

Queensland



ANNO TRICESIMO SEPTIMO

ELIZABETHAE SECUNDAE REGINAE



No. 34 of 1988

An Act to amend the Stamp Act 1894-1987 in certain
particulars

[ASSENTED TO 26TH APRIL, 1988]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Stamp Act Amendment Act 1988*.

2. Principal Act and amended citation. (1) In this Act the *Stamp Act 1894-1987* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Stamp Act 1894-1988*.

3. Commencement. (1) This Act, other than sections 37 and 56 and sections 39 to 49, both inclusive, shall commence on the day on which it is assented to for and on behalf of Her Majesty.

(2) Section 37 shall be deemed to have commenced on 1 July 1985 and shall be given retrospective effect accordingly.

(3) Section 56 shall be deemed to have commenced on 15 September 1987 and shall be given retrospective effect accordingly.

(4) Sections 39 to 49, both inclusive, shall commence on 1 July 1988.

4. Amendment of s. 2. Definitions. Section 2 of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsection:—

“(1) In this Act, unless the contrary intention appears—

“application for registration” means the application prescribed by the regulations under the *Main Roads Act 1920-1985* for the issue of a certificate of registration in respect of a motor vehicle in accordance with those regulations: The term does not include any application made for the issue of a certificate of registration or renewal of registration in accordance with those regulations in respect of a motor vehicle and by the person in whose name that motor vehicle was last registered (whether in Queensland or elsewhere) before the date upon which the application is made where *ad valorem* duty under this Act or a corresponding Act or law of any other State or a Territory has been paid in respect of a prior registration of that vehicle in the name of that person;

“application for transfer of registration” means the application prescribed by the regulations under the *Main Roads Act 1920-1985* for the issue of a certificate of transfer of registration in respect of a motor vehicle in accordance with those regulations by reason of the transfer of the ownership of that motor vehicle;

- “bill of lading” means any instrument signed by the master, mate or other person in charge of a vessel, or by the agent, shipping clerk or other person acting in that capacity for that vessel, acknowledging the receipt of goods, wares or merchandise for conveyance therein to any place outside Queensland;
- “charter party” includes any agreement or contract for the charter of a ship or vessel, or any memorandum, letter or other writing between the captain, master or owner of a ship or vessel and any other person for or relating to the freight or conveyance of any money, goods or effects on board of the ship or vessel;
- “Commissioner” means the Commissioner of Stamp Duties appointed under this Act;
- “corporate debt security” means any marketable security which is a debenture, debenture stock, bond or note or other security of a corporation, company or society, or any right thereto (whether constituting a charge on the assets of the corporation, company or society, or not) and includes any property of a class or description of property prescribed by Order in Council to be a corporate debt security for the purposes of this definition: The term does not include property of a class or description prescribed by Order in Council not to be a corporate debt security for the purposes of this definition;
- “deed of gift” means and includes—
- (a) every deed of gift or instrument by way of gift conveying, transferring, assigning or disposing of or purporting to convey, transfer, assign or dispose of property absolutely (including disposal by the extinguishment by forgiveness, in whole or in part, of a debt);
 - (b) every conveyance, transfer, assignment or disposition of property (including the disposition by the extinguishment by forgiveness, in whole or in part, of a debt) relating to a trust or a disposition of property (including the disposition by the extinguishment by forgiveness, in whole or in part, of a debt) to take effect during the life of the donor, and not being made before and in consideration of the marriage of the donor, or in favour of a bona fide purchaser or incumbrancer for valuable consideration in money, and whether or not the property comprised in that deed is subject to limitation;
 - (c) every deed or instrument whereby a person directly or indirectly conveys, transfers, assigns or otherwise disposes of property to or for the benefit of a person connected with him by blood or marriage, in consideration or with the reservation of a benefit or advantage to or in favour of himself or any other

person, whether by way of rent-charge, or life or any other estate or interest in the same or any other property, or by way of annuity or other payment or otherwise howsoever, and whether such benefit or advantage is charged on the property comprised in such deed or instrument or not;

“die” includes any type, plate or implement whatsoever used under the direction of the Commissioner for expressing or denoting duty, or a rate of duty, or that duty or a rate of duty or penalty has been paid, or that an instrument is duly stamped, or is not chargeable with duty or for denoting any fee, and includes any part of that type, plate or implement;

“donor” means the person making a deed of gift;

“executed”, in respect of an instrument, means signed by or on behalf of one or more of the parties thereto, or, in the case of a corporation, signed on behalf of that corporation or sealed with its seal;

“hiring agreement” means an agreement (including an instrument constituting or evidencing the terms and conditions of an agreement) for the letting or hiring of goods: The term does not include an agreement or instrument constituting or evidencing the terms and conditions of an agreement, which is defined by section 32A to be an instalment purchase agreement for the purposes of that section or, where such an instalment purchase agreement is constituted by two or more agreements, any of those agreements or an instrument constituting or evidencing the terms and conditions of any of those agreements: For the purposes of this definition “goods” includes all chattels personal other than money and things in action;

“impressed” means impressed by a die;

“information”, without limiting its meaning, includes documents of any kind and copies of or extracts from documents;

“instrument” includes a written document and where the original is not available for production to the Commissioner, a duplicate original thereof and a copy of the original or the duplicate original whether produced by the same process as the original document that is not available or by a separate process and whether executed or not and any representation (in any form whatsoever) of that document;

“insurance” includes assurance;

“investigating officer” means a person authorized by the Commissioner under section 29;

“lodge” means to lodge with the Commissioner;

“marketable security” means—

- (a) any stock or share of a local authority or other corporation, company or society;
 - (b) any debenture, debenture stock, bond, note or other security of a Government or of a local authority or other corporation, company or society, whether constituting a charge on the assets of the Government, local authority or other corporation, company or society or not;
- and
- (c) any right or interest (whether described as a unit or otherwise) of a beneficiary under a public unit trust scheme;

“material” includes every sort of material upon which words or figures can be expressed;

“Minister” includes a Minister of the Crown for the time being acting for or on behalf of the Minister;

“money” includes a bill of exchange, a promissory note and all sums expressed in any currency;

“motor vehicle” means a motor vehicle as defined by the regulations under the *Main Roads Act 1920-1985* other than a trailer or caravan trailer as respectively defined by those regulations;

“policy of assurance against accident” means a policy of insurance (other than a policy of insurance under the *Workers Compensation Act 1916-1986*) for a payment to be made upon the death of a person only from accident, violence or otherwise than from a natural cause or as compensation for personal injury: The term includes any notice or advertisement in a newspaper or other publication which purports to insure the payment of money upon the death of or injury to the holder or bearer of the newspaper or publication containing the notice only from accident, violence or otherwise than from a natural cause;

“policy of insurance” includes every certificate or declaration as to the existence of or an agreement for insurance or renewal or reinstatement thereof or any instrument or every writing whereby a contract of insurance or renewal or reinstatement thereof is made or agreed to be made or is evidenced;

“policy of life insurance” means a policy of insurance upon any life or lives or upon any event or contingency relating to or depending upon any life or lives: The term does not include a policy of assurance against accident;

“policy of marine insurance” means insurance made upon a ship or vessel or upon the machinery, tackle or furniture of a ship or vessel, or upon any goods, merchandise or property of any description whatever on board of a ship

or vessel, or upon the freight of or any other interest which may be lawfully insured in or in respect of a ship or vessel: The term includes the insurance of goods, merchandise or property during transit (which includes a sea risk and any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance);

“produce” means to produce to the Commissioner;

“public unit trust scheme” means a public unit trust scheme as defined in section 56B;

“record” includes book, account, deed, writing, document and any other source of information compiled, recorded or stored in written form, on microfilm, by electronic process or in any other manner or by any other means: The term includes a part of a record or a copy of a record;

“risk in Queensland” in relation to insurance or a policy of insurance includes—

(a) the happening of an event or contingency in Queensland against the possibility of which or against the consequences of which, wherever those consequences might arise, the insurance has been effected;

or

(b) a loss or damage in Queensland as a consequence of the happening of an event or contingency, wherever that happening or contingency might occur, against the possibility of which consequence the insurance has been effected;

“settlement” means any contract, deed or agreement (whether voluntary or upon good or valuable consideration other than a bona fide pecuniary consideration) whereby property, real or personal, is settled or agreed to be settled in any manner whatsoever;

“stamp” means an adhesive stamp or an impressed stamp;

“statutory declaration” means a declaration made under the authority of the *Oaths Act 1867-1988*;

“stock” means any share in stocks or funds of any Government, or in the capital, stock, or funded debt of any company, corporation or society;

“unit trust scheme” means an arrangement made for the purpose, or having the effect of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in any profits or income arising from the acquisition, holding, management or disposal of property pursuant to the trust or the carrying on of business by the trust.”;

(b) by omitting subsection (3) and substituting the following subsection:—

“(3) In this Act, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.”.

5. **New ss. 2A and 2B.** The Principal Act is amended by inserting after section 2 the following sections:—

“**2A. Meaning of “full unencumbered value”.** (1) Subject to the following provisions of this section, in this Act, unless the contrary intention appears, “full unencumbered value” in respect of property means the full value of the property without regard to any encumbrance to which the property is subject, whether certainly or contingently.

(2) Where property is held or is to be held pursuant to a trust, other than a public unit trust scheme (in this section called “trust property”) the expression “full unencumbered value” means the full unencumbered value of the trust property held or to be held by the trustee for the trust, without regard to the debts or liabilities of the trustee of the trust.

(3) Where property is an estate or interest in trust property (other than a marketable security) the expression “full value” means the value of that proportion of the full unencumbered value of the trust property that the property which is the estate or interest in the trust property bears to the aggregate of the estates or interests which comprise all of the estates or interests in the trust property.

(4) In calculating the full unencumbered value of trust property which comprises or includes an estate or interest in other trust property, the value of that estate or interest shall be the full unencumbered value of that estate or interest calculated in accordance with this section and the value of the other trust property shall be the full unencumbered value of the trust property that is the other trust property calculated in accordance with this section.

(5) Where property represents an interest in a partnership held by or acquired by a person (in this section called “partnership interest”) the expression “full unencumbered value” means—

- (a) the amount which bears to the full unencumbered value of all of the property of the partnership to which the partnership interest relates (in this section called “partnership property”) without regard to the debts and liabilities of the partnership, the same proportion as the profit-sharing proportion attaching to the partnership interest expressed as a fraction bears to 1;
- (b) the consideration, if any, given for the acquisition or in respect of the transaction relating to the partnership interest;

or

- (c) the total capital amount represented by the partnership interest,

whichever is the greatest.

(6) In determining the profit-sharing proportion for the purposes of subsection (5) (a), adjustments as agreed between the parties in respect of interest on capital and compensation for partners engaged in personal exertion for the partnership may, at the discretion of the Commissioner, be disregarded and where the profit-sharing proportion cannot be presently determined from the partnership agreement the proportion shall be that provided for by the *Partnership Acts, 1891 to 1965*.

(7) For the purposes of subsection (5) (b), the Commissioner may in his discretion, in calculating the value of the consideration, disregard the partnership debts and liabilities.

(8) For the purposes of subsection (5) (c), the total capital amount represented by the partnership interest shall include all proprietorship of property and assets, by whatever name called, attaching to the partnership interest and in calculating the total capital amount, the Commissioner shall take into account, whether as additions to or subtractions from the total capital amount, as the case requires, capital, drawings, advances and loans.

(9) Where for the purposes of determining the full unencumbered value of any property (other than stock or marketable security) it is necessary to determine the value of any trust property or an estate or interest in trust property or a partnership interest, the value of that trust property, estate or interest in trust property or partnership interest shall (except where its value is being determined for the purpose of determining the value of any stock or marketable security) be the full unencumbered value of that property, estate, interest or partnership interest calculated in accordance with this section.

(10) Where for the purpose of calculating duty it is necessary to calculate the full unencumbered value of property to the extent that it is located in Queensland, only trust property (or, as the case may be, partnership property) located in Queensland, shall be included in that calculation and where the trust property (or, as the case may be, partnership property) consists wholly or in part of a business—

- (a) that is conducted on or from any place in Queensland;
or

- (b) the conduct of which consists wholly or partly of offering to supply land or any interest therein, money, credit or goods or any interest therein or to render any service, by way of offers directed to persons (generally as a class or individually) ordinarily resident in Queensland,

only the business to the extent that it is carried on in Queensland shall be included in that calculation and, should the case require

it, a true apportionment shall be made of the value of all of the trust property (or, as the case may be, partnership property) which is located both in and outside Queensland.

2B. Special directions where property comprises certain shares. (1) For the purposes of this Act, a reference to property in Queensland includes shares in a company of the kind to which section 56C applies, and where, for the purposes of calculating duty, it is necessary to determine the full unencumbered value of those shares that value shall be deemed to be the value that they would have under section 56C if they were disposed of.

(2) For the purposes of this Act—

(a) a reference to property in Queensland;

and

(b) a reference in section 54AB to real property in Queensland or land in Queensland held under a lease from the Crown,

includes shares in a corporation to which the prescribed provisions, as defined in section 56F, apply, where the owner of those shares, if he and all persons related to him in the terms of section 56FA

(3) were to newly acquire all of the shares in the corporation which he or they own, would have made a relevant acquisition, as defined in section 56FM, and where, for the purposes of calculating duty, it is necessary to determine the full unencumbered value of those shares, that value shall be deemed to be the value that is equal to—

(c) the amount which bears to the full unencumbered value of land in Queensland to which the corporation is entitled, as provided in section 56FK (4), at the relevant time, the same proportion as the value of the property of the corporation to which the shares would entitle the holder, if the corporation were wound up at that time, bears to the value of all of the distributable property of the corporation if the corporation were wound up at that time;

or

(d) the value of those shares on which duty would otherwise be calculated if they were transferred,

whichever is the greater.”.

6. Amendment of s. 4. Charge of duties. Section 4 of the Principal Act is amended by adding at the end thereof the following subsections:—

“(4) Subject to subsections (7) and (8) and for the purposes of this Act, where an instrument or transaction relates to a trust or to property the subject of a trust or any estate or interest in

a trust or any right, obligation or power in respect of a trust and that trust—

- (a) whatever law may be applicable to that trust;
- (b) wherever the trust deed may be located or executed;
- (c) wherever the trustee is incorporated or resides;
- (d) where the trustee is a corporation, wherever that trustee's governing body may be situated,

relates or is to relate, directly or indirectly, to property in Queensland or provides, directly or indirectly, for any matter or thing done or to be done in Queensland, it shall be deemed that—

- (e) the law of Queensland is applicable to that trust;
- (f) the trust deed is located in and was executed in Queensland;
- (g) the trustee is incorporated in or resides in Queensland; and
- (h) where the trustee is a corporation—the governing body of the trustee is situated in Queensland.

(5) Subject to subsection (8) and for the purposes of this Act, where—

- (a) an instrument relates to a right, obligation, matter or thing arising from or in respect of a second instrument or a transaction (in this subsection called the "second transaction") which gives rise to a liability to create a dutiable statement under this Act;
- or
- (b) a transaction (which would, if it related to property in Queensland or any matter or thing done or to be done in Queensland, give rise to a liability to create a dutiable statement under this Act) relates to a right, obligation, matter or thing arising from or in respect of a second transaction which gives rise to such liability or an instrument (in this subsection called the "second instrument"),

and the second instrument, wherever executed, or second transaction, wherever it took place or is to take place or was entered into, relates or is to relate, directly or indirectly, to property in Queensland or any matter or thing to be done in Queensland, the right, obligation, matter or thing arising from or in respect of the second instrument or second transaction is deemed, as the case may require, to have been, to be or in the future to be located, performed, done, enforced, administered or undertaken in Queensland.

(6) For the purposes of this section, a trust, an instrument or a transaction is deemed to relate to property in Queensland where it relates to rights, obligations, matters or things arising

from an instrument or a transaction which relates to property in Queensland and in determining whether the second-mentioned instrument or transaction relates to property in Queensland the second-mentioned instrument or transaction shall be deemed to relate to property in Queensland where it would, if it were the first-mentioned instrument or transaction, be deemed to relate to property in Queensland under this subsection.

(7) For the purposes of subsection (4), a reference to a trust that relates to property in Queensland is deemed to include a reference to a trust the trustee of which on behalf of the trust owns an interest (vested or contingent) in property in Queensland through his interest in another trust and in determining whether that trustee through his interest in that other trust has an interest in property in Queensland that other trust shall be deemed to relate to property in Queensland where it would, if it were the first-mentioned trust, be deemed to relate to property in Queensland under this subsection.

(8) Where the Commissioner is of the opinion that the connexion between a trust, an instrument or a transaction, directly or indirectly, and property in Queensland or any matter or thing done or to be done in Queensland is inconsiderable, subsections (4) and (5) shall not apply.

(9) Where the Commissioner is satisfied—

(a) that duty is chargeable under this Act on an instrument or in respect of a transaction by virtue of the operation of subsection (4) or (5) or section 2B;

and

(b) that *ad valorem* duty is payable and has or will be paid on the instrument or in respect of the transaction in any other State or a Territory,

he may in his discretion, having regard to the matters specified in subsection (8), allow against the duty chargeable on the instrument or in respect of the transaction under this Act an offset of the duty paid or payable in the other State or Territory.”.

7. Repeal of and new s. 4B. Duty and penalty a debt, and recoverable by Commissioner. The Principal Act is amended by repealing section 4B and substituting the following section:—

“**4B. Duty a debt recoverable by Commissioner.** (1) When duty becomes payable it shall be a debt due to the Crown and payable to the Commissioner in the manner and at the place prescribed.

(2) Any duty unpaid at the time by which it is required to be paid under this Act may be demanded by the Commissioner to be paid to him at his office in Brisbane and may, in any court of competent jurisdiction determined by the Commissioner, be sued for and recovered by him, suing in his official name or by an officer engaged in the administration of this Act and authorized

to sue for and recover duty on behalf of the Commissioner, suing in the official name of the Commissioner.

(3) For the purposes of this section and section 78A (1), “duty” includes any duty assessed or penalty imposed and interest or other amount payable under this Act.”.

8. Amendment of s. 5. Appointment of Commissioner, Deputies, and other officers. Section 5 of the Principal Act is amended by omitting the second, third and fourth paragraphs thereof.

9. Amendment of s. 6. Branch offices may be opened. Section 6 of the Principal Act is amended—

(a) by omitting the words “in the Colony” and substituting the words “or city in Queensland”;

(b) by inserting after the words “such town” the words “or city”.

10. Repeal of and new s. 7. Duties and powers of Deputy Commissioners. The Principal Act is amended by repealing section 7 and substituting the following section:—

“**7. Duties and powers of Assistant Commissioner and Deputy Commissioners.** Subject to the Commissioner, the Assistant Commissioner of Stamp Duties and each Deputy Commissioner of Stamp Duties shall have and may exercise all of the powers and perform all of the duties of the Commissioner under this Act.”.

11. New ss. 7A and 7B. The Principal Act is amended by inserting after section 7 the following sections:—

“**7A. Delegation.** (1) The Commissioner may delegate all or any of his powers and duties under this Act, except this power of delegation or his power to issue a certificate under section 78A (4A), to a specified officer or specified class of officer engaged in the administration of this Act and may make such number of delegations of the same power or duty concurrently as he considers appropriate.

(2) A power or duty delegated under this section may be exercised or performed by the delegate in accordance with the delegation and when exercised or performed shall be deemed, for the purposes of this Act, to have been exercised or performed by the Commissioner.

(3) A delegation made under this section is revocable at the Commissioner’s will and does not derogate from the Commissioner’s power to act personally in a matter.

(4) A person purporting to exercise a power or to perform a duty pursuant to a delegation given under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with a delegation made under this section.

(5) A delegation under this section may be made or given subject to such conditions or such limitations as to the exercise

or performance of any of the powers or duties delegated, or as to time or circumstances.

7B. Commissioner's opinion. Where the exercise or performance by the Commissioner of a power or duty under this Act or the operation of a provision of this Act is dependent upon the opinion, belief, or state of mind of the Commissioner in relation to a matter, that power or duty may be exercised or performed by the Assistant Commissioner of Stamp Duties, or by a Deputy Commissioner of Stamp Duties or another officer acting as a delegate of the Commissioner in relation to that matter, or that provision may operate, as the case may be, upon the opinion, belief, or state of mind of the Assistant Commissioner or such a Deputy Commissioner or officer so acting.”.

12. Repeal of s. 8A. Collection of Commonwealth tax on receipts. The Principal Act is amended by repealing section 8A.

13. Repeal of s. 9. Inspectors. The Principal Act is amended by repealing section 9.

14. Repeal of and new s. 10. Secrecy. The Principal Act is amended by repealing section 10 and substituting the following section:—

“**10. Disclosure of information.** (1) Except as provided in this section and the *Revenue Laws (Reciprocal Powers) Act 1988*, a person shall not disclose information or publish a record obtained by that or another person in connexion with the administration of this Act, unless the disclosure or publication is made—

- (a) with the consent (express or implied) of the person to whose affairs the information or record relates;
- (b) in connexion with the administration of this Act;
- or
- (c) for the purpose of any legal proceedings (including any report thereon) arising out of this Act.

Penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) The Commissioner may, if he is of the opinion that it is necessary to do so for the purpose of enforcing a law which is designed to protect the public revenue of Queensland, disclose information or publish a record referred to in subsection (1) to such persons as necessary for the purpose of enforcing that law so as to enable those persons to exercise or perform a power or duty conferred or imposed on those persons by law.

(3) A person shall not disclose information or publish a record communicated to him under subsection (2) unless the disclosure or publication—

- (a) is made with the consent of the Commissioner;
- and
- (b) is to enable a person to exercise or perform, for a purpose referred to in subsection (2), a power or duty conferred or imposed on the person by law.

Penalty: 100 penalty units or imprisonment for 6 months, or both.

(4) Neither the Commissioner nor an officer engaged in the administration of this Act nor a person authorized by the Commissioner to represent him shall be required to produce in court any return, declaration, valuation, statement, requisition, assessment, notice or any other document or disclose to a court the fact that he has received any information or the nature thereof or the name of the person who gave such information or any matter or thing coming under his notice in the performance of his duties under this Act, except when it is necessary to do so for the purposes of the administration of this Act.

(5) Subsection (1) does not apply to information or a record obtained for the purposes of this Act under a corresponding law within the meaning of the *Revenue Laws (Reciprocal Powers) Act 1988*.

(6) Subject to subsection (5), this section applies to information and records obtained (whether before or after the commencement of section 1 of the *Stamp Act Amendment Act 1988*) by a person in connexion with the administration of this Act.”.

15. Repeal of s. 11. Inspector may take possession of unstamped documents. The Principal Act is amended by repealing section 11.

16. Amendment of s. 13. All duties to be paid according to regulations of Act. Section 13 of the Principal Act is amended—

(a) by omitting from the note appearing in and at the beginning of the section the words “regulations of” and substituting the words “this”;

(b) by omitting the words “the regulations in” and the word “contained”.

17. New s. 13A. The Principal Act is amended by inserting after section 13 the following section:—

“13A. **Duty accounted for by returns.** (1) In this section, “approved person” means a person approved of or required by the Commissioner in writing to account for stamp duty on instruments according to this section during such time as the approval of or requirement by the Commissioner remains in force.

(2) Notwithstanding any other provision of this Act to the contrary, this section applies to the accounting for stamp duty on instruments by return to the Commissioner.

(3) The Commissioner may by notice in writing—

(a) approve of or refuse a request by a person to pay and account for stamp duty in respect of an instrument or class of instrument in accordance with this section;

or

- (b) require a person to pay and account for stamp duty in accordance with this section on any instrument or class of instrument.

(4) For the purpose of determining whether it is necessary or desirable that a person be approved or required to account for stamp duty on instruments in accordance with this section, the Commissioner may require that person to furnish copies or abstracts of any instrument or instrument of any class the Commissioner may specify and information regarding that instrument executed by or in favour of that person or which the person regularly receives or acts on in the course of his business.

(5) The Commissioner shall give notice in writing to each approved person of—

- (a) the date on which the relevant approval or requirement under subsection (3) comes into force;
 - (b) the instruments or class of instruments to which the relevant approval or requirement of the Commissioner relates;
 - (c) the records to be maintained by the approved person of instruments to which the approval or the requirement of the Commissioner relates and to be made available for inspection by the Commissioner and the period for which those records are to be retained and made available for inspection;
- and
- (d) the endorsements to be made on instruments to which the approval or requirement of the Commissioner relates.

(6) Each approved person shall—

- (a) lodge a return in respect of instruments to which the approval or requirement of the Commissioner relates in respect of the periods, in the form, verified in the manner, containing the particulars and at the time as may be notified to that person in writing by the Commissioner;
- and
- (b) pay to the Commissioner, at the time of lodgement of the return, as stamp duty an amount equal to the total amount of stamp duty that would but for this section have been payable in respect of all instruments to which the return relates.

(7) Where stamp duty that would but for this section have been payable on an instrument depends on the Commissioner's opinion, belief or state of mind in respect of a matter, the approved person may (in calculating the amount of duty which he is required to pay on the return under subsection (6) in respect

of any such instrument) have regard to the Commissioner's instructions as to his opinion, belief or state of mind in that regard in respect of that instrument or class of instrument.

(8) Each approved person may, in addition to the requirements of subsection (6), be required to include in returns lodged by him under this section such information, as may be prescribed by regulation, regarding the stamp duty or the instruments or relating to the instruments or matters in respect of the transactions contained in the instruments to which the return relates.

(9) Each approved person shall endorse on each instrument or instrument of a class to which the approval or requirement of the Commissioner relates the words "Queensland Stamp Duty Paid" together with such other words, expressions or particulars (or any one or more of them) as may be notified to him in writing by the Commissioner.

(10) Notwithstanding any other section of this Act to the contrary, an instrument endorsed in accordance with subsection (9) and for which the correct duty has been or will be accounted for to the Commissioner shall be deemed to be duly stamped.

(11) Compliance by an approved person with the requirements of the Commissioner under this section concerning instruments to which section 68 (3) would otherwise apply shall be sufficient compliance with that section.

(12) An approved person who fails to comply with this section or who submits a return which is false in any material particular commits an offence against this Act.

Penalty: 50 penalty units and where the offence relates to a return required to be lodged under subsection (6), an amount equal to twice the duty payable on the return required to be lodged under that subsection.

(13) Notwithstanding subsection (12)—

(a) where a person fails to lodge a return as required by this section;

or

(b) where the stamp duty on a return lodged under this section has not been paid or fully paid within the time required by this section,

the Commissioner, or an officer authorized by him, may demand and receive by way of penalty such amount as the Commissioner considers appropriate (being not less than \$10 nor more than the maximum penalty which would be recoverable pursuant to proceedings under subsection (12)).

(14) A person who—

(a) endorses on an instrument any notation indicating or implying that the instrument is duly stamped under this section;

and

- (b) is not an approved person or an agent or employee of an approved person acting in pursuance of subsection (9),

commits an offence against this Act.

Penalty: 100 penalty units and an amount equal to twice the duty payable on that instrument.

(15) The Commissioner may, by notice in writing, cancel his approval or requirement applying to an approved person under this section on application by the approved person or for any reason the Commissioner considers sufficient and shall specify in such notice the date on and from which the approval or requirement ceases to be in force.

(16) A payment by an approved person of duty in respect of an instrument under this section shall (where the approved person is not a party to the instrument) be deemed to be a payment on behalf of the parties to that instrument and may be deducted by the approved person from any money payable to those parties by the approved person or recovered from the parties in any court of competent jurisdiction as a debt due and owing to the approved person.”

18. Repeal of and new s. 16. Facts and circumstances affecting duty to be set forth in instruments. The Principal Act is amended by repealing section 16 and substituting the following section:—

“**16. Facts and circumstances affecting duty to be disclosed.**

(1) A person who—

(a) being a party to an instrument or acting on behalf of a party to an instrument, lodges the instrument pursuant to section 26 for assessment and does not, at the time of lodgement of the instrument (where the instrument at the time of that lodgement does not set forth all the facts and circumstances affecting the liability of the instrument to duty or the amount of the duty with which it is chargeable) lodge a statutory declaration declaring those facts and circumstances;

(b) being a party to an instrument—

(i) does not lodge the instrument pursuant to section 26;

and

(ii) does not, where the instrument comes into the possession of the Commissioner, a Deputy Commissioner or an investigating officer, produce within 21 days of a request by the Commissioner a statutory declaration disclosing all the facts and circumstances affecting the liability of the instrument to duty or affecting the amount of the duty with which it is chargeable;

or

- (c) in respect of the facts and circumstances affecting the liability of an instrument to duty or the amount of the duty with which it is chargeable—makes, signs or is concerned in the preparation of a statutory declaration or instrument which is false or misleading in a material particular,

commits an offence against this Act.

Penalty: 100 penalty units and an amount equal to twice the difference between—

- (d) the amount of duty that would have been payable on the instrument if all the facts and circumstances affecting the liability of the instrument to duty or the amount of the duty with which it is chargeable had been set forth therein;

and

- (e) the amount of duty which was required to be paid in reliance on the facts and circumstances set out in the instrument and supporting declaration, if any, which was or were relied on or which would have been required to have been paid if it or they had been relied on.

(2) A statutory declaration furnished in satisfaction of subsection (1), may, at the discretion of the Commissioner, be read with the instrument and taken into account in determining the liability of the instrument to duty as if the facts and circumstances disclosed in the statutory declaration were set forth in the instrument.

(3) Where a body corporate commits an offence under subsection (1), each of the chairman of directors, managing director or other governing officer, by whatever name called, and every member of the governing body, by whatever name called, shall be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly.

(4) Subsection (3) applies so as not to limit or affect in any way the liability of a body corporate to be proceeded against and punished for such an offence committed by it.

(5) It is a defence to a charge of an offence against this section brought against a person specified in subsection (3) to prove that the offence was committed without that person's knowledge or connivance and that he could not by due diligence have prevented the commission of the offence.

(6) Payment by a person of a penalty incurred under this section shall not relieve that person from the payment of duty or any other penalties incurred under this Act.

(7) In any legal proceedings for an offence under this section an averment concerning an instrument made by or on behalf of the Commissioner—

- (a) that a person lodged the instrument or made a statutory declaration in respect of the instrument; and
- (b) that the instrument or supporting statutory declaration does not contain the full facts and circumstances affecting the liability of the instrument to duty or the amount of duty to which it is chargeable,

shall be prima facie evidence of the matters averred.

(8) It shall be a defence to a charge of an offence against subsection (1) for a person to prove that the fact or circumstance giving rise to the complaint was not within his knowledge after all enquiries which ought reasonably to have been made by him for the purpose of ensuring compliance with the section were made or would not have come within his knowledge if all those enquiries had been made.

(9) This section shall not affect any of the provisions of *The Criminal Code*: Provided that a person shall not be liable to be proceeded against and punished both under this section and under *The Criminal Code*.”.

19. Amendment of s. 18. General direction as to the cancellation of adhesive stamps. Section 18 of the Principal Act is amended by inserting after subsection (1) the following subsection:—

“(1A) Notwithstanding any other section of this Act to the contrary, the person who affixes adhesive stamps pursuant to subsection (1) shall, in the manner provided in that subsection, cancel those stamps.”.

20. Amendment of s. 22. Assessment of duty by Commissioner. Section 22 of the Principal Act is amended—

(a) by omitting subsection (1);

(b) by omitting from subsection (2) the words “The Commissioner” and substituting the words “Where an instrument has come into the possession of the Commissioner, a Deputy Commissioner or an investigating officer or has been lodged pursuant to paragraph (b) of section 26 (3), the Commissioner”;

(c) in subsection (6)—

(i) by omitting from paragraph (b) the words “execution;” and substituting the words “execution.”;

(ii) by omitting paragraph (c);

(d) by adding at the end thereof the following subsection:—

“(8) Where an instrument has come into the possession of the Commissioner, a Deputy Commissioner or an investigating

officer, other than by lodgement of the instrument pursuant to section 26, an assessment of stamp duty under this Act may be delivered personally or sent by prepaid post to each or any of the parties to the instrument.”.

21. Repeal of and new s. 22A. Default assessments of duty. The Principal Act is amended by repealing section 22A and substituting the following section:—

“**22A. Default assessments of duty.** (1) Where a person fails to deliver or lodge, as and when he is required to do so by or under this Act, a statement, return or other document on which duty is chargeable under this Act, the Commissioner may assess the duty which in his opinion ought to be charged on the statement, return or other document that has not been delivered to or lodged with him, as if it had been delivered to or lodged with him.

(2) Where the Commissioner is not satisfied with a statement, return or other document delivered to or lodged with him and on which duty is chargeable under this Act, he may—

(a) alter the statement, return or other document so that, in his opinion, it satisfies the requirements of this Act;

and

(b) assess the duty which in his opinion is chargeable under this Act on the statement, return or other document (altered by him pursuant to paragraph (a)) with which he was not satisfied.

(3) Where a person has failed to lodge with the Commissioner an instrument which is a “registrable charge” for the purposes of Division 9 of Part IV of the *Companies (Queensland) Code* or the corresponding provisions of the *Companies Code* or *Companies Act* of any other State or a Territory, as and when required to do so by or under this Act, the Commissioner may (where information in respect of that charge is communicated in writing to the Commissioner or an officer engaged in the administration of this Act by an officer or authority administering a law corresponding with this Act or in pursuance of a corresponding law for the purposes of the *Revenue Laws (Reciprocal Powers) Act 1988*) assess the duty which in his opinion, on the basis of such information, is chargeable on the instrument that has not been lodged with him.

(4) An assessment made under subsection (1), (2) or (3) shall be deemed to be an assessment in respect of an instrument and shall be subject to appeal, as provided by this Act, by a person dissatisfied with that assessment.

(5) Upon the making of an assessment under this section the Commissioner shall cause notice in writing of the assessment and the amount thereof to be given to—

(a) in the case referred to in subsection (1)—the person required by or under this Act to deliver to or lodge

with the Commissioner the statement, return or other document to which the assessment relates;

- (b) in the case referred to in subsection (2)—the person who has delivered to or lodged with the Commissioner the statement, return or other document to which the assessment relates;
- (c) in the case referred to in subsection (3)—the company over the assets of which the charge to which the assessment relates is taken and the chargee of the charge to which the assessment relates.

(6) The amount specified in an assessment made under this section as payable shall be deemed to be stamp duty charged on an instrument and payable by each person to whom notice is required by subsection (5) to be given; and paragraphs (f), (g) and (h) of section 26 (3) shall apply as if the assessment were an assessment duly made after lodgement of an instrument as required by section 26 (3).

(7) Where an assessment has been made under this section, an offence against this Act in respect of a failure to deliver to or lodge with the Commissioner the statement, return or other document to which the assessment relates shall be deemed to have ceased on the date on which the Commissioner makes an assessment.

(8) Nothing in this section shall prevent the Commissioner from proceeding for an offence against this Act in respect of—

- (a) a particular contained in or omitted from a statement, return or other document to which the assessment under this section relates and with which the Commissioner is not satisfied;
- or
- (b) the failure of a person to deliver or lodge an instrument, statement, return or other document.”.

22. Repeal of and new s. 23. Inquiry to ascertain facts and determine duty. The Principal Act is amended by repealing section 23 and substituting the following section:—

“**23. Commissioner may require information.** (1) The Commissioner may, for the purpose of—

- (a) ascertaining whether there is any liability on a person to pay an amount or stamp duty under this Act, and if so, the amount of the liability;
- (b) ascertaining whether a person is required to comply with this Act or whether the Act has been contravened or not complied with by a person in any respect;
- or
- (c) enquiring into any matter connected with the administration of this Act,

by notice in writing, require a person—

(d) to give information of a kind and in a form or manner specified in the notice or to produce records (or copies thereof) of a kind specified in the notice (being information or records believed to be within the knowledge, in the custody or under the control of the person) at a place and within a time specified in the notice, to the Commissioner or an officer authorized by him and specified in the notice;

or

(e) to attend before the Commissioner or an officer authorized by him and specified in the notice at a time and place specified in the notice and there to give information and to produce records of a kind specified in the notice (being information or records believed to be within the knowledge, in the custody or under the control of the person) and to answer questions or to do all or any of those things.

(2) The Commissioner or an officer authorized by him pursuant to subsection (1) may require information sought under this section to be given, verbally on oath or in writing by statutory declaration, as the case may be, and for that purpose the Commissioner, that officer or any justice may administer an oath or take a declaration.

(3) The Commissioner or an officer authorized by him pursuant to subsection (1) may cause to be made copies of or extracts from the whole or part of the information or records produced in accordance with subsection (1).

(4) A notice pursuant to subsection (1) which requires a person to give information to, to attend before or to produce records to an officer authorized by the Commissioner pursuant to subsection (1) may specify that officer by name or by the office that he holds.

(5) Notwithstanding that a notice issued pursuant to subsection (1) requires a person to give information to, to attend before or to produce records to an officer whose name or office is specified in the notice, the Commissioner may at any time (without notice to the person to whom the notice was given) authorize another officer for that purpose to exercise any power or perform any duty that he would be able to exercise or perform if he were authorized pursuant to subsection (1).

(6) The regulations may prescribe scales of expenses to be allowed to persons whose attendance is required under this section.”.

23. Repeal of and new s. 23A. Commissioner may require information.

The Principal Act is amended by repealing section 23A and substituting the following section:—

“23A. **Offence not to comply with section 23.** (1) A person who fails to comply with a requirement made of him under section 23 (1) commits an offence against this Act.

Penalty: 40 penalty units.

(2) A person shall not be convicted of an offence defined in subsection (1), if the court hearing the charge is satisfied—

(a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates;

or

(b) that the defendant complied with that requirement to the extent of the defendant's ability to do so.

(3) A person is not excused from complying with a requirement under section 23 to give information or answer a question on the ground that the information or answer might tend to incriminate him or make him liable to a penalty.

(4) Information given or an answer made by a person in complying with a requirement under section 23, which might tend to incriminate him or make him liable to a penalty, is not admissible against him in any proceedings brought against him in a court in Queensland with a view to his punishment for an alleged offence except—

(a) proceedings in respect of an offence under this Act; or

(b) proceedings in respect of an offence in connexion with verification of the information or answer by oath or affirmation.

(5) Where a person commits an offence defined in subsection (1)—

(a) the offence shall be a continuing offence and be deemed to continue for as long as the requirement in respect of which the offence was committed is not complied with;

and

(b) the court may, upon convicting the person of the offence, in addition to any penalty that it may impose under subsection (1), order the person to pay a penalty of 2 penalty units for each day on which the offence is, pursuant to paragraph (a), deemed to have continued to the date of the person's conviction of the offence.

(6) Subsection (5) applies notwithstanding that the failure or conduct alleged against a defendant related to a particular time or a particular period.

(7) Where a person has been convicted of an offence against subsection (1), the court may, in addition to imposing a penalty that it may impose under subsection (1) and, where applicable, subsection (5), order the person to comply with the requirement in respect of which the offence was committed.

(8) Where a court makes an order under subsection (7), it shall specify therein a place where and a time or period by or within which the order is to be complied with.

(9) A person who fails to comply with an order made by a court pursuant to subsection (7) commits an offence against this Act.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(10) A person who after conviction of an offence defined in subsection (1) or this subsection (in this subsection called the "previous conviction") continues to fail to comply with the requirement in respect of which he incurred the previous conviction commits an offence against this Act.

Penalty: 2 penalty units for each day on which he has continued to fail to comply with the requirement from the date of the last occurring previous conviction to the date of his conviction for the offence under this subsection last committed by him.

(11) When a person is convicted of an offence as defined in subsection (1) and the court makes an order under subsection (7), the person shall not be punished under subsection (10) for continuing to fail to comply with the requirement to which the order relates."

24. New ss. 23B and 23C. The Principal Act is amended by inserting after section 23A the following sections:—

"23B. False or misleading statements. (1) A person shall not give an answer, whether orally or in writing, that is false or misleading in a material particular to a question put to him under section 23.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) A person shall not, in providing information in accordance with section 23, make a statement or representation that is false or misleading in a material particular.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(3) It is a defence to a charge under subsection (1) or (2) to prove that the defendant believed on reasonable grounds that the answer, statement or representation was neither false nor misleading.

23C. Penalty duty when section 23 not complied with. (1) Where a person, in respect of a notice directed to him under section 23, commits an offence under section 23A or 23B and—

- (a) the instrument or statement to which the notice related is later assessed or reassessed;
- (b) the total amount of the person's liability to duty on a statement, return or other document to which the notice related is later ascertained;

or

- (c) the statement, return, other document or instrument to which the notice related is later default assessed under section 22A,

the Commissioner shall, subject to subsection (2), when making such assessment, reassessment, default assessment or demand for duty (in addition to any other penalty which he may demand under the Act) demand and receive by way of penalty from the person who has committed the offence, an amount equal to—

- (d) in the case of an assessment of an instrument or statement—the amount of duty so assessed or reassessed;
- (e) in the case of a default assessment or demand for duty in respect of any instrument, statement, return or other document—the amount of duty ascertained to be liable on that instrument, statement, return or other document.

(2) The Commissioner may in his absolute discretion, when demanding an amount by way of penalty under subsection (1), remit in any particular case for reasons he thinks sufficient the additional duty or part thereof.”

25. Amendment of s. 25. Evidence of parties to instruments. Section 25 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:—

“(2) For the purposes of this Act and unless the contrary intention appears, an instrument (which is an instrument under this Act because the original instrument is not available for production) shall be deemed—

- (a) to have been signed or executed by or on behalf of every party to the original instrument who is legally bound thereby;
- (b) to be signed or executed on the same date and in the same manner as the original instrument.”.

26. Amendment of s. 26. Liability in respect of stamp duties payable upon instruments. Section 26 of the Principal Act is amended in subsection (3)—

(a) by omitting paragraphs (c), (d), (e) and (f) and substituting the following paragraphs:—

“(d) Where an instrument or other document (which could be an instrument if the original instrument were not available for production) is altered, that alteration shall be deemed to have been executed on the date when it was so altered, by every person—

- (i) who signed or executed or is deemed to have signed or executed the instrument;

or

- (ii) who would have been deemed to have signed or executed the document if it had been an instrument because the original was not available for production to the Commissioner.

(e) The Commissioner or Deputy Commissioner may, where an instrument is not lodged before the expiration of the time within which it is required by paragraph (b) to be lodged, instead of proceeding for an offence against paragraph (c), demand and receive by way of penalty an amount equal to 3 per cent of the amount of duty chargeable on the instrument in respect of the first month or any part thereof after one month after the execution thereof and an additional 2 per cent of the amount of duty chargeable on the instrument in respect of each additional month or part thereof until the instrument comes into the Commissioner's possession or \$10 whichever is the greater.

(f) Where a person fails to pay to the Commissioner or a Deputy Commissioner stamp duty charged under this Act (upon any instrument or statement) by the expiration of 1 month after he has due notice of the stamp duty assessed under this Act upon the instrument or statement, the Commissioner may demand and receive by way of penalty until the duty and any penalty imposed pursuant to this Act on the instrument or statement have been paid in full an amount equal to—

- (i) where it is paid within 1 month after the expiration of that time—3 per cent of the amount of that duty;
- (ii) where it is not paid within 1 month after the expiration of that time—3 per cent of the amount of that duty in respect of the first month and an additional 2 per cent of the duty in respect of each further month or part of a month during which the duty is not paid,

or \$10 whichever is the greater.

(g) The Commissioner in a particular case, for reasons which in his discretion he considers sufficient, may reduce or remit the penalty, or any part thereof, which he has demanded or would otherwise demand under paragraph (e) or (f).

(h) All penalties referred to in paragraphs (c), (e) and (f) shall be calculated to the next highest dollar.

(j) Where a person who is not a party to an instrument stores the instrument on another person's behalf or acts on the authority of or in reliance on or in pursuance of that instrument, and that instrument has not been lodged in compliance with paragraph (b), that person shall be required to notify the Commissioner forthwith in the prescribed form.

(k) A person who fails to comply with paragraph (j) commits a continuing offence and is liable to a penalty under paragraph (c) as if he were a person who is required to and has not lodged the instrument for stamping in compliance with paragraph (b).

(l) It shall be a defence to a charge of an offence under paragraph (k) that a person did not know that the instrument was of the kind referred to in paragraph (j).”;

(b) in paragraph (b)—

(i) by omitting from the first paragraph all words from and including the words “the Commissioner” where they first occur to the end of the first paragraph and substituting the words “the Commissioner or a Deputy Commissioner, where he considers there are special circumstances warranting an extension, may allow.”;

(ii) by omitting the second paragraph commencing with the words “If, after an amount”;

(iii) by designating the third paragraph commencing with the words “If an instrument” as paragraph (c).”.

27. Amendment of s. 28. Instrument not to be delivered up till duty and penalty paid. Section 28 of the Principal Act is amended by omitting the word “Inspector” and substituting the words “investigating officer”.

28. Repeal of and new s. 29. Powers of inspection. The Principal Act is amended by repealing section 29 and substituting the following section:—

“29. Powers of investigation. (1) The Commissioner may, for the purposes of this Act, authorize in writing an officer engaged in the administration of this Act to be an investigating officer.

(2) An investigating officer may—

(a) conduct enquiries for the purposes specified in subsection (3);

and

(b) exercise the powers specified in subsection (4) when conducting those enquiries.

(3) An investigating officer may conduct enquiries—

(a) into any matter arising in connexion with the administration of this Act;

(b) for the purposes of ascertaining the amount of duty chargeable in respect of an instrument or the amount (including any penalty) otherwise payable in accordance with this Act, or both;

(c) for the purposes of ascertaining facts in order to determine whether there is, in respect of any transaction, any liability—

(i) to pay duty or another amount (including a penalty) under this Act, or both;

or

- (ii) to deliver to or lodge with the Commissioner any statement, return or other document;
 - (d) for the purposes of ascertaining whether a person is required to comply with this Act in any respect or has complied with this Act in every respect.
- (4) The powers that may be exercised by an investigating officer, at all reasonable times, when conducting enquiries for a purpose specified in subsection (3) are—
- (a) to enter upon any land and into any place, building or premises in Queensland and to remain thereon or therein for as long as is necessary for those purposes;
 - (b) to have full and free access to all records in Queensland and to inspect those records;
 - (c) to require a person, whom he reasonably believes to have custody or control of records, to produce all records of any description over which that person has custody and control;
 - (d) to require a person to furnish him with such information, orally or in writing, that he reasonably believes to be within the knowledge or possession of that person;
 - (e) if any record to which an investigating officer has access or any record or information produced or furnished to him or required by him under paragraph (c) or (d) to be produced or furnished to him—
 - (i) is not in writing on paper;
 - (ii) is not written in the English language;
- or
- (iii) is not decipherable on sight,
 - to require the person who has knowledge, custody or control of that information or that record, to produce a statement on paper in the English language and decipherable on sight setting out the information or the contents of that record;
 - (f) to make and take away copies of or take extracts from the whole or any part of a record produced or information furnished in accordance with paragraph (b), (c) or (d) or a statement produced in accordance with paragraph (e);
 - (g) to require a person to answer any question relating to—
 - (i) any records inspected or produced, or required to be produced, in accordance with paragraph (b) or (c);
 - (ii) any information furnished or required to be furnished in accordance with paragraph (d);

or

(iii) any statement produced or required to be produced in accordance with paragraph (e);

and

(h) to require any person having relevant connexion with the investigation to provide him and all persons acting in aid of him with all reasonable facilities and assistance for the effective conduct of the investigation.

(5) An investigating officer is entitled to inspect and take copies of or extracts from any public record kept under an Act or law of Queensland without payment of any fee that would be payable but for this section.

(6) Where an instrument produced to or coming into the hands of an investigating officer, appears to him to be chargeable with stamp duty and to be unstamped or insufficiently stamped, that officer may take possession of the instrument and shall refer the instrument to the Commissioner for assessment or reassessment, as the case may require.

(7) Where the Commissioner considers that it would be desirable, for the effective administration of this Act in respect of the conduct of enquiries into a particular matter for a purpose specified in subsection (3), he may authorize a member of the Police Force to conduct those enquiries and the member of the Police Force so authorized shall for the purposes of the enquiry into that matter and for the purposes of this Act be deemed to be an investigating officer.”.

29. New ss. 29A, 29B and 29C. The Principal Act is amended by inserting after section 29 the following sections:—

“29A. Restriction on entry to investigate. (1) An investigating officer who has entered upon land or into any place, building or premises in the exercise of a power conferred by section 29 (4) is not authorized to remain thereon or therein if, on request by the occupier thereof, that officer does not produce a certificate purporting to be issued by the Commissioner stating that the officer is an officer authorized by him, pursuant to section 29 (1), to exercise the powers specified in section 29 (4) for the conduct of enquiries for the purposes specified in section 29 (3).

(2) An investigating officer and any other person acting in aid of him shall not enter into a dwelling house for the purposes of an investigation under this Act unless—

(a) the occupier thereof has consented to the entry;

or

(b) the officer or other person has first obtained and produces upon the occupier’s request a warrant that authorizes the entry.

(3) Upon the information of an investigating officer that he reasonably suspects that there are in any dwelling house records or other things that make it desirable that entry be made into the dwelling house for the purposes of an investigation under this Act, a stipendiary magistrate may issue a warrant, in the prescribed form, directed to the informant and all persons acting in aid of him authorizing him and them to enter into the dwelling house at all reasonable times for the purpose of conducting his or their enquiries under this Act.

(4) A person to whom a warrant issued under subsection (3) is directed is authorized to enter from time to time the dwelling house specified in the warrant as often as he thinks such entry to be necessary or desirable for the purposes of the investigation under this Act for which the warrant was issued.

(5) In this section the expression “dwelling house” includes any part of a building used exclusively as a dwelling but does not include the curtilage of any building.

29B. Obstruction etc. of an investigating officer. A person who—

(a) obstructs or hinders an investigating officer, or any person properly assisting such an officer, exercising a power specified in section 29;

(b) fails to comply with a requirement made under section 29;

or

(c) knowingly fails to comply with section 29 (5),

commits an offence against this Act.

Penalty: 40 penalty units or imprisonment for 3 months, or both.

29C. False or misleading statements. (1) A person shall not give an answer, whether orally or in writing, to a question put to him by an investigating officer, that is false or misleading in a material particular.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) A person shall not, in furnishing information to an investigating officer, make any statement or representation that is false or misleading in a material particular.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

(3) It is a defence to a charge under subsection (1) or (2) to prove that, when the answer, statement or representation was given or made, the defendant believed on reasonable grounds that it was neither false nor misleading.

(4) Where a requisition made under section 29 (4) is directed to a body corporate, which fails to comply with it, each of the chairman of directors, managing director or other governing

officer, by whatever name called, and every member of the governing body, by whatever name called, shall be deemed to have failed to comply with that requisition and to have committed an offence against this Act and shall be liable to be proceeded against and punished accordingly.

(5) It is a defence to a charge of an offence against this Act brought against a person specified in subsection (4) to prove that the offence was committed without that person's knowledge or connivance and that he could not by due diligence have prevented the commission of the offence."

30. Amendment of s. 30. Penalty for registering instrument not duly stamped. Section 30 of the Principal Act is amended by inserting after subsection (1) the following subsections:—

"(1A) Subsection (1) does not apply to the Registrar of Titles where he records in the register maintained by him particulars in respect of the issue of a deed of grant in respect of Crown land granted in trust for a public purpose under the *Land Act 1962-1988*.

(1B) A registrar or person of the kind referred to in paragraph (b) of the definition "conveyance" or "transfer" in section 49 (1) may refer an instrument lodged with him to the Commissioner for determination as to whether it is an instrument whereby property is vested as provided for in paragraph (a) (ii) of that definition."

31. Amendment of s. 31C. Sales and purchases to be recorded. Section 31C of the Principal Act is amended in subsection (4) by omitting paragraphs (d) and (e) and substituting the following paragraph:—

"(d) by an institution or body of the kind specified in exemption 5 under the heading "CONVEYANCE OR TRANSFER" in the First Schedule."

32. Amendment of s. 31D. Returns to be lodged and duty paid. Section 31D of the Principal Act is amended in subsection (1) by omitting the word "and" where it secondly occurs between paragraph (aa) and paragraph (b).

33. Amendment of s. 31G. Section 31G of the Principal Act is amended—

- (a) by omitting subsections (3) and (4);
- (b) by renumbering subsection (5) as subsection (2).

34. New s. 31GA. The Principal Act is amended by inserting after section 31G the following section:—

"**31GA. Retention of transfer instrument.** (1) Subject to section 31G, a corporation or company that registers, records or enters a transfer of any stock, marketable security or right in respect of shares in its records in Queensland shall retain the instrument

of transfer in Queensland for 3 years from the date on which it registers, records or enters the transfer.

(2) Where in respect of shares of a corporation or company incorporated in Queensland, a transfer of any stock, marketable security or right is registered, recorded or entered in a record lawfully kept at a place outside Queensland and the law of that place—

(a) does not require the instrument of transfer to be retained in that place;

or

(b) requires the instrument of transfer to be retained in that place for a period of less than 3 years from the date on which the corporation or company registers, records or enters the transfer,

the corporation or company shall retain the transfer in that place for 3 years from the date on which it registers, records or enters the transfer.

(3) A corporation or company that fails to comply with a requirement made of it under subsection (1) or (2) commits an offence against this Act.

Penalty: 100 penalty units.

(4) Where a corporation or a company commits an offence under subsection (3), each of the chairman of directors, managing director or other governing officer, by whatever name called, and every member of the governing body thereof, by whatever name called, shall be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly.

(5) It is a defence to a charge of an offence brought against a person specified in subsection (4) to prove that the offence was committed without that person's knowledge or connivance and that he could not by due diligence have prevented the commission of the offence.

(6) Subsection (4) applies so as not to limit or affect in any way the liability of a corporation or company to be proceeded against and punished for an offence under subsection (3) committed by it."

35. Amendment of s. 31H. Duty on transactions on registers of Queensland incorporated companies. Section 31H of the Principal Act is amended—

(a) by omitting subsections (1), (2), (3), (3A), (3B) and (3C) and substituting the following subsections:—

“(1) A company incorporated in Queensland shall, not later than the fourteenth day of each month, lodge a return containing such particulars and information as may be prescribed in respect of all entries made in the preceding month on a register kept by the company, whether inside or outside the State, in respect of

a transfer of any of the marketable securities of that company where the instrument of transfer is not duly stamped under this Act.

(2) A return lodged by a company in accordance with subsection (1) is chargeable with duty of an amount which is the sum of the following amounts—

(a) in respect of entries which relate to transfers on which no duty has been paid under the law of any State, Territory or country, the amount of duty that would, in aggregate, have been payable in respect of those transfers under paragraph (3) under the heading “CONVEYANCE OR TRANSFER” in the First Schedule, if the transfers to which the entries relate had at the time of execution related to marketable securities on a register kept by the company in Queensland and attracted duty at the *ad valorem* rates under that paragraph;

and

(b) in respect of all other entries, the amount which is the sum of the amounts represented by A in respect of each such entry in the formula—

$$A = B - C$$

where—

B is the amount of duty that would have been payable in respect of the transfer to which the entry relates under paragraph (3) under the heading “CONVEYANCE OR TRANSFER” in the First Schedule, if the transfer had at the time of execution related to marketable securities on a register kept by the company in Queensland and attracted duty at the *ad valorem* rates under that paragraph; and

C is the amount of duty paid under the law of any State, Territory or country in respect of the transfer to which the entry relates,

and the company shall, when lodging that return, pay to the Commissioner the amount of duty chargeable thereon.

(3) This section shall not apply in relation to an entry in respect of a transfer—

(a) which is pursuant to a sale or purchase of a marketable security effected by a member of a stock exchange in this State or any State, Territory or country proclaimed under subsection (6);

(b) which is for the purpose of carrying into effect any distribution under a will or on intestacy;

or

(c) on which duty has been paid under the law of any State, Territory or country of an amount which is

equal to or greater than the amount of duty that would have been payable in respect of the transfer under paragraph (3) under the heading "CONVEYANCE OR TRANSFER" in the First Schedule, if the transfer had at the time of execution related to marketable securities on a register kept by the company in Queensland and attracted duty at the *ad valorem* rates under that paragraph.”;

(b) by omitting from subsection (4) the expression “(3)” and substituting the expression “(1)”;

(c) by omitting subsections (5), (6) and (7);

(d) by renumbering subsection (8) as subsection (5);

(e) by inserting after subsection (5), as renumbered by this section, the following subsections:—

“(6) The Governor may by proclamation proclaim a State or Territory of the Commonwealth or any country to be a proclaimed State, Territory or country for the purposes of this section.

(7) Where an entry included in a return pursuant to subsection (1) relates to a transfer which the Commissioner is satisfied would, if it related to a marketable security on a register kept by the company in Queensland—

(a) have been exempt from duty;

or

(b) have attracted duty of \$1.00 under the proviso immediately following paragraph (3) (b) under the heading “CONVEYANCE OR TRANSFER” in the First Schedule,

the Commissioner may on application of the company or the transferee and on provision by the applicant of such particulars or evidence as the Commissioner may require—

(c) allow a rebate of duty otherwise payable in respect of the return in respect of that entry;

or

(d) where the Commissioner is satisfied that the amount attributable to the entry has been paid on the return by the company, refund that amount—

(i) to the applicant company;

or

(ii) where the Commissioner is satisfied that the transferee has paid that amount to the company in respect of that entry—to the applicant transferee.”;

(f) by omitting from subsection (10) the words “any inspector or other officer authorized by him” and substituting the words “an investigating officer”.

36. Amendment of s. 31J. Duty on certain transactions on the Stock Exchange of the United Kingdom. Section 31J of the Principal Act is amended in subsection (6) by omitting provisions (B) and (C) of paragraph (a) (i) and substituting the following provision:—

“(B) a conveyance or transfer of property to an institution or body of a kind specified in exemption 5 under the heading “CONVEYANCE OR TRANSFER” in the First Schedule;”.

37. Amendment of s. 42B. Stamp duty on credit card business. Section 42B of the Principal Act is amended in subsection (3A) by omitting paragraph (b) and substituting the following paragraph:—

“(b) the cardholder’s bank is—

- (i) a company the issued share capital of which is beneficially owned (directly or indirectly) wholly or to a prescribed extent by another company which is principally engaged in the supply of goods or services;
- (ii) a company which is the beneficial owner (directly or indirectly), wholly or to a prescribed extent, of the issued share capital of a company which is principally engaged in the supply of goods or services;
- (iii) a company the issued share capital of which is beneficially owned (directly or indirectly) wholly or to a prescribed extent by a third company which is the beneficial owner (directly or indirectly) wholly or to a prescribed extent of the issued share capital of another company which is principally engaged in the supply of goods and services;
or
- (iv) a company which the Commissioner is satisfied should be approved for the purposes of this subsection having regard to the nature and degree of direct or indirect control or association existing between the company and another company which is principally engaged in the supply of goods or services and to any other matter that he considers relevant,

and the credit card issued by the cardholder’s bank is principally for use in connexion with transactions had with the other company in connexion with the supply of goods or services by that other company.”.

38. New s. 45A. The Principal Act is amended by inserting after section 45 the following section:—

“**45A. Collection of duties by the Land Administration Commission.** (1) Where—

- (a) any contract or agreement for sale of Crown land;
or
- (b) any deed of grant,

is required to be received at or issued from the office of the

Land Administration Commission, constituted under the *Land Act 1962-1988*, the payment of duties chargeable on the relevant instrument shall be taken by the person or officer whose duty it is to receive or issue that instrument.

(2) The person or officer referred to in subsection (1), upon receipt of the whole of the amount of duty properly payable, shall, in the manner and form directed by the Commissioner, denote the amount of the duty and the date on which that duty was paid upon the relevant instrument.

(3) Where an instrument has been denoted in accordance with subsection (2), it shall be deemed to be duly stamped.

(4) An instrument in respect of which duty is chargeable by this Act and required to be paid in accordance with this section shall not be accepted for any purpose or issued unless or until the instrument is duly stamped.

(5) Where an instrument in respect of which duty is chargeable under this Act has been accepted or issued without the instrument being duly stamped, the correct amount of duty, or any unpaid part thereof, shall be deemed to be a debt due and owing to the Crown from the date of the acceptance or issue of the relevant instrument.

(6) The debt referred to in subsection (5) shall be recoverable by the Commissioner in any court of competent jurisdiction in accordance with section 4B.

(7) The Land Administration Commission shall remit to the Commissioner all amounts of duty referred to in this section and received by it.”.

39. Repeal of and new s. 46. The Principal Act is amended by repealing section 46 and substituting the following section:—

“**46. Policies executed outside Queensland.** (1) Without limiting the operation of section 4, every policy of insurance executed outside Queensland relating to a risk in Queensland or the life of a person resident in Queensland shall, subject to subsection (2), be charged with the stamp duty specified in the First Schedule to apply to a policy of that kind in accordance with the law in force at the time of execution.

(2) A policy of insurance executed outside Queensland and charged with *ad valorem* duty under this Act shall be chargeable with duty specified in subsection (1) to the extent that, it relates to—

- (a) a risk in Queensland;
- (b) a life of a person resident in Queensland;
- or
- (c) property in Queensland,

or any two or all of them.

(3) Where a policy of insurance executed outside Queensland is chargeable with *ad valorem* duty under this section or section

4 (solely because it relates in part to a risk, life or property, of the kind specified in paragraph (a), (b) or (c) of subsection (2) or any two or all of them) the duty chargeable shall be an amount which bears to the total amount of duty that would apply if the policy related, as the case may be, wholly to a risk, life or property of the kind specified in paragraph (a), (b) or (c), the same proportion as that part of the sum insured relating to, risks, lives, or property of the kind specified in paragraph (a), (b) and (c) of subsection (2) or any two or all of them bears to the total sum insured.”.

40. Repeal of and new s. 46A. Duty to be paid on returns where policy issued outside Queensland. The Principal Act is amended by repealing section 46A and substituting the following section:—

“**46A. Policies executed in Queensland.** (1) Where a policy of insurance is executed in Queensland and it relates to—

- (a) a risk, other than a risk in Queensland;
- (b) a life of a person resident outside Queensland;
- or
- (c) property outside Queensland,

duty chargeable under this Act on the policy may be reduced to the extent to which it relates to any risk, life or property specified in paragraph (a), (b) or (c) or any two or all of them, provided that *ad valorem* duty is payable in respect of the policy to the extent to which it relates to such risk, life or property in the State or Territory where, as the case may be that risk, life or property is located.

(2) Where a policy of insurance to which subsection (1) applies also relates to—

- (a) a risk in Queensland;
- (b) a life of a person resident in Queensland;
- or
- (c) property in Queensland or any matter or thing done or to be done in Queensland,

or any two or more of them, the duty otherwise chargeable under this Act shall not be reduced below the amount of duty that would be payable had a policy relating to such risk, life, property, matter or thing been executed outside Queensland.

(3) Where duty chargeable under the Act is to be reduced pursuant to subsection (1), to the extent that it relates to a risk, life or property in another State or Territory, duty chargeable under this Act shall, subject to subsection (2), be reduced by the amount which bears to the total amount of duty that would be chargeable if such reduction were not allowed, the same amount as the sum insured attributable to the risk, life or property outside Queensland bears to the total sum insured.”.

41. Repeal of and new s. 46B. Returns to be made in respect of certain insurances. The Principal Act is amended by repealing section 46B and substituting the following section:—

“**46B. Risk of consequential loss or damage.** (1) Subject to subsection (2), (3) and (4), where a policy of insurance is chargeable with duty under this Act, for the purposes of determining—

(a) the extent to which a policy executed outside Queensland relates to a risk in Queensland;

or

(b) the extent to which a policy executed in Queensland relates to a risk outside Queensland,

in addition to any other matters that may be relevant for those purposes, to the extent that the policy relates to the risk of loss or damage as a consequence of the happening of an event or contingency, the State or Territory where the loss or damage may arise shall be had regard to and not the State or Territory where the event or contingency that would give rise to that consequence might arise.

(2) Where the State or Territory where the risk of loss or damage that may arise under the policy is not Queensland—

(a) subsection (1) only applies where the risk of loss or damage is located in that State or Territory because of the impact of the event or contingency in a practical and physical sense in that State or Territory through its consequential effect on property in that State or Territory or a business undertaking being or to be carried out in that State or Territory or any other matter or thing of a kind prescribed;

and

(b) subsection (1) shall not apply where the risk of loss or damage is located in that State or Territory because it emanates from an instrument which was executed in that State or Territory or a transaction which took place or is to take place or was entered into in that State or Territory.

(3) Notwithstanding subsection (1), where the State or Territory where the risk of loss or damage that may arise under the policy is not Queensland and the policy is not liable for *ad valorem* duty in that State or Territory, in addition to any other matters that may be relevant for the purposes referred to in subsection (1), the State or Territory where the event or contingency giving rise to the loss or damage might arise may be had regard to.

(4) Where the extent to which the risk of loss or damage under a policy of insurance is attributable to the various States or Territories cannot reasonably be ascertained, subsection (1) shall not apply and for the purposes outlined in subsection (1), in addition to any other matters that may be relevant for those

purposes, the State or Territory where the event or contingency giving rise to the risk of loss or damage may occur or arise may be had regard to.”

42. New ss. 46C and 46D. The Principal Act is amended by inserting after section 46B the following sections:—

“**46C. Insurance with no executed policy.** (1) Where insurance is effected—

(a) in Queensland;

or

(b) outside Queensland relating to a risk in Queensland or a life of a person resident in Queensland or property in Queensland or matter or thing done or to be done in Queensland,

and there is not an executed instrument constituting a policy of insurance in respect of that insurance then upon the happening of the event which makes the insurance binding between the parties,

(c) any policy of insurance or any document, whether executed or not, referring to the insurance which has passed between the insurer and another person, shall be deemed to be—

(i) a policy of insurance executed by the insurer and the person who has taken out the insurance and the broker or agent acting for either of them in respect of the effecting of the insurance;

and

(ii) executed at the time and place where the insurance is effected;

or

(d) where there is no document of the kind specified in paragraph (c), each of the insurer, the person who has taken out the insurance and the broker or agent, if any, acting for either of them in respect of the effecting of the insurance shall be liable to create a statement containing prescribed particulars and lodge it with the Commissioner within 30 days of the insurance becoming binding and such statement shall be chargeable as if it were, in respect of the insurance which has been effected, a policy of insurance executed by each of those persons at the time and place where the insurance is effected.

(2) Where more than one statement prepared under subsection (1) (d) is lodged in respect of the same insurance, the Commissioner may elect which one of those statements shall be stamped.

(3) A person who—

(a) fails to create and lodge a statement required under subsection (1) (d);

or

(b) creates or lodges a statement that is false or misleading in a material particular,

commits an offence against this Act.

Penalty: 100 penalty units and an amount equal to twice the duty that would have been chargeable on the statement if it had been prepared as required by this section.

(4) A person who is an approved insurer under section 46F or who is a person to whom paragraph (a) of section 46F (9) applies shall not be liable for prosecution under subsection (3) for failure to lodge a statement under subsection (1) (d).

(5) A person who takes out insurance with an approved insurer or uses an approved insurer or a person to whom paragraph (a) of section 46F (9) applies as his agent in the taking out of that insurance shall not be liable for prosecution for failure to prepare or lodge a statement under subsection (1) (d).

(6) Where a corporation commits an offence under subsection (3) each of the chairman of directors, managing director or other governing officer by whatever name called, and every member of the governing body, by whatever name called, shall be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly.

(7) Subsection (6) applies so as not to limit or affect in any way the liability of the corporation to be proceeded against and punished for such offence committed by it.

(8) It is a defence to a charge of an offence under this Act brought against a person specified in subsection (6) to prove that the offence was committed without that person's knowledge or connivance and that he could not by due diligence have prevented the commission of the offence.

46D. Relief from duty where duty also chargeable in other States or Territories. Where—

(a) a policy of insurance is chargeable with duty under this Act and under a corresponding law of another State or a Territory;

and

(b) the sum of the formula—

$$\frac{QD1}{QD2} + OSD$$

where—

- QD1 is the amount of duty chargeable on the policy in Queensland;
- QD2 is the amount of duty that would be chargeable if the policy were wholly dutiable in Queensland;
- OSD is, in respect of all other States and Territories where duty is also payable on the policy, the sum of the fractions calculated, in respect of each other State or Territory where duty is also payable on the policy, in accordance with the formula—

$$\frac{\text{OSD1}}{\text{OSD2}}$$

where—

- OSD1 is the amount of duty payable on the policy in that other State or Territory;
- OSD2 is the total amount of duty that would be payable in that other State or Territory if the policy were wholly dutiable in that other State or Territory;

exceeds 1,

the Commissioner may, in his discretion, having regard to facts and circumstances in respect of the insurance including the nature of the insurance and the extent of its connexion with Queensland and with the other State or Territory, allow as an offset against the duty chargeable under this Act on the policy, an amount not exceeding the duty paid in the other State or Territory where the duty is also payable.”.

43. New ss. 46E and 46F. The Principal Act is amended by inserting after section 46D, as inserted by this Act, the following sections:—

“46E. Liability for duty on a policy and lodgement. (1) The insurer, the person taking out the insurance and the broker for either of them, if any, in respect of the taking out of a policy of insurance charged with duty under this Act whether or not a party to the policy, shall be liable for the duty so charged in respect of the policy.

(2) A person who has custody or control or possession of a policy of insurance chargeable with duty under this Act or document deemed to constitute a dutiable policy of insurance which is or are not duly stamped shall be liable to lodge the policy or document for stamping as if he were a party liable for duty on the instrument.

(3) A person to whom subsection (2) applies who fails to lodge a policy or document referred to in subsection (2) for stamping as required by this Act commits an offence against this Act.

Penalty: 100 penalty units.

46F. Approved insurers to pay duty by return. (1) Where a person carries on any insurance business in Queensland (whether or not he carries on any other business) or advertises or holds himself out in any way as carrying on an insurance business in Queensland, whether the head office or principal place of business of that person is in Queensland or elsewhere, he is required to apply in the prescribed form to the Commissioner for approval as an approved insurer for the purposes of this section.

(2) A person to whom subsection (1) does not apply who in the course of any insurance business carried on by him effects or has effected with him insurance in respect of—

- (a) a risk in Queensland;
- (b) a life of a person resident in Queensland;
- or
- (c) property in Queensland or any matter or thing done or to be done in Queensland,

or any two or more of them, may apply in the prescribed form to the Commissioner for approval as an approved insurer.

(3) A person who fails to comply with subsection (1) commits an offence against this Act.

Penalty: 100 penalty units and 10 penalty units for each day on which the offence continues to the date of the person's conviction for the offence.

(4) A person who after conviction for an offence defined in subsection (3) or this subsection (in this subsection called the "previous conviction") continues to fail to comply with subsection (1) commits an offence against this Act.

Penalty: 10 penalty units for each day on which he has continued to fail to comply with subsection (1) from the date of his last occurring previous conviction to the date of his conviction for an offence under this subsection last committed by him.

(5) For the purposes of this section, a person who, in the course of business whether as a principal or as an agent—

- (a) grants or issues policies of insurance, other than policies of a kind prescribed;
- (b) accepts directly or indirectly any premium, renewal or reinstatement premium or consideration for, or in respect of, the granting or issuing or keeping in force any policy of insurance of the kind specified in paragraph (a);
- and
- (c) carries out any written, verbal or implied contract or undertaking to effect any insurance,

carries on an insurance business.

(6) For the purposes of subsections (5) to (14), both inclusive, of section 13A—

- (a) an approved insurer shall be deemed to be an approved person;
- and
- (b) documents constituting policies of insurance under paragraph (c) of section 46C (1) and statements required to be created under paragraph (d) of section 46C (1) shall be deemed to be instruments of a kind to which an approval or requirement under section 13A relates.

(7) Where an approved insurer ceases to carry on insurance business in Queensland or ceases to have effected with him insurance of the kind specified in subsection (2), he shall notify the Commissioner and his approval shall be cancelled.

(8) Where the Commissioner is satisfied that it will not result in administrative inconvenience and that an alternative means of collection of duty is more suitable for—

- (a) policies of insurance chargeable with duty;
- (b) documents dutiable under paragraph (c) of section 46C (1);
- and
- (c) statements required to be created under paragraph (d) of section 46C (1),

in respect of insurance effected in the course of a person's insurance business, he may, where he considers it appropriate to do so, in writing authorize that person not to be required to be approved under this section.

(9) A person who carries on insurance business—

- (a) shall not be required to be approved where, in carrying on that business, he only acts as agent for a principal who is an approved insurer;
- or
- (b) where he acts as agent for insurers including an approved insurer—he shall only be required to lodge returns in respect of policies, documents and statements other than those in respect of which he has acted as agent for an approved insurer.”

44. Repeal of and new s. 47. Penalty for not making out, etc., duly stamped policy. The Principal Act is amended by repealing section 47 and substituting the following section:—

“47. **Policy of temporary insurance.** (1) A policy of insurance—

- (a) which is to provide temporary insurance and is to be replaced or superseded by another policy of insurance;

and

(b) for which no premium is payable,
shall be exempt from duty.

(2) If—

- (a) a premium is payable on a policy of insurance which is to provide temporary insurance for a period of not longer than 3 months;
- (b) it is clear from the policy that it is intended to be replaced or superseded by another policy;
- (c) the subsequent policy when issued is in respect of the same risk, life, property or matter or thing and is for a sum insured not less than that provided for under the policy of temporary insurance and is for a term including the period of cover of the temporary insurance;

and

- (d) full credit is given under the subsequent policy for the premium paid on the temporary insurance,

duty on the subsequent policy shall be calculated (including in respect of the premium on the policy of temporary insurance) and credit against that duty, not exceeding that duty, shall be given for duty paid on the policy of temporary insurance.”.

45. Repeal of and new s. 47A. Continuous insurance. The Principal Act is amended by repealing section 47A and substituting the following section:—

“**47A. Policies of marine insurance in sets.** (1) Any number of policies of marine insurance forming part of one set or series according to the custom of insurers shall be held to be one such policy for the purposes of this Act, provided that one of the number is duly stamped.

(2) Upon proof of the loss or destruction of a duly stamped policy of marine insurance forming one of a set or series, any other policy of the set may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed policy.”.

46. Repeal of and new s. 47B. Workers' Compensation Insurance. The Principal Act is amended by repealing section 47B and substituting the following section:—

“**47B. Workers' compensation insurance.** (1) The Workers' Compensation Board of Queensland shall in respect of every calendar month furnish to the Commissioner a return specifying the aggregate of the premiums charged in respect of accident insurance policies under the *Workers' Compensation Act 1916-1986* during the relevant month and every such return shall be liable to duty at the rate specified in the First Schedule to apply to those policies.

(2) Every return furnished pursuant to subsection (1) shall be delivered to the Commissioner within 14 days or such further time as agreed by the Commissioner after the last day of the month in respect of which that return is required to be furnished.

(3) In subsection (1), the expression “premiums charged” means all amounts charged during the relevant month to holders of accident insurance policies under the *Workers’ Compensation Act 1916-1986* in respect of premiums after allowing for any adjustments made during that month in respect of any previous period and after deducting any bonuses allowed to policy holders during that month.”.

47. Repeal of and new s. 48. Policies of life insurance. The Principal Act is amended by repealing section 48 and substituting the following section:—

“**48. Continuous insurance.** (1) Where a policy of insurance (other than a policy of insurance chargeable with duty under the heading “POLICIES OF LIFE INSURANCE” in the First Schedule) is for an indefinite period, the policy shall, on issue or execution and at the expiration of each successive period of 12 months until its termination, be deemed to be a new or separate policy of insurance for a definite period of 12 months and chargeable with duty as such under this Act.

(2) In calculating duty chargeable on a policy of insurance or deemed new policy of insurance under subsection (1), so much of the premium as the Commissioner is satisfied is reasonably attributable to the relevant period of 12 months shall be deemed to be the premium for the policy or deemed new policy.”.

48. Repeal of and new s. 48A. Composition of duty in respect of policies of insurance against accident, etc. The Principal Act is amended by repealing section 48A and substituting the following section:—

“**48A. Assessment of duty where sum insured or premium unascertainable.** (1) Where, to calculate the duty chargeable on a policy of insurance, it is necessary to determine the sum insured or the premium, or both of them, but such is or are not ascertainable from the policy or is or are so ascertainable but may be varied, the insurer and the person taking out the insurance shall furnish to the Commissioner—

(a) an estimate of the sum insured under the policy;
or

(b) an estimate of the net premium, as defined in the last paragraph of provision (g) of the proviso occurring immediately after paragraph (8) under the heading “POLICIES OF INSURANCE (other than Policies of Life Assurance and Policies of Accident Insurance issued under the *Workers’ Compensation Act 1916-1973*)” in the First Schedule, payable on the policy,

or both, as he may require, together with supporting evidence to his satisfaction and the Commissioner may for the purposes

of making an assessment calculate the duty chargeable having regard to that estimate and evidence.

(2) Where the sum insured under a policy is unascertainable from the policy or may be varied and the Commissioner is not satisfied with the estimate of the sum insured referred to in subsection (1) or is of the opinion that the sum insured is incapable of estimation and the policy would but for this subsection be chargeable with duty under paragraph (4), (5) or (8) under the heading "POLICIES OF INSURANCE (other than Policies of Life Assurance and Policies of Accident Insurance issued under the *Workers' Compensation Act 1916-1973*)" in the First Schedule, subject to provision (g) of the proviso occurring immediately after paragraph (8) under that heading, the Commissioner may determine duty to be chargeable at a rate of 25 per cent of the net premium payable in respect of the policy or the net premium estimated in accordance with subsection (1); and the expression "net premium" shall in this subsection have the same meaning as under provision (g) in that proviso.

(3) Where—

- (a) in the case of a policy of insurance chargeable with duty under the heading "POLICIES OF INSURANCE (other than Policies of Life Assurance and Policies of Accident Insurance issued under the *Workers' Compensation Act 1916-1973*)" or as a temporary or term policy under the heading "POLICIES OF LIFE INSURANCE" in the First Schedule—
- (i) the term of a policy of insurance has expired or is deemed to have expired by section 48 or in the case of a temporary or term assurance policy—the first year has expired;
 - (ii) the premium payable over the term of the policy or the maximum sum insured covered under the policy, or both, at any time during the term of the policy has or in the case of a temporary or term assurance policy—the first year's premium has exceeded the estimate provided to the Commissioner to which he has had regard in calculating duty on the policy under subsection (1);
and
 - (iii) duty calculated having regard to the actual premium paid or the maximum sum insured, or both, as the case may require, during the term of the policy, or in the case of a temporary or term assurance policy—the first year's premium would have been greater than duty paid on the assessment under subsection (1);

or

- (b) in the case of a policy of insurance other than a temporary or term assurance policy chargeable with

duty under the heading "POLICIES OF LIFE INSURANCE" in the First Schedule—

- (i) the sum insured under the policy is unascertainable or may be varied and the Commissioner has assessed duty chargeable on the instrument on the basis of an estimate under subsection (1) or on the basis of the sum insured referred to in the policy which is subject to variation; and
- (ii) the sum insured during the term of the policy exceeds the sum insured on the basis of which the policy has been assessed,

the policy shall at that time be deemed to be a new and separate instrument chargeable with duty having regard to the actual premium paid or the maximum sum insured, or both, as the case requires, during the term of the policy; and duty paid on the instrument as chargeable in accordance with subsection (1) and paid shall be allowed as a credit against the duty chargeable on the policy deemed by this subsection to be a new and separate instrument."

49. Repeal of and new s. 48B. The Principal Act is amended by repealing section 48B and substituting the following section:—

"**48B. Sum Insured or Premium Varied.** Where the sum insured or the premium, or both, under a policy of insurance other than one to which section 48A applies, (in this section called the "original policy") is increased during the term of the policy, the policy shall at that time be deemed to be a new and separate instrument for the same term and commencing on the same date as the original policy and duty already paid on the original policy shall be allowed as a credit against the duty chargeable on the policy deemed to be a new and separate instrument having regard to the varied premium or varied sum insured, or both, as the case may be."

50. Amendment of s. 49. Meaning of "Conveyance or Transfer" and provisions affecting the same. Section 49 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

"(1) For the purposes of this Act—

- (a) the expressions "conveyance" and "transfer" include every instrument and every decree or order of a court —
 - (i) whereby property is conveyed, transferred or assigned to or is vested in a person; or
 - (ii) whereby property is vested, without an instrument of conveyance, transfer or assignment, in any person

- upon notification to or registration or recording by the Registrar or other person having the duty under an Act of noting, registering or recording a vesting or dealing in property,
- except in the case of an instrument whereby property is vested as provided in paragraph (ii) which is—
- (iii) an instrument which notifies a transmission by death;
 - (iv) an instrument which relates solely to goods, wares, livestock or merchandise;
 - (v) an instrument which notifies a vesting of property in the Official Receiver in Bankruptcy or a registered trustee pursuant to section 58 of the Bankruptcy Act 1966 of the Commonwealth, as amended from time to time;
- or
- (vi) an instrument which notifies a vesting by statute of a prescribed class, or any other instrument of a prescribed class;
- (b) the expression “transferee” in respect of a conveyance or transfer, means the person to whom property is conveyed, transferred or assigned or in whom property is vested;
- and
- (c) the expression “transferor” in respect of a conveyance or transfer, means the person who conveys, transfers, assigns or vests the property to which the instrument relates.”.

51. New s. 51E. The Principal Act is amended by inserting after section 51D the following section:—

“51E. Minimum value of certain shares or stock. (1) For the purposes of this section “share” means a share or stock of a company, corporation or society that is not listed on a stock exchange.

(2) Notwithstanding any other provision of this Act, the shares which comprise all of the issued capital of a company, corporation or society shall be deemed to have an aggregate minimum value of \$800.

(3) For the purpose of assessing the stamp duty payable upon a transfer of a share or shares referred to in subsection (2), the full unencumbered value of each share included in the transfer shall be deemed to be not less than that part of \$800 equivalent to the proportion of the total issued share capital of the company, corporation or society represented by the share.”.

52. Amendment of s. 53. Directions as to duty in certain cases.
Section 53 of the Principal Act is amended—

(a) by renumbering subsections (4) and (5) as subsections (8) and (11) respectively;

(b) by omitting subsections (1), (2) and (3) and substituting the following subsections:—

“(1) For the purposes of this section—

“convey” has a meaning, as the case may require, corresponding to the dealing in property which is effected by or evidenced by an instrument of conveyance as defined in this subsection;

“instrument of conveyance” includes a conveyance, transfer, assignment, settlement, deed of gift, voluntary conveyance, declaration of trust, contract or agreement or any instrument or statement which is charged as if it were a conveyance or is charged at the same *ad valorem* rates of duty as a conveyance;

“transferee” has a meaning, as the case may require, corresponding to the person to or on whom or for the benefit of whom property is under the instrument of conveyance, as defined in this subsection, conveyed, transferred, assigned, settled, gifted, declared to be held or that it is to be held on trust or contracted, agreed or otherwise acquired;

“transferor” has a meaning, as the case may require, corresponding to the person who under the instrument of conveyance, as defined by this subsection, conveys, transfers, assigns, settles, gifts, declares the trust, contracts, agrees or otherwise disposes of property to which the instrument relates.

(2) Subject to subsections (4), (5) and (6), if there are two or more instruments of conveyance, whether involving the same or different parties—

(a) that arise from a single agreement (whenever made) to convey property;

or

(b) that together form, or arise from, substantially one transaction or one series of transactions,

the instruments are chargeable with *ad valorem* duty—

(c) calculated on the sum of the amounts by reference to which *ad valorem* duty on each of the instruments would but for this section have been calculated;

and

(d) apportioned between the instruments as determined by the Commissioner.

(3) Without limiting subsection (2), if—

(a) a person conveys, by two or more instruments of conveyance that were or appear to the Commissioner to have been executed within 12 months of each other, property to the same person whether alone or with the same or different persons;

or

(b) there are two or more instruments of conveyance—

(i) whether or not involving the same transferee or different transferees and the same transferor or different transferors and the instruments arise from one or more agreements, one or more of which is or are conditional on the making or completion of any other of those agreements;

or

(ii) whereby property is conveyed or transferred to the same transferee by different transferors within 12 months of one another and the properties have in the 12 months preceding either or any of the instruments been used otherwise than separately and independently of one another by the transferors,

it shall be presumed, unless the Commissioner is satisfied to the contrary, that the instruments arose from the one transaction or one series of transactions.

(4) Subsection (2) does not apply to two or more instruments of conveyance of property where interests in the property are conveyed by separate instruments to different transferees and the Commissioner is satisfied—

(a) that there is not an arrangement or understanding between any of those transferees under which the interests are to be used otherwise than separately and independently from each other;

(b) that the instruments arise from two or more agreements to convey property made independently of each other;

and

(c) none of those transferees required as a condition of any of those agreements, the making or completion of any other of those agreements.

(5) Subsection (2) does not apply to two or more instruments of conveyance whereby property is conveyed by separate instruments by different transferors and the Commissioner is satisfied—

(a) the property the subject of the conveyance has not been used by the transferors otherwise than separately and independently from each other;

and

(b) that the instruments arise from two or more agreements to convey property made independently of each other.

(6) For the purposes of subsection (2)—

(a) an instrument of conveyance of property and another instrument of conveyance which other instrument effects a disposition by the transferee under the first-mentioned instrument of that property (or a different interest in that property);

(b) instruments of conveyances to the extent that they relate to the partition or division of property or an exchange of property;

(c) instruments of conveyance of classes prescribed in respect of one another,

are not in relation to one another conveyances or transfers which satisfy paragraph (a) or (b) of that subsection.

(7) Where there are two or more instruments for completing or giving effect to the same conveyance, the Commissioner may set off against duty charged on any of those instruments duty paid on any of those instruments in respect of that conveyance.”;

(c) by inserting after subsection (8), as renumbered by this section, the following subsections:—

“(9) A transfer to which this subsection applies is a transfer where the Commissioner is satisfied that the transferor is a person who at the time that he purchased the property was acting in the purchase evidenced by a contract or agreement for sale as agent for the transferee (either as a general agent or in relation to the particular transaction) and was so acting under an authority given to him by such person in writing executed prior to the execution of the contract or agreement for sale.

(10) The Commissioner shall not be satisfied for the purposes of subsection (9) solely on the basis of a document which purports to be an authority given to the transferor by the transferee in writing executed prior to the execution of the contract or agreement for sale pursuant to which the transferor became proprietor of the property.”.

53. New s. 53B. The Principal Act is amended by inserting after section 53A the following section:—

“**53B. Calculation of value where property subject to a lease.**

(1) Where land which is conveyed or transferred is subject to a lease or agreement for a lease in favour of the transferee or a person related to the transferee (whether or not the conveyance or transfer is expressed to be so subject) the full unencumbered value of that land may be determined by the Commissioner without regard to the existence of the lease or agreement for lease.

(2) In making a determination as provided in subsection (1), the Commissioner shall have regard to the term of the lease, the adequacy of the rental payable and the times and manner in which the rental is payable.

(3) Where the Commissioner makes a determination under subsection (1) in respect of an instrument, he may, in assessing duty on the instrument, allow a rebate of any stamp duty paid on the lease to which the conveyance or transfer is subject and which was disregarded in determining the value of the land to which the conveyance or transfer relates.

(4) For the purposes of this section, persons are related where they are associated persons, as defined in section 56FA (2), or related, within the meaning of section 56FA (3).”.

54. Amendment of s. 54. Certain contracts to be chargeable as conveyances on sale. Section 54 of the Principal Act is amended—

(a) by omitting from the note appearing in and at the beginning of the section the words “on sale”;

(b) by omitting subsection (1) and substituting the following subsections:—

“(1) Any contract or agreement for sale of any property or any contract or agreement whereby a person becomes entitled or may, provided the terms and conditions thereof are met, become entitled to the conveyance or transfer of any property shall be charged with the same duty as if it were an instrument of conveyance of the property.

(2) Subsection (1) does not apply to a contract or agreement for sale of any property (other than any equitable estate or interest in any property) which is property outside Queensland or which is solely comprised of any goods, live stock, wares or merchandise.”;

(c) by inserting after the second paragraph of subsection (6) the following paragraph:—

“The Commissioner shall not be satisfied for the purposes of the preceding paragraph solely on the basis of a document which purports to be an authority given to the purchaser by the transferee in writing executed prior to the execution of the contract or agreement for sale.”;

(d) by adding at the end of the section the following subsection:—

“(8) For the purposes of subsection (7) and without limiting its meaning, a contract or an agreement which has been rescinded includes a contract or agreement under which all rights and obligations are at an end and the parties to the contract or agreement have been returned to the original positions in respect of the property the subject of the contract or agreement which they held prior to the execution of the contract or agreement: The term does not include a contract or agreement which is at

an end because the vendor has entered into or has agreed to enter into a further contract or agreement with a person nominated, introduced, substituted or otherwise by the purchaser in the original contract or agreement or some other person pursuant to that original contract or agreement or a related document.”.

55. Amendment of s. 54AB. Duty payable where no dutiable instrument. Section 54AB of the Principal Act is amended—

(a) by inserting after the word “transaction” wherever it occurs in subsections (1) (a), (2) (other than in paragraph (b)), (3), (4) and (6) the words “or acquisition” in each case;

(b) by inserting after subsection (1) the following subsections:—

“(1A) For the purposes of subsection (1), a person is deemed to have obtained an estate or interest in property of the kind specified in subsection (1) where—

(a) that person acquires an estate or interest, vested or contingent, in a trust the trustee of which owns an estate or interest, vested or contingent, in that property;

or

(b) the trustee of a trust in which that person has an estate or interest, vested or contingent, acquires an estate or interest, vested or contingent, in that property.

(1B) For the purposes of subsection (1A)—

(a) a trustee is deemed to own an estate or interest in property of the kind specified in subsection (1), where in his capacity as trustee he beneficially owns that estate or interest, vested or contingent, through his interest in another trust;

and

(b) a trustee is deemed to acquire an estate or interest in property of the kind specified in subsection (1), where the trustee of another trust in which he has an estate or interest, vested or contingent, has acquired that estate or interest,

and in determining whether the trustee of that other trust owns or has acquired that estate or interest, that other trust shall be deemed to own or to have acquired that estate or interest where it would, if it were the first-mentioned trust, have been deemed to own or have acquired that estate or interest.”;

(c) by inserting in subsection (2) after the words “to which this section applies” and the words “had that instrument been executed” the words “or is a person who has obtained an estate or interest in property of the kind specified in subsection (1)” and the words “or where he is a person who has obtained an estate or interest in property of the kind specified in subsection (1)” respectively;

(d) by omitting subsection (5) and substituting the following subsections:—

“(4A) Where the Commissioner in particular circumstances considers it appropriate, in view of the extent of a person’s connexion with the transaction or acquisition, he may determine the person not to be liable, in whole or in part, under subsection (3) on a statement lodged under subsection (2).

(5) The Governor in Council may, whether before or after a particular transaction or acquisition has taken place, by Order in Council, exempt from the operation of this section a particular transaction or acquisition or a particular class of transaction or acquisition.”;

(e) by adding at the end thereof the following subsection:—

“(8) It is a defence to a charge of an offence under subsection (7) brought against a person to prove that the offence was committed without that person’s knowledge or connivance and that he could not by due diligence have prevented the commission of the offence.”.

56. Amendment of s. 55A. Duty relating to principal place of residence and first principal place of residence. Section 55A of the Principal Act is amended—

(a) by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):—

““acquirer’s interest” means an interest acquired by a person in a property comprising or including a place or places of residence where the property is acquired by that person and another person or other persons as co-owners and where if that first-mentioned person were the only acquirer and one place of residence only was contained in the property acquired the Commissioner would have been satisfied that the place of residence was in respect of that acquirer a prescribed principal place of residence;

“first acquirer’s interest” means an acquirer’s interest in respect of which the Commissioner is satisfied that—

(a) the person acquiring that interest does not hold and at any time prior to that acquisition has not held an estate or interest in any property that consists or consisted of or includes or included any other place of residence in Queensland or elsewhere;

and

(b) there is consideration for the acquisition of property which includes the acquisition of the interest which is equal to or greater than the full unencumbered value of the property acquired by the first-mentioned acquisition;

“first acquirer’s share” in relation to the share of a person who acquires a first acquirer’s interest, means the proportion that

the share of that person in the whole of the property acquired bears to the total of the shares of the co-owners of the property immediately following the acquisition, expressed as a fraction;

“second acquirer’s interest” means an acquirer’s interest not being a first acquirer’s interest;

“second acquirer’s share” in relation to the share of a person who acquires a second acquirer’s interest, means the proportion that the share of that person in the whole of the property acquired bears to the total of the shares of the co-owners of the property immediately following the acquisition, expressed as a fraction;”;

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

“(2A) For the purposes of this section—

“TD” means the total duty chargeable on an instrument;

“FAS” means the fraction represented by the first acquirer’s share or the sum of the fractions which represent the shares of all acquirers who have first acquirers’ interests;

“FAD1” means the amount obtained by applying the provisions for calculating duty on the acquisition of property which is or includes a prescribed first principal place of residence in paragraph (4) under the heading “CONVEYANCE OR TRANSFER” in the First Schedule (in this section called “the first principal place of residence provisions”) to TV, as if TV were the amount or value of consideration for a conveyance upon a sale to which those provisions applied and as if the whole of the property to which the conveyance relates were attributable to a place of residence;

“TV” means the amount which (in respect of an acquisition to which an instrument relates) is the greater of the amount of, and the value of, the consideration for the acquisition of the whole property acquired and the full unencumbered value of the whole of the property acquired;

“SAS” means the fraction represented by the second acquirer’s share or the sum of the fractions which represent the shares of all acquirers who have second acquirers’ interests;

“SAD1” means the amount obtained by applying the provisions for calculating duty on the acquisition of property which is or includes a prescribed principal place of residence, that is

not a prescribed first principal place of residence, in paragraph (4) under the heading "CONVEYANCE OR TRANSFER" in the First Schedule (in this section called "the principal place of residence provisions") to TV, as if TV were the amount or value of consideration for a conveyance upon a sale to which those provisions applied and as if the whole of the property to which the conveyance relates were attributable to a place of residence;

- "NAD1" means the amount obtained by applying the provisions for calculating duty according to the first table contained in paragraph (4) (a) under the heading "CONVEYANCE OR TRANSFER" in the First Schedule (in this section called "the ordinary conveyance rate provisions") to TV, as if TV were the amount or value of consideration for a conveyance upon a sale to which those provisions applied;
- "FAD2" means the amount obtained by applying the first principal place of residence provisions to PRV, as if PRV were the amount or value of consideration for a conveyance upon a sale to which those provisions applied and the whole of the property to which the conveyance relates were attributable to a place of residence;
- "PRV" means that part of TV that would be reasonably attributable to a place of residence, if the Commissioner were satisfied that the residence was a prescribed principal place of residence of the person occupying that place of residence;
- "SAD2" means the amount obtained by applying the principal place of residence provisions to PRV, as if PRV were the amount or value of consideration for a conveyance upon a sale to which those provisions applied and the whole of the property to which the conveyance relates were attributable to a place of residence;
- "NAD2" means the amount obtained by applying the ordinary conveyance rate provisions to the amount calculated in accordance with $[TV - ((FAS \times PRV) + (SAS \times PRV))]$ as if that amount were the amount or value of consideration for a conveyance upon a sale to which those provisions applied;
- "FAD3" in respect of all persons acquiring first acquirers' interests, means the sum of the amounts which, in respect of each first acquirer's interest, is obtained by multiplying the fraction represented

- by the first acquirer's share by the amount obtained by applying the first principal place of residence provisions to FPRV, as if FPRV were the amount or value of consideration for a conveyance upon a sale to which those provisions applied and the whole of the property were attributable to a place of residence;
- “FPRV” in respect of a first acquirer's interest, means that part of TV that is reasonably attributable to the place of residence which the Commissioner, in determining that the person had acquired that interest, was satisfied would be occupied by the person having that interest;
- “SAD3” in respect of all persons acquiring second acquirers' interests, means the sum of the amounts which, in respect of each second acquirer's interest, is obtained by multiplying the fraction represented by the second acquirer's share by the amount obtained by applying the principal place of residence provisions to SPRV, as if SPRV were the amount or value of consideration for a conveyance upon a sale to which those provisions applied and the whole of the property were attributable to a place of residence;
- “SPRV” in respect of a second acquirer's interest, means that part of TV that is reasonably attributable to the place of residence which the Commissioner, in determining that the person had acquired that interest, was satisfied would be occupied by the person having that interest;
- “NAD3” means the amount obtained by applying the ordinary conveyance rate provisions to NPRV, as if NPRV were the amount or value of consideration for a conveyance upon a sale to which those provisions applied;
- “NPRV” means that part of TV which remains after deducting, in respect of all acquirers' interests, the amount which in respect of each acquirer's interest is obtained by multiplying the fraction that is represented by the first acquirer's share or second acquirer's share, as the case may be, of that acquirer by the amount which in respect of that acquirer's interest is FPRV or SPRV, as the case may be.

(2AB) For the purposes of calculating FAD2 or FAD3 and for the purposes of calculating the amount of duty in respect of a place of residence under subsection (2D), where the full unencumbered value of the property, which includes the place

of residence, exceeds \$60 000, the third proviso to paragraph (4) (a) under the heading "CONVEYANCE OR TRANSFER" in the First Schedule shall not apply.

(2B) Notwithstanding the provisions of the First Schedule, where *ad valorem* duty is chargeable under the heading "CONVEYANCE OR TRANSFER" in the First Schedule in respect of an instrument which effects the acquisition of a first acquirer's interest or a second acquirer's interest, or both, in property consisting of a place of residence, duty in the first instance shall be calculated in accordance with the formula—

$$TD = (FAS \times FAD1) + (SAS \times SAD1) + (NAD1 \times [1 - FAS - SAS]).$$

(2C) Notwithstanding the provisions of the First Schedule, where *ad valorem* duty is chargeable under the heading "CONVEYANCE OR TRANSFER" in the First Schedule in respect of an instrument which effects the acquisition of a first acquirer's interest or a second acquirer's interest, or both, in property consisting of a place of residence and of property not being a place of residence, duty in the first instance shall be calculated in accordance with the formula—

$$TD = (FAS \times FAD2) + (SAS \times SAD2) + NAD2.$$

(2D) Notwithstanding the provisions of the First Schedule, where *ad valorem* duty is chargeable under the heading "CONVEYANCE OR TRANSFER" in the First Schedule in respect of an instrument which effects the acquisition of a first acquirer's interest or a second acquirer's interest, or both, in a property comprising two or more places of residence each of which will be occupied by one or more of the acquirers so that every acquirer will so occupy a residence, duty in the first instance shall be the sum of the amounts calculated, in respect of each place of residence as if that place of residence were being acquired by the acquirer who is to occupy the residence and as if the acquirer were the only person acquiring the residence and as if that residence were the only property acquired.

(2E) Notwithstanding the provisions of the First Schedule, where—

- (a) subsection (2D) would apply to an instrument if the instrument did not relate to property in addition to a place of residence;

or

- (b) *ad valorem* duty is chargeable under the heading "CONVEYANCE OR TRANSFER" in the First Schedule in respect of an instrument which effects the acquisition of a first acquirer's interest or a second acquirer's interest, or both, in property comprising or including two or more places of residence and with or without other property not being a place of residence, where one or more of the places of residence will be occupied by one or more of the acquirers and one or more of which will not be so occupied,

duty in the first instance shall be calculated in accordance with the formula—

$$TD = FAD3 + SAD3 + NAD3.”;$$

(c) by inserting after subsection (3A) the following subsections:—

“(3B) If it appears to the Commissioner that a person acquiring an acquirer’s interest in premises in respect of which *ad valorem* duty has been paid on an instrument in accordance with a calculation set out in subsection (2B), (2C), (2D) or (2E) has not—

(a) acquired the interest for the purpose of occupying the relevant place of residence as his principal place of residence;

(b) entered into occupation of the premises as his principal place of residence upon taking possession of the premises or within such further time as the Commissioner in the exercise of his discretion has allowed;

or

(c) having entered into occupation of the premises, thereafter remained in occupation as and for his principal place of residence for a continuous period of 6 months,

then the amount of duty chargeable in respect of the instrument effecting the acquisition of the acquirer’s interest shall be the amount chargeable as if that person had not acquired an acquirer’s interest; and section 80 applies as if the amount of duty assessed in the first instance had been assessed at an insufficient amount.

(3C) If it appears to the Commissioner that a person whom he was satisfied, for the purpose of calculating duty in accordance with subsection (2B), (2C), (2D) or (2E), acquired a first acquirer’s interest at the time of or at any time before the acquisition by him of that interest held an estate or interest in any property that consists or consisted of, includes or included a place of residence in Queensland or elsewhere then the amount of duty chargeable in respect of the instrument effecting the acquisition of the interest shall be the amount chargeable as if the interest were not acquired as a first acquirer’s interest; and section 80 applies as if the amount of duty assessed in the first instance had been assessed at an insufficient amount.”;

(d) by inserting in subsection (4) after the words “subsection (2)” where they twice occur the words “, (2B), (2C), (2D) or (2E)” in each case;

(e) by inserting in subsection (5) after the words “subsection (3)” the words “or (3B)”;

(f) by inserting in subsection (6) after the words “principal place of residence” the words “or first acquirer’s interest”.

57. Amendment of s. 56B. Unit trust schemes. Section 56B of the Principal Act is amended—

(a) in subsection (1)—

(i) by inserting after the definition “disposition” the following definition:—

“public unit trust scheme” means a unit trust scheme as defined in section 2 in respect of which there is an approved deed for the purposes of Division 6 of Part IV of the *Companies (Queensland) Code* or the corresponding provisions of the Companies Code or Companies Act or any other State or a Territory or a deed of a class approved by Order in Council: The term does not include a unit trust scheme in respect of which there is such an approved deed but under which—

(a) no units have been issued to the public;

or

(b) fewer than 50 persons are beneficially entitled to units under the scheme or 20 or fewer persons are entitled to 75 per cent or more of the total issued units under the scheme before or after a disposition of a unit or a series of dispositions of units which are pursuant to one transaction or arrangement (or what is substantially one transaction or arrangement) or a series of transactions or arrangements having a mutuality of purpose, whether or not in the case of a series of dispositions they involve the same or different persons;”;

(ii) by omitting paragraph (a) from the definition “unit trust scheme” and substituting the following paragraph:—

“(a) which is a public unit trust scheme or in respect of which there is a deed of a class approved by Order in Council;”;

(b) by inserting after subsection (1) the following subsections:—

“(1A) For the purposes of paragraph (a) of the definition “public unit trust scheme” in subsection (1), where the Commissioner is satisfied that, within 12 months of the date of the approval of a deed, units will be issued to the public to an extent and with such entitlements as are within the scope of that definition, the unit trust scheme shall be deemed to be a public unit trust scheme for the purposes of that definition.

(1B) Where a unit trust scheme is not a public unit trust scheme, as defined in subsection (1), because it is a unit trust scheme under which as a result of a disposition or series of dispositions of the kind referred to in that definition fewer than 50 persons are entitled to units under the scheme or 20 or fewer persons are entitled to 75 per cent or more of the total issued units under the scheme, the unit trust scheme shall, for the purposes of that definition, be deemed not to be a public unit trust scheme from the time immediately preceding that disposition

or the first disposition in that series of dispositions, as the case may be.

(1C) For the purposes of the definition “public unit trust scheme” in subsection (1), a person shall be treated as beneficially entitled to all units held by that person and a related person, as defined by section 56FA (3).

(1D) For the purposes of the definition “unit trust scheme” in subsection (1), a trustee owns property in Queensland where the trust of which it is trustee would under section 4 be deemed to so relate.”;

(c) by omitting from subsection (2) the last paragraph thereof;

(d) by inserting after subsection (2) the following subsection:—

“(2A) The disporor and the donee of a unit in a unit trust scheme to which this section applies shall prepare and execute a transfer or other instrument effecting or evidencing the disposition.”;

(e) by inserting in subsection (3) (a) after the words “subsection (2)” the words “or (2A)”.

58. Repeal of and new s. 56C. Discretionary trusts. The Principal Act is amended by repealing section 56C and substituting the following section:—

“**56C. Companies involving trusts.** (1) For the purposes of this section—

“company” means a corporation within the meaning of the *Companies (Queensland) Code* but does not include—

- (a) a corporation which is an authorised trustee corporation within the meaning of the *Companies (Queensland) Code*;
 - (b) a corporation or class of corporation prescribed to be exempt from the provisions of this section;
- or
- (c) a company that is listed on a prescribed stock exchange;

“disposition” in relation to a share, includes—

- (a) a transfer or other disposition (including any declaration of trust, settlement or agreement to dispose) of the share;
 - (b) the allotment or issue of the share;
 - (c) the redemption, surrender or cancellation of the share;
- or
- (d) the variation, abrogation or alteration of a right pertaining to the share with respect to voting,

whether at meetings of the company or the directors or otherwise,

whether or not the disposition is documented or evidenced or recorded in writing but does not include a disposition by which the personal representative of a deceased person disposes of a share to a beneficiary in the administration of the estate of the deceased person;

“officer” in relation to a company, has the same meaning as in the *Companies (Queensland) Code*;

“share” means a share or stock of a company and includes an interest in a share;

“stock exchange” has the same meaning as in the *Securities Industry (Queensland) Code*.

(2) This section applies to—

(a) a company which is the trustee of a trust and in that capacity carries on business in Queensland or owns property located in Queensland;

and

(b) a company which has an interest in shares in a company of the kind specified in paragraph (a).

(3) (a) For the purpose of this section, a company is a company which has an interest in the shares of a company if—

(i) it owns those shares (whether as trustee or in its own right);

or

(ii) it owns shares in a company which (whether as a trustee or in its own right) owns or is entitled to those shares.

(b) For the purposes of this section, a trustee owns property in Queensland where the trust of which he is trustee would under section 4 be deemed to so relate.

(4) Without limiting the meaning of “entitled”, a company is entitled to shares to the extent that a subsidiary of that company is entitled to those shares and whether that subsidiary is entitled to those shares shall be determined as if it were a company to which this section applies and for the purposes of this section a subsidiary of a corporation is a subsidiary of a corporation within the meaning of section 7 of the *Companies (Queensland) Code*.

(5) A company to which this section applies, and an officer of that company, shall not make, accept, give effect to, recognize or register, record or enter in the books or records of the company a disposition in relation to a share unless—

(a) a transfer or an instrument effecting or evidencing the disposition is executed and delivered to the company;

and

(b) the transfer or the instrument, as the case may be, is duly stamped under this Act.

(6) The disporor and the disponee of a share in a company to which this section applies shall be liable to prepare and execute a transfer or other instrument effecting or evidencing the disposition.

(7) (a) (i) A person who contravenes or fails to comply with subsection (5) or (6) commits an offence against this Act.

Penalty: 100 penalty units and an amount equal to twice the amount of duty that would have been payable if an appropriate transfer or instrument had been prepared, executed and duly stamped under this Act.

(ii) It is a defence to a charge of an offence against this Act brought against a person specified in paragraph (i) where the court is satisfied that the person did not know and could not reasonably have known that the disposition was one of a kind to which this provision relates.

(b) (i) Where a body corporate commits an offence under paragraph (a) (i), each of the chairman of directors, managing director and other governing officer, by whatever name called, and every member of the governing body thereof, by whatever name called, shall be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly.

(ii) Paragraph (i) applies so as not to limit or affect in any way the liability of a body corporate to be proceeded against and punished for such an offence committed by it.

(iii) It is a defence to a charge of an offence against this Act brought against a person specified in paragraph (i) to prove that the offence was committed without that person's knowledge or connivance and that he could not by due diligence have prevented the commission of the offence.

(8) (a) Notwithstanding section 31G, an instrument effecting or evidencing a disposition in relation to a share in a company to which this section applies shall be chargeable with duty, in addition to any other duty payable under this Act, calculated as if it were a conveyance free of encumbrances of a prescribed undivided share in all of the trust property held by the trustee of the trust which, as the case may be, is the trust of which the company (or a company in which the company has an interest within the terms of subsection (2)) is trustee.

(b) For the purposes of this section a "prescribed undivided share" shall be equivalent to—

(i) in the case of a company described in subsection (2) (a)—the proportion of the value of the total issued capital of the company which the Commissioner determines is represented by the share;

or

- (ii) in the case of a share in a company to which this section applies by virtue of it having an interest in another company in the terms of subsection (2) (b)—the proportion which the Commissioner, having regard to such matters as he considers appropriate, determines that the share represents of the interest which the company has in that other company.

(c) Where the property the subject of a trust consists of both property in Queensland and property outside Queensland, paragraph (a) applies in respect of the property to the extent that it is located in Queensland.

(d) Where property the subject of a trust consists of or includes a business, the business is carried on in Queensland if—

- (i) it is conducted on or from any place in Queensland;
or
- (ii) its conduct consists wholly or partly of offering to supply land or any interest therein, money, credit, or goods or any interest therein or to render any service by way of offers directed to persons (generally as a class or individually) ordinarily resident in Queensland.

(e) Where the property the subject of the trust consists both of a business that is carried on in Queensland and outside Queensland, paragraph (a) applies only in respect of the relevant part of the business that is carried on in Queensland and for the purposes of that application, should the case require it, a true apportionment shall be made of the value of all things subject to the trust which are located both in and outside Queensland.

(9) The Commissioner shall (where it is necessary to determine, for the purposes of subsection (8), the proportion of the total issued capital of a company represented by a share) take into account, in the manner he considers appropriate, the respective rights and obligations pertaining to the share and the other shares in the capital of the company.

(10) Where a company is a company to which this section applies in respect of more than one trust the value of a prescribed undivided share in the trust property of each trust shall be aggregated.

(11) The disponent and disponentee of a share in a company to which this section applies as at the date of disposition are liable to pay the duty with which a transfer of the share or an instrument effecting or evidencing a disposition in relation to the share is chargeable.

(12) A company to which this section applies shall, where a transfer of a share or an instrument effecting or evidencing a disposition in relation to a share has been delivered, retain the

transfer or instrument, as the case may be, for not less than 5 years after the day on which the transfer or instrument is delivered to it.

(13) A company that contravenes or fails to comply with subsection (12) commits an offence against this Act.

Penalty: 100 penalty units.

(14) A right or obligation arising out of a disposition in relation to a share shall not be invalidated because the company or an officer of the company—

(a) made, accepted, gave effect to or recognized the disposition;

or

(b) registered, recorded or entered the disposition in the books or records of the company,

in contravention of subsection (5).

(15) Where in respect of a disposition in relation to a share in a company to which this section applies which is a trustee, a transfer or an instrument effecting or evidencing the disposition is not executed and an officer of a company which is a trustee fails to comply with subsection (5), the trust deed in respect of the trust is chargeable with the amount of duty with which the instrument transferring or effecting or evidencing the disposition of a share would have been charged under subsection (8) had subsection (5) been complied with and the trustee and the donee and disponent shall be liable to pay the duty on the trust deed.

(16) Where the Commissioner is satisfied that a disposition in respect of a share in a company to which this section applies was not made in the contemplation of the disponent disposing or the donee acquiring, directly or indirectly, for himself or any person any benefit in relation to property held in trust, the Commissioner may determine duty not to apply under this section in respect of the disposition.

(17) Where the Commissioner is satisfied of the matters under subsection (16) and he determines that duty under this section does not apply in respect of a disposition, the Commissioner shall notify the company and the disponent and the donee of the matters and circumstances of which he was satisfied in making that determination.

(18) If it appears to the Commissioner that a disposition in respect of which he has made a determination under subsection (16) was made in the contemplation of the matters outlined in that subsection and he is no longer satisfied of the matters and circumstances of which he was satisfied in making that determination, the transfer or instrument evidencing the disposition shall be chargeable with duty in accordance with this section as if the Commissioner had not made a determination under subsection (16); and thereupon section 80 applies as if the amount

of duty assessed in the first instance had been assessed at an insufficient amount.

(19) Where—

- (a) the company, disponsor or disponee has been notified by the Commissioner in accordance with subsection (17) of matters or circumstances of which the Commissioner was satisfied for the purposes of making a determination under subsection (16);
and
- (b) any of the matters or circumstances which the Commissioner was satisfied would occur do not occur or any of those matters or circumstances which the Commissioner was satisfied would not occur, do occur,

the company, disponsor and disponee shall be obliged to notify the Commissioner of the happening or non-happening, as the case may be, of the matter or circumstance, within 28 days of that happening or non-happening, or such longer time which the Commissioner in his discretion in a particular case allows.

(20) A person who—

- (a) fails to notify the Commissioner in accordance with subsection (19);
or
- (b) who makes a false statement or representation for the purpose of satisfying the Commissioner of the matters under subsection (16),

commits an offence against this Act.

Penalty: 100 penalty units and an amount equal to twice the amount of the duty chargeable on the transfer or instrument effecting or evidencing the disposition.”.

59. Amendment of s. 56E. Conveyance of other property by way of security. Section 56E of the Principal Act is amended by omitting the words “thereafter, an instrument” and substituting the following:—

“thereafter—

(a) in the case where—

- (i) the property conveyed or transferred by way of security comprises shares in a corporation which, at the time when the transferee or subsequent assignee attained that ownership, is a corporation to which the prescribed provisions, within the meaning of section 56F apply;
and
- (ii) the owner would, if he and all persons related, within the meaning of section 56FA (3), to him were to newly acquire all of the shares in the corporation which he or they own, have made a relevant acquisition within the meaning of section 56FM,

the prescribed provisions shall apply as if the transferee or assignee who attained that ownership and all persons related, within the meaning of section 56FA (3), to him were to newly acquire all of the shares of the corporation owned by them and duty chargeable under those provisions shall be reduced by the amount of duty, if any, paid on the conveyance or transfer by way of security;

or

(b) in any other case—an instrument”.

60. New ss. 56F, 56FA and 56FB. The Principal Act is amended by inserting after section 56E the following sections:—

“56F. Meaning of “prescribed provisions”. In sections 56FA to 56FO, both inclusive, unless the contrary intention appears, “prescribed provisions” means sections 56FA to 56FO, both inclusive.

56FA. Interpretation. (1) In the prescribed provisions, unless the contrary intention appears—

“acquire”, in relation to an interest in a corporation to which the prescribed provisions apply, includes, without limiting the generality of the expression, to acquire an interest by virtue of—

- (a) the purchase, gift, allotment or issue of any share, (not being the initial allotment of shares to a subscriber to a memorandum of a corporation);
- (b) the redemption, surrender or cancellation of any share;
- (c) the variation, abrogation or alteration of a right pertaining to any share,

but does not include an acquisition—

- (d) that is chargeable with duty under section 56C;
- (e) that is a transfer by way of security (chargeable with duty under the heading “MORTGAGE, BOND, DEBENTURE, and COVENANT” in the First Schedule) where the Commissioner is satisfied that the instrument has not been executed with an intention of avoiding *ad valorem* duty (calculated in accordance with the provisions under the heading “CONVEYANCE OR TRANSFER” in the First Schedule);
- (f) that occurs solely as the result of—
 - (i) the appointment of a receiver or trustee in bankruptcy;

- (ii) the appointment of a liquidator;
 - (iii) the making of a compromise or arrangement under Part VIII of the *Companies (Queensland) Code* which has been approved by the court;
 - (iv) the distribution of the estate of a deceased person, including an acquisition that occurs as the result of—
 - (A) a will, a codicil or an order of a court varying or modifying the provisions of a will or codicil;
or
 - (B) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of the provisions of a law relating to the distribution of the assets of persons who die intestate;
- “corporation” has the same meaning as in the *Companies (Queensland) Code*;
- “director” has the same meaning as in the *Companies (Queensland) Code*;
- “discretionary trust” means—
- (a) a trust under which the vesting of the whole or part of the capital of the trust property, or the whole or part of the income from that capital, or both—
 - (i) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both;
or
 - (ii) will occur in the event that a discretion conferred under the trust is not exercised;
or
 - (b) a trust which is, by Order in Council, declared to be a discretionary trust for the purposes of the prescribed provisions,
but does not include—
 - (c) a trust that is solely a charitable trust;
or
 - (d) a trust that is, by Order in Council, declared not to be a discretionary trust for the purposes of the prescribed provisions;
- “entitled” means beneficially entitled;
- “interest” includes a majority interest and a further interest as defined in section 56FN;
- “land” includes—
- (a) any estate or interest in land but does not include the interest of a mortgagee in land;

(b) anything fixed to the land that is or purports to be the subject of ownership separate from the ownership of the land;

and

(c) a mining tenement within the meaning of the *Mining Act 1968-1986*;

“related corporation” has the same meaning as in the *Companies (Queensland) Code*;

“share” means a share or stock of a corporation and includes an interest in a share;

“subsidiary”, in respect of a corporation (in this definition called “the corporation”), means—

(a) a corporation that is deemed to be a subsidiary of the corporation under section 7 of the *Companies (Queensland) Code*;

(b) the trustee of any trust where the corporation or a subsidiary (referred to in paragraph (a)) of the corporation—

(i) is entitled to a share or interest in the trust, whether vested or contingent;

or

(ii) in the case of a discretionary trust—may benefit from the trust;

(c) any corporation, where the trustee of a trust (of the kind in which paragraph (b) applies) would be entitled, if that corporation were to be wound up immediately after the making of a relevant acquisition, to participate (otherwise than as a creditor or other person to whom the corporation is liable) in a distribution of the property of that corporation to an extent greater than 50 per cent of the value of the property distributable to all of the holders of shares in that corporation;

or

(d) any corporation or the trustee of a trust that would by the application of this definition be a subsidiary of a corporation that is a subsidiary of the corporation:

For the purposes of this definition, a reference to a trust includes any other trust if the property of the first-mentioned trust—

(e) includes a share or interest, whether vested or contingent, or direct or indirect, in that other trust;

or

- (f) in the case of a discretionary trust—may comprise or be augmented by a benefit from that other trust; “trust” includes a unit trust scheme.

(2) For the purposes of paragraph (c) of section 56FL (4), the following—

- (a) are associated persons in relation to a corporation—
 - (i) a related corporation;
 - (ii) a related person within the meaning in subsection (3);
 - (iii) a director or secretary of the corporation or a related corporation;
 - (iv) a person who is entitled to any shareholding in the corporation or a related corporation;
 - (v) a relative of any natural person referred to in subparagraph (ii), (iii) or (iv);
 - (vi) a corporation in which the corporation or any person referred to in subparagraph (iii), (iv) or (v) is entitled to any shareholding;
- (b) are relatives of a person for the purposes of paragraph (a) (v)—
 - (i) a child or remoter lineal descendant of the person or his spouse;
 - (ii) a parent or remoter lineal ancestor of the person or his spouse;
 - (iii) a brother or a sister of the person or his spouse;
 - (iv) his spouse and a spouse of any person referred to in subparagraph (i), (ii) or (iii).

(3) For the purposes of the prescribed provisions, the following persons are related—

- (a) natural persons who are spouses of each other or between whom the relationship is that of parent and child;
- (b) related corporations;
- (c) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
- (d) a natural person and a corporation if the natural person is a majority shareholder, director or secretary of the corporation or a related corporation;
- (e) a natural person and a trustee if the natural person is a beneficiary under the trust of which the trustee is a trustee, whether the person has a vested share

or is contingently entitled or may benefit from a discretionary trust;

(f) a corporation and a trustee if—

(i) the corporation, a majority shareholder, director or secretary of the corporation is a beneficiary of the trust of which the trustee is a trustee;

or

(ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,

whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;

and

(g) persons who acquire interests in a corporation by virtue of acquisitions that together form substantially one acquisition or one series of acquisitions.

(4) For the purposes of subsection (3), a majority shareholder, in relation to a corporation, is a person who has a substantial shareholding in the corporation in accordance with section 136 of the *Companies (Queensland) Code* as if the reference in that section to the prescribed percentage were a reference to 50 per cent.

(5) For the purposes of the prescribed provisions, the entitlement of a person to participate (otherwise than as a creditor or other person to whom the corporation is liable) in the distribution of the property of a corporation on a winding up of the corporation is an entitlement to an amount calculated—

(a) as if the winding up were carried out in accordance with the memorandum and articles of association of the corporation and any law relevant to the winding up, as the memorandum, articles and law exist at the time of the winding up;

or

(b) as if the person had, immediately prior to the winding up, exercised all powers and discretions exercisable by him—

(i) to effect or compel an alteration to the memorandum or articles of association;

(ii) to vary the rights conferred by shares in the corporation;

or

(iii) to effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation,

in such manner as to maximize that amount,

whichever of the amounts under paragraph (a) or (b) results in the greater amount, unless the Commissioner determines, after consideration of the circumstances of the case, and where the calculation under paragraph (b) results in the greater amount, that the amount of the entitlement should be calculated under paragraph (a).

(6) For the purposes of the prescribed provisions, the entitlement of a person on the distribution of a trust shall be determined as the greatest entitlement that the person could derive at any time from the trust whether by the fulfilment of any condition, the outcome of any contingency or the exercise of any power or discretion or otherwise, and in particular a person that may benefit from, or the trust property of another trust that may comprise or be augmented by a benefit from, a discretionary trust shall be deemed to be entitled to or comprise or be augmented by—

- (a) the property the subject to the discretionary trust unless the Commissioner determines otherwise;
- or
- (b) such part of that property as the Commissioner determines.

56FB. Lodgement of statements where trust acquires interest.

(1) Where a person by a relevant acquisition acquires a majority interest or a further interest in a corporation to which the prescribed provisions apply in the capacity of a trustee, the liability to prepare and lodge a statement under section 56FH, 56FI or 56FJ, as the case may require, is not affected by the fact that the acquisition is not made by the person beneficially, and the prescribed provisions shall apply as if the acquisition had been made beneficially.

(2) Notwithstanding subsection (1), where the Commissioner considers that—

- (a) any person beneficially entitled to a share or interest in the trust property (whether he has a vested share or is contingently entitled or may benefit from a discretionary trust) is related to any person within the meaning in section 56FA (3), who has acquired an interest in the corporation;
- and
- (b) the beneficial interest of the beneficiary in the corporation, when taken with that of any such related person, amounts to a greater interest than the interest of the trustee and any person who is related to the trustee,

on payment of the duty payable on the statement required to be lodged under section 56FH by the beneficiary any duty paid by the trustee in respect of the acquisition giving rise to the requirement for that statement to be lodged shall be refunded to the trustee.”.

61. New ss. 56FC, 56FD and 56FE. The Principal Act is amended by inserting after section 56FB, as inserted by this Act, the following sections:—

“56FC. Valuation of land. (1) The Commissioner may—

- (a) require a person who is required to lodge a statement under section 56FH, 56FI or 56FJ to furnish him with a further statement in a form approved by the Commissioner concerning the full unencumbered value of any land, or such other evidence of that value as the Commissioner considers appropriate; and
- (b) assess duty having regard to the evidence of value referred to in paragraph (a).

(2) The Commissioner shall, if required by any person, express his opinion as to the value of any specified land at a specified time for the purposes of section 56FL (2), and for the purposes of the prescribed provisions the Commissioner is bound by any opinion he expresses in terms of such a requirement but subject to any qualification that he may make to his opinion.

(3) Where the Commissioner is not satisfied with evidence of value furnished under subsection (1) or is required to express an opinion as to the value of land under subsection (2), he may—

- (a) cause a valuation of the property to be made by some person appointed by him;
- or
- (b) accept a valuation of the property tendered by or on behalf of any party,

and for the purpose of assessing duty payable or determining any liability to prepare a statement under this Part, he may have regard to that valuation.

(4) The Commissioner may, having regard to the merits of the case, charge the whole or any part of the expenses of or incidental to the making of a valuation under subsection (3) to the person liable to pay the duty, and may recover the same from him as a debt due to the Crown.

56FD. Charge may be recorded on title. (1) Where the Commissioner has reason to believe that duty calculated in accordance with section 56FK is chargeable or a penalty is payable on or in respect of a statement required to be made under section 56FH, 56FI or 56FJ or on a default assessment made in respect of such statement on the value of land to which a corporation is entitled or where any such duty has been assessed or default assessed but not paid, the Commissioner may, if the corporation or a subsidiary is the registered proprietor of the land, deliver to the Registrar of Titles a request in the prescribed form relating to the duty or any penalty, or both, that is or may be payable

under this Act, and the Registrar of Titles shall record particulars of that request on the register in respect of that land.

(2) Notwithstanding the provisions of the *Real Property Act 1861-1986* and the *Real Property Act 1877-1986*, after the request is recorded the Registrar of Titles shall not record or accept for recording an instrument affecting the land unless the Commissioner consents in writing to the recording of that instrument.

(3) The Commissioner shall consent in writing to the recording of an instrument where—

- (a) the instrument relates to a security interest in the property arising under an agreement entered into before the request was recorded or that was lodged with the Registrar of Titles within 5 business days after the request was recorded;
- (b) the instrument is a duly stamped conveyance—
 - (i) that was executed under an agreement entered into before the request was recorded;
 - (ii) made as a result of a sale of real property under section 56FF;
 - or
 - (iii) made as a result of a sale of real property by the holder of a security interest referred to in paragraph (a);
- (c) the instrument is to record a security interest or further charge on the property;
- or
- (d) the land ceases under subsection (7) to be subject to this subsection.

(4) An instrument recorded in accordance with subsection (3) (a) has effect, in relation to the request recorded under subsection (1), as if it had been registered before the request was recorded.

(5) If an instrument referred to in subsection (3) (b) affecting real property is registered by the Registrar of Titles, the request recorded in accordance with subsection (1) shall be deemed to be cancelled upon the registration of the instrument and the Registrar of Titles shall make the appropriate entries to give effect to the cancellation.

(6) Forthwith upon—

- (a) payment of the duty and any penalty, in respect of which a request is recorded under this section;
- (b) the Commissioner being satisfied that no duty is payable;

or

- (c) the Commissioner determining that he will not exercise his powers under section 56FF in respect of that land,

the Commissioner shall deliver to the Registrar of Titles a notice to that effect.

(7) The Registrar of Titles shall record particulars of the notice under subsection (6) on the register in respect of that land and thereupon it shall cease to be subject to subsection (2).

(8) The Commissioner shall deliver a copy of the request referred to in subsection (1) to the relevant corporation or a subsidiary.

56FE. Charge on land. Where a request has been recorded under section 56FD in respect of any land, any duty and any penalty to which the request relates that has become payable is a charge on the land and the charge continues in force notwithstanding any disposition of the land until the duty and any penalty is paid.”.

62. New ss. 56FF, 56FG and 56FH. The Principal Act is amended by inserting after section 56FE, as inserted by this Act, the following sections:—

“**56FF. Power of sale.** (1) Where—

- (a) a corporation or subsidiary is liable for duty on a statement required to be made under section 56FI or 56FJ;
- (b) the duty and any penalty have not been paid in respect of the relevant acquisition to which that statement relates pursuant to section 56FH, 56FI or 56FJ at the expiration of one year from the date on which the corporation or subsidiary was determined to be so liable;
- and
- (c) a request is recorded under section 56FD in respect of land to which the corporation or subsidiary is entitled,

the Commissioner may, notwithstanding any judgment against any person liable to pay the duty and penalty, cause to be published in the Government Gazette, a notice specifying the land, and the amount of duty and any penalty for which the corporation or subsidiary is liable, and stating that if such amount is not paid within 6 months from the publication of the notice the Commissioner intends to apply to the Supreme Court for an order for the sale of the land.

(2) A copy of a notice under subsection (1) shall be served on the registered proprietor of the land, which service may be effected by posting the document on the land if service cannot reasonably be effected in Queensland by other means.

(3) The Commissioner may apply to the Supreme Court for an order to sell so much of the land described in the notice as may be necessary, and the Court or Judge, on being satisfied by affidavit or otherwise that the amount is lawfully due and that all things required by this Act to be done by the Commissioner have been done, shall order the sale of the land and that the proceeds be applied in accordance with paragraph (a) of section 56FG.

56FG. Application of proceeds of sale. Where any land has been sold under the authority of an order to sell granted under section 56FF—

- (a) the proceeds of the sale shall be applied—
 - (i) firstly—in payment of all costs, charges and expenses properly incurred as incidental to the sale, or any attempted sale;
 - (ii) secondly—in payment of any mortgage or encumbrance being a charge on the land earlier in time to the charge referred to in section 56FE, unless the land is sold subject to that charge;
and
 - (iii) thirdly—in payment of the duty and penalty,
and after such advertisement as the Supreme Court directs the balance thereof shall be applied as the Supreme Court may consider appropriate for the benefit of the parties interested therein;
- (b) a transfer in accordance with the requirements of the *Real Property Act 1861-1986* shall be executed in favour of the purchaser by an officer of the Supreme Court nominated by the Supreme Court for that purpose;
- (c) the transfer shall vest the land, estate, or interest sold in the purchaser as completely and effectually as if the transfer had been executed by the registered proprietor of the land, estate or interest;
and
- (d) the Registrar of Titles shall, upon production to him of the transfer and request for substitute title, record particulars thereof on the register, and issue a new instrument of title for the land notwithstanding the instrument of title to the land is not produced.

56FH. When statement to be lodged. (1) Where by a relevant acquisition a person acquires a majority interest or a further interest in a corporation to which the prescribed provisions apply, he shall prepare and lodge a statement in respect of that acquisition.

(2) If a requirement under subsection (1) arises in circumstances where a person acquires a majority interest or a

further interest by reason of acquisitions by him and a related person or related persons being aggregated, each related person shall prepare and lodge a statement under that subsection of all acquisitions on behalf of all such persons.

(3) Where an acquisition is a relevant acquisition by virtue of a person and any related person acquiring a shareholding in a corporation, the Commissioner may, if requested, relieve a person from the obligation to prepare a statement required under subsection (1) where the Commissioner is satisfied that another person has in respect of the same acquisition lodged a statement under subsection (1).

(4) A statement prepared under subsection (1) shall be in the prescribed form.

(5) A statement prepared under subsection (1) shall be deemed, for the purposes of this Act, to be an instrument executed on the day on which the relevant acquisition occurs.

(6) A person who is required to lodge a statement under subsection (1) or who has been relieved under subsection (3) from lodging a statement is liable to pay the duty chargeable under the prescribed provisions on the statement.

(7) Where an acquisition is a relevant acquisition by virtue of a person and any related person acquiring a shareholding in a corporation, all those persons are jointly and severally liable for the duty chargeable under the prescribed provisions on the statement.

(8) A person who fails to prepare a statement under subsection (1) commits a continuing offence against this Act.

Penalty: 100 penalty units and an amount equal to twice the duty for which the statement would, if prepared, have been liable.

(9) Where a person who commits an offence under subsection (8) is a corporation, each of the chairman of directors, managing director or other governing officer, by whatever name called, and every member of the governing body thereof, by whatever name called, shall be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly.

(10) Subsection (9) applies so as not to limit or affect in any way the liability of the corporation to be proceeded against and punished for such an offence committed by it.

(11) It is a defence to a charge of an offence under this section brought against a person specified in subsection (9) to prove that the offence was committed without that person's knowledge or connivance and that he could not by due diligence have prevented the commission of the offence.

(12) It is a defence to a charge of an offence under subsection (8) brought against a corporation to prove that the offence was committed without the knowledge or connivance of each of the chairman of directors, managing director and other governing

officer, by whatever name called, of the governing body of the corporation and that each of those persons could not by due diligence have prevented the commission of the offence.”.

63. **New ss. 56FI, 56FJ and 56FK.** The Principal Act is amended by inserting after section 56FH, as inserted by this Act, the following sections:—

“**56FI. Corporation to lodge a statement.** (1) Where by a relevant acquisition a person acquires a majority interest or a further interest in a corporation to which the prescribed provisions apply, the corporation shall prepare and lodge a statement, which shall be in the prescribed form.

(2) A statement prepared under subsection (1) shall be lodged within 30 days of the occurrence of the relevant acquisition.

(3) Where a corporation lodges with the Commissioner a statement as required by subsection (1) and a person acquiring the majority interest or further interest to which that statement relates has not lodged a statement under section 56FH or duty on a statement lodged under that section has not been duly paid, the Commissioner may, where in the particular circumstances he considers it appropriate, determine the statement lodged by the corporation to be a statement chargeable with duty of—

(a) where a statement under section 56FH has been lodged and duty thereon has not been paid—an amount equal to the amount of that duty;

or

(b) where a statement under section 56FH has not been lodged—an amount equal to the amount of duty that would have been chargeable on the statement under section 56FH had it been lodged as required by that section.

(4) A statement lodged pursuant to this section and determined by the Commissioner to be a statement chargeable with duty shall be deemed, for the purposes of this Act, to be an instrument executed on the day on which the relevant acquisition occurs and the corporation required to lodge the statement under this section is liable to pay the duty chargeable on the statement pursuant to subsection (3).

(5) A corporation that does not prepare or lodge a statement in compliance with sections (1) and (2), commits a continuing offence against this Act.

Penalty: 100 penalty units and an amount equal to twice the duty that would have been chargeable on the statement, if it had been prepared and lodged, and if the Commissioner were to determine the statement to be chargeable with duty under subsection (3).

(6) Where a corporation commits an offence under subsection (5), each of the chairman of directors, managing director or other

governing officer, by whatever name called, and every member of the governing body thereof, by whatever name called, shall be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly.

(7) Subsection (6) applies so as not to limit or affect in any way the liability of the corporation to be proceeded against and punished for such an offence committed by it.

(8) It is a defence to a charge of an offence under this section brought against a person specified in subsection (6) to prove that the offence was committed without that person's knowledge or connivance and that he could not by due diligence have prevented the commission of the offence.

(9) It is a defence to a charge of an offence under subsection (5) brought against a corporation to prove that the offence was committed without the knowledge or connivance of each of the chairman of directors, managing director and other governing officer, by whatever name called, of the governing body of the corporation and that each of those persons could not by due diligence have prevented the commission of the offence.

(10) The Commissioner may, on request, relieve a company from the obligation to make a statement under subsection (1) where he is satisfied that a person has in respect of the same acquisition complied with section 56FH.

56FJ. Subsidiary to lodge a statement. (1) Where by a relevant acquisition a person acquires a majority interest or further interest in a corporation which is a landholder under paragraph (a) of section 56FL (2) then each subsidiary, the land of which the corporation is entitled to, shall be required to notify the Commissioner of the acquisition and to prepare a statement in the prescribed form.

(2) A statement prepared under subsection (1) shall be lodged within 30 days of the occurrence of the relevant acquisition.

(3) Where a subsidiary lodges with the Commissioner a statement as required by subsection (1) and—

(a) a person acquiring the majority interest or further interest to which that statement relates has not lodged a statement under section 56FH or duty on a statement lodged under that section has not been paid;

and

(b) the corporation in which the majority or further interest is acquired has not lodged a statement under section 56FI or duty on a statement lodged under that section has not been paid,

the Commissioner may, where in the particular circumstances he considers it appropriate, determine a statement lodged by a subsidiary to be a statement chargeable with duty of—

(c) where a statement under section 56FH has been lodged and duty thereon has not been paid—an amount equal to the amount of that duty;

or

- (d) where a statement under section 56FH has not been lodged—an amount equal to the amount of duty that would have been chargeable on the statement under section 56FH had it been lodged as required by that section.

(4) Subject to subsection (5), a statement lodged pursuant to this section and determined by the Commissioner to be a statement chargeable with duty shall be deemed, for the purposes of this Act, to be an instrument executed on the day on which the relevant acquisition occurs; and a subsidiary required to lodge a statement under this section is liable to pay duty chargeable on the statement required to be lodged by it pursuant to subsection (3).

(5) Where the Commissioner in particular circumstances considers it appropriate, he may reduce the duty for which a subsidiary is liable having regard to the amount of duty which he considers not to be attributable to the value of land to which the subsidiary is entitled including its entitlement through its interests in other subsidiaries.

(6) Where a statement is not prepared under subsection (1) or is not lodged in compliance with subsection (2), the subsidiary commits a continuing offence against this Act.

Penalty: 100 penalty units and an amount equal to twice the amount of duty that would have been chargeable on the statement if it had been prepared and lodged and if the Commissioner were to determine the statement to be chargeable with duty under subsection (3).

(7) Where a corporation commits an offence under subsection (6) each of the chairman of directors, managing director or other governing officer by whatever name called, and every member of the governing body thereof, by whatever name called, shall be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly.

(8) Subsection (7) applies so as not to limit or affect in any way the liability of the corporation to be proceeded against and punished for such offence committed by it.

(9) It is a defence to a charge of an offence under this section brought against a person specified in subsection (7) to prove that the offence was committed without that person's knowledge or connivance and that he could not by the use of due diligence have prevented the commission of the offence.

(10) It is a defence to a charge of an offence under subsection (6) brought against a corporation to prove that the offence was committed without the knowledge or connivance of each of the chairman of directors, managing director and other governing officer, by whatever name called, of the governing body of the corporation and that each of those persons could not by due diligence have prevented the commission of the offence.

(11) The Commissioner may, on request relieve a subsidiary from the obligation to make a statement under subsection (1) where he is satisfied that a person, a corporation or a subsidiary which is entitled to the land of the first-mentioned subsidiary has in respect of the same acquisition complied with section 56FH, 56FI or this section, as the case may be.

56FK. Statement chargeable with duty. (1) A statement lodged under section 56FH is chargeable with duty—

- (a) where the statement relates to a relevant acquisition within paragraph (a) of section 56FM (1)—equal to the amount calculated in accordance with the provisions of the first table contained in subparagraph (a) of paragraph (4) under the heading “CONVEYANCE OR TRANSFER” in the First Schedule applied to the dutiable value determined under subsection (2), as if that value were the value of the consideration; and
- (b) where the statement relates to a relevant acquisition within paragraph (b) of section 56FM (1)—equal to the amount which is the difference between—
 - (i) the amount calculated in accordance with the table referred to in paragraph (a) applied to the dutiable value determined under subsection (3) (a), as if that value were the value of the consideration; and
 - (ii) the amount of duty calculated in accordance with the table referred to in paragraph (a) applied to the dutiable value calculated under subsection (3) (b), as if that value were the value of the consideration.

(2) Where, by a relevant acquisition a person acquires a majority interest in a corporation, the dutiable value is the amount which bears to the full unencumbered value of the land in Queensland to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, the same proportion as the value of the property of the corporation to which the person, or the person and any related persons, would be entitled, bears to the value of all the distributable property of the corporation if the corporation were to be wound up, immediately after the acquisition.

(3) Where the relevant acquisition is within paragraph (b) of section 56FM (1), the dutiable value—

- (a) for the purposes of paragraph (b) (i) of subsection (1)—is the amount which bears to the value of the land in Queensland to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, the same proportion as the value of the property of the corporation to which the

person, or the person and any related persons, would be entitled, bears to the value of all the distributable property of the corporation if the corporation were to be wound up, immediately after the relevant acquisition;

- (b) for the purposes of paragraph (b) (ii) of subsection (1)—is the amount which bears to the value of the land in Queensland to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, the same proportion as the value of the property of the corporation to which the person, or the person and any related persons, would have been entitled, bears to the value of all the distributable property of the corporation if the corporation were to be wound up, at the time immediately preceding the relevant acquisition.

(4) Subject to subsection (5) and for the purposes of subsections (2) and (3), the full unencumbered value of the land to which a corporation is entitled at any time is the sum of—

- (a) in the case of land to which the corporation is entitled without reference to section 56FL (6)—the full unencumbered value of the land at that time;

and

- (b) in the case of land to which a subsidiary is entitled as mentioned in that subsection—the amount to which, if the property of a subsidiary or of all subsidiaries in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same, the corporation would be entitled in respect of the full unencumbered value at that time of land to which the subsidiary is, or all subsidiaries are, entitled.

(5) Where, for the purposes of the prescribed provisions, the corporation is a landholder but is not a landholder under paragraph (a) of section 56FL (2), the dutiable value shall be calculated having regard only to land and property to which the corporation is entitled without reference to section 56FL (6).”

64. New ss. 56FL, 56FM and 56FN. The Principal Act is amended by inserting after section 56FK, as inserted by this Act, the following sections:—

“**56FL. Corporations to which the prescribed provisions apply.**

- (1) The prescribed provisions apply to a corporation that is—
- (a) a corporation other than a corporation shares in the capital of which are listed on a recognized stock exchange, within the meaning of the *Securities Industry (Queensland) Code*, or a corporation shares in the capital of which are listed on a prescribed stock exchange;

and

(b) a landholder within the meaning in subsection (2).

(2) A corporation is a landholder for the purposes of the prescribed provisions if at the time of a relevant acquisition—

(a) it is entitled to land in Queensland or it is entitled to land in Queensland as a co-owner, or both, and the full unencumbered value of the land or land in which it is a co-owner, or both, is not less than \$1 000 000, and the full unencumbered value of all land to which the corporation is entitled, whether in Queensland or elsewhere, is 80 per cent or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (4);

or

(b) it is entitled to land in Queensland (excluding land to which it is deemed to be entitled under subsection (6)) or it is entitled to land in Queensland as a co-owner, or both, and the full unencumbered value of the land or land in which it is a co-owner, or both, is not less than \$1 000 000, and the full unencumbered value of all land to which the corporation is entitled (excluding land to which it is deemed to be entitled under subsection (6)) whether in Queensland or elsewhere, is 80 per cent or more of the full unencumbered value of all property to which it is entitled (excluding property to which it is deemed to be entitled under subsection (6)) other than property directed to be excluded by subsection (4).

(3) For the purposes of subsection (2), in determining the value of land or a lesser estate in land, or the value of property to which a corporation is entitled, where the relevant acquisition of shares is one to which section 55B or 55C applies, assets which are deemed to have no value under subsection (2) of either of those sections shall be deemed to have no value for the purposes of subsection (2).

(4) The following property of a corporation or of a subsidiary shall not be included in the value of property to which the corporation is entitled for the purpose of calculating the value of property under subsection (2)—

(a) cash or money in an account at call;

(b) negotiable instruments, and money on deposit with any person;

(c) money lent by the corporation or a subsidiary to—

(i) a person who in relation to the corporation is an associated person;

or

- (ii) a person at call or on terms that require or allow full repayment to the corporation within 12 months after the money is lent;
 - (d) where the corporation or subsidiary is a holding company within the meaning in section 7 of the *Companies (Queensland) Code*—the shareholding of that corporation or subsidiary in a subsidiary corporation within the meaning of that section;
 - (e) property consisting of a share or interest in a trust the trustee of which is a subsidiary;
- and
- (f) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner's satisfaction that a reason for the corporation's ownership is not for the purpose of defeating the object of the prescribed provisions.

(5) For the purposes of calculating the value of all land to which a corporation is entitled or the value of all property to which it is entitled for the purposes of subsection (2), any contracts or agreements for the sale or transfer of land of the corporation or of a subsidiary shall be treated as though they had not been made.

(6) Without limiting the meaning of "entitled", a corporation is deemed to be entitled to land or property to the extent that a subsidiary is entitled to that land or property.

(7) A corporation that is a co-owner of land is not a co-owner for the purposes of subsection (2) if the Commissioner is satisfied that to regard it as not being a co-owner will not defeat the intention of the prescribed provisions.

56FM. Meaning of "relevant acquisition". (1) For the purposes of the prescribed provisions, an acquisition is a relevant acquisition—

- (a) if a person—
 - (i) by that acquisition acquires a majority interest in a corporation;

or

 - (ii) by that acquisition of an interest in a corporation, when taken with each previous acquisition of an interest in the corporation made by the person during the 3 years immediately preceding the day on which that acquisition occurs, acquires a majority interest in the corporation;
- or
- (b) if by the acquisition a person who has a majority interest in the corporation (and in acquiring that

majority interest he was required to prepare a statement under section 56FH (1) acquires a further interest in the corporation.

(2) For the purposes of subparagraph (ii) of subsection (1) (a), if a person acquires an interest in a corporation and within 3 years before or after that acquisition he became or becomes entitled to a right to acquire a further shareholding in the corporation, and that right is exercised, he is deemed to acquire that further shareholding in the corporation within the period of 3 years after the first-mentioned acquisition, notwithstanding that the right is exercised after the expiration of that period.

(3) A previous acquisition referred to in subparagraph (ii) of subsection (1) (a) does not include an acquisition that occurred before the commencement of section 1 of the *Stamp Act Amendment Act 1988*.

56FN. Meaning of “interest”, “majority interest” and “further interest”. (1) For the purposes of the prescribed provisions, a person acquires an interest in a corporation if the person, or the person and any related person, acquires a shareholding in the corporation that would entitle the person, or the person and any related person (if the corporation were to be wound up immediately after the shareholding was acquired) to participate (otherwise than as a creditor or other person to whom the corporation is liable) in a distribution of the property of the corporation.

(2) For the purposes of the prescribed provisions, a person acquires a majority interest in a corporation if the person, or the person and any related person, acquires a shareholding in the corporation that would entitle the person, or the person and any related person, if the corporation were to be wound up immediately after the shareholding was acquired to participate (otherwise than as a creditor or other person to whom the corporation is liable) in a distribution of the property of the corporation to an extent greater than 50 per cent of the value of the property distributable to all of the holders of shares in the corporation.

(3) For the purposes of the prescribed provisions, a person acquires a further interest in a corporation if the person, or the person and any related person—

- (a) has a majority interest in the corporation;
 - (b) in acquiring that majority interest the person, or the person and any related person, became subject to section 56FH;
- and
- (c) acquires a further shareholding in the corporation that would entitle the person, or the person and any related person, if the corporation were to be wound up immediately after the shareholding was acquired to participate further (otherwise than as a creditor

or other person to whom the corporation is liable) in a distribution of the property of the corporation.”.

65. New s. 56FO. The Principal Act is amended by inserting after section 56FN, as inserted by this Act, the following section:—

“**56FO. Special directions as to duty.** (1) A statement lodged under section 56FH, 56FI or 56FJ shall not be liable for duty where the Commissioner is satisfied, having regard to the circumstances of the case, that—

- (a) if the person making the relevant acquisition of the majority interest or further interest in a corporation to which the prescribed provisions apply, had acquired the land or lesser estate in land to which the corporation is entitled directly by way of conveyance, the instrument of conveyance would not have been liable for *ad valorem* duty under the heading “CONVEYANCE OR TRANSFER” in the First Schedule; and
- (b) the instrument would not have been prepared with an intention to avoid that duty.

(2) Where the prescribed provisions apply in respect of a relevant acquisition and in absence of this subsection, the instrument giving effect to the relevant acquisition would be chargeable with duty under the heading “MORTGAGE, BOND, DEBENTURE, and COVENANT” in the First Schedule, the instrument shall not be chargeable with that duty to the extent to which it so relates.”.

66. Amendment of s. 57A. Motor vehicles. Section 57A of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsections:—

“(1) The duty on an application for registration or an application for transfer of registration in respect of a motor vehicle shall be denoted in the prescribed manner and shall be paid at the time of lodgement of the application.

(1A) Where an application is an application for the transfer of registration of a motor vehicle, both the transferor and the transferee shall be liable for the payment of duty on that application.

(1B) Where the full amount of duty is not paid in accordance with subsection (1), the Commissioner may, in lieu of proceedings for an offence under section 26 (1), impose a penalty not exceeding 2 penalty units and recover that amount as a debt due to the Crown, which penalty will be in addition to any penalty payable under subsection (6) hereof.”;

(b) in subsection (2)—

(i) by omitting from the proviso thereto the words “not exceed” and substituting the word “be”;

(ii) by omitting from the end of paragraph (b) of the proviso thereto the words “list price.” and substituting the following words and proviso:—

“list price,

at the time specified in the first paragraph of this subsection:

Provided further that in the case of a motor vehicle which has been previously registered (whether in this State or elsewhere in the Commonwealth) or for which there is no list price, the value for the purpose of assessing the duty payable under this Act shall be—

(a) the total consideration in monetary terms payable by the purchaser including any deposit, sales tax, trade-in allowance, and the consideration for all additions by way of optional or additional equipment regardless of when or by whom supplied or fitted;

or

(b) the price at which the motor vehicle, including all equipment and fittings might reasonably have been sold, free from encumbrances, in the open market,

whichever is the greater.”;

(iii) by omitting the note (commencing with the words “In the proviso to this subsection”) to the proviso and substituting the following subsection:—

“(2A) In subsection (2)—

(a) the expression “list price” means the price fixed by the manufacturer, importer or principal distributor as the retail selling price at Brisbane—

(i) of a motor vehicle other than a motor truck;

or

(ii) in the case of a motor truck—of a cab-chassis, of the make and model in question;

and

(b) the expression “optional equipment” means all equipment not included in the list price which is an integral part of the motor vehicle, and, without limiting the meaning thereof, includes all features actually fitted by the manufacturer or usually fitted by a manufacturer including air conditioning.”;

(c) by inserting in subsection (3) after the word “applicant” the words “or, in the case of an application for transfer of registration, the transferee and the transferor”;

(d) by inserting after subsection (3) the following subsection:—

“(3A) Where a person, who is required under subsection (3) to make a declaration as to the value of a motor vehicle, does not state the true market value of that motor vehicle as defined in this section, that person commits an offence against this Act.

Penalty: 20 penalty units and an amount equal to twice the amount of duty that would have been payable if the true market value of that motor vehicle had been stated in the declaration.”;

(e) in subsection (5)—

(i) by omitting the words “or, in the case of an application for transfer of registration, either the transferor or transferee (and whether or not he made the declaration)”;

(ii) by omitting the words “two hundred dollars” and substituting the words “20 penalty units”;

(f) by inserting after subsection (5) the following subsections:—

“(5A) Where, in the opinion of the Commissioner, the amount of the market value of a motor vehicle declared in accordance with subsection (3) by a person required to declare that value in respect of the motor vehicle is less than the true market value of the motor vehicle, the Commissioner may make an assessment of the further duty payable on the basis that the value of the motor vehicle was—

(a) the amount of the consideration paid for the acquisition of the motor vehicle by the applicant;

(b) such other amount as in the opinion of the Commissioner is the true market value of the motor vehicle;

or

(c) if the applicant satisfies the Commissioner that the value of the motor vehicle was some other amount, that other amount.

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

(a) the application for registration or the application for transfer of registration is chargeable with the additional duty payable as a result of the assessment; and

(b) the assessment may be served upon the person to whom it is directed personally or by post or by giving it to him in a prescribed manner.

(5C) Where a motor vehicle has been acquired by a licensed motor dealer, and an exemption applies under the second exemption under the heading “APPLICATION for REGISTRATION or APPLICATION for TRANSFER of REGISTRATION of a motor

vehicle” in the First Schedule, the licensed motor dealer shall, in respect of that motor vehicle—

- (a) maintain in Queensland for a period of five years a record, as may be prescribed, of its acquisition and disposal;
- (b) issue an account or statement to the purchaser showing the full consideration paid and payable including the value of any trade-in, and retain in Queensland a true copy of that account or statement for a period of 5 years;
and
- (c) maintain in Queensland for a period of 5 years a true copy of the application for registration or the application for transfer of registration, as the case may be.

(5D) A person who contravenes or fails to comply with subsection (5C) commits an offence against this Act.

Penalty: for each motor vehicle in respect of which an offence under this subsection was committed—an amount equal to twice the amount of duty which would have been payable had the exemption in respect of that motor vehicle not applied.

(5E) Where the duty which would have been payable by way of penalty pursuant to subsection (5D) is not able to be calculated, the penalty shall be 10 penalty units in respect of each motor vehicle in respect of which an offence under that subsection was committed.

(5F) For the purposes of subsection (5E), in calculating the number of vehicles acquired by a licensed motor dealer, regard shall be had to whatever records are available but the number as averred by the Commissioner shall be accepted as final in the absence of conclusive evidence to the contrary.”;

(g) by omitting subsection (6) and substituting the following subsection:—

“(6) Where stamp duty charged upon an application for registration or an application for transfer of registration under this section, in the opinion of the Commissioner, exceeds the amount of duty which accompanied it, the Commissioner may make an assessment of duty of an amount equal to the amount by which, in his opinion, duty has been underpaid and may serve the assessment (personally or by post or by giving it in a prescribed manner) upon the person to whom it is directed.”;

(h) by adding at the end of the section the following subsection:—

“(8) If duty has been paid on an application for registration or an application for the transfer of registration and the transaction of acquisition or disposal is cancelled within a period of three months from that acquisition or disposal, that duty may be refunded by the Commissioner upon evidence satisfactory to him to verify the cancellation of that transaction.”.

67. New s. 59E. The Principal Act is amended by inserting after section 59D the following section:—

“59E. Conveyance duty exemption for educational, religious and other institutions. (1) Where the Commissioner is satisfied that a conveyance or transfer is to—

- (a) the University of Queensland, Griffith University or James Cook University or a constituent college thereof;
 - (b) an institution or the trustees of an institution in Queensland, the principal object and pursuit of which—
 - (i) is the education of students in primary or secondary schools, or both;
 - (ii) is the conduct of a rural training school;
 - (iii) is the conduct of a kindergarten or pre-school;
 - (iv) is the relief of poverty;
 - (v) is the care of sick, aged, infirm, afflicted or incorrigible persons or of children;

or

 - (vi) is more than one of those objects and pursuits specified in subparagraphs (i), (ii), (iii), (iv) and (v),
- or
- (c) an institution in Queensland determined pursuant to subsection (5) to be a religious institution or associate religious body of that institution or to the trustees of that institution or body,

the Commissioner may determine the conveyance or transfer to be exempt from stamp duty where he is satisfied that the property conveyed or transferred, or to be conveyed or transferred, has been acquired for and is to be used solely or almost solely—

- (d) for educational purposes;
 - (e) for the purpose of conducting a kindergarten or pre-school;
 - (f) for the purpose of the relief of poverty;
 - (g) for the purpose of care of sick, aged, infirm, afflicted or incorrigible persons or of children;
 - (h) for the purpose of activities of a religious nature;
- or
- (i) for more than one of the purposes specified in paragraphs (d) to (h),

within 6 months (or such later time as the Commissioner may in his discretion in a particular case allow) and for a duration of 12 months (or such longer period as the Commissioner may in a particular case require for the purpose of being satisfied that

the property has been acquired for such purpose); and the Commissioner shall when determining an instrument to be exempt under this subsection advise the institution or body of the time within and the duration for which he was satisfied the property would be so used for such purpose when determining the exemption.

(2) An institution is not an institution of the kind described in subparagraph (i), (ii), (iii), (iv), (v) or (vi) of paragraph (b) of subsection (1), unless the constitution, by whatever name called, of the institution provides—

(a) that the income and property of the institution is to be used and applied solely for the promotion of the objects of the institution and that no portion of the income or property will be distributed, paid or transferred by way of dividend, bonus or otherwise amongst its members;

and

(b) that on dissolution the assets of the institution remaining after satisfaction of all debts and liabilities shall be transferred to some institution having similar objects.

(3) For the purposes of subsection (1)—

(a) the care of sick, aged, infirm, afflicted or incorrigible persons means the care which relates directly to and is necessary because of the persons so cared for being sick, aged, infirmed, afflicted or incorrigible;

and

(b) the care of children means being responsible for children on a full time basis and providing them with all necessary food, clothing and shelter and providing for their general well being and protection.

(4) The Commissioner shall be entitled not to be satisfied that an institution is a religious institution for the purposes of subsection (1) unless the members or followers of the institution subscribe to common articles of faith or beliefs which are formally documented.

(5) The Commissioner may, having regard to—

(a) whether the institution is formally constituted;

(b) the number of members or followers of that institution in Queensland;

(c) the period of time during which the institution has been established;

(d) whether the institution has a ministry, by whatever name called, which is devoted to the propagation or practice of the faith or beliefs of the institution and regularly conducts religious services for members or

followers of the institution for religious worship or meditation;

- (e) whether it is usual for members of the institution to meet at a place clearly identifiable as a place at which such persons meet to engage in religious worship or meditation;

and

- (f) whether members of the institution's ministry have undergone a formal training program to qualify for that ministry,

determine an institution to be or not to be a religious institution for the purposes of subsection (1).

(6) For the purposes of subsection (1), the provision of a residence for a minister or members of a religious order who are engaged in activities of a religious nature or pursuits of the kind specified in subparagraphs (i) to (vi) of subsection (1) (b) shall be deemed to be a religious activity.

(7) For the purposes of subsection (1), a body—

- (a) which appertains to or is controlled by an institution which the Commissioner is satisfied is a religious institution of the kind referred to in that subsection;

and

- (b) whose principal object and pursuit is the conduct of activities of a religious nature,

is an associated religious body.

(8) Where the Commissioner is not, at the time when a conveyance or transfer referred to in subsection (1) is lodged with him, satisfied—

- (a) that an institution or body is an institution or body of the kind referred to in subsection (1);

or

- (b) that the property conveyed or transferred, or which is to be conveyed or transferred, is to be used solely or almost solely for a purpose listed in paragraphs (d) to (i) of subsection (1),

the Commissioner may determine the instrument not to be exempt from duty; but may, by notice to the institution or body, specify a later time or period when he will determine according to the facts and circumstances known to him at that later time, whether those facts and circumstances, if known when the instrument was first lodged, would have allowed him to determine the instrument to be exempt; and where he at that later time so determines he may refund the duty paid on the relevant conveyance or transfer.

(9) Where the Commissioner is of the opinion that property conveyed or transferred by an instrument which he has determined to be exempt under subsection (1)—

- (a) has been used for a purpose other than a purpose of the kind specified in paragraphs (d) to (i) of subsection (1);
- (b) has not been used solely or almost solely for a purpose of the kind specified in paragraph (d) to (i) of subsection (1);
- or
- (c) has not been used solely or almost solely for a purpose of a kind specified in paragraph (d) to (i) of subsection (1) within the time or for the duration which he advised the institution or body under subsection (1) that he was satisfied that it would be used,

then the amount of duty chargeable in respect of the instrument shall be the amount chargeable as if the instrument were not an instrument of a kind which the Commissioner may determine as exempt under subsection (1); and thereupon section 80 applies as if the amount of duty assessed in the first instance had been assessed at an insufficient amount; and the Commissioner may, in addition, charge interest at the rate of 20 per centum from the date which is 60 days after the execution of the instrument until the date when payment of the duty in accordance with this section is made.

(10) The Commissioner may, in his discretion, defer reassessing an instrument under subsection (9) where he is satisfied that the property—

- (a) has not been used for a purpose other than a purpose of a kind specified in paragraphs (d) to (i) of subsection (1);
- and
- (b) will within a further time and for a duration nominated by him be used solely or almost solely for a purpose of the kind specified in paragraphs (d) to (i) of subsection (1),

and where the property is so used in that time and for that duration, he shall not reassess the instrument under subsection (9).

(11) Where a conveyance or transfer has been exempted from duty under subsection (1) and the institution or body—

- (a) uses the property conveyed or transferred for a purpose other than a purpose of the kind specified in paragraphs (d) to (i) of subsection (1);
- (b) does not use the property so conveyed or transferred for the purpose for which the Commissioner was satisfied it would be used on the basis of

representations by the institution or body when he determined the instrument to be exempt from duty;
or

- (c) has not used the property transferred for that purpose within the time or for the duration within and for which the Commissioner was satisfied it would be used and of which he advised the institution or body at the time he determined the exemption,

the institution or body shall, within 28 days of the occurrence described in paragraph (a), (b) or (c) or such later time as the Commissioner, in his discretion, allows, notify the Commissioner of that occurrence.

(12) Where an institution or body fails to notify the Commissioner in compliance with subsection (11), the Commissioner when reassessing duty payable pursuant to subsection (9), may demand and receive by way of penalty an amount equal to the total amount of duty so reassessed.”

68. Repeal of and new s. 62. Agreement for lease to be charged as a lease. The Principal Act is amended by repealing section 62 and substituting the following section:—

“**62. Agreement for lease.** (1) An agreement for a lease in respect of the letting of any lands, tenements or hereditament subjects for any definite or indefinite term is to be charged with duty as if it were a lease made for the term and consideration mentioned in the agreement.

(2) Where duty has been paid pursuant to subsection (1) on an agreement for a lease and, subsequent to that agreement, a lease is granted which is in conformity, or substantially in conformity, with the agreement, the Commissioner shall allow, as an offset against duty chargeable on the lease, an amount up to but not exceeding the duty paid on that agreement.

(3) For the purposes of this Act, a lease granted for a fixed term and thereafter until determined shall—

- (a) where the lessor and lessee are not related—be deemed to be a lease for a definite term equal to the fixed term together with that further period that must elapse before the earliest date at which the lease can be determined (other than through non-compliance with the terms of the lease);
(b) where the lessor and lessee are related—be deemed to be a lease for an indefinite term.

(4) For the purpose of this section, “related” has the same meaning as in section 56FA (3).”

69. Amendment of s. 64. Directions as to duty in certain cases. Section 64 of the Principal Act is amended by adding at the end of the section the following subsection:—

“(5) An instrument whereby the rent, reserved by any other instrument chargeable with duty as a lease, is increased, is

chargeable with duty as a lease in consideration of the additional rent thereby made payable.”.

70. Repeal of and new s. 64A. Provisions affecting the term of leases and payment of duty on leases. The Principal Act is amended by repealing section 64A and substituting the following section:—

“**64A. Provisions affecting the term of leases.** (1) For the purposes of this section, any lease for a fixed term and then for a further term or other terms conditional upon the exercise of a right given by the lease or any other document to a lessee shall be deemed to be for an indefinite term.

(2) A lease deemed by subsection (1) to be for an indefinite term shall be chargeable with stamp duty in respect of a term that is deemed to be a definite term equal to—

(a) where the sum of the fixed term and any other possible term is less than 6 years—that sum of years;

(b) where the sum of the fixed term and any other possible term is for 6 years or more—6 years or the fixed term, whichever is the greater.

(3) A lease that is an indefinite lease for the purposes of this Act by virtue of paragraph (b) of section 62 (3) or is indefinite for any reason other than as provided by subsection (1) shall be chargeable with stamp duty—

(a) in the case of a lease under paragraph (b) of section 62 (3)—in respect of a term that is deemed to be for the fixed term or for 6 years, whichever is the greater; and

(b) in all other cases—6 years.

(4) For the purposes of this Act, a lease—

(a) referred to in subsection (2) (b) or (3);

and

(b) chargeable with duty under this subsection,

shall, on the expiration of all terms for which duty is or has been chargeable under this Act in respect of any further remaining term of the lease, be chargeable with duty in respect of a term that is 6 years or such lesser term as the Commissioner may be satisfied is the final term of the lease.”.

71. New ss. 64B and 64C. The Principal Act is amended by inserting after section 64A the following sections:—

“**64B. Provisions affecting the payment of duty on leases.** (1) Where a lease provides for the payment of rent at a rate that can be ascertained but may be varied during its term, stamp duty chargeable shall be calculated on the highest ascertainable total rent for the relevant term of the lease.

(2) Where a lease, at the time it is produced to the Commissioner, provides for payment of rent the total amount

of which cannot, disregarding any Consumer Price Index variation, be ascertained from the terms of the relevant instrument, the parties to the instrument shall furnish to the Commissioner—

- (a) an estimate of the total rent payable over the term or deemed term of the lease;
- and
- (b) evidence, to the satisfaction of the Commissioner, supporting that estimate.

(3) The Commissioner may at any time require, by notice in writing, the parties to a lease to furnish—

- (a) information in the prescribed form;
- and
- (b) such further information or evidence as the Commissioner may require.

(4) Where, in respect of any expired term of a lease, the amount of duty assessed is less than the duty that would have been assessed had the total rent payable for the expired term been known at the time of assessment, duty chargeable on the lease in respect of the expired term shall be the amount that would be assessed on the total rent payable for the expired term; and section 80 applies as if the amount of duty assessed in the first instance had been assessed at an insufficient amount.

(5) The Commissioner may make an assessment of the duty charged under subsection (4) and serve the assessment upon the person to whom it is directed personally or by post or by giving it to him in a prescribed manner.

64C. Refund of duty. Where duty has been paid on a lease for the whole or part of a term which was conditional upon the exercise of a right given by the lease or other document to a lessee, the Commissioner shall upon application in writing made to him within 6 months after the forfeiture of the right to a lease for that term—

- (a) make an adjustment of the stamp duty paid on the relevant instrument;
- and
- (b) refund to the lessee or (where the lease has been transferred or assigned by the lessee) to the transferee or assignee,

an amount of money equal to the difference between the duty actually paid and the duty which would have been payable if the lease had terminated at the date of that forfeiture.”.

72. Amendment of s. 65. Meaning of “Mortgage.”. Section 65 of the Principal Act is amended by inserting after subsection (1) the following subsections:—

“(2) For the purposes of this Act, where a security is given, wholly or in part, to secure an obligation on default arising under

or in respect of a bill of exchange or promissory note, drawn or made or to be drawn or made or which may be drawn or made, or a series of such bills or notes—

- (a) it shall be deemed to be a security for the payment or repayment of money lent or to be lent;
 - (b) it shall be deemed that the loan which it secures is or is to be or may be made on the date on which the funds are first provided in exchange for the bill or note or the first bill or note in the series;
 - (c) it shall be deemed that the amount of the loan which it secures is the face value of the bill or note or the total face value of the bills or notes to which the security relates which is or are or is to be or are to be current or outstanding at any time;
- and
- (d) it shall be deemed that the amount of the loan at a particular time is the face value of the bill or note or the total face value of bills or notes to which the security relates which is or are current or outstanding at that time.

(2A) Subject to subsection (2B), where a security has been executed prior to the commencement of section 1 of the *Stamp Act Amendment Act 1988* (in this subsection called “that commencement date”) and there is an underlying agreement or arrangement in respect of the bills or notes with respect to which the obligations secured by that security relate which was also executed or entered into prior to that commencement date and—

- (a) that underlying agreement or arrangement can be shown to relate to a fixed term and a fixed amount;
- or
- (b) pursuant to the agreement or arrangement a term and amount to which the obligation is for the time being to relate was approved in writing before that commencement date,

subsection (2) shall not apply to render the provisions of section 68 or the First Schedule operative in respect of such security.

(2B) Where in the case of a security of the kind referred to in subsection (2A), the underlying agreement or arrangement referred to in subsection (2A) or an approval pursuant thereto is varied or a new approval provided in so far as it relates to the term of the arrangement or agreement or the amount of bills or notes to which it relates, the security is deemed to be a new and separate instrument bearing the date on which funds are provided in exchange for the first bill or note issued after that variation or new approval.”

73. Repeal of and new s. 69A. Exemption of duty in case of certain mortgages and guarantees. The Principal Act is amended by repealing section 69A and substituting the following section:—

“69A. Securities for loans to or debts of educational, charitable or religious bodies. (1) Where the Commissioner is satisfied that—

(a) a security is given for a loan to or a debt of an institution or body or the trustees of an institution or body of the kind specified in section 59E (1);
and

(b) the loan is or the debt is incurred solely, or almost solely, for a purpose of the kind specified in paragraphs (d) to (i) of section 59E (1),

he may determine the security to be exempt from stamp duty.

(2) Where the Commissioner is not, at the time at which a security referred to in subsection (1) is lodged with him, satisfied that—

(a) the relevant institution or body is an institution or body of the kind referred to in subsection (1) (a);
or

(b) the relevant loan or debt was incurred solely, or almost solely, for a purpose of the kind referred to in subsection (1) (b),

he may determine the instrument not to be exempt from duty; but may, by notice to the institution or body, specify a later time or period when he will determine according to the facts and circumstances known to him at that later time, whether those facts and circumstances if known when the instrument was first lodged, would have allowed him to determine the instrument to be exempt; and where he at that later time so determines he may refund the duty paid on the relevant security.

(3) Where an instrument has been exempted under subsection (1) and—

(a) the loan monies, or part of them, secured by that instrument are used for a purpose other than a purpose referred to in subsection (1) (b);
or

(b) the instrument is used to secure any other loan or further advance made for a purpose, other than a purpose referred to in subsection (1) (b),

then the instrument shall be chargeable with duty on the amount of such loan or further advance; and section 80 applies as if the instrument had been assessed in the first instance with stamp duty of an insufficient amount.

(4) Where a person is a party to an instrument which has been exempted from duty under subsection (1), he shall within

28 days of the happening of any of the circumstances specified in subsection (3), or within such longer time as the Commissioner in his discretion in the particular case allows, notify the Commissioner of those circumstances.

(5) Where a person fails to notify the Commissioner in compliance with subsection (4), the Commissioner, when reassessing duty payable pursuant to subsection (3), shall demand and receive by way of penalty an amount equal to the total amount of duty so reassessed.”.

74. New ss. 69B and 70. The Principal Act is amended by inserting after section 69A the following sections:—

“69B. Restriction on exemption on instruments securing advances to certain Boards and Co-operative Associations. (1) Where a Commodity Board or a Marketing Board constituted under the *Primary Producers’ Organisation and Marketing Act 1926-1987* or a primary producers’ co-operative association registered under the *Primary Producers’ Co-operative Associations Act 1923-1986* has obtained exemption from stamp duty on an instrument, by virtue of the last exemption under the heading “MORTGAGE, BOND, DEBENTURE, and COVENANT” in the First Schedule and—

(a) the advance made under that instrument or part of the advance is used for a purpose which would not have qualified the instrument for exemption under that provision;

or

(b) the instrument is used to secure any other advance or further advance made for a purpose which would not have qualified the instrument for exemption under that provision,

then the instrument shall be chargeable with duty on the amount of such advance or other advance or further advance; and section 80 applies as if the instrument had been assessed in the first instance with stamp duty of an insufficient amount.

(2) Where a person is a party to an instrument which has been exempted from duty under the provision referred to in subsection (1), he shall within 28 days of the happening of any of the circumstances specified in paragraphs (a) and (b) of that subsection, or within such longer time as the Commissioner in his discretion in the particular case allows, notify the Commissioner of those circumstances.

(3) Where a person fails to notify the Commissioner in compliance with subsection (2), the Commissioner, when reassessing duty payable pursuant to subsection (1), shall demand and receive by way of penalty an amount equal to the total amount of duty so reassessed.

70. Ex-Queensland securities. (1) Where the money to be paid or repaid under an instrument chargeable with duty under

the heading "MORTGAGE, BOND, DEBENTURE, and COVENANT" in the First Schedule is secured both on property in Queensland and on property in another State or a Territory, and the Commissioner is satisfied that *ad valorem* duty under a corresponding provision relating to mortgages or other securities has been paid or will be paid to that other State or Territory in respect of the same money he shall allow a credit against the duty that would otherwise be payable of an amount equal to the lesser of—

- (a) the same proportion of the duty otherwise payable in Queensland as the full unencumbered value of the property situated in that other State or Territory bears to the aggregate full unencumbered value of all property upon which the money to be paid or repaid is secured;

and

- (b) the amount of duty paid or to be paid to that other State or Territory.

(2) Where the money to be paid or repaid under an instrument chargeable with duty under the heading "MORTGAGE, BOND, DEBENTURE, and COVENANT" in the First Schedule is secured wholly on property within another State or a Territory, and the Commissioner is satisfied that *ad valorem* duty under a corresponding provision relating to mortgages or other securities has been or will be paid to that other State or Territory, he shall allow a credit against the duty that would otherwise be payable of an amount equal to the lesser of—

- (a) the duty otherwise payable in Queensland;

and

- (b) the amount of duty paid or to be paid to that other State or Territory.

(3) Where an instrument secures money to be paid or repaid and the money lent has been or is to be applied, wholly or partly in Queensland, the instrument shall be deemed to relate to a matter or thing done or to be done in Queensland.

(4) Where the Commissioner is satisfied that *ad valorem* duty under provisions corresponding with the provisions under the heading "MORTGAGE, BOND, DEBENTURE, and COVENANT" in the First Schedule has been or will be paid on an instrument which secures the payment or repayment of money to another State or a Territory—

- (a) in which the property, on which the money is secured, is located;

or

- (b) in which that money has been or will be partly applied,

he shall allow a credit, against the duty that would otherwise be payable, of an amount equal to—

(c) in the case of an instrument chargeable with duty in that other State or Territory only because the money paid or to be repaid under the instrument has been or is to be applied in that other State or Territory—the amount which is the lesser of—

(i) the same proportion of the duty otherwise payable in Queensland as the amount of money which has been or is to be applied in that other State or Territory bears to the total amount of money to be paid or repaid,

and

(ii) the amount of duty paid or to be paid to that other State or Territory;

or

(d) in any other case—the amount of the duty paid or to be paid to that other State or Territory.”.

75. New s. 71. The Principal Act is amended by inserting after section 70, as inserted by this Act, the following section:—

“71. Securities over certain shares and units. (1) A security under the heading “MORTGAGE, BOND, DEBENTURE, and COVENANT” in the First Schedule shall be deemed to be secured on property in Queensland where the property on which it is secured is or includes—

(a) shares in a company incorporated in Queensland;

(b) shares in a company of a kind to which section 56C applies;

(c) shares in a corporation to which the prescribed provisions, within the meaning of section 56F, apply where the owner of those shares, if he and all persons related, within the meaning of section 56FA (3), to him were to newly acquire all of the shares in the corporation which he and they own, would have made a relevant acquisition within the meaning of section 56FM;

or

(d) units in a unit trust scheme within the meaning of section 56B.

(2) Where the calculation of duty on a security of the kind referred to in subsection (1) requires a determination of the value of the property in Queensland on which it is secured—

(a) shares of the kind referred to in subsection (1) (b) shall have a full unencumbered value equal to—

(i) the value that they would be regarded as having under section 56C if they were disposed of;

(ii) where it is also a share of the kind referred to in subsection (1) (a)—the full unencumbered value of that share;

or

(iii) where the share is registered on a register in Queensland—the full unencumbered value of that share,

whichever is the greater;

(b) shares in a corporation of the kind referred to in subsection (1) (c) shall have a full unencumbered value equal to—

(i) the amount which bears to the full unencumbered value of land in Queensland to which the corporation is entitled, as provided in section 56FK (4), at the time at which the security is executed, the same proportion as the value of the property of the corporation to which the shares would entitle the holder of those shares if the corporation were wound up at that time bears to the value of all of the distributable property of the corporation if the corporation were to be wound up at that time;

(ii) where it is also a share of the kind referred to in subsection (1) (a)—the full unencumbered value of that share;

or

(iii) where the share is registered on a register in Queensland—the full unencumbered value of that share,

whichever is the greater;

and

(c) units of the kind referred to in subsection (1) (d) shall have the same full unencumbered value which they would be regarded as having under section 56B if they were disposed of.

(3) Where the Commissioner is satisfied that *ad valorem* duty has been paid in another State or a Territory (having regard to the whole of the money lent or advanced or to be lent or advanced) the Commissioner may determine the security of the kind referred to in subsection (1) as not chargeable with duty in Queensland.

(4) Subject to subsection (3), where—

(a) a security is chargeable with duty under this Act by virtue of this section and under a corresponding law of another State or a Territory;

and

(b) the sum of the formula—

$$\frac{QD1}{QD2} + OSD$$

where—

QD1 is the amount of duty chargeable on the security in Queensland;

QD2 is the amount of duty that would be chargeable if the security were wholly dutiable in Queensland;

OSD is, in respect of all other States and Territories where duty is also payable on the security, the sum of the fractions calculated, in respect of each other State or Territory where duty is also payable on the security, in accordance with the formula—

$$\frac{OSD1}{OSD2}$$

where—

OSD1 is the amount of duty payable on the security in that other State or Territory;

OSD2 is the total amount of duty that would be payable in that other State or Territory if the security were wholly dutiable in that other State or Territory;

exceeds 1,

the Commissioner may in his discretion allow as an offset against the duty chargeable under this Act on the security an amount not exceeding the duty paid in the State or Territory where the duty is also payable.”.

76. Repeal of and new s. 75. Allowance in case of stamps becoming useless. The Principal Act is amended by repealing section 75 and substituting the following section:—

“**75. Allowance in certain circumstances.** (1) For the purposes of this section, “stamp” means either—

(a) an adhesive stamp;

(b) an impressed stamp;

or

(c) an amount of stamp duty accounted for by any means authorized by this Act.

(2) Where a person has possession of a stamp which he, directly or indirectly, purchased or paid for and that stamp—

- (a) is unused, useless to the applicant or superfluous to his requirements;
- (b) has been inadvertently physically spoiled;
- or
- (c) is attached to an instrument which never has been of any legal effect,

he may (within 12 months after the happening of an event referred to in paragraph (a), (b) or (c)) apply to the Commissioner in the prescribed form for allowance to be made in respect to that stamp.

(3) The Commissioner may make an allowance referred to in subsection (2) by—

- (a) issuing other stamps to the value of the stamps which have become spoiled or useless, less 5 per cent thereof;
- or
- (b) where the applicant will have no use within a reasonable period for stamps issued in substitution—paying to the applicant the value of the stamps which have become spoiled or useless, less 5 per cent thereof.

(4) If an allowance is made under subsection (3), the relevant stamp for which the allowance is made or the paper or document to which it is attached, if it is so attached, or both, shall be dealt with by the Commissioner in the prescribed manner.

(5) Subject to subsection (2) and the production of such evidence as the Commissioner may require, an allowance may be made in circumstances which include the following circumstances—

- (a) where a stamp is inadvertently, mistakenly and undesignedly spoiled, torn, obliterated, defaced or by any means rendered unfit for the purpose intended;
- (b) where a document to which a stamp has been attached is inadvertently, mistakenly, and undesignedly spoiled, torn, obliterated, defaced or by any means rendered unfit for the purpose intended, prior to its having any legal effect, notwithstanding that the stamp attached thereto may be unaffected;
- (c) where an instrument is found, prior to its having any legal effect, to be unfit for the purpose intended because of any error or mistake therein;
- (d) where an instrument is not capable of legal effect, and was void from inception;
- (e) where an instrument was voidable from inception and so rendered before the exercise of any right or

- fulfilment of any obligation or duty under the instrument;
- (f) where an instrument contains mistakes or errors in its preparation so that it does not represent the intention or agreement of the parties and has no legal effect;
 - (g) where a stamp is on any bill of exchange or promissory note which has not been accepted or made use of in any manner whatever, or is delivered out of the hands of the maker for any purpose other than by way of tender for acceptance;
 - (h) where a stamp is on any policy of insurance which is issued for renewal by an insurer but which is not renewed;
 - (i) where the mortgagor under a purported mortgage is not and does not become, nor has a right to become, the owner of any of the property purported to be mortgaged;
 - (j) where the transferor under a purported conveyance or transfer is not and does not become, nor has a right to become, the owner of any of the property purported to be conveyed or transferred;
 - (k) where a purported transfer or conveyance by way of gift is never accepted by the donee;
 - (l) where the highest amount advanced under a mortgage, bond, debenture or covenant securing an unlimited amount, or a further advance certificate relating thereto has been erroneously over-stated, or where ad valorem duty has been paid erroneously on more than one instrument in respect of the same advance.”.

77. Amendment of s. 78A. Evidentiary provisions. Section 78A of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsections:—

“(1) In all legal proceedings instituted by or on behalf of the Commissioner for the purposes of this Act a certificate in writing purporting to be signed by the Commissioner, or a delegate of the Commissioner, certifying that—

- (a) the person named therein, made, gave or executed an instrument of a description specified therein;
- (b) an assessment or reassessment of duty was duly made against that person in respect of the instrument mentioned in the certificate;
- (c) the particulars of the assessment or reassessment are as stated in the certificate;
- (d) notice of the assessment was duly served upon that person;

or

- (e) the amount specified in the certificate was at the date of the certificate due by that person to the Crown in respect of duty,

shall be prima facie evidence of the facts stated in the certificate.

(1A) The production of an assessment or reassessment, or of a document purporting to be under the hand of the Commissioner purporting to be a copy of an assessment or reassessment, shall—

- (a) be conclusive evidence of the due making of the assessment or reassessment;
- and
- (b) be conclusive evidence that the amount and all particulars of the assessment or reassessment are correct, except in proceedings on appeal against the assessment or reassessment.

(1B) The validity of any assessment or reassessment shall not be affected by reason that any of the provisions of this Act have not been complied with.

(1C) In any legal proceeding instituted in the name of the Commissioner for the purposes of this Act, any officer authorized in writing by the Commissioner—

- (a) may appear on behalf of the Commissioner before any Court of competent jurisdiction;
- (b) shall be deemed to represent the Commissioner;
- and
- (c) shall be entitled to conduct the proceedings and to give evidence.”;

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

“(2A) Proceedings in respect of an offence against this Act may be instituted in the name of the Commissioner by any officer engaged in the administration of this Act and authorized by the Commissioner to institute proceedings on his behalf and any proceedings instituted in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been duly instituted by the Commissioner or on his authority.”;

(c) by inserting after subsection (4) the following subsection:—

“(4A) A certificate, purporting to be under the hand of the Commissioner, certifying that on a day specified in the certificate an officer of the Public Service named in the certificate was a delegate of the Commissioner, under section 7A, to whom such powers and functions of the Commissioner as are specified in the certificate had been delegated, on terms, if any, so specified, shall be prima facie evidence of the matters so certified.”.

78. New s. 78B. The Principal Act is amended by inserting after section 78A the following section:—

“**78B. Service of documents on the Commissioner.** Any notice, summons, writ or other process and any return, application, statement or form to be served on the Commissioner for the purposes of this Act may be served by being lodged at the office of the Commissioner with an officer employed in the administration of this Act and authorized in writing by the Commissioner to accept service of documents on his behalf.”

79. Repeal of and new s. 80. Remedy where insufficient duty has been paid. The Principal Act is amended by repealing section 80 and substituting the following section:—

“**80. Amendment of assessments.** (1) The Commissioner may, subject to this section, at any time amend any assessment by making such alterations or additions thereto as he considers appropriate, notwithstanding that duty may have been paid in respect of the assessment.

(2) In any case where it is ascertained or any court has determined that the amount of duty payable on any instrument or statement has been assessed at an insufficient amount, the Commissioner may—

(a) reassess that duty at any time within 2 years after he has ascertained the facts sufficient to enable the amount of duty to be assessed correctly or, as the case may be, after the court’s judgement has been delivered;

and

(b) demand and recover an amount equal to the difference between the duty assessed at an insufficient amount and the amount of duty correctly assessed.

(3) No amendment to an assessment effecting a reduction in the amount of duty assessed on any instrument or statement shall be made except to correct an arithmetic error in the calculation of an assessment or to correct an assessment made under a mistake of fact; and no such amendment shall be made after the expiration of 2 years from the date upon which the duty under the assessment made in arithmetic error or under mistake of fact became due and payable.

(4) Nothing contained in this section shall prevent the amendment of any assessment against which any person has lodged an appeal (in accordance with the requirements of section 24) which at the time of reassessment is current.

(5) Subject to subsection (6), nothing in this section shall prevent the Commissioner in his absolute discretion from amending, by a reduction in duty, an assessment within 2 years of the date upon which the assessment was made where he is satisfied that the assessment was not made in accordance with the interpretation which he determines was his consistent

interpretation of the application of the Act to instruments of that particular kind at the time at which the assessment was made.

(6) It is not competent to a person to commence proceedings against the Commissioner to require the Commissioner to exercise his discretion under subsection (5).

(7) The Commissioner shall refund any duty paid on the assessment in excess of the amount of the reassessment, as amended pursuant to this section.

(8) Forthwith upon making an amended assessment under this section, the Commissioner shall cause notice in writing of the amended assessment and the amount thereof to be given to any party to the instrument or statement or to the person lodging the instrument or statement for reassessment.

(9) Subject to subsection (10), an amended assessment made under subsection (2) or (4) shall be deemed to be an assessment to which section 24 applies.

(10) Where a person appeals against an amended assessment made by the Commissioner under subsection (2) or (4), the amount that the Court may order to be repaid to the appellant shall not exceed the amount by which the amended assessment increased the amount of duty payable on the instrument, above the amount paid or payable under any previous assessment or amended assessment, unless an appeal in accordance with the requirements of section 24, or in accordance with this section and section 24 in respect of a previously amended assessment, has been lodged and is current in respect of the previous assessment.

(11) It is not competent to a person to appeal against an amended assessment made under subsection (3) unless—

(a) the amended assessment is made within the time in which an appeal (in accordance with the requirements of section 24) might be lodged in respect of the original assessment;

or

(b) the previous assessment is the subject of an appeal (in accordance with the requirements of section 24) or in the case of a previously amended assessment, in accordance with the requirements of this section and section 24.”.

80. New s. 85. The Principal Act is amended by inserting after section 84 the following section:—

“85. Declaration in respect of certain provisions. (1) Duty in accordance with paragraph (4) under the heading “CONVEYANCE OR TRANSFER” in the First Schedule is and always has been payable in respect of—

(a) all contracts and agreements for the sale of Crown land;

and

(b) all deeds of grant from the Crown under the hand of the Governor in respect of Crown land, specified in subsection (2).

(2) Crown land specified for the purposes of subsection (1) is Crown land—

(a) comprised in a Special Lease referred to in section 207;

(b) referred to in section 208;

(c) comprised in a road permanently closed pursuant to section 363 and dealt with in accordance with section 365;

or

(d) offered for sale for an estate in fee simple by public auction under section 170,

of the *Land Act 1862-1988*.

(3) The Commissioner, and any officer of the Land Administration Commission acting on the Commissioner's behalf, is and always has been empowered and authorized to assess, collect and recover under this Act duty in accordance with paragraph (4) under the heading "CONVEYANCE OR TRANSFER" in the First Schedule on all instruments referred to in subsection (1)."

81. Amendment of First Schedule. The First Schedule to the Principal Act is amended—

(a) by numbering in regular arithmetical series in the order in which they occur under each of the following headings, each of the exemptions listed in the provisions under the following headings, so that the first exemption under each heading be numbered "1."—

"BILL OF EXCHANGE OR PROMISSORY NOTE";

"BOND, COVENANT, OR INSTRUMENT of any kind whatsoever";

"CONVEYANCE OR TRANSFER";

"DECLARATION OF TRUST";

"INSTALMENT PURCHASE AGREEMENT";

"MORTGAGE, BOND, DEBENTURE, and COVENANT";

"POWER OR LETTER OF ATTORNEY OR AUTHORITY or other instrument in the nature thereof";

(b) by omitting from exemption 5 to the provisions under the heading "APPLICATION for REGISTRATION of APPLICATION for TRANSFER of REGISTRATION of a motor vehicle", paragraph (e), beginning with

the words “any other person” and ending with the words “granted by him).”, and substituting the following paragraph:—

“(e) a public benevolent institution in Queensland where the motor vehicle is necessary and is to be principally used for carrying out the institution’s work of a public benevolent nature.”;

(c) in the provisions under the heading “BILL OF EXCHANGE OR PROMISSORY NOTE”—

(i) by omitting from exemption 8, as numbered by this section, all words from and including the words “, any religious, charitable” to and including the words “association of persons approved” and substituting the words “or any other body or association of persons approved, prior to the commencement of section 1 of the *Stamp Act Amendment Act 1988*”;

(ii) by omitting exemption 10, as numbered by this section, and substituting the following exemption:—

“10. A cheque drawn by an institution or body which the Commissioner is, for the time being, satisfied is an institution or body of the kind specified in section 59E (1), subject to subsections (2), (3) and (4) of that section; and the Commissioner shall, until such time as he otherwise determines, be deemed to be so satisfied in respect of an institution or body which had exemption under this heading immediately prior to the commencement of section 1 of the *Stamp Act Amendment Act 1988* because it was an institution or body of a kind similar to those specified in section 59E (1).”;

(iii) by omitting exemption 12, as numbered by this section;

(d) by omitting exemption 1, as numbered by this section, from the provisions under the heading “BOND, COVENANT, OR INSTRUMENT of any kind whatsoever”, and substituting the following exemption:—

“1. Any instrument securing an advance to any Parents and Citizens Association formed as prescribed by the *Education Act 1964-1987*.”;

(e) in the provisions under the heading “CONVEYANCE OR TRANSFER”—

(i) by omitting from paragraph (3) the words “, company or society which has a register in Queensland” and substituting the words “or company incorporated in Queensland or which being incorporated out of Queensland has a register in Queensland wherein that stock, marketable security or right is registered”;

(ii) in the first proviso to paragraph (3)—

(A) by omitting provision (iv) and substituting the following provision:—

“(iv) a transfer of the kind to which section 53 (9) applies;”;

(B) by omitting from the end of provision (x) the words “him,” and substituting the following words and provisions:—

“him; or

(xi) transferring property which was acquired by the Public Trustee pursuant to section 59 of the *Public Trustee Act 1978-1985* to the beneficial owner; or

(xii) vesting property in trustees upon the statutory trust for sale or on the statutory trust for partition pursuant to Part V of the *Property Law Act 1974-1986*;”;

(iii) by omitting from the third proviso to paragraph (4) (a) the words “that property” and substituting the words “the property acquired”;

(iv) in the proviso occurring immediately after paragraph (4) (b)—

(A) by omitting provision (iv) and substituting the following provision:—

“(iv) a transfer of the kind to which section 53 (9) applies;”;

(B) by omitting from the end of provision (xiii) the words “purposes,” and substituting the following words and provisions:—

“purposes; or

(xiv) transferring property which was acquired by the Public Trustee pursuant to section 59 of the *Public Trustee Act 1978-1985* to the beneficial owner; or

(xv) vesting property in trustees upon the statutory trust for sale or on the statutory trust for partition pursuant to Part V of the *Property Law Act 1974-1986*;”;

(v) by omitting exemption 2, as numbered by this section, and substituting the following exemption:—

“2. Any grant from the Crown under the hand of the Governor to any—

(a) trustee of Crown land for a public purpose;
or

(b) person who held a right to acquire a grant in fee simple of the land comprised in—

(i) an Agricultural Farm Lease;

(ii) a Grazing Homestead Freeholding Lease;

or

(iii) a Perpetual Lease Selection,
under the *Land Act 1962-1988*.”;

(vi) by omitting exemption 5, as numbered by this section, and substituting the following exemption:—

“5. A transfer of a marketable security or right, in respect of shares, that is listed on a recognized stock exchange within the meaning of the *Securities Industry (Queensland) Code* to an institution or body which the Commissioner is, for the time being, satisfied is an institution or body of the kind specified in section 59E (1) subject to subsections (2), (3) and (4) of that section; and the Commissioner shall, until such time as he otherwise determines, be deemed to be so satisfied in respect of an institution or body which had exemption under this heading immediately prior to the commencement of section 1 of the *Stamp Act Amendment Act 1988* because it was an institution or body of a kind similar to those specified in section 59E (1).”;

(vii) by omitting exemption 8, as numbered by this section;

(f) by omitting the heading “LEASE OR AGREEMENT FOR LEASE or any document providing for the tenancy or occupancy of land, tenements or hereditaments—”, and substituting the following heading and words:—

“LEASE—

For any term of any lands, tenements or hereditary subjects—”;

(g) in the provisions and exemptions under the heading “LEASE” as inserted by this section—

(i) by omitting the words “tenancy or occupancy” where they twice occur and substituting the word “lease” in each case;

(ii) by omitting the words “, tenanted or occupied”;

(h) in the provisions under the heading “MORTGAGE, BOND, DEBENTURE, and COVENANT”—

(i) by inserting after provision (2) the following provision:—

“(2A) Any such security which is a security solely for the payment of money which represents the whole or part of the purchase price payable under an instalment purchase agreement where the instalment purchase agreement or an original instrument in relation to that agreement is liable to be and is stamped with ad valorem duty imposed under this Act or duty has been accounted for under the provisions of section 32A. \$1.00”

(ii) by omitting provision (4);

(iii) by omitting exemption 2, as numbered by this section, and substituting the following exemption:—

“2. Any instrument securing an advance to any Parents and Citizens Association formed as prescribed by the *Education Act 1964-1987*.”;

(j) by omitting from the provisions under the heading “POLICIES OF LIFE INSURANCE” the exemption thereto and the heading “Exemption”;

(k) in the provisions under the heading “POLICIES OF INSURANCE (other than Policies of Life Assurance and Policies of Accident Insurance issued under the *Workers’ Compensation Act 1916-1973*)”—

(i) by omitting from provision (l) the words “regulations thereunder—

Upon the first issue and upon every renewal thereof \$0.10”

and substituting the words

“regulations thereunder \$0.10”;

(ii) by omitting from provision (4) all words from and including the words “In respect of” to and including the words “public risk” and substituting the following words:—

“In respect of any policy of insurance indemnifying the insured against legal liability—

(a) for accidental bodily injury (fatal or non-fatal) to a person;

or

(b) for damage, where—

(c) such injury or damage is caused by, through or in connexion with a caravan trailer, trailer or power boat;

or

(d) such liability is connected with the premises, business or undertaking of the insured and is in respect of such personal injury or damage to members of the general public”;

(iii) in provision (6)—

(A) by omitting the words “In respect of every” and substituting the word “Every”;

(B) by omitting the words “upon every policy and every renewal of a policy of insurance—”;

(iv) by inserting after provision (6) the following provision:—

“(6A) In respect of every policy of insurance relating to the risk of accidental personal injury (fatal or non-fatal) to a person in connexion with travel by that person while on an aircraft—

For every \$1 and also for any fractional part of \$1 of the net premium payable thereon . . . \$0.05.

In this provision (6A) the expression “net premium has the same meaning as in provision (6).”;

(v) by omitting from paragraphs (a) and (b) of provision (8) the words “and every renewal of a policy” in each case;

(vi) in the proviso occurring immediately after provision (8)—

(A) by omitting paragraph (b);

(B) in paragraph (g)—

(i) by omitting the words “on the first issue and every renewal”;

(ii) by omitting the words “issue or renewal in question” and substituting the word “policy”;

(iii) by inserting before the paragraph beginning with the words “In this paragraph “net premium” means” the following paragraphs—

“This paragraph (g) does not apply in respect of any policy that is one of a number of policies taken out with the one insurer or separate insurers between whom there is any arrangement in respect of the insurance, unless the Commissioner is satisfied that—

(i) the taking out of the separate policies was based on sound commercial reasons not based on stamp duty considerations;

(ii) the premiums relative to sums insured under the policies truly reflect the relative risks under the separate policies;

and

(iii) the policy is not one of a number of policies under which the amount of the premiums are conditional on or are part of an arrangement whereby they only apply if other policies of that number are taken out with the same or another insurer.

Where a policy of insurance is one of a number of policies taken out with the one insurer and each of the policies is dutiable under provision (4), (5) or (8), the Commissioner may, notwithstanding the preceding paragraph of this paragraph (g), for the purpose of calculating duty, aggregate the premiums and sums insured, respectively, under all or any of those policies for the purposes of calculating duty in respect of those policies and attribute a proportion of that duty to each of those policies as he considers appropriate.

The Commissioner may, in exercising his discretion under the preceding paragraph, have regard to the matters in subparagraphs (i), (ii) and (iii) of the second paragraph of this paragraph (g).”;

(iv) by inserting in the paragraph beginning with the words “In this paragraph “net premium” means” after the word “paragraph” the expression “(g)”;

(vii) by omitting the heading “Exemption” at the end of the provisions and substituting the heading “Exemptions”;

(viii) by numbering the existing exemption as exemption 1;

(ix) by inserting after exemption 1, as numbered by this section, the following exemption:—

“2. A policy of insurance entered into in the course of an insurer’s “health insurance business” within the meaning of the National Health Act 1953 of the Commonwealth, as amended from time to time.”.