) provides an extensive list of what constitutes dutiable property and identifies the relevant nexus for duty, including—
- specified estates in land in Victoria;
 - shares in a Victorian company or in a corporation whose shares are kept on a register kept in Victoria;
 - units in a unit trust scheme registered in Victoria or where the manager of the scheme is a Victorian company or a natural person resident in Victoria;
 - goods in Victoria held or used in connection with a dutiable transaction concerning any estate in land, including goods used in connection with a business carried on the land or in connection with the land, but excluding certain specified goods;
 - an interest in an deceased person's estate comprising property elsewhere referred to in this clause;

- an interest of a purchaser of an estate in land elsewhere referred to in this clause under an agreement to purchase; and
- an interest in shares and units.

Sub-clause (2) excludes marketable securities from the definition of dutiable property that are shares or units quoted on the Australian Stock Exchange (ASX) or a recognised stock exchange and an interest in shares or units in specifies estates in land whether or not quoted on the ASX or a recognised sock exchange.

Clause 11 sets out when a liability for duty arises.

Sub-clause (1) provides that a liability to duty arises when a dutiable transaction occurs.

Sub-clause (2) provides that if a dutiable transaction is effected in writing, liability to duty arises when the instrument is first executed.

Clause 12 provides that the transferee is normally liable to pay the duty unless otherwise specified in the Chapter.

Clause 13 provides that joint tenants of dutiable property are deemed to hold dutiable property as tenants in common in equal shares.

Clause 14 requires a written instrument to be executed or a written statement to be made.

Sub-clause (1) requires that a statement in the approved form must be made by the transferee where a dutiable transaction is not effected in writing.

Sub-clause (2) requires that a statement be made within 3 months after the liability arises.

Sub-clause (3) provides that if a dutiable transaction is completed or evidenced in writing within 3 months, the requirement to lodge a statement is satisfied by the lodgment and payment within 3 months of duty on the written instrument.

Clause 15 requires that the transferee must lodge the written instrument or statement with the Commissioner within 3 months after the liability arises.

- Clause 16 provides that a tax default does not occur under the **Taxation Administration Act 1997** if duty is paid 3 months after the liability arises.
- Clause 17 provides that if a dutiable transaction is effected by more than one instrument, only one instrument is to be stamped with duty and the other instruments are to be denoted with a statement of the amount and date of payment of the duty.
- Clause 18 provides that duty is charged and calculated at the rate of duty set out in Part 3.
- Clause 19 states that concessions and exemptions from duty charged by the Chapter are set out in Part 5.

PART 2—DUTIABLE VALUE

- Clause 20 provides that the dutiable value of dutiable property is the greater of the consideration for the dutiable transaction or the unencumbered value of the dutiable property.

- Clause 21 sets out what the consideration for the transfer of dutiable property is.

Sub-clause (1) provides that the consideration for the transfer of property includes the amount or value of all encumbrances.

Sub-clause (2) provides that the consideration for the transfer of a purchaser's interest under a contract of sale of dutiable property includes the balance owing under the contract.

Sub-clause (3) provides that the consideration for duty purposes for a transfer of land on the sale of that land excludes any amount paid or payable for the construction of a building on the land on or after the contract date.

Sub-clause (4) relates to the assessment of the consideration for the transfer of dutiable property in respect of a lot on a plan of subdivision. It provides that the consideration in respect of a lot on a plan of subdivision (within the meaning of the **Subdivision Act 1988**) does not include the cost of refurbishment of that lot carried out after the contract date and before the transfer if certain conditions and requirements are met. The transferor must be the first registered proprietor of the lot, which must be transferred to the transferee first after registration of the plan of

subdivision. The transferee must not have entered into any other contract for the refurbishment of the lot. When lodged with the Commissioner, copies of the building permit or approval must accompany the transfer together with the contract for the refurbishment. Certain specified information must also be provided by way of statutory declarations, including information which the Commissioner may require.

Sub-clause (5) defines the term "refurbishment".

Clause 22 sets out what is the unencumbered value of dutiable property.

Sub-clause (1) provides that the unencumbered value of dutiable property is the amount for which the property might reasonably have been sold in the open market free from any encumbrances at the date of transfer.

Sub-clause (2) provides that, in determining the amount for which property might reasonably have been sold free from encumbrances for the purposes of assessing ad valorem duty, any interest, agreement or arrangement that has the effect of reducing the value of the property, must (subject to sub-clause (3)) be disregarded.

Sub-clause (3) states that an interest, agreement or arrangement referred to in sub-clause (2) is not to be disregarded if the Commissioner is satisfied that it was not granted or entered into with the purpose of reducing duty otherwise payable upon the transfer.

Sub-clause (4) provides the criteria to which the Commissioner may have regard in determining whether he or she is satisfied that an interest, agreement or arrangement was not entered into with the reduction of duty as a purpose. These include—

- the duration of the interest, agreement or arrangement;
- whether the interest had been granted to, or the agreement or arrangement made with, an associate, a related corporation or a trustee of the transferor or transferee;

- whether there is commercial efficacy to the granting of the interest or making of the agreement or arrangement other than the reduction of duty; and
- any other matters the Commissioner considers relevant.

Clause 23 deals with agreements that reduce the dutiable value of marketable securities.

Sub-clause (1) provides that the Commissioner may include in the unencumbered value of any marketable securities of a company the value of any assets formerly owned or controlled by the company if—

- those assets were transferred to the transferee of the marketable securities or to an associated person of the transferee before the transfer of the marketable securities; and
- those assets are necessary for the continuing operation of the company; and
- the value of the marketable securities was reduced following the transfer of ownership or control of the assets because the proceeds of that transfer were not retained by the company.

Sub-clause (2) sets out the matters the Commissioner may take into account in determining whether assets are necessary for the continuing operation of a company.

Sub-clause (3) provides that this clause does not apply if the Commissioner is satisfied that the transfer of ownership and control of the assets was part of the normal business operations of the transferee or was not part of a duty minimisation scheme.

Clause 24 provides for the aggregation of certain dutiable transactions.

Sub-clause (1) provides that dutiable transactions of separate dutiable items or parts of land and goods are to be aggregated and treated as one dutiable transaction if—

- they occur within 12 months,
- the transferee is the same person or the transferees are associated persons, and

- the dutiable transactions together are substantially one arrangement.

Sub-clause (2) provides that dutiable transactions are not to be aggregated if the Commissioner is satisfied that it would not be just and reasonable to do so in the particular circumstances.

Sub-clause (3) provides that the dutiable value of the aggregated dutiable property is the sum of the dutiable values of the items or parts of the dutiable property calculated at the time when each dutiable transaction occurs.

Sub-clause (4) provides that the amount of duty payable is to be reduced by the amount of duty paid on a prior dutiable transaction that is the subject of aggregation under this clause.

Sub-clause (5) provides that the duty may be apportioned between the instruments or stamped in accordance with clause 17.

Sub-clause (6) requires the transferee to disclose, at or prior to the lodgement of an instrument, relevant details of all items or parts of the dutiable property to be included in an arrangement to which sub-clause (1) applies, including the consideration for each item or part.

A maximum penalty of 100 penalty units (\$10 000) may be imposed for failing to disclose the matters the subject of this provision.

Clause 25 deals with the apportionment of dutiable and other property that is the subject of one dutiable transaction.

Sub-clause (1) provides that if a dutiable transaction relates to both dutiable and non-dutiable property, duty is chargeable only to the extent that it relates to the dutiable property.

Sub-clause (2) provides that where different rates of duty apply to different types of dutiable property the subject of one dutiable transaction, duty is chargeable as if separate dutiable transactions had occurred for each type of dutiable property.

Clause 26 provides that where a dutiable transaction effects a partition or division of marketable securities, duty is payable on the value less any beneficial interest held by the transferee prior to the transaction.

Clause 27 provides that where a dutiable transaction effects a partition or division of an interest in land, duty is payable on the value less any beneficial interest held by the transferee prior to the transaction.

PART 3—RATES OF DUTY

Clause 28 provides for a general rate of duty.

Sub-clause (1) sets out the general rate of duty chargeable on a dutiable transaction under this Chapter.

Sub-clause (2) provides that the general rate applies unless other provision is made under this Chapter.

Clause 29 sets out the rate of duty on a dutiable transaction in respect of marketable securities.

PART 4—SPECIAL PROVISIONS

Clause 30 deals with the interim payment of duty.

Sub-clause (1) provides that if the value of dutiable property is unascertainable, the Commissioner may make an estimate in accordance with section 11(2) of the **Taxation Administration Act 1997**.

Sub-clause (2) provides that any instrument or statement required by clause 14 may be stamped "interim stamp only".

Sub-clause (3) empowers the Commissioner to reassess the duty when the full dutiable value is ascertainable.

Sub-clause (4) provides that if no further duty is payable the interim stamp is to be cancelled and a refund made of any duty paid in excess of the amount of the assessment.

Sub-clause (5) provides that where further duty is payable, the liability for duty arises on the issue of a notice of assessment.

Sub-clause (6) provides that on payment of the balance of the duty the instrument or statement is to be stamped with the amount of the balance and the payment.

Clause 31 covers sub sales of land.

Sub-clause (1) provides that, in the case where a person agrees to transfer dutiable property referred to in clause 10(1)(a) or (d) (land or goods used in connection with land) not to the first purchaser but to another person ("the transferee"), the transfer is not chargeable with duty in respect of the initial agreement, but is separately chargeable with duty on the value of—

- the property in the agreement;
- the property conveyed to the transferee; and
- the transaction or agreement whereby the rights and interests of the first purchaser were acquired by the transferee.

Sub-clause (2) provides that the value of the property in an agreement or transaction referred to in sub-clause (1) is the greater of the consideration or the amount for which the property would have sold in the open market free from encumbrances.

Sub-clause (3) provides that a transfer is not separately chargeable with duty if—

- the agreement was entered into by the first purchaser as agent (with authority in writing) of the transferee, or in anticipation of the incorporation of the transferee, or as trustee for the transferee; or
- the transferee is a body corporate, of which at the time the transaction was entered into, the first purchaser was a director; or
- the transferee is a relative of the first purchaser, or
- the first purchaser was a related corporation of the transferee at the time the agreement was entered into; or
- the agreement would be exempt from duty under another provision of the Act.

Sub-clause (4) provides that duty charged upon an agreement or transaction under sub-clause (1) shall be payable by the person acquiring the rights of the first purchaser.

Sub-clause (5) enables a transferee who pays the duty payable on an agreement or transaction by another person to recover the duty from that person as a debt.

Sub-clause (6) deems that, for the purposes of this clause and without limiting the ways in which a person may be taken to acquire the rights and interest of another person in property, a first person who has an interest in property acquires the rights and interest of a second person in that property in the following circumstances. If as the result of an agreement, arrangement or understanding involving those persons—

- the second person acquires an interest in the property; and
- the interests of the first person in the property are increased—

the first person is deemed to have acquired an interest in the property.

Clause 32 deals with transfers arising from mortgages of land.

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

Sub-clause (2) provides that the Commissioner must refund duty paid, less mortgage duty, if the dutiable property is re-transferred to the mortgagor, who is to hold the dutiable property as the registered proprietor.

Sub-clause (3) defines, for the purposes of the clause, a transfer by way of mortgage.

PART 5—EXEMPTIONS AND CONCESSIONAL RATES OF DUTY

Division 1—Trusts

Clause 33 exempts from duty transfers resulting from changes in trustees.

Sub-clause (1) defines "new trustee" and "special trustee" for the purpose of this clause.

Sub-clause (2) exempts from duty a transfer of dutiable property to a special trustee as a consequence of the retirement or appointment of a trustee.

Sub-clause (3) exempts from duty a transfer of dutiable property that is as a consequence of the retirement or appointment of a trustee other than a special trustee where the Commissioner is satisfied that neither the remaining nor appointed trustees could become a beneficiary under the trust.

Sub-clause (4) charges duty on transfer where the Commissioner is not satisfied under sub-clause (3).

Sub-clause (5) exempts from duty a transfer of property as a consequence of the retirement of a responsible entity of a managed investment scheme where the Commissioner is satisfied that the only beneficial interest acquired is that acquired by the replacement or appointment of the new responsible entity.

Clause 34 exempts from duty property vested in an apparent purchaser.

Sub-clause (1) provides an exemption from duty if there is—

- a declaration of trust by an apparent purchaser that identified dutiable property is held or to be held for another person who provided the consideration; or
- a transfer of dutiable property to a real purchaser who provided consideration from an apparent purchaser who merely held the property on trust for the real purchaser.

Sub-clause (2) provides that, in this clause, "purchase" includes an allotment.

Clause 35 exempts from duty transfers to and from a trustee or nominee.

Sub-clause (1) provides an exemption from duty for a transfer for no consideration of dutiable property to a trustee or nominee who is to hold that property solely for the transferor (beneficiary) who is absolutely entitled to the ownership of that property. A transfer made by way of re-transfer to the transferor in these circumstances is also exempted.

Sub-clause (2) provides that when considering changes in beneficial ownership of the property the creation of a trustee's right of indemnity from the property is not included.

Clause 36 exempts property passing to the beneficiaries under a trust.

Sub-clause (1) provides an exemption from duty for a transfer of dutiable property made for no consideration under a declaration of trust.

Sub-clause (2) qualifies sub-clause (1). The exemption applies only if the Commissioner is satisfied about a number of matters. The property transferred must be wholly or substantially the same as the property vested in the trustee at the time of execution of the declaration of trust and duty must have been paid (or an exemption applied) in respect of the declaration of trust. The Commissioner may also apply the exemption if he or she is satisfied that the property that is the subject of a transfer represents the proceeds of a reinvestment of that property.

Sub-clause (3) requires that the transferee be a beneficiary at the time duty became chargeable in respect of the declaration of trust.

Clause 37 deals with the establishment of a trust relating to unidentified property or non-dutiable property.

Sub-clause (1) charges a nominal duty of \$200 on an instrument executed in Victoria declaring a trust in respect of property that is not dutiable property in Victoria.

Sub-clause (2) charges a nominal duty of \$200 on an instrument executed in Victoria declaring a trust over property for a person and for purposes identified in the instrument, but where the property itself is not identified in the instrument.

Sub-clause (3) provides that it does not matter whether the beneficiary or the appointor under the trust has joined in or assented to the instrument.

Sub-clause (4) provides that a liability to the \$200 duty arises when the instrument is executed.

Sub-clause (5) provides that the person declaring the trust is liable to pay the duty.

Clause 38 exempts from duty a declaration of trust made in consideration of marriage.

Sub-clause (1) provides an exemption from duty under clause 37 for a declaration of trust made in consideration of marriage if—

- the parties to the marriage and their children are sole beneficiaries; or
- if there are other beneficiaries, the Commissioner is satisfied that the marriage is the sole and real consideration for the declaration of trust.

Sub-clause (2) provides an exemption from duty under clause 37 for a declaration of trust made due to the breakdown of a marriage if certain conditions apply.

Sub-clause (3) provides an exemption from duty under clause 37 for a declaration of trust over property held on trust solely for a religious, charitable or educational purpose or for a corporation or body of persons established for such a purpose.

Division 2—Superannuation

Clause 39 provides an exemption from duty for instruments that establish or vary certain provisions governing a superannuation fund as defined or that will be such within 12 months of the instrument taking effect.

Clause 40 exempts from duty transfers of property between superannuation funds.

Sub-clause (1) provides an exemption from duty for transfers of dutiable property resulting from an individual changing superannuation funds due to a takeover, merger or other reorganisation of the funds.

Sub-clause (2) sets out the requirements that must accompany an application for exemption under this clause.

Sub-clause (3) empowers the Commissioner to request further information.

Sub-clause (4) provides an inclusive definition of "complying superannuation fund".

Clause 41 exempts from duty transfers of property to trustees or custodians of superannuation funds and trusts.

Sub-clause (1) provides an exemption from duty where there is no change in the beneficial ownership of property on a transfer of dutiable property to a trustee or custodian of a complying superannuation fund as defined, or that will be such within 12 months of the transfer.

Sub-clause (2) provides that there is no change in the beneficial ownership of property where there is a transfer of property from a trustee or custodian in exchange for the issue or redemption of units in a superannuation trust.

Sub-clause (3) provides that there is no change in the beneficial ownership of property where there is a transfer of property from a beneficiary of a superannuation fund as defined to a trustee or custodian of such a fund.

Division 3—Other General Exemptions and Concessions

Clause 42 exempts from duty transfers of property under a deceased estate.

Sub-clause (1) provides an exemption from duty for a transfer of dutiable property not made for valuable consideration to a beneficiary entitled under a will or following an intestacy including where the will contains a trust for sale of the property.

Sub-clause (2) provides an exemption for any vesting of dutiable property pursuant to section 13 of the **Administration and Probate Act 1958**.

Clause 43 exempts from duty transfers of property pursuant to pre-nuptial agreements and transfers between spouses and de facto spouses.

Sub-clause (1) provides an exemption for a transfer of dutiable property in consideration of marriage and made before the marriage or, if made after the marriage pursuant to a pre-nuptial agreement, if—

- the parties to the marriage and their children are sole beneficiaries; or
- if there are other beneficiaries, the Commissioner is satisfied that the marriage is the sole and real consideration for the transfer.

Sub-clause (2) provides an exemption from duty for a re-transfer in the event that the marriage does not take place.

Sub-clause (3) provides an exemption from duty for any transfer of dutiable property between the parties to a marriage or de facto relationship, provided no other person takes or is entitled to take an interest in the property under the transfer.

Clause 44 exempts from duty transfers of property resulting from the breakdown of marriage or a de facto relationship.

Sub-clause (1) provides an exemption from duty for any transfer of dutiable property between the parties to a marriage or de facto relationship made as a consequence of the breakdown of the marriage or relationship, providing that no other person takes or is entitled to take an interest in the property under the transfer.

Sub-clause (2) provides an exemption from duty for a declaration of trust or transfer of dutiable property to a trustee made as a consequence of the breakdown of the marriage where the transferor or trustee is a party to the marriage providing that no other person takes or is entitled to take an interest in the property under the transfer.

Clause 45 provides an exemption from duty for a transfer of dutiable property to, or a declaration of trust over, dutiable property to be held for—

- a religious, charitable or educational purpose; or
- a corporation or body of persons established for such a purpose; or
- a friendly society.

Clause 46 exempts from duty transfers of property to certain co-operatives.

Sub-clause (1) provides an exemption from duty for a transfer of dutiable property that was, immediately prior to its incorporation, held by or on behalf of an unincorporated club, association or body, to a newly formed successor co-operative that—

- has as its primary activity the provision of a community service or benefit; and

- immediately prior to incorporation, was an unincorporated club, association or body providing not for profit sporting or recreational services to its members.

Sub-clause (2) provides an exemption for a transfer of dutiable property as a consequence of sections 335, and 386(4) and (5) of the **Co-operatives Act 1996**, which deal with the merger of co-operatives.

Clause 47 exempts from duty transfers to Government bodies and diplomats.

Sub-clause (1) provides an exemption from duty for a transfer of dutiable property to—

- the Crown in right of Victoria;
- a municipal council;
- the Municipal Association of Victoria;
- the Western Metropolitan Market Trust;
- an authority under the **Water Act 1989**;
- any person on behalf of the above.

Sub-clause (2) provides an exemption from duty for a transfer of dutiable property to—

- the representative in Australia of the Government of another country;
- a foreign consul;
- a trade commissioner of any part of the British Commonwealth.

Clause 48 provides an exemption from duty for—

- a transfer of dutiable property as a consequence of the appointment of a receiver, a trustee in bankruptcy or a liquidator;
- a vesting of dutiable property in a liquidator by an order pursuant to section 474(2) of the Corporations Law;
- a transfer of dutiable property without consideration to a former bankrupt from the estate of the former bankrupt;

- a vesting of dutiable property by vesting order under section 51 of the **Trustee Act 1958**.

Clause 49 provides an exemption from duty for a transfer of dutiable property to a shareholder of a company if the transfer results from a distribution of the assets of the company by a reduction of capital not involving a redemption of preference shares. The Commissioner must be satisfied that the reduction in capital has not resulted primarily from tax avoidance activities.

Clause 50 provides for the adjustment of dutiable value of a transfer on the winding up of a company.

Sub-clause (1) provides that if a transfer of dutiable property is made to a shareholder of a company in the course of a distribution of the assets of the company upon a winding up, the dutiable value is to be reduced by—

- if the shareholder is not a creditor, the value of the shareholder's entitlement in the undistributed assets of the company immediately before the transfer; or
- if the shareholder is a creditor of the company, the amount by which 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.

Sub-clause (2) makes special provision where the dutiable property transferred is land. If a transfer of land is made to a shareholder of a company in the course of a distribution of assets because of a voluntary winding-up, the dutiable value of the transfer is to be calculated according to sub-clause (1) only where the Commissioner is satisfied that the winding-up is not devised with the collateral purpose of reducing the amount of duty payable.

Sub-clause (3) provides that, in considering whether he or she is satisfied for the purpose of sub-clause (2), the Commissioner may have regard to the range of factors outlined in the provision. Those factors are—

- the duration of the shareholding;
- whether the shareholder held any shares in a related corporation that previously owned the dutiable property;

- the period of time for which the dutiable property has been owned by the company or a related corporation;
- any dealings in shares of the company or a related corporation by the shareholder or a previous owner;
- whether there is any commercial efficacy to an arrangement in relation to the winding up, other than to reduce the duty otherwise payable on the transfer; and
- any other matters the Commissioner considers relevant

Division 4—Exemptions and Concessions in relation to Land

Clause 51 provides an exemption from duty for Crown grants and public rights of way.

Clause 52 provides an exemption for a transfer of an estate in land to—

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

Clause 53 provides an exemption from duty for a transfer of an estate in land from the Director of Defence Service Homes to a purchaser or the personal representative of the purchaser under the Defence Service Homes Act 1918 (Cth).

Clause 54 provides an exemption from duty for a transfer of an estate in land from joint tenants to tenants in common in equal shares and vice versa.

Clause 55 provides an exemption from duty for the vesting of an estate in land by decree or order of a court or the Registrar of Titles resulting from a foreclosure of mortgage.

Clause 56 exempts from duty transfers of farms to relatives or charities.

Sub-clause (1) grants an exemption from duty for transfers of dutiable property if the Commissioner is satisfied that—

- the dutiable property is a fee simple estate in land used for primary production; and
- the transferor and transferee of the property are persons referred to in sub-clauses (2) and (3) respectively; and
- the transfer does not arise from a scheme of avoidance of duty otherwise payable.

Sub-clause (2) provides that the transferor must be a natural person, a trustee for a natural person or a company all the shares in which are owned by natural persons who are related to each other.

Sub-clause (3) provides that the transferee must be in a specified class of relative or charity.

Sub-clause (4) defines "charitable institution" and "fixed trust".

Clause 57 provides an exemption from duty for a transfer of land where lease duty is paid in respect of a lease containing a term for the future transfer of the land.

Division 5—Pensioner and First Home Owner Exemptions and Concessions

Clause 58 outlines what is an "eligible pensioner".

Sub-clause (1) defines "eligible pensioner" for the purposes of the Division. An "eligible pensioner" is a person whom the Commissioner is satisfied—

- is an eligible beneficiary under the **State Concessions Act 1986**; and
- is a bona fide purchaser for adequate consideration of a fee simple in land; and
- intends that a dwelling on the land will be his or her principal place of residence; and

- has not previously received an exemption, refund or rebate in respect of a transfer of land.

Sub-clause (2) provides that two or more persons are eligible if they each satisfy the criteria set out in sub-clause (1).

Clause 59 provides an exemption from duty or a duty concession where a dwelling exists on the land at the time of transfer.

Sub-clause (1) provides an exemption from duty for a transfer to an eligible pensioner of the fee simple in land if, at the time of the transfer, there is a dwelling on the land and the dutiable value of the land does not exceed \$100 000.

Sub-clause (2) provides that an eligible pensioner is entitled to a concession from duty in respect to a transfer in which the dutiable value of the dutiable property is between \$100 000 and \$130 000.

Sub-clause (3) sets out the formula for calculating the duty concession.

Clause 60 extends the exemption or concession where a dwelling is constructed after the transfer of the land.

Sub-clause (1) provides an exemption from duty for a transfer to an eligible pensioner of land on which no dwelling is constructed at the time of transfer in circumstances where, within 3 years after that time, a dwelling is constructed. The exemption is available where the aggregate dutiable value of the land and the costs of construction does not exceed \$100 000.

Sub-clause (2) provides a duty concession or partial refund in the circumstances outlined in sub-clause (1) but where the aggregate dutiable value of the land and the costs of construction exceeds \$100 000 but is below \$130 000.

Sub-clause (3) sets out the formula for calculating the duty concession or partial refund where the aggregate amount referred to in sub-clause (2) does not exceed \$115 000.

Sub-clause (4) sets out the formula for calculating the duty concession where the aggregate amount referred to in sub-clause (2) is between \$115 000 and \$130 000.

Clause 61 concerns an "eligible first home owner".

Sub-clause (1) defines "eligible first home owner" for the purposes of the Division. An "eligible first home owner" is a person whom the Commissioner is satisfied—

- is a bona fide purchaser of land for adequate consideration; and
- intends to reside in a dwelling on the land as his or her principal place of residence; and
- has a dependent child at the following times: if there is a dwelling on the land, the person must have a dependent child at the date the contract for sale was entered into, or within 11 months after that time; if there is no dwelling on the land, the person must have a dependent child at the earlier of the date on which a contract to construct a dwelling was entered into or the date on which construction commenced, or within 11 months after those times; and
- has a taxable income not exceeding \$39 000 if the person has only one dependent child or \$40 000 if the person has two or more dependent children; and
- has not previously owned a home anywhere in Australia that was used as a principal place of residence.

Sub-clause (2) provides that a person and his or her spouse are both eligible first home owners if they each satisfy these eligibility criteria.

Sub-clause (3) provides that the income test applies to the sum of the incomes of the person and his or her spouse.

Sub-clause (4) defines "dependent child" for the purposes of the clause, to include a child under 18 years in the custody and control of the person and ordinarily living with them.

Clause 62 provides an exemption from duty or a duty concession where a dwelling exists on the land at the time of its transfer.

Sub-clause (1) provides an exemption from duty for a transfer to an eligible first home owner of the fee simple in land if, at the time of the transfer, there is a dwelling on the land and the dutiable value of the land does not exceed \$115 000.

Sub-clause (2) provides that an eligible first home owner is entitled to a concession from duty in respect of a transfer in which—

- the dutiable value of the dutiable property is between \$115 000 and \$165 000 (if there is a dwelling on the land at the time of the contract for sale); or
- if the aggregate of the dutiable value of the land and the costs of construction of the dwelling is within this range (if the dwelling was constructed after the time of the contract of sale).

Sub-clause (3) sets out the formula for calculating the duty concession in relation to cases where there was a dwelling on the land at the date the contract of sale was entered into.

Sub-clause (4) sets out the formula for calculating the duty concession in relation to cases where the dwelling was constructed after the date the contract of sale was entered into.

Clause 63 extends the exemption or concession where a dwelling is constructed after the transfer of the land.

Sub-clause (1) provides an exemption from duty for a transfer to an eligible first home owner of land on which no dwelling is constructed at the time of transfer in circumstances where, within 3 years after that time, a dwelling is constructed. The exemption is available where the aggregate dutiable value of the land and the costs of construction does not exceed \$115 000.

Sub-clause (2) provides a duty concession or partial refund in the circumstances outlined in sub-clause (1) but where the aggregate dutiable value of the land and the costs of construction exceeds \$115 000 but falls below \$165 000.

Sub-clause (3) sets out the formula for calculating the duty concession or refund.

Clause 64 imposes double duty for false and misleading statements in relation to applications for an exemption from duty or a duty concession.

Sub-clause (1) imposes a penalty of double duty less any duty paid for a false or misleading statement provided under this

Division where a person is convicted of an offence under section 57 of the **Taxation Administration Act 1997**.

Sub-clause (2) provides that the penalty under sub-clause (1) is in addition to any penalty tax or interest payable under the **Taxation Administration Act 1997**.

Division 6—Exemptions and Concessions in relation to Marketable Securities

Clause 65 provides an exemption from duty for a transfer of marketable securities in a co-operative for adequate consideration or in a co-operative housing society.

Clause 66 Exempts from duty loans and temporary transfers.

Sub-clause (1) exempts from duty a transfer of marketable securities made as a security, or a re-transfer of those marketable securities, except where the transfer is to a person who intends to purchase the marketable securities at a future sale.

Sub-clause (2) exempts from duty a transfer of marketable securities made for the sole purpose of—

- vesting them in a transferee for sale and delivery; or
- where the transferee is a nominee director whose holding qualifies him or her to act or vote on behalf of a holding company at its direction, or
- re-transferring marketable securities to a holding company by the nominee director.

Clause 67 exempts from duty transfers of marketable securities between the following persons—

- the beneficial owner;
- a trustee or nominee of the beneficial owner;
- a custodian of a trustee or nominee of the beneficial owner; and
- a sub-custodian of a trustee or nominee of the beneficial owner.

Transfers of marketable securities between any of these persons are exempt from duty only if—

- there is no change in the beneficial ownership of the marketable securities;
- the transferee is to hold the marketable securities solely for a beneficial owner of them or solely for a trustee or nominee or a custodian of a trustee or nominee and there is no contemplation of the marketable securities being held for any other person; and
- the transferor has solely held the marketable securities on trust and since the time they were first transferred or issued to the transferor, no person has held them other than solely for one of the persons mentioned above.

Clause 68 provides an exemption from duty on a dutiable transaction arising as a consequence 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 with a view to issuing marketable securities. Division 2 of Part 2J.1 of the Corporations Law sets out the circumstances in which a corporation may buy-back its own shares.

Clause 69 provides a duty concession in relation to payments made in overseas jurisdictions.

Sub-clause (1) provides a duty concession in relation to transfer of marketable securities listed on overseas markets. The amount of duty chargeable is to be reduced by the amount of comparable duty paid in accordance with the law of the non-Australian jurisdiction.

Sub-clause (2) clarifies the meaning of transfer of marketable securities for the purposes of the clause.

CHAPTER 3—CERTAIN TRANSACTIONS TREATED AS TRANSFERS

Chapter 3 contains clauses 70 to 103. It incorporates provisions intended to prevent avoidance of the duty charged under Chapter 2. Broadly, this Chapter reflects the policy of existing **Stamps Act 1958**.

Part 2 of Chapter 3 charges duty on the acquisition by a person of an interest consisting of certain shareholdings in a private company, or on the unit holder in a unit trust scheme, whose property in either case consists of landholdings to a defined extent. Duty is charged at the general rate for a

dutiable transaction under Chapter 2, rather than the rate applicable for a transfer of shares or 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.

This Chapter also contains a provision to ensure that certain company takeovers effected by a capital reduction, where there is no transfer of shares and allotments of shares by direction, attract marketable security duty.

There are a number of minor departures from the existing provisions found in the **Stamps Act 1958**.

Clause 72(2) gives the Commissioner discretion to reinstate (in the asset ratio calculation used to ascertain whether a corporation is land-rich) any liquid assets that would otherwise be excluded property, provided that the property was not acquired for the purpose of changing the ratio of land to other assets to defeat the provisions.

Under clause 72 the vendor and purchaser under an incomplete contract for the sale of land are taken to be separately entitled to the whole land for the purpose of determining whether a corporation is a land-rich corporation. This would overcome the situation where a contract is entered into to reduce the value of company landholdings to defeat the 80% test.

Although technically this may result in both a vendor and purchaser corporation being land-rich, to ensure that double duty is avoided, clause 88 provides for a re-assessment, depending on whether the contract is subsequently completed or terminated. If invoked, this would result either in the withdrawal of one duty assessment or, in the highly unlikely circumstance of double duty being paid, a refund of one lot of duty.

The definition of "interest" in clause 76 is widened to include an interest of a holder of shares or units with rights entitling them to greater than 50% of the property distributed upon a winding up of the corporation. This allows the Commissioner to consider, subject to clause 76(3), any relevant powers or discretions available to an acquirer which if exercised would give the acquirer control over the corporation.

Under clause 79, a person's interest as a landholder includes the interests of an associated person. This is similar to the current related person test. However, if the Commissioner is satisfied that the associated person's interest was acquired independently and for no common purpose, under clause 83 the Commissioner has the discretion not to aggregate the interests of the associated person.

Under clause 89, an acquisition effected for the purpose of securing financial accommodation would require an acquisition statement to be lodged. This is to close an avoidance mechanism where property is transferred to a lender purportedly by way of security but never returned to the borrower, whether because of foreclosure or plain avoidance. An exemption from duty would still apply in circumstances where the Commissioner was satisfied that the acquisition was effected for the purpose of a security.

Clause 89 provides that if there is no re-acquisition of the shares by the borrower, within 5 years or longer period as determined by the Commissioner, the statement would be liable for the general rate of duty.

Clause Notes

PART 1—INTRODUCTION AND OVERVIEW

Clause 70 provides that 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

Clause 71 provides that, for the purposes of the Part, a "private corporation" is a private company or private unit trust scheme.

Clause 72 defines when a corporation is land-rich.

Sub-clause (1) provides that a private corporation is land-rich if it owns real estate in Victoria whose unencumbered value is \$1 million or more and has land holdings regardless of location that comprise at least 80% of the unencumbered value of all its property.

Sub-clause (2) excludes certain kinds of property from the calculation of the unencumbered value of the property of a private corporation. If the Commissioner is satisfied that the property was acquired to avoid duty under this Part, then it will be included in the calculation of the unencumbered value of the property of the private corporation. If so, notice must be given to the private corporation that the property will be so counted. The property to be excluded is—

- cash;
- money on deposit with an authorised deposit-taking institution, within the meaning of the Banking Act 1959 (Cth);
- loans repayable on demand;
- where the private corporation is a private company, loans to persons associated with a majority shareholder or director;
- where the private corporation is a unit trust scheme, loans to persons associated with a trustee or beneficiary;
- prescribed property.

Sub-clause (3) provides that property will not be counted in calculating the unencumbered value of all the property of a private corporation if the private corporation is able to satisfy the Commissioner that the property was not acquired to dilute the ratio of its land holdings to its total assets.

Sub-clause (4) provides that, in determining whether a private corporation is land-rich, any primary production land acquired by a family member is excluded from the land holdings of the corporation.

Clause 73 defines what constitutes the land holdings of a private corporation.

Sub-clause (1) defines a landholding in a private corporation as a beneficial interest in land other than an estate or interest of a mortgagee, chargee or secured creditor or a profit à prendre. In the case of a unit trust scheme, the landholding is the interest held by the trustees of the scheme in that capacity.

Sub-clause (2) provides that the clause is to assist in, but is not to limit, the operation of any provision dealing with constructive ownership of interests.

Sub-clause (3) provides that for the purposes of the Part, both the vendor and purchaser under an uncompleted agreement for the sale of land are taken to be separately entitled to the whole of the land.

Clause 74 covers the landholdings of subsidiary entities of a private corporation.

Sub-clause (1) deems that, for the purposes of the Part, a private corporation holds the interests of a subsidiary in property. The value of the property of any subsidiary is to be calculated in accordance with sub-clause (2).

Sub-clause (2) provides that the value of the property referred to in sub-clause (1) is its unencumbered value calculated on the entitlement on a winding up of the actual landholder and every subsidiary in the ownership chain.

Sub-clause (3) provides that a private company is a subsidiary of another private company if it is a subsidiary within the meaning of the Corporations Law.

Sub-clause (4) provides that a private company is a subsidiary of a unit trust scheme if the trustees have a majority interest in the private company.

Sub-clause (5) provides that a unit trust scheme is a subsidiary of a private corporation if the corporation has a majority interest in the scheme.

Clause 75 deals with discretionary trusts.

Sub-clause (1) defines a beneficiary of a trust for the purposes of the clause. A beneficiary is a person (or a member of a class of persons) in whose favour the capital the subject of the trust may be applied under the terms of the discretionary trust, whether or not a power or discretion in favour of that person is exercised.

Sub-clause (2) provides that, unless the Commissioner considers it would be inequitable in the circumstances of a particular case, a beneficiary is taken to be the beneficial owner of trust property.

Sub-clause (3) provides that, for the purposes of this Part, unless the Commissioner considers it would be inequitable in the circumstances of a particular case, trust property is taken to be the property of any other discretionary trust that is a beneficiary of it. Trust property is also taken to be the subject of any other discretionary trust where a trustee of that property is in turn a beneficiary of it.

Sub-clause (4) provides that sub-clause (3) extends to apply to property held under a discretionary trust only by the operation of that sub-clause.

Sub-clause (5) provides that in this clause "person" includes a private corporation.

Division 2—Acquisition of Interests in Private Corporations

Clause 76 defines "interests" and "majority interests" in a private corporation.

Sub-clause (1) provides that the interest of a person in a private corporation is their entitlement to a distribution of property from the private corporation on a winding up or otherwise, excepting their entitlements as a creditor.

Sub-clause (2) provides that a person to whom sub-clause (1) applies will have a majority interest in a private corporation if, in the event of a distribution of all the property of the corporation immediately after the interest was acquired, the person would be entitled to more than 50% of the trust property distributed.

Sub-clause (3) provides that an interest in a private corporation is not counted for the purposes of the clause if—

- the interest concerned is an interest in a private corporation acquired before 15 November 1987 or, if acquired on or after that date, as the result of an agreement entered into before that date; or
- the interest concerned was acquired at a time when the private corporation held no land in Victoria.

Sub-clause (4) provides that in this clause "person" includes a private corporation.

Clause 77 provides that an interest in a land-rich private corporation may be acquired by means of (or by the combination of any of)—

- the purchase, gift, allotment or transfer of any share or unit in a private corporation;

- the variation, abrogation or alteration of a right attaching to any such share or unit;
- the redemption, surrendering or cancellation of any share or unit.

Division 3—Charging of Duty

Clause 78 provides that a liability to duty arises when a relevant acquisition is made.

Clause 79 deems that a person has made a relevant acquisition when—

- a person acquires a majority interest in a land-rich corporation; or
- a person or associated persons, acquires interests as a result of two or more transactions which in the aggregate constitute a majority interest in a corporation; or
- where having a majority interest, the person acquires a further interest in the corporation.

Clause 80 provides for the making and lodging of an acquisition statement.

Sub-clause (1) provides that a person who has made a relevant acquisition must lodge an acquisition statement with the Commissioner.

Sub-clause (2) specifies that the acquisition statement must contain details of the transaction including the name and address of the parties involved, the date of the relevant acquisition and particulars of the interests acquired. Details as to the value of the land holdings and all property of the private corporation the subject of the relevant acquisition is required. Any duty paid in other Australian jurisdictions in respect to interests acquired must also be specified. The Commissioner has the discretion to obtain other information.

Clause 81 provides that a tax default does not occur under **the Taxation Administration Act 1997** if duty is paid within 3 months after the liability to duty arises.

Clause 82 covers the liability to pay duty.

Sub-clause (1) provides that the person who makes the relevant acquisition is liable to pay the duty, except as provided by sub-clause (2).

Sub-clause (2) provides that where a relevant acquisition results from the aggregation of interests of associated persons, the associated persons are jointly and severally liable for payment of the duty.

Clause 83 outlines how duty is charged on a relevant acquisition.

Sub-clause (1) provides that duty on a relevant acquisition disclosed in an acquisition statement is chargeable at the general rate applicable to a transfer of dutiable property (which is the rate applicable to a transfer of land). The amount is calculated by multiplying the unencumbered value of the private corporation's land by the interest acquired in the relevant acquisition. The calculation is to be made on the value at the date of acquisition of the relevant interest.

Sub-clause (2) provides that where the acquisition statement discloses more than one acquisition in the 3 year period preceding a relevant acquisition, duty is chargeable at the general rate on the aggregate of each of the amounts calculated by multiplying the unencumbered value of the private corporation's land by the interest acquired in the relevant acquisition. The calculation is to be made on the value at the date of acquisition of each relevant interest.

Sub-clause (3) allows a reduction from duty payable under the clause for any duty paid or payable in respect of prior acquisitions of an interest in the same private corporation made by a person or an associated person during the preceding 3 years from the date of the relevant acquisition. This credit is calculated proportionally on the basis of the duty paid or payable in respect of the interest acquired.

Sub-clause (4) sets out the formula by which to calculate the amount of reduction from duty payable under this clause.

Sub-clause (5) provides that where a relevant acquisition is made upon aggregating the interests of associated persons, the Commissioner may assess and charge duty on the relevant acquisition as if the interests of associated persons were acquired separately. To exercise this discretion, the Commissioner must be satisfied that the respective interests were acquired independently and for no common purpose.

Sub-clause (6) provides that this clause is to be read in conjunction with clause 87 which provides for the phase-in of duty in accordance with the formula set out in that clause, and clause 6 in Schedule 1. Clause 6 provides that, before 1 July 2002, with respect to this clause and clause 80 the period for the acquisition of prior interests is less than 3 years.

Division 4—General and Supplemental

Clause 84 exempts certain acquisitions from these provisions.

Sub-clause (1) provides that an acquisition by a person of an interest in a private corporation is an exempt acquisition if—

- the land could have been acquired in a manner that would not be liable to ad valorem duty under Chapter 2; or
- the interest was acquired by a receiver or trustee in bankruptcy, liquidator or executor or administrator of the estate of a deceased person; or
- the interest was acquired solely as the result of the making of a court-approved compromise or arrangement under Part 5.1 of the Corporations Law which the Commissioner is satisfied was not made with the intention of defeating the operation of the Chapter; or
- the interest was acquired solely from a pro rata increase in the interests of all shareholders or unitholders.

Sub-clause (2) provides that the Commissioner may determine that an acquisition by a person of an interest in a private corporation is an exempt acquisition, if satisfied in the particular case that it would not be just and reasonable to apply this Part.

Clause 85 deals with the maximisation of entitlements on the distribution of the property of a private corporation.

Sub-clause (1) provides that the clause applies to any calculation of the entitlement of an interested person to participate in a distribution of property of a private corporation on a winding up or otherwise. This calculation does not apply for clause 74 purposes.

Sub-clause (2) provides that the entitlement of an interested party is to be calculated, first, on a distribution carried out in accordance with the constitution of the private corporation and with any relevant law then applicable to the distribution.

Sub-clause (3) provides that the entitlement of an interested party is then to be calculated on a distribution carried out after the interested party or an associate has exercised all powers and discretions exercisable by them by reason of having acquired an interest in a private corporation concerned—

- to effect or compel an alteration to the constitution of the private corporation; and
- to vary the rights conferred by shares or units in the private corporation; and
- 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.

Sub-clause (4) provides that a comparison of the entitlements using the evaluations made under sub-clauses (2) and (3) must be made. The greater of these must be used as the entitlement for the purposes of this Part, unless the Commissioner determines that this would be inequitable.

Clause 86 deals with the valuation of property.

Sub-clause (1) provides that to ascertain the value of the land holdings referred to in an acquisition statement, the provisions in Part 2 that apply to value on the transfer of dutiable property chargeable with ad valorem duty should be applied.

Sub-clause (2) provides that in determining the amount for which property might reasonably have been sold free from encumbrances for the purposes of assessing ad valorem duty, the following must, subject to sub-clause (3), be disregarded—

- any interest, agreement or arrangement granted or made in respect of that property that has the effect of reducing the value of the property.

Sub-clause (3) provides that an interest, agreement or arrangement referred to in sub-clause (2) is not to be disregarded if the Commissioner is satisfied that it was not part of an arrangement or scheme with the collateral purpose of reducing the duty payable upon the transfer.

Sub-clause (4) provides the criteria to which the Commissioner may have regard in determining whether he or she is satisfied that an interest, agreement or arrangement was not entered into with the reduction of duty as a purpose. These include—

- the duration of the interest, agreement or arrangement; and
- whether the interest had been granted to, or the agreement or arrangement made with, an associate, a related corporation or a trustee of the transferor or transferee; and
- whether there is commercial efficacy to the granting of the interest or making of the agreement or arrangement other than the reduction of duty; and
- any other matters the Commissioner considers relevant.

Clause 87 provides for the phasing-in of duty in certain circumstances. The clause sets out a formula for calculating duty where the value of the land holding of a private corporation is between \$1 million and \$1.5 million. It applies a combination of the general rate that applies to land and the rate applicable to marketable securities under Chapter 2 in such a way as to increase the application of the general rate as the value of the land exceeds \$1 million.

Clause 88 deals with certain agreements for the sale or transfer of land.

Sub-clause (1) contains a provision to ensure that double duty is not paid in respect of agreements for the sale or transfer of land not completed at the time of the acquisition by a person of an interest in a land-rich private corporation, but which are subsequently completed. In these circumstances, the Commissioner is to assess or reassess duty as though the land was not, at the time of the acquisition, a land holding of the corporation.

Sub-clause (2) contains a similar provision in respect of agreements for the sale or transfer of land not completed at the time of the acquisition by a person of an interest in a land-rich private corporation, but which are subsequently terminated before completion. In these circumstances, the Commissioner is to assess or reassess duty as though the land was not, at the time of the acquisition, a land holding of the corporation.

Sub-clause (3) provides that in this clause "land rich private corporation" includes a subsidiary of a corporation.

Clause 89 provides a duty concession in relation to acquisitions that secure financial accommodation.

Sub-clause (1) provides an exemption from duty where a person lodging an acquisition statement under the land-rich provisions informs the Commissioner that the acquisition is for the purposes of securing financial accommodation. If the Commissioner is satisfied that the acquisition is effected for that purpose, the statement is not chargeable with duty, except where sub-clause (2) applies.

Sub-clause (2) imposes duty at the expiration of 5 years (or longer period if the Commissioner determines) from the date of an acquisition if—

- the interest is not re-acquired by the disposer; or
- in relation to an acquisition by way of mortgage, where there is a transfer by the mortgagee to a third party in exercise of the mortgagee's power of sale.

Sub-clause (3) provides that clause 80 does not have application where a person re-acquires the interest referred to in this clause.

PART 3—ENTITLEMENT ARISING FROM CAPITAL REDUCTIONS OR RIGHTS ALTERATIONS

Clause 90 contains certain definitions for the purposes of this Part.

Sub-clause (1) defines, "capital reduction", "company", "dutiablc entitlement", "person", "rights alteration" and "voting shares"—

- "Capital reduction" is any redemption, surrender or cancellation of shares, including cancellation as part of a buy-back of shares under Division 2 of Part 2J.1 of the Corporations Law, or a reduction in the paid up value of a share;
- "company" is a Victorian company that is a public company within the meaning of the Corporations Law whose shares are not quoted on the ASX or a recognised stock exchange;
- "dutiablc entitlement" is a voting share entitlement in respect of whose acquisition a statement is required to be lodged;
- "person" includes persons who are associated persons;
- "rights alteration" is defined in relation to voting shares as a variation, abrogation or alteration of rights relating to the shares;
- "voting share" has the same meaning as in section 9 of the Corporations Law.

Sub-clause (2) deems that an entitlement to which this Part applies is conferred on the last associated person acquiring voting shares, in circumstances where this Part would apply to voting shares acquired by associated persons when taken in the aggregate. This provision is applied in circumstances where this Part would not apply if the acquisitions were made separately, but do meet the relevant criteria when aggregated.

Sub-clause (3) imposes a joint and several liability upon the associated persons, whose entitlement to voting shares is aggregated under sub-clause (2), in respect of payment of the duty chargeable on the statement required to be lodged under this Part.

Sub-clause (4) provides that voting shares acquired separately by associated persons are not to be aggregated if the Commissioner is satisfied that the several shares were acquired independently and for no common purpose.

- Clause 91 provides that a liability to duty arises when a dutiable entitlement is acquired.
- Clause 92 provides that a tax default does not occur under the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability arises.
- Clause 93 provides that the person who acquires a dutiable entitlement is liable to pay the duty.
- Clause 94 deals with an entitlement to voting shares arising from a capital reduction or rights alteration.

Sub-clause (1) requires a person to lodge a statement with the Commissioner in the following circumstances—

- where the person becomes entitled to at least 50% of the voting shares of a company by means of capital reduction or rights alteration; or
- where the person is already entitled to at least 50% of the voting shares of a company and becomes entitled to at least 10% more of the voting shares over not more than 12 months by means of capital reduction or rights alteration or both.

Sub-clause (2) requires that the statement be lodged within 3 months after the entitlement arises.

- Clause 95 specifies the particulars to be included in the statement. These are: details of the transaction including the name and address of the parties involved and the date on which the capital reduction or rights alteration occurred. Details as to the value of the shares the subject of the capital reduction or rights alteration is required. The consideration paid by the person in relation to all relevant capital reductions and rights alterations must also be included. The Commissioner may require additional information.

Clause 96 imposes duty on a statement required to be lodged in respect of a company whose shares are not quoted on the ASX or a recognised stock exchange at a rate of 60 cents for every \$100 or part.

PART 4—ALLOTMENT OF SHARES BY DIRECTION

Clause 97 sets out when this Part applies.

Sub-clause (1) provides that this Part applies to an allotment of shares to any person by a Victorian company at the direction of another person in discharge of an obligation to the other person.

Sub-clause (2) provides that the Part does not apply to—

- an allotment of shares by a Victorian company that is listed on the ASX or a recognised stock exchange;
- an allotment of shares at the direction of the underwriter for the first issue of shares by the company.

Clause 98 provides that a liability to duty arises upon the allotment of the relevant shares.

Clause 99 provides that a tax default does not occur under the **Taxation Administration Act 1997** if duty is paid within 3 months after the liability to duty arises.

Clause 100 provides that the person to whom the relevant shares are allotted is liable to pay the duty.

Clause 101 deals with the acquisition of shares by allotment.

Sub-clause (1) requires that the person to whom the shares are allotted in an allotment to which these provisions apply must lodge a statement.

Sub-clause (2) requires that the statement must be lodged within 3 months after the shares are allotted.

Clause 102 provides that an allotment statement must contain certain information.

Clause 103 imposes duty on an allotment statement on the dutiable value of the shares at the rate of duty set out in clause 29 (the rate of duty on transfers of marketable securities).

CHAPTER 4—FINANCIAL SECTOR (TRANSFER OF BUSINESS)

Chapter 4 contains clauses 104 to 109. Duty is charged on the voluntary transfer of business between certain kinds of financial institutions, such as banks, building societies, credit unions, friendly societies and life insurance companies. The body receiving that business is liable to pay the duty. This Chapter replicates Subdivision (18) of Division 3 of Part II of the **Stamps Act 1958**.

Clause Notes

Clause 104 provides that this Chapter charges duty on the transfer of property to a receiving body under Part 3 of the Financial Sector (Transfers of Business) Act 1999 (Cth). These are voluntary transfers of business regulated by the Australian Prudential Regulation Authority between financial institutions such as banks, building societies, credit unions, friendly societies and life insurance companies.

Clause 105 provides that liability to duty arises when the dutiable property becomes the property of the receiving body.

Clause 106 provides that the receiving body is liable to pay the duty.

Clause 107 requires the making of a statement upon the transfer of property.

Sub-clause (1) provides that a receiving body to whom property is transferred under Part 3 of the Financial Sector (Transfers of Business) Act 1999 (Cth) is required to lodge a statement with the Commissioner.

Sub-clause (2) provides that the statement must specify the dutiable property transferred and its value upon vesting in the receiving body.

Sub-clause (3) provides that a statement must be lodged and duty paid within 3 months after the dutiable property becomes the property of the receiving body.

Clause 108 sets out the rate at which duty is assessed under this Chapter.

Duty is chargeable at the rate set out in clauses 28 or 29 on the dutiable value of the property as if the transfer of the property to a receiving body were a dutiable transaction.

Clause 109 provides an exemption from duty if the transfer is of a class falling within guidelines issued by the Minister in respect of which no duty is chargeable.

CHAPTER 5—LEASE INSTRUMENTS

This Chapter contains clauses 110 to 124. Duty is chargeable on commercial leases of land in the same terms as apply under the **Stamps Act 1958**.

The Chapter charges lease instruments with duty, being instruments to give effect to leases of real property in Victoria, but not a lease of property used exclusively as a private dwelling. "Lease" is defined to be a lease, an agreement for lease or an assignment of lease. Duty is charged at the rate of duty as set out, on the cost of a lease and additional cost resulting from a variation as described. The unascertainable cost of a lease are to be determined in accordance with the provisions of this Chapter. No duty is payable in respect of hold over periods not effected in writing.

The Chapter provides that the lessee or assignee is the party liable to pay duty. The instrument must be lodged and duty paid within 3 months after the liability to pay duty arises to avoid penalty consequences under the **Taxation Administration Act 1997**.

Specific provision is made for the interim stamping of a lease and a refund of duty for early termination or rental reduction.

Exemptions from duty are in line with those contained in the **Stamps Act 1958**.

The Bill contains changes from the **Stamps Act 1958** in the following areas. Duty is no longer chargeable at a different rate for payments not described as rent, such as premiums. As a result, a single rate of duty is charged. Duty is chargeable on the "cost of a lease" which is rent, premium and royalties. Leases are required to be resubmitted for further stamping only when the actual rental exceeds the estimated rent. Provision is made for the calculation of duty on the basis of estimated rental, including a CPI increase-based estimate. Leases stamped on the basis of an estimate of rental will bear an endorsing stamp indicating interim stamping.

Clause Notes

PART 1—INTRODUCTION AND OVERVIEW

Clause 110 charges duty on a lease instrument.

Clause 111 defines "lease" to mean—

- a lease of land in Victoria or an agreement for a lease of Victorian land; or
- an assignment of such a lease or an agreement.

A clause in a mortgage providing for attornment by a mortgagor, or a clause in a contract of sale providing for attornment by a purchaser under the contract, are both excluded from the definition.

Clause 112 provides that duty is charged on a lease instrument on the cost of the lease and the additional cost of the lease resulting from any variation of the lease. The relevant general rate is 0.6%, calculated on the cost of the lease or, in the case of an assignment, on the annual rent payable under the lease at the date of assignment.

Clause 113 sets out what is the cost of a lease.

Sub-clause (1) provides that the cost of a lease is the aggregate of the total rent paid or payable, premium paid or payable and royalties payable under the lease.

Sub-clause (2) provides that "rent" includes any payment under the lease expressed to be rent.

Clause 114 establishes which party is liable to pay the duty.

Sub-clause (1) makes the lessee liable to pay the duty.

Sub-clause (2) provides that "lessee" includes any assignee of the rights of the lessee under the lease.

Clause 115 provides when duty must be paid.

Sub-clause (1) provides that duty becomes payable on a lease when first executed.

Sub-clause (2) provides that duty is also payable on any variation of a lease that increases the cost of the lease and is chargeable on the amount of the additional cost.

Sub-clause (3) states that duty must be paid within 3 months after execution of the lease, except as otherwise provided in this Chapter.

PART 2—RATES OF DUTY

Clause 116 sets out the rate of duty chargeable on a lease instrument.

Clause 117 provides that a lease made subsequently to and in conformity with an agreement for lease is not liable to duty if the duty under this Chapter has been paid on the agreement for lease.

PART 3—UNASCERTAINABLE LEASE COSTS

Clause 118 deals with the operation of this Part.

Sub-clause (1) states that the object of this Part is to enable an unascertainable component of the cost of a lease to be determined as a definite sum, for duty assessment purposes.

Sub-clause (2) defines an unascertainable cost as a cost that cannot be ascertained as a definite sum at the time duty is liable to be paid.

Sub-clause (3) requires cost components that are partly unascertainable to be dealt with by clauses 119 or 120 and cost components that are wholly unascertainable to be dealt with by clause 121(2).

Clause 119 covers the estimation and subsequent adjustment of unascertainable lease costs.

Sub-clause (1) provides that this clause applies to a lease containing an unascertainable cost component, unless the Commissioner and lessee agree that clause 120 should apply.

Sub-clause (2) requires the Commissioner to make the initial estimate of the cost of the lease.

Sub-clause (3) sets out the method of making the initial estimate cost component.

The initial estimate is the sum of—

- the amount of each ascertainable cost component payable over the course of the lease; and
- for any period of a lease subject to a certain minimum rate for which there is an unascertainable component, the rate payable at the minimum rate; and

- for any period of a lease for which there is an unascertainable component, but in respect of which the above cannot be applied, the amount payable at the highest certain rate prevailing immediately before the commencement of the period.

Sub-clause (4) provides that, following an initial estimate, duty is paid on the estimate calculated in accordance with this clause.

Sub-clause (5) provides that estimates of any amount of cost components and assessments of duty may be made at such periods as the Commissioner determines, having regard to the provisions of the lease. The date of a periodic assessment is known as the "estimate date". A periodic estimate and assessment of duty may be made more than 3 years after the initial estimate.

Sub-clause (6) provides that within one month after an estimate date, the lessee must produce to the Commissioner a duly stamped part of the lease and a statutory declaration stating—

- the amount of each cost component paid between the initial estimate and the last previous estimate and the date of the current estimate; and
- the rate of the cost component payable at the date of the current estimate.

A penalty up to 100 penalty units (\$10 000) may be imposed for failing to produce a duly stamped part of the lease and statutory declaration as required by the provision.

Sub-clause (7) provides that if the actual cost component paid for a period between two estimate dates exceeds the estimate, the Commissioner may reassess the duty payable for that period and for the remainder of the term of the lease. Any additional duty must be paid within 3 months after the notice of assessment.

Sub-clause (8) provides that if the actual cost component paid for a period between two estimate dates is less than the estimate, the Commissioner must, after the provisions of sub-clause (6) have been met, make a refund of the overpaid duty.

Clause 120 sets out the Consumer Price Index method of estimation.

Sub-clause (1) provides that this clause applies if the Commissioner and lessee agree to determine the cost component using the Consumer Price Index as the basis.

Sub-clause (2) provides that the cost component shall be estimated by applying to the cost payable during the first year of the lease, the annual percentage increase in the Consumer Price Index last issued before the commencement of the lease.

Sub-clause (3) provides that if the rate at which the cost component is payable is unascertainable for a part of the first year, the rate for that year is to be calculated in accordance with clause 119(3)(b) and (c).

Sub-clause (4) defines "Consumer Price Index".

PART 4—MISCELLANEOUS

Clause 121 deals with the interim stamping of a lease instrument.

Sub-clause (1) provides that where a lease is stamped with duty based on an estimate made under clause 119, the lease is to be marked "interim stamp only".

Sub-clause (2) provides that the conditions of clause 30 (interim payment of duty) apply to a lease marked "interim stamp only".

Clause 122 provides for the reassessment of duty if the lease is terminated early.

Sub-clause (1) provides that where a lease is terminated before the end of its term, regardless of the means, the lessee may apply to the Commissioner for a refund of the duty paid.

Sub-clause (2) provides that application must be made within 3 years after the termination and must be supported by any documentation and information specified by the Commissioner.

Sub-clause (3) provides that if the lease is terminated before it commences, the whole of the duty paid must be refunded. If the lease is terminated early, the duty paid for the unexpired portion of the term must be refunded.

Sub-clause (4) provides that the operation of this clause is not affected by the **Taxation Administration Act 1997**.

Clause 123 provides for the reassessment of duty if the cost of a lease is reduced.

Sub-clause (1) provides that a lessee may apply to the Commissioner in writing for a reassessment of duty following a variation of a lease where the cost is reduced.

Sub-clause (2) specifies that the application must be made within 3 years of the initial assessment or 12 months after the variation, whichever is the later, and must be supported by any documentation and information specified by the Commissioner.

Sub-clause (3) requires the Commissioner to make a refund of the overpaid duty where the cost of the lease has been reduced.

Sub-clause (4) provides that the operation of this clause is not affected by the **Taxation Administration Act 1997**.

Clause 124 sets out various exemptions from duty.

Sub-clause (1) sets out the classes of lease instrument that are exempt from duty. The main categories of exempt leases include—

- a mining lease;
- leases granted or assigned to the Crown or certain specified governmental bodies;
- a lease granted or assigned for religious, charitable or educational purposes, or to a body established for such purposes, or to a friendly society;
- a lease granted or assigned to the representative of a foreign government;
- a lease assigned under a will;
- a lease of Crown land;
- a lease assigned by a company to a shareholder in the course of a distribution of the company's assets on a winding up or on a reduction of capital;
- a lease or assignment of land for sole use as a private dwelling.

Sub-clause (2) exempts from duty a sub-lease or assignment of lease made as security and a re-assignment of the lease.

Sub-clause (3) provides a definition of "mining lease" for the purposes of the clause.

CHAPTER 6—HIRE OF GOODS

This Chapter contains clauses 125 to 147, and imposes duty on the hire of goods by commercial hire businesses.

A commercial hire business is clearly defined for the purposes of the Chapter. Clear identification of the nexus of duty is also made, being whether the hired goods are solely or predominantly used in Victoria. For duty to arise, the required use must occur in the relevant return period for a commercial hire business.

"Goods" are defined to include all chattels personal and fixtures severable from realty, but not to include money, livestock or things in action. "Hire of goods" is defined as 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 one to be specifically excluded under the Chapter. The Chapter covers 2 kinds of hire: an equipment financing arrangement and an ordinary hire of goods. A hire arrangement does not have to be in writing.

All exemptions from duty contained in the **Stamps Act 1958** are retained. In addition, a "wet hire" arrangement (that is, one involving the provision of an operator with the hire of goods) will be specifically exempt from duty.

The rate of duty is applied to the total amount of hiring charges and at the same rate as applies under the **Stamps Act 1958**. The duty ceiling for a special hiring agreement is to be raised from \$4000 to \$10 000.

Certain charges are included as hiring charges while other charges are specifically excluded as hiring charges in terms that reflect existing policy.

A credit for duty paid in another Australian jurisdiction under a corresponding Act is provided. The minimum amount of duty payable on a special hiring agreement is also specified.

Anti-avoidance provisions include as hiring charges payments made under an arrangement that are non-dutiable charges, if the Commissioner considers that they were increased to minimise duty and payments in the nature of hiring charges made to a third person.

The Chapter allows for the hirer out of the goods to rely on the hirer's statement as to the location where the hired goods will be solely and predominantly used. Provision is made for assessment or reassessment where the Commissioner is made aware that the actual place of sole or predominant use of the goods differs from that contained in the statement. This clause sets out the circumstances in which non-payment of duty is not a tax default under the **Taxation Administration Act 1997** and provides a penalty for an offence where a person falsely represent that goods will be used predominantly outside Victoria.

Registration requirements applying to a commercial hire business are provided in the Bill. This includes the keeping of a register of taxpayers by the Commissioner and provision to cancel registration upon the ceasing of business. A commercial hire business must lodge a return and pay duty calculated on the total hiring charges received in a month. The Commissioner may, however, approve a different basis for calculating the hire charges to approximate this amount in order to facilitate ease of compliance for the business.

Clause Notes

PART 1—INTRODUCTION AND OVERVIEW

Clause 125 states that this Chapter charges duty on the hire of goods if the person hiring out the goods is a commercial hire business.

Clause 126 defines "commercial hire business".

Sub-clause (1) defines "commercial hire business" as a person who hires out goods as a business.

Sub-clause (2) provides that it is immaterial whether or not the hiring out of goods is the principal business activity conducted by the person and whether any such principal or ancillary business is conducted wholly or partly outside Victoria.

Clause 127 sets out the relevant jurisdictional nexus for duty purposes.

Sub-clause (1) provides that the Chapter applies to the hire of goods if the goods are used solely or predominantly in Victoria during any return period.

Sub-clause (2) applies to the hire of a motor vehicle. If it is the subject of an equipment financing arrangement, the vehicle is deemed to be used in the jurisdiction in which it is registered.

If it is not the subject of an equipment financing arrangement, the vehicle is deemed to be used at all times in the course of the hire in the jurisdiction in which it is initially delivered under the hire.

Sub-clause (3) provides that any goods not used solely or predominantly in any particular State or Territory are taken to be so used in Victoria if initially delivered in Victoria.

Sub-clause (4) defines predominant use of goods in Victoria to mean goods used or to be used more in Victoria than in any other single jurisdiction.

Clause 128 provides a definition of "goods" as including all chattels and fixtures severable from land, but not including money, livestock or things in action.

Clause 129 defines "hire of goods".

Sub-clause (1) defines "hire of goods" as any arrangement under which goods are or may be used at any time by a person other than the person hiring out the goods. Exclusions are outlined in clause 132.

Sub-clause (2) provides that an equipment financing arrangement and any other hire of goods are the 2 types of hire of goods.

Clause 130 establishes the meaning of "equipment financing arrangement".

Sub-clause (1) defines "equipment financing arrangement" to include a hire purchase agreement and some other agreement for a term of not less than 9 months.

Sub-clause (2) defines "hire purchase agreement".

Clause 131 provides that a hire of goods may be in written or other form.

Clause 132 identifies those arrangements that are excluded from a hire of goods, including—

- an arrangement giving a person a right to use goods incidentally with a lease of, or licence to use or occupy, land where there is no separate fee charged in relation to the goods and duty has been paid on the lease;

- an arrangement for the hire of an aircraft, ship or vessel, or a component part of such;
- an arrangement for the provision of goods for display, pending their sale or hire to a third party;
- a "wet hire" arrangement;
- an arrangement for the use of goods the provision of which is incidental and ancillary to the provision of a service;
- an arrangement between related bodies corporate;
- an arrangement to supply an employee with a motor vehicle as part of a salary or employment benefits package;
- an arrangement for the use of a medical device by an incapacitated person;
- a contract under the Consumer Credit (Victoria) Code not exceeding \$35 000;
- a hire purchase agreement relating to the use of farm machinery or a commercial vehicle where the purchaser is a natural person;
- an arrangement relating to the use of a book; electricity, gas or water meter; or an on-site caravan.

Clause 133 defines a "special hiring agreement" as a written agreement for the hire of goods that enables ready identification of the nature and character of the goods and their number. The clause excludes certain agreements from the definition—

- an agreement under which the goods may at any time be replaced, excepting replacement of goods that are lost, destroyed or stolen, that fail or malfunction, that are temporarily replaced during maintenance or repair or that are otherwise not fit for hire; or
- an agreement under which other goods may be additionally provided.

Clause 134 sets out the rate of duty.

Sub-clause (1) provides that the rate of duty payable on a hire of goods is 0.75% of the total amount of the hiring charges.

Sub-clause (2) provides that the maximum amount of duty payable in relation to a special hiring agreement is \$10 000.

Clause 135 defines "hiring charges".

Sub-clause (1) defines "hiring charges" as payments made to the person who hires out the goods by the hirer (or on the hirer's behalf) for (or that arise from) the hire of goods.

Sub-clause (2) includes as hiring charges payments for damage waiver or for damage excess and late return fees.

Clause 136 excludes certain payments from "hiring charges".

Sub-clause (1) excludes certain charges from hiring charges, including—

- payments for delivery, installation, maintenance and cleaning of the goods;
- refundable cash deposits or bonds;
- insurance premiums paid by the hirer;
- duty paid or payable under this Act or a corresponding Act;
- payments for the sale of goods (such as fuel and replacement parts);
- any GST component of the supply of the goods;
- any payment of a type prescribed by regulation.

Sub-clause (2) excludes from hiring charges any payment made the consequence of which means that title to the goods passes to the hirer.

Clause 137 makes provision for when duty has been paid in another jurisdiction.

Sub-clause (1) provides a credit for duty paid in another State or Territory of Australia at a rate equal to or in excess of the Victorian rate.

Sub-clause (2) provides that, notwithstanding sub-clause (1), in respect of the duty payable on a special hiring agreement that is chargeable with the maximum amount of \$10 000, duty cannot be reduced below \$6000.

Clause 138 is an anti-avoidance provision that enables the Commissioner to include as hiring charges payments under the arrangement that are not hiring charges but that have been increased for the purpose of minimising duty. This includes payments that would be hiring charges but for the fact that they are paid to a person other than the person hiring out the goods.

Clause 139 sets out provisions to enable the ascertainment and disclosure of the place where goods are used.

Sub-clause (1) provides that, in determining a person's liability to duty, a person who hires out goods may rely on a statement of the hirer (unless that person knows it to be untrue) as to—

- where the goods will be solely or predominantly used; or
- in the case of a motor vehicle, where the vehicle will be registered during the course of the hire.

Sub-clause (2) provides that a person who hires out goods is not required to inquire into any change in the place of use of the goods being hired, or in the case of a motor vehicle, the place of registration of the vehicle.

Sub-clause (3) provides that the Commissioner may assess or reassess duty where goods are used in a place other than that detailed in a statement referred to in sub-clause (1), or a motor vehicle is registered in a place other than that advised by the hirer in a statement.

Sub-clause (4) provides that non-payment of duty is not a tax default under the **Taxation Administration Act 1997** if the duty is paid within 3 months after the issue of a notice of assessment of the duty.

Sub-clause (5) provides that a person must not falsely represent that goods will be used predominantly outside Victoria.

A maximum penalty of 100 penalty units (\$10 000) may be imposed in respect of a false representation made about the use of the goods, as outlined in this provision.

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

Clause 140 sets out requirements for the registration of commercial hire businesses.

Sub-clause (1) provides that a commercial hire business must be registered under this Part if its total monthly receipts from hiring charges exceed \$6000.

Sub-clause (2) states that an application for registration must be made within 21 days after the end of the month in which the \$6000 threshold is first exceeded.

A maximum penalty of 100 penalty units (\$10 000) may be imposed in respect of a failure to make an application for registration as required by this provision.

Clause 141 provides for the registration by the Commissioner of commercial hire businesses.

Sub-clause (1) imposes a requirement on the Commissioner to register a commercial hire business making application in the approved form.

Sub-clause (2) gives the Commissioner power to register a business that has not so applied.

Sub-clause (3) provides that the Commissioner must advise a business in writing that it has been registered.

Clause 142 provides for the cancellation of registration of a commercial hire business in the circumstances outlined.

Sub-clause (1) sets out a number of requirements that a registered commercial hire business must meet following its cessation of business. Written notice must be given to the Commissioner, the return required under this Part must be lodged, and outstanding duty paid on or before the 21st day of the month after which notice is given.

A maximum of 100 penalty units (\$10 000) may be imposed in the event that the matters outlined in this provision are not provided to the Commissioner.

Sub-clause (2) requires the Commissioner, on receipt of notice of cessation of business, to cancel the registration of a commercial hire business.

Sub-clause (3) empowers the Commissioner to cancel the registration of a commercial hire business if the Commissioner has reason to believe that registration is no longer required and subject to provision of notice to the business.

Sub-clause (4) provides that a cancellation of registration has effect from the date specified by the Commissioner in the notice.

Clause 143 establishes a register of commercial hire businesses.

Sub-clause (1) requires the Commissioner to maintain a register of commercial hire businesses.

Sub-clause (2) requires that the register be available for inspection during business hours.

Clause 144 sets out the duty base.

Sub-clause (1) provides that duty is to be assessed on the hiring charges received by the commercial hire business in a month.

Sub-clause (2) permits the Commissioner, by notice in writing, to approve a different base upon which to calculate duty if such alternative would, over a period, approximate the duty payable in accordance with sub-clause (1). The Commissioner may revoke the approval at any time by notice in writing.

Sub-clause (3) provides that a registered commercial hire business may, with the Commissioner's approval, change the basis of calculating duty from month to month, but not within a month.

Sub-clause (4) allows the Commissioner to assess or reassess duty following a change made under sub-clause (3).

Clause 145 requires the lodgement of returns and payment of duty.

Sub-clause (1) provides that a return must be lodged and duty paid on or before the 21st day of each month.

Sub-clause (2) provides a duty-free threshold of \$6000 per month excepting for special hiring agreements.

Sub-clause (3) permits the Commissioner, by notice in writing, to approve the lodgement of returns in respect of periods of more than one month. In such cases, 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. The duty payable is the sum of all monthly duties to which the return relates.

Sub-clause (4) provides that if a commercial hire business elects to pay the duty payable on a special hiring agreement by lodging a statement under clause 147, a return under this clause is not required.

Sub-clause (5) provides that a commercial hire business may request a reassessment of duty if a special hiring agreement is terminated early. In such cases, duty is to be reassessed as if duty had been paid on a return under this clause.

Clause 146 enables commercial hire businesses to make statements to the Commissioner in respect of a special hiring agreement.

Sub-clause (1) provides that a commercial hire business may make a written statement in respect of a special hire agreement if the total amount of hiring charges paid or payable for the goods is not less than \$10 000.

Sub-clause (2) requires the statement to detail—

- the name and address of each party;
- a description of the goods;
- the commencement date and the term of the hire;
- the total hiring charges paid or payable over the term of the hire;
- the intervals at which the hiring charges are paid or payable.

Sub-clause (3) provides that the statement must be made not later than the earlier of—

- the time when the commercial hire business receives the first payment of hiring charges; or
- the time when the hiring charges become payable.

Clause 147 requires the commercial hire business to lodge the statement with the Commissioner within 3 months after it is made out and to pay the duty on the hiring charges for the whole period of the hire.

CHAPTER 7—MORTGAGES

This Chapter contains clauses 148 to 174. The Chapter charges duty on instruments that fall within the definition of mortgage as outlined. Bonds, covenants and debentures are excluded from the definition of mortgage. Duty is calculated on the amount of the advances secured under the mortgage.

The person liable to pay duty is the mortgagor or the person giving any of the securities under clause 149. A liability to duty arises on the date of first execution of the mortgage, and on the making of an advance or further advance by which the amount secured exceeds the amount secured by it at first execution. "Advance" is defined to include mortgages securing bill facilities, aligning Victoria with other jurisdictions.

To avoid penalty consequences, duty on the instrument must be paid, at the specified rates, within 3 months after the liability to pay duty arises. A mortgage will attract a minimum duty of \$4 on execution, regardless of whether there is an advance at the date of execution. The distinction between limited and unlimited mortgages has been removed to improve the administration of these provisions. The Commissioner may authorise a person to collect duty and endorse mortgages on the Commissioner's behalf.

Mortgages are enforceable only to the extent stamped. This rule does not apply in certain circumstances involving multi-jurisdictional property mortgages.

New provisions clarifying the location of certain property for the purposes of this Chapter have been included.

Specific provision is made for ascertaining the liability for duty in the case of mortgages securing contingent liabilities.

The multi-jurisdictional property mortgage provisions have been revised. Duty is calculated on a *pro rata* basis, being that proportion of the loan value that is equal to the proportion of the secured property in Victoria to all property secured under the mortgage. The value of overseas property and property in non-taxing jurisdictions is excluded from the *pro rata* calculations, as if it were a mortgage that only secured the amount that relates to Victoria and other taxing jurisdictions.

Evidence of the jurisdictional mix of the total property is to be provided by a separate, uniform statement for each jurisdiction. The duty may be stamped on the statement instead of the mortgage to overcome the necessity of sending the mortgage separately to all jurisdictions. The concept of mortgage packages is also introduced, by which mortgages in an individual jurisdiction are treated as if they formed one security, thereby distributing duty according to the jurisdictional proportion. The property mix is referable to percentage values of property in Victoria. The date of advance is determined by a referable point, which is the latest of a series of documented events by which information is readily available to the borrower and does not require additional cost to obtain.

The Chapter provides for mortgages to be stamped in contemplation of future advances, including provisions that enable multi-jurisdictional mortgages to be stamped on the basis of the current property mix. A mortgage that is no longer part of a package is not to be taken as security for other money. The Commissioner is empowered to exchange information in regard to interstate stamping.

Provision is made for the denoting of collateral securities with duty, if duty was paid on another mortgage in respect of the amount secured, and it secures all or part of the same money. The Bill also provides for the stamping of a counterpart or collateral instrument if the original mortgage is lost, destroyed or cannot be produced.

The Chapter also provides for certain duty concessions and exemptions from duty. The relevant exemptions contained in the **Stamps Act 1958** are retained.

Provision is also made for the payment of duty on mortgages associated with a debenture issue, and for stamping where a security caveat is involved.

Clause Notes

PART 1—INTRODUCTION AND OVERVIEW

Clause 148 states that this Chapter charges duty on instruments of mortgage.

Clause 149 provides that an instrument is a mortgage if it is—

- a security by way of mortgage or charge over property that is either wholly or partly in Victoria at the date of execution or the date of any advance; or

- security by way of a transfer of property in Victoria held in trust to be sold or otherwise converted into money and redeemable before the sale. A transfer to creditors in full satisfaction of debts is excluded; or
- any transfer, assignment or disposition of any estate or interest in property apparently absolute but intended only as a security; or
- any instrument that on 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 a mortgage.

Clause 150 defines "advance".

Sub-clause (1) provides that an advance is the obtaining of funds by way of financial accommodation by means of a loan or a bill facility. A loan includes an advance of money, or the payment of money for another, or the forbearance to require the payment of money owing on any account, or any transaction that in substance effects a loan of money. A bill facility is an agreement because of which a bill of exchange or promissory note is drawn up and is held or used to obtain funds, whether or not funds are obtained as a consequence.

Sub-clause (2) states that an advance includes a contingent liability referred to in clause 158.

Clause 151 provides that the person liable to pay mortgage duty is the mortgagor or the person who gives the mortgage.

Clause 152 establishes when liability to duty arises.

Sub-clause (1) provides that a mortgage is liable to duty on the date of its first execution.

Sub-clause (2) provides that additional duty is payable on the making of an advance when the amount secured by the mortgage exceeds the amount secured by it when duty was paid on it.

Sub-clause (3) provides that a mortgage that does not affect property in Victoria at first execution will be subject to duty when it affects property in Victoria but only if it has previously not been stamped in another Australian jurisdiction.

Sub-clause (4) provides that a mortgage is liable to duty as a mortgage at the time when the documents or instruments giving control over title are deposited or authority is provided or a pledge is received evidencing the terms of a mortgage.

Clause 153 provides that where duty is paid within 3 months after a liability to pay duty no tax default under the **Taxation Administration Act 1997** arises.

Clause 154 sets out how mortgage duty is charged.

Sub-clause (1) provides that the duty chargeable on a mortgage is determined by the amount secured by it as calculated under Part 2.

Sub-clause (2) sets out the rate of duty chargeable on a mortgage.

Sub-clause (3) sets out the rates applicable to an advance or further advance under a mortgage.

Clause 155 sets out certain consequences of not paying duty.

Sub-clause (1) stipulates that a mortgage in respect of which duty remains unpaid on it, is only enforceable to the extent of the amount represented by the duty paid on it.

Sub-clause (2) provides that a mortgage over property that is partly within and partly outside Victoria on which duty is payable under this Chapter or under a corresponding Act, is enforceable only on the amount secured by the mortgage as calculated according the formula set out in the sub-clause.

Sub-clause (3) provides that sub-clause (2) does not apply where the dutiable proportion calculated in accordance with sub-clause 159(2) and (3) is not incorrect by more than 5% and the non-payment of the duty was neither intentional nor negligent.

Clause 156 sets out how to ascertain where property is located.

Sub-clause (1) specifies that in the case of shares or securities of a body corporate, the place of incorporation is the location of the property. In the case of a unit trust scheme, this is the place where the register is kept or, in the case of unit trusts where the register is kept outside Australia, the place of residence of the manager or responsible entity. Debt securities of a Government

of a State or Territory are deemed to be located in the State or Territory concerned.

Sub-clause (2) provides that the place of incorporation of a body corporate is the State or Territory under the Corporations Law of which the company is registered.

PART 2—CALCULATING THE AMOUNT SECURED BY A MORTGAGE

Clause 157 charges duty on the amount secured by a mortgage.

Sub-clause (1) provides that a mortgage is chargeable with duty assessed on the amount of any advances secured by it.

Sub-clause (2) provides that if duty of \$4 is paid on a mortgage, it is taken to secure \$10 000.

Sub-clause (3) provides that if the amount of advances at any point in time secured by a mortgage exceeds the amount on which duty was earlier chargeable, the mortgage is chargeable with duty assessed on the amount which the advances secured by it exceeds the amount on which duty was chargeable under sub-clause (1).

Sub-clause (4) provides that where several mortgages over the same property secure the same advance only one will be chargeable with duty and the payment of duty may be denoted on the other mortgages.

Sub-clause (5) provides that where the duty on a mortgage depends on the duty paid on another instrument the Commissioner may denote the mortgage with the duty paid on that other instrument. This ensures that double duty is not payable.

Clause 158 deals with contingent liabilities.

Sub-clause (1) provides that a mortgage that could be used to recover directly or indirectly any contingent amount payable by—

- a guarantor or indemnifying party; or
- another party under another instrument of any kind,

will be chargeable with duty on the amount of the contingent liability as if it were a separate advance secured by the mortgage.

Sub-clause (2) ensures that the liability to duty does not extend to any other advances made under securities not directly connected with sub-clause (1).

Sub-clause (3) provides that sub-clause (1) does not apply if the Commissioner is satisfied that there is no connection between the mortgage and any advance by a party to the arrangements. The clause does not require duty to be paid more than once on any advance.

Clause 159 deals with mortgages over property not wholly within Victoria.

Sub-clause (1) provides that duty chargeable on a mortgage over property partly within Victoria and partly elsewhere is to be assessed as if the amount secured by the mortgage were only the dutiable proportion of the total amount secured by the mortgage, as determined in accordance with this clause.

Sub-clause (2) provides that the dutiable proportion of the amount secured is to be calculated in accordance with the formula outlined in the sub-clause.

Sub-clause (3) provides that the dutiable proportion is to be calculated by reference to a referable point specified in sub-clause (4).

Sub-clause (4) outlines the following as "referable points" prepared within 12 months preceding the date of liability to duty—

- an independent valuation;
- a statement of the mortgagee based on information obtained to determine the advance;
- a property valuation used by the mortgagor in preparing an annual return under the Corporations Law;
- certified financial reports of the mortgagor as to the company's position;
- agreed valuations that support insurance policies taken out by the mortgagor;
- any other approved method.

Sub-clause (5) provides that if there are two or more referable points in relation to a mortgage, the later one must be used.

Sub-clause (6) provides that the referable point must be the same as that used under a corresponding Act in other States.

Sub-clause (7) requires that the evidence of the location and percentage value of any property be made by statement in a form approved by the Commissioner, by either party to the mortgage.

Sub-clause (8) provides that the duty may be endorsed on a mortgage or a statement made under sub-clause (7) on the basis of evidence in the statement.

Sub-clause (9) provides that if the duty payable on a mortgage under this clause has been endorsed on the statement, the mortgage may be denoted at any time by showing the percentage of property in Victoria securing the loan and the total amount secured by the mortgage.

Clause 160 is concerned with advances secured by mortgage packages.

Sub-clause (1) provides that a mortgage package consists of several instruments of security including a Victorian security, that secure or partly secure the same advance at the date of execution or date of advance.

Sub-clause (2) provides that duty is assessable on a mortgage package as if all the instruments that make up the package were one mortgage, executed on the date of the most recently executed instrument.

Sub-clause (3) provides that if more than one Victorian mortgages form part of the same package, one is to be stamped with the duty and the others stamped as collateral mortgages.

Sub-clause (4) provides that evidence of location and percentage value of property is to be made by either party by way of a statement referred to in sub-clause 159(7).

Sub-clause (5) provides that where a person provides evidence by way of a statement under sub-clause 159(7) that a mortgage over property in Victoria executed after the date of advance was intended to be part of the mortgage package, it will be considered part of the package.

Sub-clause (6) provides that where one or more of the mortgages intended for a package are yet to be executed, until the other intended mortgages are executed, the executed mortgage is security only for that proportion of the total advance that it represents in relation to all the property secured.

Sub-clause (7) provides that the Commissioner may endorse the Victorian mortgage to indicate the proportional amount secured by the mortgage pending execution of the other intended mortgages.

Sub-clause (8) provides that a mortgage that secures the same advance as a mortgage package on which duty has been paid will not be part of the package in respect of that advance but will be taken to be a collateral mortgage.

Clause 161 provides for the stamping of a mortgage instrument prior to an advance.

Sub-clause (1) provides that a mortgage may be stamped before an advance whether or not there has been an earlier advance.

Sub-clause (2) provides that a mortgage referred to in clauses 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.

Sub-clause (3) provides that a mortgage stamped under sub-clause (2) is deemed to be duly stamped and is not required to be stamped in accordance with clause 159 again, until a future advance brings the total secured above the amount to which it is already stamped.

Sub-clause (4) provides that clauses 160(5) and (6) apply to a mortgage package stamped before an advance.

Clause 162 deals with security in the context of mortgage packages.

Sub-clause (1) provides that a mortgage stamped as part of a mortgage package but—

- which is no longer part of a package; and

- no longer secures the same amount secured by that package—

is only good security for the amount represented by the duty paid on it, unless duty on the other money has been paid.

Sub-clause (2) provides that the withdrawal of a mortgage from a package will not affect the amount of security represented by the remaining mortgages.

Clause 163 empowers the Commissioner to provide information relating to—

- any statement in respect of a mortgage package; or
- a mortgage over property partly in Victoria and partly outside Victoria—

to any person the Commissioner considers is connected with the administration of this Chapter, or the corresponding provisions of a corresponding Act.

Clause 164 provides that the Commissioner or a person authorised by the Commissioner may collect any duty payable under this Chapter and endorse mortgages with a stamp showing the percentage of property in Victoria and total amount secured.

Clause 165 deals with collateral securities.

Sub-clause (1) provides that if a mortgage or other security secures the same money as—

- another mortgage that has been duly stamped under this Bill or a corresponding Act; or
- another security instrument duly stamped in Victoria—

the collateral security is not chargeable with duty in respect of the amount secured by that stamped mortgage or security instrument.

Sub-clause (2) provides that the Commissioner or authorised person may endorse a collateral security with a stamp showing the duty paid on the amount secured by the principal security.

Sub-clause (3) provides that the reference to mortgage or security includes a stamped mortgage package.

PART 3—DUTY CONCESSIONS

Clause 166 deals with refinancing loans.

Sub-clause (1) defines "refinancing mortgage" to mean a mortgage that secures the balance outstanding immediately prior to the execution of that mortgage under an earlier stamped mortgage to the same borrower that is to be discharged in favour of the new mortgage. For the purposes of the definition, it is irrelevant whether the refinancing mortgage is over the same property or over a property previously owned by the borrower.

Sub-clause (2) stipulates that for the purposes of sub-clause (1), a mortgage secures an advance to the same borrower if, whether directly or indirectly through collateral arrangements, the same person obtains the advances secured by them.

Sub-clause (3) provides that a refinancing mortgage is taken to have been duly stamped in respect of the amount required to discharge the earlier mortgage, except as provided for in sub-clause (5).

Sub-clause (4) provides that, where an advance is refinanced by more than one lender who together secure the balance outstanding under the mortgage, the definition of "refinancing mortgage" is to be construed as if—

- the reference to mortgage were a reference to an aggregate of such mortgages; and
- each lender were the holder of a refinancing mortgage.

Sub-clause (5) provides that a refinancing mortgage held by each lender is taken to have been duly stamped in respect of an amount—

- equal to the amount required to discharge the earlier mortgage in the same proportion as the amount secured by that mortgage bears to the total amount secured by the refinancing mortgage.

Sub-clause (6) provides that if each of two or more refinancing mortgages severally secures the same advance, the provisions of sub-clauses (3) or (5) apply as the Commissioner determines and no duty is chargeable in respect of any of the others.

The Commissioner may, however, denote the other mortgages.

Sub-clause (7) provides that, with respect to collateral mortgages, a refinancing mortgage taken to be duly stamped is a stamped mortgage for the purposes of clause 165 and duty is taken to have been paid on it.

Sub-clause (8) outlines the rate at which duty is payable and the method for calculating the amount secured by a refinancing mortgage.

Sub-clause (9) provides that if the number of original borrowers is reduced, all remaining borrowers are deemed to be the same borrower or person for the purposes of sub-clauses (1) or (2).

Clause 167 deals with eligible mortgages under concession schemes.

Sub-clause (1) provides that, subject to this clause, eligible mortgages are exempt from duty.

Sub-clause (2) defines an "eligible mortgage" as—

- a mortgage given by an eligible pensioner or an eligible first home owner securing an advance for the purchase of an estate in fee simple in land, if he or she was entitled under Division 5 of Part 5 of Chapter 2 to an exemption or concession from duty on the transfer of land, or for the construction of a dwelling on the land; or
- a refinancing mortgage in respect of such a mortgage.

Sub-clause (3) provides that this clause applies only to that part of the amount that relates to the purchase of land or the construction of a dwelling on the land.

Sub-clause (4) provides that in 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 referred to in sub-clause (3).

Sub-clause (5) imposes a penalty of double the duty that would have been payable less any amount paid on a person who falsely represents to a tax officer that a mortgage is not chargeable with duty and is convicted of an offence against section 57 of the **Taxation Administration Act 1997**.

Sub-clause (6) stipulates that the penalty in sub-clause (5) is additional to any penalty tax or interest payable under the **Taxation Administration Act 1997**.

PART 4—EXEMPT INSTRUMENTS

Clause 168 sets out certain exemptions from mortgage duty.

Sub-clause (1) provides that this Chapter does not apply to mortgages executed before 4 January 1965 or to mortgages not chargeable with duty under this Act.

Sub-clause (2) exempts the following instruments from duty—

- a mortgage made or given by a registered co-operative society, registered co-operative housing society or credit union;
- a mortgage given for religious, charitable or educational purposes;
- a mortgage or foreign security made or given by certain specified governmental bodies, but excluding a declared public statutory authority;
- a registered lien on a crop;
- a lien on wool or registered mortgage of stock;
- a mortgage given to the Victorian Workcover Authority;
- a mortgage given to a recognised institution within the meaning of the **Trustee Act 1958**.

Sub-clause (3) provides that, for the purposes of sub-clause (2), the Governor-in-Council, by Order published in the Government Gazette, may declare a public statutory authority to be a declared public statutory authority.

Clause 169 deals with mortgages associated with certain credit contracts.

Sub-clause (1) provides an exemption from duty for a mortgage securing an amount not exceeding \$35 000 advanced solely under a consumer credit contract.

Sub-clause (2) provides that mortgage duty is not chargeable where a mortgage secures an amount advanced under a consumer credit contract and another advance and the total amount advanced under the consumer credit contract does not exceed \$35 000.

Sub-clause (3) provides that a mortgage will be liable to duty on the whole amount where the amount advanced under a consumer credit contract exceeds \$35 000.

Sub-clause (4) restricts exemptions under sub-clauses (1) and (2) from applying to—

- advances for the purpose of acquiring a private dwelling house or the acquisition of land on which to erect a private dwelling house; or
- the erection of a private dwelling house or the addition of accommodation to a private dwelling house.

Sub-clause (5) defines, "consumer credit", "Consumer Credit Code" and "private dwelling house".

Clause 170 provides that a mortgage is not chargeable with duty on the amount of an advance to a natural person that is for the purchase of farm machinery or a commercial vehicle.

Clause 171 exempts from duty certain debentures or related instruments.

Sub-clause (1) exempts from duty a mortgage solely securing the repayment of advances arising from the issue by a financial corporation or related corporation of a debenture.

Sub-clause (2) applies that exemption to those advances arising from the issue by a financial corporation or a related entity of a debenture if the mortgage in part secures the repayment of those advances.

Sub-clause (3) clarifies that the clause applies to a debenture issued or a mortgage executed by a related corporation only with respect to the raising of funds to be used for a financial corporation.

Sub-clause (4) defines "financial corporation" and "related corporation".

PART 5—MISCELLANEOUS

Clause 172 deals with the payment of duty on mortgages associated with debenture issues.

Sub-clause (1) provides that the clause applies if a corporation is or will be under a liability to repay money secured by a mortgage

and the corporation is a party to an instrument of trust in respect of its debentures.

Sub-clause (2) provides that if the corporation and the trustee for the debenture holders gives the Commissioner a written undertaking in the approved form, a mortgage solely securing repayment of money in respect of debentures or securing the repayment of such money will not be liable to mortgage duty. Instead, duty is payable in accordance with sub-clause (3).

Sub-clause (3) sets out a simplified process for the payment of duty in these circumstances. It requires the corporation and the trustee, as parties to the undertaking, to lodge a statutory declaration each July in respect of the amounts subscribed for debentures in the previous 12 months and sets a rate of duty in respect of those subscriptions.

Sub-clause (4) provides the circumstances whereby a debenture issued outside Victoria to a Victorian domiciled person will be liable to duty under this Part.

Sub-clause (5) provides that in this clause 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 existing holdings of debentures or other marketable securities.

Clause 173 sets out an anti-avoidance provision concerning unregistered mortgages protected by caveats.

Sub-clause (1) provides that a caveat under the **Transfer of Land Act 1958** in which an interest in land is claimed under an unregistered mortgage is chargeable with duty if the mortgage is liable to duty but is unstamped.

Sub-clause (2) provides that the duty payable is the same amount as that chargeable on the mortgage.

Sub-clause (3) provides that the mortgagor is the party liable to pay the duty.

Sub-clause (4) provides that duty is not chargeable if the Commissioner is satisfied that a sum equal to the amount payable under sub-clause (2) has been paid on the mortgage or another related instrument.

Sub-clause (5) provides that if the caveat has been stamped with ad valorem duty a mortgage may be stamped as collateral security.

Sub-clause (6) provides that the clause does not apply to a caveat in respect of a mortgage that is exempt from duty under Part 4.

Clause 174 provides for the stamping of counterpart or collateral instruments in specified circumstances.

Sub-clause (1) provides that a counterpart or collateral security may on application be stamped in lieu of the mortgage securing the same amount where the Commissioner is satisfied that the mortgage has been lost or destroyed or cannot conveniently be produced.

Sub-clause (2) provides that, for the purposed of sub-clause (1), a reproduction of a mortgage or collateral security is deemed to be a counterpart if it is purported to be signed by the Registrar-General or Registrar of Titles.

Sub-clause (3) defines "reproduction".

CHAPTER 8—INSURANCE

This Chapter contains clauses 175 to 213. It imposes duty on policies of general insurance, policies of life insurance and transport accident charges. The Chapter generally retains the policy position contained in the **Stamps Act 1958**.

Proposed changes to the general insurance provisions are made in the interests of uniformity with other jurisdictions and to address the issues of multiple duty and apportionment of premium between jurisdictions where the property or risk is located in more than one place or between different types of insurance. The life insurance provisions are also more clearly identifiable in the Bill as a whole, being consolidated in one place.

Duty is charged on the amount of the premium paid in relation to a contract of general insurance and duty is to be paid at the current rate of 10%, as set out in clause 179, each time a premium is paid. "Premium" is clearly defined and the time at which a premium is "paid" is also specified. Generally, the insurer to whom the premium is paid is the person liable to pay the duty. Where insurance is taken out with an unregistered insurer, duty is payable by the insured person, who must maintain certain records of that insurance.

The Chapter clarifies that refunds of duty are payable if duty has been paid on premium amounts which subsequently have been refunded.

To facilitate payment of duty, general insurers must register with the Commissioner and abide by certain provisions contained in the Chapter. On registration, insurers must submit a monthly return detailing the total amount of premiums paid to them for general insurance during the preceding month, and pay the appropriate amount of duty when submitting the return. A registered general insurer is empowered to recover the duty payable from the person who contracts with the insurer for insurance.

Provision is made for the apportionment of premiums and other amounts between Australian jurisdictions and between different types of insurance.

Insurance that is exempt from duty for the purposes of this Chapter is also clearly identified.

A specific provision ensures that a failure to comply with these provisions will not render the insurance contract illegal or invalid.

A life insurance policy must also be endorsed with the appropriate duty. For life insurance, duty is charged on a policy of life insurance and a temporary or term insurance policy at the rates of duty as set out. These are identical to the existing rates under the **Stamps Act 1958**. The party liable to pay duty is the person issuing the policy of life insurance, being the life insurer.

The Chapter defines who is a life insurer and sets out registration requirements similar to those applying to general insurers. A return must be lodged by an approved life insurer and duty paid by the 14th day of each month in respect of policies of life insurance issued by the insurer in the previous month.

The Chapter maintains the existing exemptions from life insurance duty under the **Stamps Act 1958**.

Duty of 10% is charged on transport accident charges applicable to motor vehicles under Part 7 of the **Transport Accident Act 1986**. This duty is payable by the Transport Accident Commission, which is required to lodge a return and make payment by the Wednesday in each week. These provisions replicate the existing provisions under the **Stamps Act 1958**.

Clause Notes

PART 1—INTRODUCTION AND OVERVIEW

Clause 175 imposes duty in respect of certain types of insurance.

Sub-clause (1) charges duty on the premium paid for a contract for general insurance.

Sub-clause (2) stipulates that duty is payable each time such a premium is paid.

Sub-clause (3) charges duty on policies of life insurance.

Sub-clause (4) provides that duty is chargeable under Part 4 on transport accident charges.

PART 2—GENERAL INSURANCE

Division 1—Duty in respect of General Insurance

Clause 176 defines general insurance for the purposes of the Chapter.

Sub-clause (1) defines "general insurance" to mean insurance that relates to—

- property in Victoria, and/or
- risks, contingencies or events that may occur within Victoria.

Sub-clause (2) defines "general insurance" to include insurance against the following occurrences—

- trauma;
- disabling or incapacitating injury, sickness, condition or disease.

Sub-clause (3) stipulates that the definition of "general insurance" does not include either life insurance or insurance that Division 5 exempts from duty.

Clause 177 defines premium in relation to general insurance.

Sub-clause (1) defines premium to mean the total amount paid to the insurer or their intermediary for the insurance. This amount includes any commission paid to the insurer's intermediary.

Sub-clause (2) stipulates that the definition of "premium" includes a fire service levy that is paid in connection with any insurance.

Sub-clause (3) stipulates that the definition of "premium" does not include the following amounts—

- an amount paid to an insurance intermediary as a fee (provided that the amount can clearly be identified as such); or
- an amount of duty under this Bill or a corresponding Act of another jurisdiction.

Sub-clause (4) states that it is immaterial where the amount is paid or where the insurance is effected.

Clause 178 stipulates for duty purposes when premium is paid.

Sub-clause (1) stipulates when a premium or instalment of a premium is deemed to be paid for the purposes of this Chapter. This occurs when the earlier of the following events occur—

- the premium or instalment is received by the insurer; or
- the premium or instalment is credited to an account of the insurer.

Sub-clause (2) stipulates that a premium or instalment is deemed to be received by an insurer if it is received by a third party on behalf of the insurer.

Clause 179 states that the amount of duty chargeable on an insurance contract is 10% of the premium.

Clause 180 provides that the general insurer is liable to pay the duty, unless clause 181 provides otherwise.

Clause 181 covers circumstances where duty is payable by the insured person.

Sub-clause (1) provides that this clause applies to a person who obtains, effects or renews any general insurance with a person other than a registered insurer.

Subclause (2) provides that such a person must, on or before the 21st of the month, after they pay their insurance premium—

- lodge a return with the Commissioner containing any information about the premium and insurance that the Commissioner requires; and
- pay the Commissioner as duty the amount calculated in accordance with clause 179.

Sub-clause (3) stipulates that a person is deemed to have complied with sub-clause (2) if another person acting on their behalf meets those requirements.

Clause 182 Provides that a person to whom clause 181 applies must keep certain records. These records must indicate—

- the nature and location of the property insured;
- the nature and location of each risk, contingency or event that is covered by the insurance; and
- the amount of the premiums paid in relation to each contract of insurance.

Clause 183 provides for refunds of duty where premiums have been reduced.

Sub-clause (1) defines the circumstances where general insurer, or a person to whom clause 181 applies, will be entitled to a refund of duty that has been paid in respect of a premium. This will occur when an insurer has refunded the whole or a part of the premium.

Sub-clause (2) stipulates that the amount of duty refund will be equal to the duty paid on the amount of the premium refunded.

Sub-clause (3) provides that a general insurer may set-off a refund against other duty payable under this Bill.

Division 2—How Duty is Paid by a General Insurer

Clause 184 defines who is a general insurer for the purposes of the Bill. A general insurer is a person who—

- writes general insurance, but does not do so as an insurance intermediary; and
- is registered under the Insurance Act 1973 (Cth).

Clause 189 establishes a register of general insurers.

Sub-clause (1) requires the Commissioner to keep a register of insurers who are registered under this Part.

Sub-clause (2) allows any person to inspect this register without charge at the Commissioner's principal office during the hours that the office is open to the public.

Clause 190 imposes obligations that a registered insurer must discharge on or before the 21st day of each month. These obligations are to—

- lodge a return with the Commissioner detailing the total amount of all premiums for insurance paid to the registered insurer in the previous month; and
- pay the Commissioner as duty the amounts determined under clause 179.

Clause 191 enables registered insurers to recover amounts paid by way of duty from those persons who enter into contracts of insurance with them.

Sub-clause (1) entitles registered insurers who have premiums payable to them to require the person by a whom a premium is payable to pay the insurer an amount equal to the duty chargeable.

Sub-clause (2) stipulates that this right may only be exercised if the requirement to pay duty is contained in a written request that is given to the person and specifies the amount of duty.

Sub-clause (3) entitles the insurer to recover the duty as a debt if it is not paid.

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

Clause 192 outlines the application of this Division.

Sub-clause (1) stipulates that this Division applies to certain types of insurance contracts. These contracts are—

- contracts that insure property in Victoria as well as property in another place; and/or

Clause 185 requires a general insurer to be registered under this Part.

A penalty up to a maximum of 100 penalty units (\$10 000) may be imposed on an insurer who fails to register .

Clause 186 requires the Commissioner to register a general insurer who applies to be registered in the approved form.

Clause 187 deals with the cancellation of registration.

Sub-clause (1) stipulates grounds on which the Commissioner may by written notice cancel a general insurer's registration. These grounds are—

- the insurer's registration under the Insurance Act 1973 (Cth) is terminated; or
- the insurer is made bankrupt; or
- the insurer is a company that is wound up; or
- the insurer is convicted of an offence under an Act that imposes duty; or
- the Commissioner believes that the insurer has ceased to carry on general insurance business; or
- any other reason the Commissioner thinks sufficient.

Sub-clause (2) stipulates that a cancellation of registration is effective from the date which the Commissioner specifies in the notice of cancellation.

Clause 188 provides for the cancellation of registration when a general insurer ceases business in Victoria.

Sub-clause (1) provides that a registered insurer who ceases to write general insurance in Victoria must, within 14 days, give the Commissioner written notice of the fact. The insurer must lodge the return and pay the duty payable on or before the 21st day of the month after which the notice is given.

A penalty up to a maximum of 100 penalty units (\$10 000) may be imposed if the requirements of sub-clause (1) are not met.

Sub-clause (2) provides that the notice cancels the insurer's registration on the day on which it is received by the Commissioner.

- contracts that insure against 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.

Sub-clause (2) explains that the intention of the Division is to—

- provide the means for apportioning premiums paid and other amounts in relation to a contract of insurance given the definition of general insurance contained in sub-clause 176(1);
- avoid the imposition of multiple duty between the States and Territories; and
- give each State and Territory its appropriate share of duty by means of apportionment.

Clause 193 establishes a method for apportioning premiums for duty purposes.

Sub-clause (1) stipulates that the Commissioner may adopt a Schedule of Apportionment from time to time for the purpose of apportioning premiums and other amounts in relation to insurance in accordance with this Part.

Sub-clause (2) stipulates that in developing the Schedule of Apportionment, the Commissioner may consult with any person he or she considers suitable.

Clause 194 deals with apportionment in practice.

Sub-clause (1) stipulates that a premium or amount is to be apportioned in accordance with the Schedule of Apportionment adopted for the time being, except as provided by this clause.

Sub-clause (2) allows an insurer or insured person to make an application in writing to apportion a premium or an amount on a basis that is not in accordance with Schedule of Apportionment. The Commissioner may allow, but is not required to allow, this application and apportion the premium or amount on the alternative basis.

Sub-clause (3) permits the Commissioner to redetermine the apportionment, reassess the liability to duty and charge duty accordingly 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.

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

Clause 195 deals with apportionment between different types of insurance for duty purposes.

Sub-clause (1) provides that this Division applies only to different types of insurance, not to the apportionment of an amount between Victoria and another place.

Sub-clause (2) allows the Commissioner to determine the apportionment of insurance and reassess the duty if he or she is not satisfied that a premium paid has been properly apportioned.

Division 5—Exempt Insurance

Clause 196 exempts from duty under this Chapter certain types of insurance. The following types of insurance are exempt—

- 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 (Cth) and that provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided;
- accident compensation or workers compensation insurance, as defined;
- insurance of the physical hull of a floating vessel used primarily for commercial purposes; and goods or merchandise, or the freight of goods or merchandise, carried by land, sea or air;
- 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 law of another State or Territory corresponding to this Act;

- insurance against damage by hail to cereal or fruit crops;
- 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; and
- insurance undertaken by a friendly society or a body that, in the opinion of the Commissioner, operates in a similar way to a friendly society.

Division 6—Miscellaneous

Clause 197 stipulates that an insurance contract is not illegal merely because it fails to comply with this Chapter.

PART 3—LIFE INSURANCE

Division 1—Duty in respect of Life Insurance

Clause 198 defines life insurance for the purposes of the Chapter.

Sub-clause (1) defines "life insurance" to mean any insurance or assurance in respect of—

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

of a person or persons domiciled in Victoria when the policy is issued.

The definition of life insurance expressly excludes insurance against accident.

Sub-clause (2) defines "insurance against accident" as any insurance where there is an agreement that a payment will only be made—

- on the death of a person that is not the result of natural causes, or
- as compensation for personal injury.

Clause 199 imposes obligations to make out and execute policies of life insurance. A person who receives or takes credit for a premium or consideration for a life insurance contract is required to—

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

A person who fails to meet these obligations is subject to penalty of 2 penalty units (\$200) and double the amount of duty that would have been payable on the policy.

Clause 200 sets out the duty payable.

Sub-clause (1) provides that the amount of duty chargeable on a policy of life insurance (other than a temporary or term insurance policy) is—

- nil, if the sum insured does not exceed \$200;
- 12 cents per \$200 of the sum insured, if the sum insured is greater than \$200 but not greater than \$2000; or
- \$1.20 plus 24 cents per \$200 of the sum insured that exceeds \$2000.

Sub-clause (2) provides that the amount of duty chargeable on a temporary or term insurance policy is 5% of the first year's premium on the policy.

Sub-clause (3) provides that any additional money payable under the policy in the event of the insured dying as a result of an accident is to be disregarded in determining the sum insured by a policy of life insurance.

Clause 201 provides that duty is liable to be paid by the person who issues the policy of life insurance.

Division 2—Approved Life Insurers

Clause 202 defines "life insurer". The definition stipulates that a life insurer is a person who—

- writes life insurance but does not do so as an insurance intermediary; and
- is registered under the Insurance Act 1973 (Cth).

Clause 203 provides for the approval of life insurers.

Sub-clause (1) provides that a life insurer may apply to be registered as an approved life insurer. The application must be made in the approved form.

Sub-clause (2) provides that the Commissioner may register a person as an approved life insurer upon receipt of an application under sub-clause (1).

Clause 204 permits the cancellation of registration of an approved life insurer.

Sub-clause (1) outlines the grounds upon which the Commissioner may cancel the registration of an approved life insurer. The Commissioner must provide written notice to the person. The grounds for cancellation are—

- the insurer's registration under the Insurance Act 1973 (Cth) has been terminated;
- the insurer is made bankrupt;
- the insurer is wound up;
- the insurer is convicted of an offence under an Act imposing duty;
- the insurer's registration was made in error or because of a false or misleading statement made in relation to the application for registration;
- the Commissioner is of the opinion that the insurer has ceased to carry on life insurance; or
- any other reason the Commissioner thinks sufficient.

Sub-clause (2) provides that a cancellation of registration has effect from the date which the Commissioner specifies in the notice of cancellation.

Clause 205 sets out the obligations of a life insurer on cessation of business.

Sub-clause (1) requires an approved life insurer who ceases to write life insurance in Victoria to—

- within 14 days of ceasing business give written notice of the cessation to the Commissioner; and lodge the return that is required to be lodged under this Part; and
- pay the duty that is required to be paid under this Part on or before the 21st day of the month after the notice is given.

A penalty up to a maximum of 100 penalty units (\$10 000) may be imposed on an approved life insurer who fails to meet these obligations.

Sub-clause (2) provides that the notice given under sub-clause 205(1) cancels the insurer's registration on the day on which it is received by the Commissioner.

Sub-clause (3) avoids a potential double jeopardy by providing that an offence under sub-clause (1)(a) is not also an offence under section 59 of the **Taxation Administration Act 1997** (failing to lodge returns).

Clause 206 establishes a register of approved life insurers.

Sub-clause (1) requires the Commissioner to keep a register of approved life insurers.

Sub-clause (2) entitles any person to inspect the register at the Commissioner's principal office during the hours that the office is open to the public.

Clause 207 sets out how duty is paid by approved life insurers.

Sub-clause (1) requires an approved life insurer, on or before the 14th day of each month, to—

- lodge a return with the Commissioner detailing the total amount of all premiums for life insurance paid to the registered insurer in the previous month; and

- pay the Commissioner the duty payable on those policies.

Sub-clause (2) states that a policy on which duty has been paid is deemed to be duly stamped.

Division 3—Exemptions

Clause 208 provides exemptions from life insurance duty for—

- a cover note in respect of which a duly stamped policy is issued within 3 months after the issue of the cover note; and
- a policy of reinsurance.

PART 4—TRANSPORT ACCIDENT CHARGES

Clause 209 states that this Part charges duty on transport accident charges that are applicable to motor vehicles under Part 7 of the **Transport Accident Act 1986**.

Clause 210 states that duty under this Part is payable by the Transport Accident Commission.

Clause 211 provides that the rate of duty is 10%.

Clause 212 prescribes how duty must be paid. The Transport Accident Commission must, on or before Wednesday in each week—

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

Clause 213 entitles the Transport Accident Commission to a refund of duty if it refunds the whole or part of a transport accident charge on which duty has been paid.

CHAPTER 9—MOTOR VEHICLE DUTY

Chapter 9 contains clauses 214 to 240. Duty is imposed on the registration and transfer of registration of a motor vehicle. The Chapter preserves the policy of the **Stamps Act 1958**.

PART 1—INTRODUCTION AND OVERVIEW

Clause 214 imposes duty on applications for the registration of a motor vehicle and applications for transfer of registration of a motor vehicle.

Sub-clause (1) charges duty on the application for registration and the application for transfer of registration of a motor vehicle under the **Road Safety Act 1986**. (Heavy trailers are included as motor vehicles—see the definition of "motor vehicle" in clause 3.)

Sub-clause (2) provides that Duty is also chargeable under Part 4 on changes of use of motor vehicles and acquisitions where the transfer document is not lodged at VicRoads in the time required.

Clause 215 requires applicants to lodge statements of dutiable value with applications for registration or transfer of registration of motor vehicles.

Sub-clause (1) requires the applicant to lodge a statement of the dutiable value of the motor vehicle with an application for registration or transfer of registration. This is not required if the application is not chargeable with duty under this Chapter.

Sub-clause (2) requires a person, who does not pay the duty to the dealer when they acquire a registered motor car from a dealer, to lodge with the application for transfer of registration a copy of the agreement of sale of the motor car. This requirement does not apply when the application is exempt from duty under this Chapter.

Clause 216 sets out who must pay the duty.

Sub-clause (1) provides that duty on an application for registration is payable by the applicant.

Sub-clause (2) provides that applicant who is the acquirer of the vehicle must pay the duty on an application for transfer of registration.

Sub-clause (3) relieves a person who acquires a motor vehicle from a registered used car dealer from any further liability for duty on the application for transfer of registration if the acquirer pays the required duty to the dealer.

Clause 217 provides that duty is payable at the time of lodging the application for registration or making the application for transfer of registration.

Clause 218 provides the rates of duty. Where the motor vehicle has not been previously registered in Victoria or elsewhere, there is one rate of duty for non-passenger car applications for registration and three rates of duty depending on dutiable value for passenger car applications. One rate of stamp duty applies to the remaining applications for registration and to all applications for transfer of registration.

Clause 219 sets out how to ascertain the dutiable value of a motor vehicle.

Sub-clause (1) provides that, subject to sub-clause (2), the dutiable value of a motor vehicle is the greater of the consideration given for the acquisition of the vehicle or the price at which the vehicle might reasonably sold, free from encumbrances, on the open market.

Sub-clause (2) provides a reduction of \$24 000 (or such other prescribed amount) to the dutiable value as determined according to sub-clause (1) for a vehicle that is a taxi-cab specifically converted to enable wheelchair access and the conveyance of at least one occupied wheelchair. This provision does not apply if the vehicle has been previously registered in Victoria or elsewhere.

Clause 220 prohibits the registration of vehicles in certain circumstances.

Sub-clause (1) prohibits a registration authority from registering a motor vehicle unless a statement of the dutiable value of the vehicle is lodged in accordance with clause 215. This constraint does not apply if the application for registration is exempt from duty under this Chapter.

Sub-clause (2) defines "registration authority". Currently, this is VicRoads.

PART 2—REGISTERED USED CAR DEALERS

Clause 221 provides for registration as a registered used car dealer.

Sub-clause (1) requires the Commissioner, on receipt of a written application from a licensed motor car trader or a special dealer, to register the trader or dealer as a registered used car dealer and issue a registration code number.

Sub-clause (2) requires the Commissioner to give written notification of the registration to the registered used car dealer.

Sub-clause (3) provides that the registration takes effect from the date of the notification of registration issued by the Commissioner.

Clause 222 provides for cancellation of registration as a registered used car dealer.

Sub-clause (1) requires a registered used car dealer who ceases to be a licensed motor car trader or special dealer, or who wishes to cease being registered, immediately to advise the Commissioner in writing. Any returns due must be lodged and amounts of duty included in those returns must be paid on or before the 21st day of the following month.

Sub-clause (2) provides that the Commissioner may cancel the registration of any registered used car dealer who gives notice under sub-clause (1) or who has ceased to be a licensed motor car trader or special dealer.

Clause 223 provides for a register of registered used car dealers.

Sub-clause (1) requires the Commissioner to keep a register of registered used car dealers.

Sub-clause (2) provides that anyone may inspect the register without charge during office hours.

Clause 224 concerns the use of the dealer's code number.

Sub-clause (1) provides that this clause applies where a person acquires a currently registered Victorian motor vehicle from a registered used car dealer and pays to the registered used car dealer the duty payable on the application for transfer of registration.

Sub-clause (2) requires the registered used car dealer to endorse the application for transfer of registration with the dealer's code number and a statement that the duty payable has been paid to the dealer and the amount of that duty.

A penalty up to a maximum of 100 penalty units (\$10 000) may be imposed for failure to comply with this clause.

Clause 225 establishes a monthly return system to facilitate the payment of duty.

Sub clause (1) requires a registered used car dealer to lodge a return with the Commissioner on or before the 21st day of each month and to pay any amounts of duty received from acquirers during the previous month.

Sub-clause (2) requires the dealer to lodge a "nil" return if nothing happened in the preceding month to require the dealer to pay an amount under this clause.

Sub-clause (3) provides that the Commissioner may require verification of a return.

Clause 226 imposes penalty tax and interest on a dealer in certain circumstances. If a person acquires a vehicle from a dealer and pays to the dealer the duty payable on the application for transfer of registration which the dealer fails to pay to the Commissioner, any penalty tax and interest payable under the **Taxation Administration Act 1997** is payable by the dealer.

Clause 227 imposes a further penalty on a dealer for failure to lodge or late lodgment of a return.

Sub-clause (1) imposes on a dealer who does not comply with clause 225 a penalty of the greater of—

- an amount equal to the duty payable and interest on that amount at 20% per annum from the day on which the payment under clause 225(1)(b) was required; or
- \$25.

Sub-clause (2) stipulates that the penalty imposed by sub-clause (1) is in addition to the dealer's liability for any amount under clause 225(1)(b) and any penalty tax and interest payable under the **Taxation Administration Act 1997**.

Sub-clause (3) empowers the Commissioner to remit the penalty imposed by sub-clause (1) in the circumstances he or she considers appropriate.

Clause 228 prohibits the unauthorised endorsement of the dealer's code number.

Sub-clause (1) forbids a person endorsing on an application for transfer of registration the code number of a registered used car dealer unless required to do so under this Part.

A penalty up to a maximum of 100 penalty units (\$10 000) may be imposed in respect of an unauthorised endorsement within the terms of this provision.

Sub-clause (2) forbids a person endorsing on an application for transfer of registration a statement that an acquirer has paid duty to a registered used car dealer in regard to the application unless the duty has actually been paid to the dealer.

A penalty up to a maximum of 100 penalty units (\$10 000) may be imposed in respect of the false endorsement on an application for transfer of registration that duty has been paid to a registered used car dealer.

Sub-clause (3) forbids a person endorsing on an application for transfer of registration, an amount of duty other than the amount of duty actually paid to the dealer.

A penalty up to a maximum of 100 penalty units (\$10 000) may be imposed for endorsing on an application for transfer of registration an amount other than the amount of duty actually paid.

Sub-clause (4) avoids a potential double jeopardy by providing that an offence under this clause is not also an offence under section 52 of the **Taxation Administration Act 1997** (false or misleading information in records).

PART 3—EXEMPTIONS

Clause 229 exempts from duty motor vehicles transferred under a deceased estate.

Sub-clause (1) provides an exemption from duty for an application for transfer of registration made by a person beneficially entitled to a vehicle as a result of the death of the registered operator.

Sub-clause (2) provides an exemption from duty for an application for registration or transfer of registration made by a surviving spouse, or surviving defacto spouse, entitled to the vehicle as part of the deceased spouse's estate or deceased defacto spouse's estate.

Sub-clause (3) provides an exemption from duty for an application for transfer of registration made by the executor or administrator of a deceased estate to enable the subsequent transfer of the vehicle to an entitled beneficiary or for the sale by the estate of the vehicle.

Clause 230 exempts from duty applications for the transfer of registration in regard to certain vehicles used by registered used car dealers.

Sub-clause (1) provides an exemption from duty for an application for transfer of registration whereby a registered used car dealer acquires a vehicle solely for sale.

Sub-clause (2) provides an exemption from duty for an application for transfer of registration whereby a registered used car dealer who is a retailer acquires a vehicle solely or primarily for sale or as demonstrator vehicle. The exemption also covers a vehicle provided by the dealer to a secondary school for use for driver education.

Clause 231 exempts from duty applications for the registration of certain vehicles used by licensed motor car traders.

Sub-clause (1) provides an exemption from duty for an application for registration by a licensed motor car trader for the use of a vehicle solely for sale.

Sub-clause (2) provides an exemption from duty for an application for registration by a licensed motor car trader who is a retailer and registers the vehicle solely or primarily for sale or

as demonstrator vehicle. The exemption also covers a vehicle provided by the trader to a secondary school for use for driver education.

Clause 232 exempts from duty certain applications made by interstate licensed motor car traders.

Sub-clause (1) provides an exemption from duty for an application for registration or transfer of registration in Victoria by the holder of an interstate licence equivalent to a Victorian licensed motor car trader.

Sub-clause (2) restricts the exemption available under sub-clause (1) to applications made in the course of carrying on the business to which the interstate licence relates.

Clause 233 provides an exemption from duty for an application for registration or transfer of registration made by a person if no fee is payable under the **Road Safety Act 1986** or regulations on an application for transfer of registration.

Clause 234 provides exemption from duty for an application for transfer of registration by a shareholder who acquires a vehicle under a distribution of assets as a consequence of the winding up or reduction of the capital of a company.

Clause 235 exempts from duty applications for registration or transfer of registration resulting from the breakdown of a marriage or of a de facto relationship.

Sub-clause (1) provides exemption from duty for an application for registration or transfer of registration between persons who are married to each other or defacto spouses of each other. Exemption is also provided to persons who have been married to each other or have been defacto spouses of each other and the application is made as a result of the breakdown of the relationship. No exemption is provided if another party takes or is entitled to take an interest in the vehicle.

Sub-clause (2) provides exemption from duty for an application for registration or transfer of registration solely to transfer the vehicle to a trustee as a consequence of the breakdown of a marriage. The transferor must be or have been a party to the marriage and no person other than a party to the marriage or the child of a party to the marriage is a beneficiary of the trust.

Clause 236 exempts from duty applications for transfer of registration which transfer vehicles from trustees to former minors when they come of age.

Sub-clause (1) provides an exemption from duty for an application for transfer of registration to a person who acquires a vehicle on coming of age from another person who has held the vehicle as nominee or trustee on the first person's behalf while they were a minor.

Sub-clause (2) provides an exemption for an application for transfer of registration where a new trustee acquires the vehicle and the sole reason for the transfer is the change in trustee.

Clause 237 provides exemption from duty for an application for registration where the vehicle was last registered in the same name as the applicant outside Victoria but within Australia.

PART 4—DUTY ON CHANGE OF USE OR CHANGE OF OWNERSHIP

Clause 238 imposes duty on a change in usage of a motor vehicle.

Sub-clause (1) imposes duty if the last application for registration or transfer of registration of a vehicle was exempted from duty, but a subsequent change in the predominant use of the vehicle means that duty would have been chargeable based on the new use of the vehicle. Duty is not triggered if an application for transfer of registration is made in connection with the change of use.

Sub-clause (2) requires the registered operator of the vehicle to lodge, within 14 days of the change of use, a statement with the Commissioner and pay duty at the rate of \$8 per \$200, or part, of the dutiable value of the vehicle at the time the change occurred.

Sub-clause (3) imposes on a registered operator who does not comply with sub-clause (2) a penalty of the greater of—

- an amount equal to the duty payable and interest on that amount at 20% per annum from the day on which the payment under sub-clause (2)(b) was required; or
- \$25.

Sub-clause (4) stipulates that the penalty imposed by sub-clause (3) is in addition to the registered operator's liability for any amount under sub-clause (2) and any penalty tax and interest payable under the **Taxation Administration Act 1997**.

Sub-clause (5) empowers the Commissioner to remit the penalty imposed by sub-clause (3) in the circumstances he or she considers appropriate.

Clause 239 imposes a liability to lodge, and pay duty on, a statement of acquisition. This situation occurs when a requirement for an application for transfer of registration has been triggered but not satisfied.

Sub-clause (1) imposes duty on the acquisition of a Victorian registered vehicle if an application for transfer of registration is not lodged within the time required by the **Road Safety Act 1986**.

Sub-clause (2) provides that where a person acquires a motor vehicle and does not lodge an application for transfer of registration within the time required under the **Road Safety Act 1986** or regulations, within 7 days after the expiry of that time—

- a statement of acquisition must be lodged with the Commissioner; and
- the acquirer must pay duty at the rate of 8 per \$200, or part, on the dutiable value of the vehicle at the time of the acquisition.

Sub-clause (3) provides that, if an application for transfer of registration is subsequently made and duty is paid on it, or the subsequent application is not chargeable with duty, the person is entitled to a refund of the duty paid on the statement.

Sub-clause (4) provides that under sub-clause (3) a full refund of the duty paid is available if the application is exempt from duty but otherwise limits the refund to the lesser of the duty paid under sub-clause (2) or the amount paid on the application.

Sub-clause (5) imposes on an acquirer who does not comply with sub-clause (2) a penalty of the greater of—

- an amount equal to the duty payable and interest on that amount at 20% per annum from the day on which the payment under sub-clause (2)(b) was required; or
- \$25.

Sub-clause (6) stipulates that the penalty imposed by sub-clause (5) is in addition to the acquirer's liability for any amount under sub-clause (2)(b) and any penalty tax and interest payable under the **Taxation Administration Act 1997**.

Sub-clause (7) empowers the Commissioner to remit the penalty imposed by sub-clause (5) in the circumstances he or she considers appropriate.

PART 5—REFUND OF DUTY

Clause 240 deals with the refund of duty in specified circumstances.

Sub-clause (1) provides for a refund of duty if the application for registration or transfer of registration is exempt or if the application is refused. A refund of duty is also available if the acquisition does not proceed, the vehicle is returned to the disposer and all purchase money refundable is refunded.

Sub-clause (2) provides for a refund of duty to the extent that duty has been overpaid.

CHAPTER 10—MISCELLANEOUS DUTIES

This Chapter contains provisions which impose duty on the sale of specified livestock. In practice, duty is not collected on the sale of pigs as the relevant provisions of the **Livestock Disease Control Act 1994** have not been proclaimed.

Clause Notes

PART 1—SALE OF CATTLE

Clause 241 charges duty on—

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

Clause 242 outlines the rate of duty on the sale of cattle, calves and carcasses.

Sub-clause (1) outlines the rate of duty for each item specified in the sub-clause.

Sub-clause (2) provides that the maximum of duty chargeable on any one head of cattle is \$5, whether sold singly or as part of a lot.

Clause 243 outlines how to calculate the purchase money for a sale.

Sub-clause (1) specifies that the purchase money for a sale is deemed to be GST exclusive.

Sub-clause (2) provides that, for the purposes of calculating the purchase money for a sale, it is irrelevant whether payment was made in full at the time of the sale or was by instalment or otherwise deferred.

PART 2—SALE OF SHEEP AND GOATS

Clause 244 charges duty on—

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

Clause 245 outlines the rate of duty for each item.

PART 3—SALE OF PIGS

Clause 246 charges duty on—

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

Clause 247 outlines the rate of duty for each item.

Sub-clause (1) outlines the rate of duty for each item specified in the sub-clause.

Sub-clause (2) provides that the maximum of duty chargeable on the sale of any one pig is 16 cents, whether sold singly or as part of a lot.

Clause 248 outlines how to calculate the purchase money for a sale.

Sub-clause (1) specifies that the purchase money for a sale is deemed to be GST exclusive.

Sub-clause (2) provides that, for the purposes of calculating the purchase money for a sale, it is irrelevant whether payment was made in full at the time of the sale or was by instalment or otherwise deferred.

CHAPTER 11—GENERAL EXEMPTIONS FROM DUTY

This Chapter provides general exemptions from duty in respect of a mortgage given by the Commissioner to secure the payment of tax, transactions that result from bona fide corporate reconstructions and transfers and instruments arising from managed investment schemes.

Clause Notes

Clause 249 provides an exemption from duty for mortgages given by the Commissioner to secure the payment of tax.

Sub-clause (1) provides that no duty is chargeable on a mortgage given by the Commissioner to secure the payment of tax as a result of the Commissioner extending or postponing or extending the time for the payment of tax.

Sub-clause (2) defines "tax" as having the same meaning as in the **Taxation Administration Act 1997** and also land tax.

Clause 250 provides an exemption from duty for transactions as a result of corporate reconstructions.

Sub-clause (1) provides that an instrument or a transfer of dutiable property is exempt from duty if it arises out of a bona fide corporate reconstruction to the extent determined by the

Minister and if it is an instrument or transfer falling within guidelines issued by the Minister.

Sub-clause (2) requires the Commissioner to refund any non-payable duty that has been paid on an instrument or transfer under these provisions.

Sub-clause (3) requires the Minister, before 31 October in any year, to table in each House of Parliament a report of the exemptions approved and refunds made under this clause in the preceding year, including the name of the company and the amount of duty chargeable but for the exemption.

Clause 251 exempts from duty transfers and instruments arising from managed investment schemes, including—

- a transfer of property from a responsible entity of a managed investment scheme or a person holding the property as trustee of a prescribed interest scheme within the meaning of the Corporations Law as in force immediately before 1 July 1998, to a custodian or agent of the responsible entity as custodian or agent of the scheme in which the transferor held the property;
- a transfer of property from the custodian of the responsible entity of a managed investment scheme to the responsible entity;
- an instrument that amends or replaces an instrument that governs a managed investment scheme; does not transfer any property to a person who does not hold units in the scheme, or has that effect; and does not have the effect of reducing the number of persons who hold units in the scheme;
- a declaration made by a trustee in respect of property that, immediately prior to the declaration of trust, is held by the trustee as trustee of the prescribed interest scheme within the meaning of the Corporations Law as in force immediately prior to 1 July 1998; and to hold the property on trust for the responsible entity of the managed investment scheme.

CHAPTER 12—ADMINISTRATION AND ENFORCEMENT

Chapter 12 contains clauses 252 to 281. The Chapter sets out general administration and enforcement provisions.

The Chapter contains provisions for the use of adhesive stamps, empowers the Commissioner to license persons to deal in stamps, provides for penalties in the case that stamps are dealt with by unauthorised persons or misused, and covers the circumstances in which counterpart or replica instruments may be used.

The Chapter provides for the authorisation of a returns system to facilitate the payment of duty. It also contains enforcement provisions.

The Chapter covers comparable matters in broadly similar terms to administration and enforcement provisions in Part 3 of the **Stamps Act 1958**.

Clause Notes

PART 1—STAMPING INSTRUMENTS

Clause 252 empowers the Commissioner to provide stamps or any other equipment required for stamping instruments and otherwise denoting the payment of duty.

Clause 253 imposes limitations on the use of stamps.

Sub-clause (1) provides that stamps designated for a specific instrument cannot be used for any other instrument.

A penalty up to a maximum of 100 penalty units (\$10 000) may be imposed for misuse of stamps within the terms of this provision.

Sub-clause (2) provides that an instrument that requires a particular stamp is taken not to be duly stamped unless it is stamped with the specified stamp.

Clause 254 sets out the form of stamps to be used.

Sub-clause (1) provides that instruments required to be stamped must be stamped with an impressed stamp.

Sub-clause (2) permits an alternative form of stamping if authorised by the Act or by the Commissioner.

Clause 255 requires the Commissioner to stamp an instrument where the duty and any interest or penalty tax due under the **Taxation Administration Act 1997** has been paid.

Clause 256 provides a definition of "duly stamped".

Clause 257 relates to the use of adhesive stamps.

Sub-clause (1) identifies which instruments may stamped with adhesive duty stamps.

Sub-clause (2) provides when an instrument that may be stamped by use of an adhesive stamp is duly stamped.

Sub-clause (3) precludes the removal of an adhesive duty stamp from instruments, subject to sub-clause (4).

A penalty up to a maximum of 100 penalty units (\$10 000) may be imposed for removing a duty stamp otherwise than as authorised by this provision.

Sub-clause (4) provides that the Commissioner may remove an adhesive duty stamp in the course of providing a refund.

Clause 258 provides for licences to deal in stamps.

Sub-clause (1) provides that the Commissioner may license a person to deal in adhesive duty stamps on such terms and conditions as the Commissioner may determine.

Sub-clause (2) provides that the licence must include the licensee's name and address.

Sub-clause (3) enables the Commissioner to sell stamps to a licensee at a commission discount.

Sub-clause (4) empowers the Commissioner to repurchase those stamps no longer required by a licensee.

Sub-clause (5) empowers the Commission to cancel a licence on giving notice of the cancellation to the licensee.

Sub-clause (6) prohibits an unlicensed person from selling or dealing in stamps.

A maximum penalty of 20 penalty units (\$2000) may be imposed on an unlicensed person selling or dealing in stamp.

Clause 259 provides for refunds for spoiled or unused stamps.

Sub-clause (1) provides that a person may apply to the Commissioner for a refund of the value of an adhesive duty stamp that has become spoiled or useless.

Sub-clause (2) provides that the spoiled or useless stamps must be provided to the Commissioner.

Sub-clause (3) provides that a refund may also be sought for a stamp that is erroneously placed on a document.

Clause 260 provides for the reassessment of duty on failed instruments.

Sub-clause (1) provides that a failed instrument is not chargeable with duty.

Sub-clause (2) requires the Commissioner to make a reassessment of duty on the later date of 3 years after the initial assessment or 12 months after the failure of the instrument.

Sub-clause (3) requires the instrument to be produced to the Commissioner if required.

Clause 261 provides that an instrument relating to several matters will be subject to duty on each matter.

Clause 262 sets out in tabular form when an instrument of the specified type is taken to be executed.

Clause 263 authorises the use of counterpart and replica instruments in certain circumstances.

Sub-clause (1) provides that the Commissioner may stamp a counterpart or replica of an instrument where he or she is satisfied that the original has been duly stamped and the correct duty has been paid.

Sub-clause (2) provides that the stamp on the counterpart or replica must indicate that duty has been paid on the original instrument.

Sub-clause (3) defines "replica" to mean an instrument that is executed and is identical in terms to a previously executed original that has been lost, spoiled or destroyed.

PART 2—AUTHORISATION OF RETURNS SYSTEMS

Clause 264 empowers the Commissioner to authorise persons to perform certain functions.

Sub-clause (1) provides that the Commissioner may by instrument authorise persons of a specified class to endorse documents and collect duty on his or her behalf in relation to instruments or transactions of a specified class.

Sub-clause (2) specifies that notice of any authorisation under this clause must be published in the Government Gazette.

Clause 265 empowers authorised persons to endorse instruments.

Sub-clause (1) provides that an authorised person may endorse an instrument falling within the scope of that person's authority.

Sub-clause (2) states that if duty is chargeable on the instrument or transaction the endorsement must specify the amount.

Sub-clause (3) provides that an instrument is taken to be duly stamped to the amount of duty shown on the endorsement, or to be exempt from duty if the endorsement so indicates.

Sub-clause (4) requires an authorised person to keep a record of endorsements made in the approved form.

Sub-clause (5) provides that an authorised person must not endorse an instrument with an amount of duty less than that which is chargeable or endorse an instrument in a manner not approved.

A penalty up to a maximum of 5 penalty units (\$500) may be imposed for the unauthorised endorsement of an instrument within the terms of this provision.

Clause 266 provides for the payment of duty by authorised persons.

Sub-clause (1) requires an authorised person to lodge a return with the Commissioner and pay duty in respect of all instruments endorsed under clause 265. A penalty up to a maximum of 20 penalty units (\$2000) plus double the duty payable is imposed for non-compliance with this provision.

Sub-clause (2) provides that the return must be lodged and the duty paid at intervals determined by the Commissioner.

Clause 267 provides for the offset by an authorised person of overpaid amounts of duty.

Sub-clause (1) provides that the clause applies when an authorised person overpays to the Commissioner duty on a return through either miscalculating the amounts payable or through making a mistake in adding up the total of all the amounts endorsed on the relevant instruments.

Sub-clause (2) provides that the authorised person may, within 3 years after the date of the overpayment, reduce the amount payable on a subsequent return by the amount overpaid.

Sub-clause (3) requires the authorised person who reduces an amount payable on a return to lodge a statement with the Commissioner providing details of the offset.

Sub-clause (4) provides that if the overpayment was caused by a miscalculation of the amount of duty payable on an instrument, the instrument must be re-endorsed and, if an amount of overpayment has been charged to or recovered from another person, that person must be reimbursed with that amount.

Clause 268 prohibits the unauthorised endorsement of instruments and imposes penalties for this offence.

Sub-clause (1) prohibits an authorised person from endorsing an instrument which the person is not authorised to endorse.

A maximum penalty of 100 penalty units (\$10 000) may be imposed for the unauthorised endorsement of an instrument within the terms set out in this provision.

Sub-clause (2) prohibits a person who is not an authorised person from endorsing an instrument in any way that indicates that the person is an authorised person.

A maximum penalty of 100 penalty units (\$10 000) may be imposed on a person who breaches this provision.

PART 3—ENFORCEMENT

Clause 269 prohibits a person from registering an instrument that effects a dutiable transaction or an instrument chargeable with duty unless it is stamped with duty.

A maximum penalty of 100 penalty units (\$10 000) may be imposed in respect of the registration of an instrument that is not duly stamped.

Clause 270 provides for the registration of shares in private companies.

Sub-clause (1) provides that a private company must not enter into its records a transfer of shares unless a duly stamped transfer has been delivered to it.

A maximum penalty of 100 penalty units (\$10 000) may be imposed in respect of non-compliance with this provision.

Sub-clause (2) provides the circumstances in which a private company is entitled to assume that an instrument is duly stamped.

Clause 271 provides for the registration of transfers of units.

Sub-clause (1) provides that the trustee or manager of a unit trust scheme must not enter into its records a transfer of units unless a duly stamped transfer has been delivered to it.

A maximum penalty of 100 penalty units (\$10 000) may be imposed in respect of the non-compliance with this provision.

Sub-clause (2) provides the circumstances in which a trustee or manager of a unit trust scheme is entitled to assume that an instrument is duly stamped.

Sub-clause (3) clarifies that these provisions apply to managed investment schemes that are not registered under the Corporations Law.

Clause 272 outlines when instruments may be received in evidence by a court or tribunal.

Sub-clause (1) restricts the consideration of instruments by a court or tribunal to those that are duly stamped, stamped by the Commissioner or in a manner approved by the Commissioner.

Sub-clause (2) provides that a court or tribunal may admit an instrument in evidence if the instrument together with the name and address of the person liable for the duty is transmitted to the Commissioner after its admission and in accordance with arrangements approved by the court or tribunal.

Sub-clause (3) provides that a court or tribunal may admit a duly stamped counterpart in evidence in the circumstances specified in the sub-clause.

Clause 273 empowers the Commissioner to obtain a valuation of land by the Valuer-General.

Sub-clause (1) provides that the Commissioner may refer to the Valuer-General for valuation a case where he or she considers that the information provided by the taxpayer relevant to an assessment of duty understates the value of the land.

Sub-clause (2) provides that the taxpayer is liable for the cost of the valuation if—

- the Valuer-General's valuation exceeds the taxpayer's valuation provided by at least 15%; or
- the taxpayer does not object to the assessment of duty; or
- where on objection, appeal or review, the valuation of the land exceeds the taxpayer's valuation by at least 15%.

Clause 274 relates to the ascertainment of the value of certain items.

It provides that if it is necessary for duty assessment purposes to ascertain the value of—

- any estate or annuity or interest for the life of any person;
- any estate annuity or interest determinable on or subject to any contingency or the happening of any event; or
- any estate or annuity in remainder expectant on the death of any person or expectant on or subject to any other contingency—

regard may be had to the death of the person having the life estate or annuity or interest or the happening of the contingency at any time before the assessment of duty is actually made.

Clause 275 deals with the impounding of instruments.

Sub-clause (1) enables the Commissioner to impound unstamped and insufficiently stamped instruments.

Sub-clause (2) enables the Commissioner to retain or impound such instrument until any duty or interest or penalty tax has been paid.

Clause 276 provides that the Supreme Court may grant an injunction to restrain unregistered persons that are required to be registered from carrying on business.

PART 4—PAYMENT OF FEES AND CHARGES UNDER OTHER ACTS BY STAMPS OR OTHER METHODS

Clause 277 states that this Part provides for the payment of certain fees and charges payable to the State in stamps, money or another prescribed manner.

Clause 278 empowers the Governor in Council to determine the method of payment of fees and charges.

Sub-clause (1) empowers the Governor in Council, by notice published in the Government Gazette, to direct that certain fees and charges payable to the State or its representative or a court be paid in stamps, money or another prescribed manner.

Sub-clause (2) excludes certain fees or charges from the terms of sub-clause (1).

Clause 279 requires the Governor in Council to direct whether a fee or charge directed to be paid in stamps is to be denoted by an impressed stamp or an adhesive stamp.

Clause 280 imposes a penalty on a person who fails to pay a fee or charge to which a direction under clause 278 applies. The penalty is an amount double the amount of the fee or charge unpaid, in addition to the amount of the fee and any other penalty imposed by law.

Clause 281 renders inadmissible in evidence before a court or tribunal any instrument on which payment of a fee or charge is directed to be by stamp unless it is duly stamped or it is stamped by the person receiving the fee or charge in a manner approved by that person.

CHAPTER 13—GENERAL

Clause 282 provides a standing appropriation of the Consolidated Fund to allow the payment from that Fund of any amounts authorised or required to be paid by the Commissioner under the Bill.

Clause 283 Sub-clause (1) empowers the Governor in Council to make regulations under the Act.

Sub-clause (2) authorises the making of regulations which create an offence punishable by a penalty up to 20 penalty units (\$2000).

CHAPTER 14—REPEALS, CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

Clause 284 repeals the **Stamps Act 1958**.

Clause 285 makes consequential amendments to other Acts as set out in Schedule 1.

Clause 286 provides that Schedule 2 has effect. Schedule 2 contains transitional provisions.

Schedule 1 contains consequential amendments to other Acts.

Schedule 2 contains transitional provisions, as follows.

Clause 1 defines the "commencement day" as 1 July 2001 and the "former Act" as the **Stamps Act 1958**.

Clause 2 states that savings and transitional provisions may be made by regulation after enactment.

Clause 3 confirms the application of the **Interpretation of Legislation Act 1984**.

Clause 4 provides that the Bill applies to instruments first executed after 1 July 2001.

Clause 5 outlines provisions related to Chapter 2 (Transactions concerning dutiable property)—

- duty charged by Chapter 2 is charged on dutiable transaction that occur on or after 1 July 2001, except as otherwise provided for in this clause;

- clause 24 (aggregation provisions) extends to dutiable transactions at least one of which occurred before 1 July 2001 if they occurred within 12 months and the provisions of clause 24 are satisfied. This provision does not apply so as to aggregate transactions that occurred before 1 July 2001 that would not have been aggregated under the law in force immediately prior to 1 July 2001;
- clause 35 extends to a transfer of dutiable property to a trustee of nominee and the payment of duty on that transfer before 1 July 2001 if the transfer back to the transferor occurs on or after that day;
- a reference in clause 36(2)(a)(i) to duty charged by the Bill includes a reference to duty charged under the **Stamps Act 1958**.

Clause 6 outlines provisions related to Chapter 3 (Certain transactions treated as transfers)—

- duty is charged under Chapter 3 on an acquisition that occurs on or after 1 July 2001;
- with respect to the inclusion in an acquisition statement of the acquisitions made by a private corporation over the past 3 years under clauses 80(2)(e) and 83, provision is made to ensure they have prospective effect only. The provision does not apply so as to aggregate interests that were acquired before 1 July 2001 and that would not have been aggregated under the law in force immediately prior to that day.

Clause 7 outlines provisions related to Chapter 5 (Lease instruments)—

- duty under Chapter 5 is charged on a lease instrument that occurs on or after 1 July 2001, except as provided by this clause;
- Chapter 5 lease duty extends to a lease instrument that is first executed before 1 July 2001 and a variation of which on or after that day increases the cost of the lease;

- clause 122 (reassessment of lease duty in respect of early termination) extends to a lease instrument that is terminated on or after 1 July 2001 if duty was paid on the lease before that day;
- clause 123 (reassessment of duty when a reduction in costs) extends to a lease instrument that is varied on or after 1 July 2001 so as to reduce the total cost of the lease if duty was paid on the lease before that day.

Clause 8 outlines provisions related to Chapter 6 (Hire of goods)—

- duty under Chapter 6 is chargeable on a hire of goods entered into on or after 1 July 2001;
- a person registered under the former Act immediately prior to 1 July 2001 is deemed to be registered under Part 2 of Chapter 6.

Clause 9 outlines provisions related to Chapter 7 (Mortgages)—

- duty charged by Chapter 7 is charged on a mortgage that is first executed on or after 1 July 2001 and on a further advance that occurs on or after that day on a mortgage first executed before 1 July 2001;
- a mortgage duly stamped or not subject to duty under the former Act immediately prior to 1 July 2001 is on that day deemed to be duly stamped to the amount secured by the mortgage on 1 July 2001;
- a mortgage not duly stamped under the former Act immediately prior to 1 July 2001 is on that day chargeable with duty under Chapter 7 as if the unstamped advance took place on 1 July 2001.

Clause 10 outlines provisions related to Chapter 8 (Insurance)—

- duty under Chapter 8 is charged on the amount of a premium paid in relation of a contract of general insurance or a policy of life insurance if the contract is effected or renewed on or after 1 July 2001;
- a person who, immediately before 1 July 2001, is registered under section 96 of the former Act is taken to be registered under Part 2 of Chapter 8;

- a person who, immediately prior to 1 July 2001, is an approved insurer under section 111D of the former Act is taken to be registered under clause 203.

Clause 11 outlines provisions related to Chapter 9 (Motor vehicle duty)—

- a person who, immediately prior to 1 July 2001, is registered under section 137AG of the former Act is taken to be registered under Part 2 of Chapter 9.

Clause 12 provides that if an assessment of duty under this Act must take into consideration an amount of duty previously paid, a reference to duty under this Act includes duty within the meaning of former Act paid in accordance with that Act.

Clause 13 provides that an instrument duly stamped under the former Act immediately prior to 1 July 2001 is duly stamped for the purposes of this Act.

Clause 14 provides that if, immediately prior to 1 July 2001, a transaction or instrument was not chargeable with duty under the former Act by virtue of the provision of an Act other than former Act, it is not chargeable with duty under this Act, unless the contrary intention is evident.

Clause 15 provides a provision to the effect that any provision of the **Stamps Act 1958** or the regulations made under it continue to apply if necessary to give effect to any provision of that Act in force by virtue of these transitional provisions.