

South Australia



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ELIZABETHAE II REGINAE
A.D. 2002

**STATUTES AMENDMENT (CORPORATIONS—FINANCIAL SERVICES
REFORM) ACT 2002**

No. 34 of 2002

[Assented to 28 November 2002]

An Act to amend the Authorised Betting Operations Act 2000, the Broken Hill Proprietary Company's Indenture Act 1937, the Broken Hill Proprietary Company's Steel Works Indenture Act 1958, the Casino Act 1997, the Co-operatives Act 1997, the Corporations (Ancillary Provisions) Act 2001, the Liquor Licensing Act 1997, the Motor Vehicles Act 1959, the Racing (Proprietary Business Licensing) Act 2000 and the Stamp Duties Act 1923.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 AMENDMENT OF AUTHORISED BETTING OPERATIONS ACT 2000

4. Amendment of s. 3—Interpretation
5. Amendment of s. 5—Close associates
6. Amendment of s. 29—Duty of auditor
7. Amendment of s. 74—Power to appoint manager

PART 3 AMENDMENT OF BROKEN HILL PROPRIETARY COMPANY'S INDENTURE ACT 1937

8. Insertion of s. 11
 11. References to shares listed on a stock exchange

PART 4 AMENDMENT OF BROKEN HILL PROPRIETARY COMPANY'S STEEL WORKS INDENTURE ACT 1958

9. Insertion of s. 13
 13. References to shares listed on a stock exchange

PART 5 AMENDMENT OF CASINO ACT 1997

10. Amendment of s. 3—Interpretation
11. Amendment of s. 4—Close associates
12. Amendment of s. 49—Licensee to supply authority with copy of audited accounts
13. Amendment of s. 50—Duty of auditor
14. Amendment of s. 63—Power to appoint manager

PART 6 AMENDMENT OF CO-OPERATIVES ACT 1997

15. Amendment of s. 9—Exclusion of operation of Corporations Act
16. Amendment of s. 258—Application of Corporations Act to issues of debentures

PART 7 AMENDMENT OF CORPORATIONS (ANCILLARY PROVISIONS) ACT 2001

17. Amendment of s. 22—Power to amend certain statutory instruments
18. Insertion of s. 22A
 - 22A. Power to make interim regulations construing certain references in Acts
19. Insertion of s. 25A
 - 25A. Validation—FSR Amendments
20. Amendment of s. 26—Regulations

**PART 8
AMENDMENT OF LIQUOR LICENSING ACT 1997**

21. Amendment of s. 7—Close associates

**PART 9
AMENDMENT OF MOTOR VEHICLES ACT 1959**

22. Amendment of s. 71C—Interpretation
23. Amendment of s. 99—Interpretation

**PART 10
AMENDMENT OF RACING (PROPRIETARY BUSINESS LICENSING) ACT 2000**

24. Amendment of s. 3—Interpretation
25. Amendment of s. 5—Close associates

**PART 11
AMENDMENT OF STAMP DUTIES ACT 1923**

26. Amendment of s. 2—Interpretation
27. Amendment of s. 31—Certain contracts to be chargeable as conveyance on sale
28. Amendment of s. 67—Computation of duty where instruments are interrelated
29. Amendment of s. 71—Instruments chargeable as conveyances operating as voluntary dispositions *inter vivos*
30. Amendment of heading
31. Amendment of s. 90A—Interpretation
32. Amendment of s. 90B—Application of Division
33. Amendment of s. 90C—Records of sales and purchases of financial products
34. Amendment of s. 90E—Endorsement of instrument of transfer as to payment of duty
35. Amendment of s. 90F—Power of dealer to recover paid duty
36. Amendment of s. 90G—Transactions in S.A. financial products on U.K. stock exchange
37. Substitution of Divisions 3 and 4 of Part 3A

DIVISION 3—DUTY ON CERTAIN CLEARING AND SETTLEMENT TRANSACTIONS

- 90H. Application of Division
90I. Requirement to make record of CSF transactions
90J. Transfer document or record to be treated as instruments of conveyance
90K. Particulars to be included in a transfer document
90L. Relevant CSF participant's identification code equivalent to stamping
90M. Returns to be lodged and duty paid
90N. Monthly returns by registered CS facility licensees
90O. Particulars reported by participants to be kept by registered CS facility licensees
90P. Refund for error transaction

**DIVISION 4—REGISTRATION OF AUSTRALIAN MARKET
LICENSEES AND CS FACILITY LICENSEES**

- 90Q. Registration process
90R. Disclosure of information

38. Amendment of s. 90T—Application of Division
39. Amendment of s. 90U—Financial products liable to duty
40. Amendment of s. 90V—Proclaimed countries
41. Amendment of s. 91—Interpretation
42. Amendment of s. 97—Calculation of duty
43. Amendment of s. 101—Exempt transactions

- 44. Amendment of s. 106A—Transfer of financial products not to be registered unless duly stamped
- 45. Amendment of Sched. 2
- 46. Transitional provisions

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Corporations—Financial Services Reform) Act 2002*.

Commencement

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

(2) A proclamation under subsection (1) may bring a provision of this Act into operation on a day that is earlier than the day on which the proclamation is made, not being a day that is earlier than the day on which Part 1 of Schedule 1 of the *Financial Services Reform Act 2001* of the Commonwealth comes into operation.

(3) For the purposes of subsection (2), a reference to a provision of an Act extends to—

(a) a part of a provision;

(b) a provision to be inserted into another Act by this Act.

(4) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to the commencement of this Act or any provision of this Act.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF AUTHORISED BETTING OPERATIONS ACT 2000**

Amendment of s. 3—Interpretation

4. Section 3 of the principal Act is amended—

(a) by striking out from the definition of "State-owned company" in subsection (1) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth";

(b) by striking out from the definition of "substantial holding" in subsection (1) "the *Corporations Law*" and substituting "section 9 of the *Corporations Act 2001* of the Commonwealth";

(c) by striking out from subsection (2) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth".

Amendment of s. 5—Close associates

5. Section 5 of the principal Act is amended—

(a) by striking out from paragraph (f) "listed on a stock exchange" and substituting "quoted on a prescribed financial market";

- (b) by striking out from paragraph (g) "listed on a stock exchange" and substituting "quoted on a prescribed financial market";
- (c) by inserting after its present contents (as amended by paragraphs (a) and (b) and now to be designated as subsection (1)) the following subsection:

(2) In subsection (1)—

"prescribed financial market" means a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

Amendment of s. 29—Duty of auditor

6. Section 29 of the principal Act is amended by striking out from subsection (1) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth".

Amendment of s. 74—Power to appoint manager

7. Section 74 of the principal Act is amended by striking out from subsection (2)(a) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth".

**PART 3
AMENDMENT OF BROKEN HILL PROPRIETARY COMPANY'S
INDENTURE ACT 1937**

Insertion of s. 11

8. The following section is inserted after section 10 of the principal Act:

References to shares listed on a stock exchange

11. A reference in the Indenture (or in the 2000 Deed of Amendment) to shares listed (or being listed) on a stock exchange will be taken to include a reference to shares quoted (or being quoted) on a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

**PART 4
AMENDMENT OF BROKEN HILL PROPRIETARY COMPANY'S STEEL
WORKS INDENTURE ACT 1958**

Insertion of s. 13

9. The following section is inserted after section 12 of the principal Act:

References to shares listed on a stock exchange

13. A reference in the Indenture (or in the 2000 Deed of Amendment) to shares listed (or being listed) on a stock exchange will be taken to include a reference to shares quoted (or being quoted) on a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

**PART 5
AMENDMENT OF CASINO ACT 1997**

Amendment of s. 3—Interpretation

10. Section 3 of the principal Act is amended—

- (a) by striking out from subsection (1) the definition of "substantial shareholder" and substituting the following definition:

"substantial shareholder" in a body corporate means a person who has a substantial holding in the body corporate as defined in section 9 of the *Corporations Act 2001* of the Commonwealth;;

(b) by striking out from subsection (2) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth".

Amendment of s. 4—Close associates

11. Section 4 of the principal Act is amended—

(a) by striking out from paragraph (f) "listed on a stock exchange" and substituting "quoted on a prescribed financial market";

(b) by striking out from paragraph (g) "listed on a stock exchange" and substituting "quoted on a prescribed financial market";

(c) by inserting after its present contents (as amended by paragraphs (a) and (b) and now to be designated as subsection (1)) the following subsection:

(2) In subsection (1)—

"prescribed financial market" means a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

Amendment of s. 49—Licensee to supply authority with copy of audited accounts

12. Section 49 of the principal Act is amended by striking out from subsection (2) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth".

Amendment of s. 50—Duty of auditor

13. Section 50 of the principal Act is amended by striking out from subsection (1) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth".

Amendment of s. 63—Power to appoint manager

14. Section 63 of the principal Act is amended by striking out from subsection (2)(a) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth".

**PART 6
AMENDMENT OF CO-OPERATIVES ACT 1997**

Amendment of s. 9—Exclusion of operation of Corporations Act

15. Section 9 of the principal Act is amended—

(a) by striking out paragraphs (h), (i), (j), (k), and (l) of subsection (2) and substituting the following paragraphs:

(h) provisions relating to derivatives; or

(i) provisions relating to—

(i) financial services licensees (as defined in section 761A of the *Corporations Act*) whose licence covers dealing in, or providing advice about, securities; or

- (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; or
 - (j) provisions relating to the carrying on of financial services business (as defined in section 761A of the Corporations Act) relating to securities; or
 - (k) provisions relating to financial statements, and audits of financial statements, of—
 - (i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities; or
 - (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; or
 - (l) provisions relating to money and scrip of clients of—
 - (i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities; or
 - (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; or;
- (b) by striking out paragraph (d) of subsection (3) and substituting the following paragraph:
- (d) Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and services).

Amendment of s. 258—Application of Corporations Act to issues of debentures

16. Section 258 of the principal Act is amended by striking out from subsection (1) "Part 7.11" and substituting "Part 7.10".

PART 7

AMENDMENT OF CORPORATIONS (ANCILLARY PROVISIONS) ACT 2001

Amendment of s. 22—Power to amend certain statutory instruments

17. Section 22 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The Minister may make a recommendation under subsection (1) only if he or she considers that each amendment proposed to be made by the regulations is consequential on the enactment, or the proposed enactment, by the Parliament of the Commonwealth of—

- (a) the new ASIC Act; or

- (b) the new Corporations Act; or
- (c) an Act amending an Act referred to in paragraph (a) or (b).

Insertion of s. 22A

18. The following section is inserted after section 22 of the principal Act:

Power to make interim regulations construing certain references in Acts

22A. (1) In this section—

"affected reference" means—

- (a) a reference in an Act to a provision of the new ASIC Act or the new Corporations Act; or
- (b) a reference in an Act to a term, expression or concept defined or used in the new ASIC Act or the new Corporations Act,

that is, or is to be, affected in any way by the enactment or proposed enactment by the Parliament of the Commonwealth of an Act amending the new ASIC Act or the new Corporations Act.

(2) The Governor, on the recommendation of the Minister, may make regulations providing that an affected reference in any Act is to be construed as set out in the regulations.

(3) The Minister may make a recommendation under subsection (2) only if he or she considers that—

- (a) each substantive provision of the proposed regulations is necessary as a consequence of the enactment, or the proposed enactment, by the Parliament of the Commonwealth of an Act amending the new ASIC Act or the new Corporations Act; and
- (b) subject to subsection (4), the proposed regulations do not deal with any other matter.

(4) Regulations made under this section may deal with matters of a transitional nature (including matters of an application or savings nature) consequent on the enactment of the amending Act referred to in subsection (3)(a).

Note: Section 26(6) and (7) enable a provision of the regulations made under this section to have effect from a time that is earlier than the day on which they are made.

(5) Regulations made under this section have effect according to their terms.

(6) Regulations made under this section expire on the first anniversary of the day on which they are made unless they are revoked, or expressed to expire, on an earlier day.

Insertion of s. 25A

19. The following section is inserted after section 25 of the principal Act:

Validation—FSR Amendments

25A. (1) In this section—

"relevant period" means the period—

- (a) starting on the commencement of Part 1 of Schedule 1 to the *Financial Services Reform Act 2001* of the Commonwealth; and
- (b) ending immediately before the commencement of Part 7 of the *Statutes Amendment (Corporations—Financial Services Reform) Act 2002*.

(2) Anything done or omitted to be done by a person or body during the relevant period that would have been valid and lawful had the *Statutes Amendment (Corporations—Financial Services Reform) Act 2002* been in operation at the time at which the thing was done or omitted, must be taken to be, and to have always been, valid and lawful.

(3) Anything done or omitted to be done by a person or body during the relevant period that would have been valid and lawful had none of the provisions of the *Financial Services Reform Act 2001* of the Commonwealth been in operation at the time at which the thing was done or omitted, must be taken to be, and to have always been, valid and lawful.

Amendment of s. 26—Regulations

20. Section 26 of the principal Act is amended by inserting in subsection (6) "or, in the case of regulations made under section 22(2)(c) or 22A, the time when the amending Act (or the relevant provision of that Act) comes into operation or is taken to have come into operation" after "the relevant time".

PART 8**AMENDMENT OF LIQUOR LICENSING ACT 1997****Amendment of s. 7—Close associates**

21. Section 7 of the principal Act is amended—

- (a) by striking out from paragraph (g) "listed on a stock exchange" and substituting "quoted on a prescribed financial market";
- (b) by striking out from paragraph (h) "listed on a stock exchange" and substituting "quoted on a prescribed financial market";
- (c) by inserting after its present contents (as amended by paragraphs (a) and (b) and now to be designated as subsection (1)) the following subsection:

(2) In subsection (1)—

"prescribed financial market" means a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

PART 9
AMENDMENT OF MOTOR VEHICLES ACT 1959

Amendment of s. 71C—Interpretation

22. Section 71C of the principal Act is amended—

- (a) by inserting after the definition of "corresponding law" in subsection (1) the following definition:

"prescribed financial market" means a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth;;

- (b) by striking out from subsection (3)(f) "listed on a stock exchange" and substituting "quoted on a prescribed financial market";
- (c) by striking out from subsection (3)(g) "*Corporations Law*" and substituting "*Corporations Act 2001*" of the Commonwealth".

Amendment of s. 99—Interpretation

23. Section 99 of the principal Act is amended by striking out from subsection (1a) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth".

PART 10
AMENDMENT OF RACING (PROPRIETARY BUSINESS LICENSING) ACT 2000

Amendment of s. 3—Interpretation

24. Section 3 of the principal Act is amended—

- (a) by inserting after the definition of "executive officer" in subsection (1) the following definition:

"prescribed financial market" means a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth;;

- (b) by striking out from the definition of "substantial holding" in subsection (1) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth";
- (c) by striking out from subsection (2) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth".

Amendment of s. 5—Close associates

25. Section 5 of the principal Act is amended—

- (a) by striking out from paragraph (f) "listed on a stock exchange" and substituting "quoted on a prescribed financial market";
- (b) by striking out from paragraph (g) "listed on a stock exchange" and substituting "quoted on a prescribed financial market".

PART 11
AMENDMENT OF STAMP DUTIES ACT 1923

Amendment of s. 2—Interpretation

26. Section 2 of the principal Act is amended—

(a) by inserting after the definition of "assessment" in subsection (1) the following definition:

"Australian market licensee" means the holder of an Australian market licence under Chapter 7 of the *Corporations Act 2001* of the Commonwealth;;

(b) by inserting after the definition of "executed" in subsection (1) the following definition:

"financial product" means—

- (a) any stock, share or other similar security of a corporation (including a government, semi-government or municipal corporation), company or society; or
- (b) any debenture, debenture stock, bond, note or other similar security of a corporation (including a government, semi-government or municipal corporation), company or society (whether constituting a charge on the assets of the corporation, company or society or not); or
- (c) any interest in a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001* of the Commonwealth; or
- (d) any other stock or security that is bought or sold through the agency of a participant in a financial market within the meaning of Chapter 7 of the *Corporations Act 2001* of the Commonwealth operated by an Australian market licensee; or
- (e) a CUFS; or
- (f) any other stock, security or interest brought within the ambit of this definition by the regulations,

and includes a right in respect of a financial product but does not include any stock, security or interest excluded from the ambit of this definition by the regulations;;

(c) by striking out from subsection (1) the definition of "marketable security";

(d) by striking out the definition of "recognised stock exchange" in subsection (1) and substituting the following definition:

"recognised financial market" means—

- (a) a financial market operated by the Australian Stock Exchange Limited; or

- (b) a financial market of a stock exchange brought within the ambit of this definition by the regulations;;
- (e) by striking out from subsection (1) the definition of "right in respect of a marketable security" and substituting the following definition:

"right in respect of a financial product" means a right, whether actual, prospective or contingent, of any person to have issued to him or her a financial product, whether or not on payment of any money or other consideration for the financial product;.

Amendment of s. 31—Certain contracts to be chargeable as conveyance on sale

27. Section 31 of the principal Act is amended by striking out from subsection (1)(c) "marketable securities" and substituting "financial products".

Amendment of s. 67—Computation of duty where instruments are interrelated

28. Section 67 of the principal Act is amended by striking out from subsection (2)(c) "marketable security" and substituting "financial product".

Amendment of s. 71—Instruments chargeable as conveyances operating as voluntary dispositions *inter vivos*

29. Section 71 of the principal Act is amended—

- (a) by striking out from subsection (4) "marketable security" twice occurring and substituting, in each case, "financial product";
- (b) by striking out from subsection (5)(c) "marketable security" and substituting "financial product";
- (c) by striking out from subsection (11) "marketable security" twice occurring and substituting, in each case, "financial product".

Amendment of heading

30. The heading to Part 3A of the principal Act is amended by striking out "MARKETABLE SECURITIES" and substituting "FINANCIAL PRODUCTS."

Amendment of s. 90A—Interpretation

31. Section 90A of the principal Act is amended—

- (a) by striking out the definition of "broker" and substituting the following definitions:

"Australian CS facility licensee" means the holder of an Australian CS facility licence under Chapter 7 of the *Corporations Act 2001* of the Commonwealth;

"broker" means a person who is a broker under the operating rules of a registered market licensee;;

- (b) by inserting after the definition of "corresponding Act" the following definitions:

"CS facility" means a clearing and settlement facility within the meaning of Chapter 7 of the *Corporations Act 2001* of the Commonwealth operated by an Australian CS facility licensee;

"**CSF identifier**", in relation to a CSF transaction, means a distinctive code assigned to, or in relation to, the transaction by, or under the operating rules of, the relevant CS facility;

"**CSF participant**" means a person who is a participant in relation to a CS facility within the meaning of section 761A of the *Corporations Act 2001* of the Commonwealth;

"**CSF transaction**" means—

(a) a transaction that is conducted through a CS facility in order to allow parties to a transaction relating to financial products to meet obligations to each other that arise from entering into the transaction and that is of a kind prescribed by regulations made for the purposes of paragraph (b) of section 768A of the *Corporations Act 2001* of the Commonwealth; or

(b) a transaction of a kind brought within the ambit of this definition by the regulations;;

(c) by striking out the definition of "error transaction" and "exempt transaction" and substituting the following definitions:

"**error transaction**" means each of the following transfers:

(a) a CSF transaction made to reverse a CSF transaction that was made mistakenly not more than seven days earlier;

(b) the CSF transaction so reversed;

"**exempt transaction**" means a conveyance (including a sale or purchase) of a quoted financial product made after 30 June 2001;

"**financial market**" means a financial market within the meaning of Chapter 7 of the *Corporations Act 2001* of the Commonwealth;;

(d) by striking out the definition of "identification code" and substituting the following definition:

"**identification code**", in relation to a CSF participant, means a code that, for the purposes of the operating rules of the relevant CS facility, is the CSF participant's identification code, or one of the CSF participants's identification codes, as the case may be;;

(e) by striking out the definitions of "odd lot", "odd lot specialist", "proper SCH transfer" and "quoted marketable security" and substituting the following definitions:

"**operating rules**" of a CS facility, or of a financial market, has the same meaning as is assigned to the term by section 761A of the *Corporations Act 2001* of the Commonwealth;

"proper CSF transaction" means—

- (a) a CSF transaction involving a financial product effected in accordance with the operating rules of the relevant CS facility; or
- (b) a CSF transaction involving a financial product that substantially complies with the operating rules of the relevant CS facility;

"quoted financial product" means a financial product that is quoted on a recognised financial market (see section 2);

"registered CS facility licensee" means an Australian CS facility licensee registered by the Commissioner under Division 4;

"registered market licensee" means an Australian market licensee registered by the Commissioner under Division 4;;

- (f) by striking out the definitions of **"relevant SCH participant"**, **"SCH"**, **"SCH business rules"**, **"SCH participant"** and **"SCH-regulated transfer"** and substituting the following definition:

"relevant CSF participant", in relation to a CSF transaction, means the CSF participant who is, according to Division 3, liable to pay duty chargeable in respect of the transaction, or, if no duty is chargeable, the CSF participant who would be so liable if duty were chargeable;;

- (g) by striking out the definition of **"transfer document"**, **"transfer identifier"** and **"transfer value"** and substituting the following definitions:

"transfer document", in relation to a CSF transaction, means a document that is used to effect the transfer of a financial product from one party to the transaction to the other party;

"transfer value", in relation to a financial product involved in a CSF transaction, means—

- (a) in a case involving the sale of the financial product—the total consideration for the sale or the unencumbered market value of the financial product as at the date of sale, whichever is the greater; or
- (b) in any other case—the unencumbered market value of the financial product at the date of the transaction.

Amendment of s. 90B—Application of Division

32. Section 90B of the principal Act is amended—

- (a) by striking out **"marketable security"** wherever occurring and substituting, in each case **"financial product"**;
- (b) by striking out **"security"** wherever occurring and substituting, in each case, **"financial product"**;

- (c) by striking out from subsection (1)(c) "stock exchange" and substituting "a financial market of a registered market licensee".
- (d) by striking out from subsection (1)(d) "securities" and substituting "financial products".

Amendment of s. 90C—Records of sales and purchases of financial products

33. Section 90C of the principal Act is amended—

- (a) by striking out "marketable security" wherever occurring and substituting, in each case, "financial product";
- (b) by striking out paragraph (c) of subsection (3) and substituting the following paragraph:
 - (c) in respect of any sale or purchase, where the sale or, as the case may be, the purchase is made in circumstances prescribed by the regulations for the purposes of this subsection.

Amendment of s. 90E—Endorsement of instrument of transfer as to payment of duty

34. Section 90E of the principal Act is amended—

- (a) by striking out from subsection (1) "not an SCH-regulated transfer" and substituting "not a CSF transaction";
- (b) by striking out subsection (3) and substituting the following subsection:

(3) If an instrument of transfer of a financial product has affixed to it, in accordance with this section or a corresponding Act, the respective stamps of the dealers by whom the sale and purchase of that financial product has been effected, the instrument will be taken to be duty stamped with *ad valorem* duty.

Amendment of s. 90F—Power of dealer to recover paid duty

35. Section 90F of the principal Act is amended by striking out "marketable securities" and substituting "a financial product".

Amendment of s. 90G—Transactions in S.A. financial products on U.K. stock exchange

36. Section 90G of the principal Act is amended—

- (a) by striking out "marketable security" wherever occurring and substituting, in each case, "financial product";
- (b) by striking out "marketable securities" wherever occurring and substituting, in each case, "financial products";
- (c) by striking out from subsection (6)(c) "those securities" and substituting "those financial products";
- (d) by striking out from subsection (6)(d)(ii) "those securities" and substituting "those financial products".

Substitution of Divisions 3 and 4 of Part 3A

37. Divisions 3 and 4 of Part 3A of the principal Act (and the heading to those Divisions) are repealed and the following Divisions are substituted:

**DIVISION 3—DUTY ON CERTAIN CLEARING AND SETTLEMENT
TRANSACTIONS****Application of Division**

90H. This Division applies to a CSF transaction relating to a financial product if (and only if)—

- (a) the transaction is a proper CSF transaction conducted through a CS facility operated by a registered CS facility licensee; and
- (b) the transaction is made otherwise than on a sale or purchase to which Division 2 applies; and
- (c) the financial product is—
 - (i) a share, or a right or CUFS in respect of a share, of a relevant company; or
 - (ii) a unit of a unit trust scheme, or a CUFS in respect of a unit of a unit trust scheme, the principal register of which is situated in this State; or
 - (iii) a unit of a unit trust scheme, or a CUFS in respect of a unit of a unit trust scheme, in relation to which no register exists in Australia and—
 - (A) having as the manager of the scheme a relevant company or a natural person principally resident in this State; or
 - (B) not having a manager but with a trustee that is a relevant company or a natural person principally resident in this State; or
 - (iv) a financial product of a class prescribed for the purposes of this section.

Requirement to make record of CSF transactions

90I. (1) If a CSF transaction relating to a financial product to which this Division applies occurs, the CSF participant to the transaction or, if there is more than one of them, the CSF participant who is the transferee or controls the transferee's holding in relation to the transaction, must immediately make a record that complies with this section in a form determined or approved by the Commissioner.

(2) The record must show—

- (a) the date of the transaction; and
- (b) a CSF identifier for the transaction; and
- (c) the name of the transferee in relation to the transaction and, unless another CSF participant controls the transferor in relation to the transaction, the name of the transferor; and

- (d) the identification code of the CSF participant making the record and the identification code of the other CSF participant party to the transaction (if any); and
- (e) the quantity and full description of the financial product involved in the transaction; and
- (f) the transfer value of the financial product or, if more than one of them, of each financial product involved in the transaction and the total transfer value of all; and
- (g) the amount of duty chargeable under this Act in respect of the transaction; and
- (h) if *ad valorem* duty is not chargeable in respect of the transaction, a statement of the grounds on which *ad valorem* duty is not chargeable; and
- (i) in the case of an error transaction to reverse an earlier transaction that was made mistakenly, the CSF identifier of that earlier transaction; and
- (j) any other particulars prescribed for the purposes of this section.

(3) A CSF participant may, in any record made in accordance with this section, incorporate additional information for the participant's own use.

(4) A CSF participant who fails to make a record as required by this section, or fails to keep the record, is guilty of an offence:

Maximum penalty: \$10 000.

Transfer document or record to be treated as instruments of conveyance

90J. (1) For the purposes of this Act—

- (a) a transfer document for a CSF transaction of a financial product to which this Division applies; or
- (b) if there is no such document for a CSF transaction of a financial product to which this Division applies, the record made under section 90I in relation to the transaction,

will be taken to be an instrument of conveyance or conveyance on sale (as the case may require) of the financial product, subject to this Act, chargeable with duty accordingly.

(2) The CSF participant to a CSF transaction of a financial product to which this Division applies or, if there is more than one of them, the CSF participant who is the transferee or controls the transferee's holding in relation to the transaction, is liable to pay the duty chargeable under subsection (1).

(3) If the CSF participant liable to pay duty in respect of a CSF transaction is not the transferee in relation to the transaction, the participant may recover from the transferee the amount of duty paid as a debt by action in a court of competent jurisdiction and may, in reimbursement of that amount, retain any money in the participant's hands belonging to the transferee.

Particulars to be included in a transfer document

90K. The relevant CSF participant must include in any transfer document for a CSF transaction to which this Division applies the particulars required by the Commissioner under the conditions of registration of the registered CS facility licensee.

Maximum penalty: \$2 000.

Relevant CSF participant's identification code equivalent to stamping

90L. When the relevant CSF participant's identification code is included in a transfer document for a CSF transaction to which this Division applies, the transfer document is to be taken to be duly stamped but without affecting the relevant CSF participant's liability to pay any duty chargeable under this Act.

Returns to be lodged and duty paid

90M. (1) The relevant CSF participant must, not later than seven days after the end of the month in which the participant has been involved in a CSF transaction to which this Division applies—

- (a) make a report to the registered CS facility licensee through which the transaction was conducted; and
- (b) if duty is chargeable in respect of the transaction, pay the duty to that registered CS facility licensee.

(2) The provisions of the *Taxation Administration Act 1996* apply in relation to the requirement for the making of a report, or the payment of duty, to a registered CS facility licensee as if the requirement were for the making of the report, or the payment of duty, to the Commissioner.

Monthly returns by registered CS facility licensees

90N. A registered CS facility licensee must, on or before the fifteenth day of each month—

- (a) lodge with the Commissioner a return in the form and containing the particulars required by the Commissioner under the conditions of registration of the registered CS facility licensee; and
- (b) pay to the Commissioner any duty paid to the registered CS facility licensee under this Act in respect of a CSF transaction conducted in the preceding month.

Particulars reported by participants to be kept by registered CS facility licensees

90O. The particulars reported to a registered CS facility licensee under this Division must be kept by the registered CS facility licensee in a legible form, or so as to be readily convertible in to such a form, in accordance with any directions of the Commissioner, for a period of not less than five years from the date on which the report is made.

Refund for error transaction

90P. The Commissioner must, on being satisfied that *ad valorem* duty has been paid to the Commissioner in respect of an error transaction to which this Division applies, refund the amount of the duty so paid.

**DIVISION 4—REGISTRATION OF AUSTRALIAN MARKET
LICENSEES AND CS FACILITY LICENSEES**

Registration process

90Q. (1) The Commissioner may register an Australian market licensee or an Australian CS facility licensee for the purposes of this Part.

(2) An application for registration must be made to the Commissioner in a form approved by the Commissioner.

(3) An application must be accompanied by—

- (a) such information as the Commissioner requires to determine the application; and
- (b) the fee, if any, prescribed by the regulations.

(4) The Commissioner may grant or refuse an application for registration.

(5) A registration will be subject to conditions specified by the Commissioner at the time of registration or by subsequent written notice given to the Australian market licensee or the Australian CS facility licensee.

(6) The Commissioner may suspend or cancel the registration of an Australian market licensee or Australian CS facility licensee.

(7) However, the Commissioner may only take action under subsection (6)—

- (a) after having given to a person involved in the administration of the Australian market licensee or Australian CS facility licensee (as the case may be) determined by the Commissioner to be appropriate in the circumstances—
 - (i) written reasons of the Commissioner's intention to suspend or cancel the registration; and
 - (ii) an opportunity to make submissions; and
- (b) after having considered any submissions made by that person.

(8) Subsection (7) does not apply to the cancellation of a registration at the request of the relevant entity.

Disclosure of information

90R. Nothing in the *Taxation Administration Act 1996* prevents the disclosure to a registered market licensee or a registered CS facility licensee of information acquired in, or in connection with, the administration of this Part.

Amendment of s. 90T—Application of Division

38. Section 90T of the principal Act is amended—

- (a) by striking out "marketable security" wherever occurring and substituting, in each case, "financial product";

- (b) by striking out from paragraph (c) "not an SCH-regulated transfer" and substituting "not a CSF transaction".

Amendment of s. 90U—Financial products liable to duty

39. Section 90U of the principal Act is amended—

- (a) by striking out "marketable security" twice occurring and substituting, in each case, "financial product";
- (b) by striking out "security" and substituting "financial product".

Amendment of s. 90V—Proclaimed countries

40. Section 90V of the principal Act is amended by striking out from subsection (1) "marketable security" and substituting "financial product".

Amendment of s. 91—Interpretation

41. Section 91 of the principal Act is amended by striking out from subsection (1) the definition of "private company" and substituting the following definition:

"private company" means—

- (a) a company that is limited by shares but whose shares are not quoted on a recognised financial market; or
- (b) a company that is not limited by shares,

but does not include a company excluded from the ambit of this definition by the regulations;.

Amendment of s. 97—Calculation of duty

42. Section 97 of the principal Act is amended by striking out "marketable securities" wherever occurring and substituting, in each case, "financial products".

Amendment of s. 101—Exempt transactions

43. Section 101 of the principal Act is amended by striking out from subsection (2)(a) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth".

Amendment of s. 106A—Transfer of financial products not to be registered unless duly stamped

44. Section 106A of the principal Act is amended—

- (a) by striking out from subsection (1) "marketable security" and substituting "financial product";
- (b) by striking out from subsection (1) "security" and substituting "financial product";
- (c) by striking out from subsection (1a) "marketable securities" and substituting "financial products";
- (d) by striking out from subsection (2) "marketable security (other than an SCH-regulated transfer)" and substituting "financial product (other than a CSF transaction within the meaning of Part 3A)";

- (e) by striking out from subsection (2) "security" and substituting "financial product";
- (f) by striking out from subsection (2)(b) "deemed" and substituting "taken";
- (g) by striking out from subsection (3) "marketable security" and substituting "financial product";
- (h) by striking out from subsection (5) "marketable security" and substituting "financial product";
- (i) by striking out from subsection (5) "security" and substituting "financial product".

Amendment of Sched. 2

45. Schedule 2 of the principal Act is amended—

- (a) by striking out paragraph (a) under the heading "CONVEYANCE or TRANSFER on sale of any property (not otherwise charged), including contract or agreement for sale—" and substituting the following paragraph:

- (a) In the case of the sale of any financial product (where no return lodged with the Commissioner under section 90D or furnished under section 90G relates to the sale)—

- (i) if the financial product is quoted on a recognised financial market—for every \$100 and any fractional part of \$100 of the vale of the financial product 0.30

- (ii) if the financial product is not quoted on a recognised financial market—for every \$100 and any fractional part of \$100 of the value of the financial product 0.60;

- (b) by striking out "stock or marketable security" from paragraph (b) under the heading "CONVEYANCE or TRANSFER on sale of any property (not otherwise charged), including contract or agreement for sale—" and substituting "financial product";
- (c) by striking out "security" from Exemption 2 under the heading "CONVEYANCE or TRANSFER on sale of any property (not otherwise charged), including contract or agreement for sale—" and substituting "financial product";
- (d) by striking out "marketable security" from Exemption 3 under the heading "CONVEYANCE or TRANSFER on sale of any property (not otherwise charged), including contract or agreement for sale—" and substituting "financial product";
- (e) by striking out paragraphs (a) and (aa) under the heading "CONVEYANCE operating as a voluntary disposition *inter vivos* of any property (including a statement under Part 4)—" and substituting the following paragraphs:

- (a) In the case of a CSF transaction relating to a financial product to which Division 3 of Part 3A applies—For every \$100 and any fractional part of \$100 of the value of the financial product 0.30

**Statutes Amendment (Corporations—Financial
Services Reform) Act 2002**

No. 34 of 2002

- (aa) In the case of the disposition of any financial product (excluding the transfer of a financial product referred to in paragraph (a)) where no return furnished under section 90G relates to the sale—
- (i) if the financial product is quoted on a recognised financial market—for every \$100 and any fractional part of \$100 of the value of the financial product 0.30
 - (ii) if the financial product is not quoted on a recognised financial market—for every \$100 and any fractional part of \$100 of the value of the financial product 0.60;
- (f) by striking out "marketable security" from Exemption 3 under the heading "CONVEYANCE operating as a voluntary disposition *inter vivos* of any property (including a statement under Part 4)—" and substituting "financial product";
- (g) by striking out "marketable securities" under the heading "RETURN lodged with the Commissioner by a dealer pursuant to section 90D—and substituting "financial products";
- (h) by striking out Exemptions 1 and 2 under the heading "RETURN lodged with the Commissioner by a dealer pursuant to section 90D—" and substituting the following Exemptions:
- 1. Any sale of financial products to which the return relates, which sale was made by a broker on his or her own account or behalf, where the financial products concerned were purchased by him or her on, or within 10 clear days (not including any day on which the market of which he or she is a member is closed) of, the day of the sale.
 - 2. Any purchase of financial products to which the return relates, which purchase was made by a broker on his or her own account or behalf, where the financial products concerned were sold by him or her on, or within 10 clear days (not including any day on which the market of which he or she is a member is closed) of, the day of the purchase.;
- (i) by striking out "marketable security" under the heading "RETURN under section 90G—" and substituting "financial product";
- (j) by striking out from General Exemption 19 "marketable security" twice occurring and substituting, in each case, "financial product";
- (k) by striking out from General Exemption 20 "marketable security" and substituting "financial product";
- (l) by striking out from General Exemption 21 "marketable security" and substituting "financial product";
- (m) by striking out from General Exemption 22 "marketable securities" and substituting "financial products";
- (n) by striking out General Exemption 24 and substituting the following item:
- 24. A conveyance or transfer of a financial product to or from a nominee company established by a dealer or a CSF participant solely for the purpose of facilitating settlement of transactions relating to financial products entered into in the ordinary course of business.;

- (o) by striking out from General Exemption 24AA "marketable security" and substituting "financial product";
- (p) by striking out from General Exemption 24A "marketable security" and substituting "financial product";
- (q) by striking out from General Exemption 24B "marketable security" and substituting "financial product";
- (r) by striking out from General Exemption 24C "An SCH-regulated transfer of a marketable security" and substituting "A proper CSF transaction of a financial product";
- (s) by striking out from General Exemption 24D "marketable security" and substituting "financial product".

Transitional provisions

46. (1) The Australian Stock Exchange Limited will, on the commencement of this section, be taken to be a registered market licensee under Part 3A of the principal Act without the need for an application under Division 4 of that Part (as enacted by this Act).

(2) The body registered by the Commissioner of State Taxation under Division 4 of Part 3A of the principal Act immediately before the commencement of this section will, on that commencement, be taken to be a registered CS facility licensee under Part 3A of the principal Act without the need for an application under Division 4 of that Part (as enacted by this Act).