

Stamps (Miscellaneous Amendments) Bill

No.

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By Authority Jean Gordon Government Printer Melbourne

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LEGISLATIVE ASSEMBLY

Read 1° 10 October 1989

(Brought in by Mr Jolly and Mrs Setches)

A BILL

to amend the *Stamps Act 1958*, section 10 of the *Business Franchise (Tobacco) Act 1974* and section 244 of the *Accident Compensation Act 1985* and for other purposes.

Stamps (Miscellaneous Amendments) Act 1989

The Parliament of Victoria enacts as follows:

Purpose

- 5 1. The purpose of this Act is to levy stamp duty on the transfer of businesses, to make certain other amendments to the *Stamps Act 1958* and to make certain amendments to the *Business Franchise (Tobacco) Act 1974* and the *Accident Compensation Act 1985*.

Commencement

2. (1) Section 8 is deemed to have come into operation on 1 April 1989.
- 10 (2) Section 24 (1) is deemed to have come into operation on 31 August 1985.
- (3) Sections 20 and 24 (3) comes into operation on 1 December 1989.
- 15 (4) Section 26 is deemed to have come into operation on 1 October 1989.

(5) The remaining provisions of this Act come into operation on the day on which this Act receives the Royal Assent.

Principal Act

No. 6375.
Reprinted to No.
29/1988 and
subsequently
amended by Nos
65/1988, 12/
1989, 18/1989,
44/1989 and 57/
1989.

3. In this Act, the *Stamps Act 1958* is called the Principal Act.

Facts affecting duty

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4. (1) In section 24 (1) of the Principal Act, after “set forth in the instrument” insert “or otherwise disclosed in writing to the Comptroller of Stamps”.

(2) After section 24 (2) of the Principal Act insert—

“(2AA) If an instrument does not disclose a fact or circumstance necessary to enable the Comptroller of Stamps to ascertain the amount of duty (if any) payable in respect of the instrument, the person liable to pay any duty on the instrument must ensure that a statement disclosing that fact or circumstance is given to the Comptroller when the instrument is lodged for stamping.

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Penalty: 10 penalty units.”.

Valuation of consideration

5. For section 25 of the Principal Act substitute—

Valuation of money in foreign currency

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“25. If, in an instrument chargeable with *ad valorem* duty, the consideration is expressed in a currency other than Australian currency, the duty shall be calculated on the value of the money in Australian currency according to the applicable rate of exchange—

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- (a) if the instrument is a conveyance or transfer on sale of real or personal property, on the date of the sale; and
- (b) in any other case, on the date of the instrument.”.

Valuation of marketable securities etc.

6. (1) In section 26 of the Principal Act, for sub-section (1) substitute—

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“(1) If, in an instrument chargeable with *ad valorem* duty, the consideration consists of marketable securities or rights in respect of shares, the duty shall be calculated on the unencumbered value of the marketable securities or rights—

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- (a) if the instrument is a conveyance or transfer on sale of real or personal property, on the date of the sale; and
- (b) in any other case, on the date of the instrument.”

5 (2) In section 26 (4) of the Principal Act, for “on the day of the date of the instrument” substitute “, if the instrument is a conveyance or transfer on sale of real or personal property, on the date of the sale and, in any other case, on the date of the instrument,”.

10 (3) In section 26 (5) of the Principal Act, for “on the day of the date of the instrument” substitute “, if the instrument is a conveyance or transfer on sale of real or personal property, on the date of the sale and, in any other case, on the date of the instrument,”.

Evidence

7. In section 34 (1) of the Principal Act—

- 15 (a) for “such evidence” substitute “such other information and evidence”;
- (b) for “are fully and truly set forth in the instrument” substitute “have been disclosed”;
- (c) after “abstract” (where secondly occurring) insert “, information”.

20 UK stockmarket transactions

8. Section 59A of the Principal Act is amended as follows:

- (a) In sub-section (1), for the definition of “Jobber” substitute—
25 “ **“Market maker”** means a person, firm or corporation who or which is, and is acting in the capacity of, a market maker according to the rules and practices of The Stock Exchange.”;
- (b) In sub-section (1), for the definition of “The Stock Exchange” substitute—
30 “ **“The Stock Exchange”** means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited.”;
- (c) In sub-section (7) (d) and (e), for “jobber” (wherever occurring) substitute “market maker”;
- (d) In sub-section (7), for paragraph (f) substitute—
35 “(f) is made or effected by a market maker to another market maker.”;
- (e) In sub-section (8) (a) and (b), for “jobber” (wherever occurring) substitute “market maker”.

Duty on partitions and divisions

9. (1) In section 56B of the Principal Act, for sub-section (1) substitute—

“(1) Where a transfer gives effect to a partition or division of any marketable securities or rights in respect of shares, the value on which the stamp duty is assessed is the value of the marketable securities or rights transferred by the transfer less the value of the beneficial interest held by the transferee in those first-mentioned securities or rights before the transfer.”. 5

(2) In section 72 of the Principal Act, for sub-section (1) substitute— 10

“(1) Where a conveyance gives effect to a partition or division of any real property, stamp duty shall be assessed on the value of the real property transferred by the conveyance less the value of the beneficial interest held by the transferee in the first-mentioned real property before the conveyance.”. 15

New section 67A inserted

10. (1) After section 67 of the Principal Act insert—

Certain conveyances to be charged with duty in respect of two or more transactions

“67A. (1) Where— 20

(a) a person (“the vendor”) agrees to transfer any real property to another person (“the first purchaser”) (whether or not the agreement provides for that other person to nominate another person as purchaser); and

(b) the conveyance of the real property executed by the vendor conveys the whole or any part of the real property not to the first purchaser but to another person (“the transferee”) who has acquired, whether directly or indirectly, the rights and interest of the first purchaser in the real property— 25 30

the conveyance shall not be charged with duty in respect of the transfer from the vendor to the transferee but shall be separately and distinctly charged with duty in respect of—

(c) the value of the real property in the agreement between the vendor and the first purchaser; and 35

(d) the value of the real property in the transaction or agreement as a result of which the transferee acquires the first purchaser’s rights and interest in the real property; and

(e) if the transferee did not acquire those rights and interest directly from the first purchaser, the value of the real property in each other transaction or agreement as a result of which the rights and interest of the first purchaser in the real property were conveyed. 40

(2) For the purposes of sub-section (1), the value of the real property is—

(a) if there was a consideration for the agreement or transaction in respect of which duty is chargeable—

(i) that consideration; or

(ii) the amount for which the real property might reasonably have been sold if it had been sold, free from encumbrances, in the open market on the date of the agreement or transaction in respect of which duty is chargeable—

whichever is the greater; and

(b) in any other case, the amount for which the real property might reasonably have been sold, free from encumbrances, in the open market on the date of the agreement or transaction in respect of which duty is chargeable.”.

(2) The Principal Act as amended by this section applies to a transfer of real property executed by the vendor on or after 1 December 1989.

New section 68A inserted

11. (1) After section 68 of the Principal Act insert—

Business acquired with real property

“68A. (1) Where, at the time of, or within 12 months before, the acquisition of any real property by a person, a business within the meaning of section 73 carried on on that property is acquired by that person or an associate of that person, the acquisition of the real property and the acquisition of the business are deemed to form substantially one transaction.

(2) Where, within 12 months before the acquisition of a business within the meaning of section 73 by a person, the real property on which the business is carried on was acquired by that person or an associate of that person, the acquisition of the business and the acquisition of the real property are deemed to form substantially one transaction.

(3) Where sub-section (1) or (2) applies, an instrument of conveyance of the real property or a statement required to be lodged under subdivision (6A) in respect of the acquisition of the business, whichever is last lodged for stamping, is chargeable with *ad valorem* duty calculated on the sum of the amounts by reference to which *ad valorem* duty would, but for this section, have been calculated on—

(a) the instrument of conveyance of the real property; and

- (b) the statement under subdivision (6A) in respect of the acquisition of the business—
 less any amount or amounts paid as *ad valorem* duty in respect of the instrument or statement or any other instrument or statement evidencing the acquisition of the real property or the acquisition of the business. 5
- (4) Duty may be apportioned between the instruments and statements as determined by the Comptroller of Stamps.
- (5) This section does not apply where— 10
- (a) a person acquires the real property and the business if the Comptroller of Stamps is satisfied that— 10
- (i) the acquisition of the real property and the acquisition of the business arise from two or more agreements made independently of each other; and
- (ii) the person did not enter into any of the agreements conditionally on the making of any other of those agreements; or 15
- (b) one person acquires the real property and an associate of that person acquires the business if the Comptroller of Stamps is satisfied that— 20
- (i) there is not an arrangement or understanding between the person and the associate relating to the acquisition of the real property or the business; and
- (ii) the acquisition of the real property and the acquisition of the business arise from two or more agreements made independently of each other; and 25
- (iii) neither the person nor the associate entered into any of the agreements conditionally on the making of any other of those agreements. 30
- (6) For the purposes of sub-section (5), the Comptroller of Stamps shall be deemed to be satisfied that the circumstances referred to in that sub-section apply in respect of an instrument or statement if the transferee under the instrument or the person acquiring the business to which the statement relates gives to the Comptroller a statutory declaration declaring that those circumstances apply. 35
- (7) A person who is—
- (a) the transferee under an instrument to which sub-section (1) applies; or 40
- (b) a person acquiring a business to which a statement to which sub-section (2) applies—
- must cause to be disclosed in writing to the Comptroller of Stamps, at or before the time at which the instrument or statement is submitted to the Comptroller for Stamps, details 45

known to the person of the total consideration given or to be given and the whole of the real property or business included or to be included in the transaction or series of transactions in connection with which the instrument is executed or statement given.

Penalty: 50 penalty units.

(8) In this section—

“Associate” means—

(a) in relation to a corporation—

- (i) a corporation that, by virtue of section 7 (5) of the *Companies (Victoria) Code*, is deemed to be related to the first-mentioned corporation;
- (ii) a director or secretary of the corporation or related corporation;
- (iii) a person entitled to any share in the corporation or related corporation;
- (iv) a corporation in which the first-mentioned corporation or a person referred to in sub-paragraph (ii) or (iii) is entitled to any share; and

(b) in relation to a natural person—

- (i) a child, or remoter lineal descendant, of the person or of the spouse or de facto spouse of the person;
- (ii) a parent, or remoter lineal ancestor, of the person or of the spouse or de facto spouse of the person;
- (iii) a brother or a sister, or a child of a brother or a sister, or an uncle or an aunt, of the person or of the spouse of the person;
- (iv) the spouse or de facto spouse of the person;
- (v) a spouse or de facto spouse of any person referred to in sub-paragraph (i), (ii) or (iii).

(9) For the purposes of this section—

- (a) a reference to the acquisition of real property or a business by a person does not include a reference to an acquisition from a parent or child or remoter lineal ancestor or descendant of the person;
- (b) the acquisition of real property shall be deemed to occur on the date of the instrument of conveyance of the property;
- (c) The acquisition of a business shall be deemed to occur when 50 per centum of the consideration for the acquisition has been paid or otherwise satisfied.”.

(2) The Principal Act as amended by this section applies in relation to an agreement or arrangement for the acquisition of a business entered into on or after 1 November 1989.

New subdivision (6A) inserted

12. (1) After subdivision (6) of Part II of the Principal Act insert— 5

“(6A)—Transfer of Business”

Definitions

“73. (1) In this subdivision, a reference to a business includes a reference to—

(a) any business— 10

(i) carried on in the course of or as incidental to or in connection with the carrying on of another business; and

(ii) whether carried on by a person on that person’s own behalf or in partnership with any other person; and 15

(b) any interest or part of an interest held by a partner in a business; and

(c) any interest or additional interest acquired as a partner in a business. 20

(2) In this subdivision, a reference to the value of a business includes a reference to the value of—

(a) leases, licences or other rights used in connection with the business and acquired or to be acquired with the business; and 25

(b) intellectual property rights and any interest in such rights owned by the proprietor of the business or an associate of the proprietor and used in connection with the carrying on of the business; and

(c) chattels (other than stock in trade, livestock unshorn wool and growing crops) used predominantly for the purposes of the business and acquired or to be acquired with the business. 30

(3) For the purposes of this subdivision, the acquisition of a business shall be deemed to occur when 50 per centum of the consideration for the acquisition has been paid or otherwise satisfied.”. 35

Statement of acquisition of business

“74. (1) A person who acquires a business carried on wholly or partly in Victoria must, within 3 months after the acquisition— 40

(a) give to the Comptroller of Stamps a statement in the prescribed form as to the acquisition of the business; and

(b) pay the stamp duty chargeable on the statement.

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(2) A statement under sub-section (1) is chargeable with duty as if—

(a) the business were real property; and

(b) the acquisition of the business were, to the extent to which the business is carried on in Victoria, the acquisition of real property in Victoria; and

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(c) the statement were a conveyance; and

(d) the date on which the business is acquired were the date on which the conveyance was made; and

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(e) the person acquiring the business were a transferee under a conveyance; and

(f) the value of the business, less the value of the business carried on outside Victoria, were the value of real property in Victoria.

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(3) If a person fails to comply with sub-section (1), an amount equal to the amount of stamp duty payable, together with interest at the rate of 20 per centum per annum on that amount from the end of the period within which the duty was payable until the date of payment or \$25, whichever is the greater, is a debt due and payable by that person to the Crown and may be recovered in accordance with this Act.

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(4) The Comptroller of Stamps may mitigate or remit a debt payable under sub-section (3).

(5) For the purposes of this section, a reference to the acquisition of a business by a person does not include a reference to an acquisition from a parent or child or remoter lineal ancestor or descendant of the person.”.

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(2) The Principal Act as amended by this section applies in relation to an agreement or arrangement for the sale or transfer of a business entered into on or after 1 November 1989.

35 Land-owning unit trusts

13. (1) In section 75i (5) of the Principal Act, for paragraph (b) substitute—

“(b) the trustee of any trust, if the corporation or a subsidiary corporation of the corporation as defined in paragraph (a)—

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(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 that trust—

and, at the time of the relevant acquisition, the corporation or subsidiary is entitled to more than 50 per centum of the value of the property held by the trustee as trustee of the trust (being the value determined on the basis of a distribution of the property at that time); or” 5

(2) In section 75N (1) of the Principal Act, at the end of paragraph (b) in the definition of “Private unit trust scheme” insert in paragraph (b)— 10

“but does not include a unit trust scheme if the deed relating to the scheme has been so approved and the Comptroller of Stamps is satisfied that, within 12 months after the date of approval of the deed, units will have been issued to 50 or more persons and more than 20 persons are likely to be beneficially entitled to 75 per centum of the issued units under the scheme.”. 15

(3) In section 75N (2) of the Principal Act—

(a) in paragraph (b), after “(b)” insert “subject to paragraph (c),”; and 20

(b) after paragraph (b) insert—
“; and

(c) where a trustee of a unit trust scheme, not being a private unit trust scheme, is entitled to units (whether directly or through any one or more intervening trusts), each of the unit holders shall be deemed to be beneficially entitled to units under the unit trust scheme but the unit trustee shall not be deemed to be so entitled by reason only of being the trustee.”. 25

(4) After section 75N (3) (c) of the Principal Act insert— 30

“(ca) the private unit trust scheme were entitled to the property held by it; and”.

(5) In section 75N of the Principal Act—

(a) in sub-section (4) omit “beneficially”;

(b) in sub-section (5)— 35

(i) omit “beneficially”; and

(ii) for “75 (5)” substitute “75 (6)”; and

(c) in sub-section (6), for “75 (5)” substitute “75 (6)”.

Refund of part of duty on certain leases

14. In section 80 of the Principal Act, for “three months” substitute “two years”. 40

Friendly societies

15. The Principal Act is amended as follows:

- (a) In section 98 (3) (d) omit “registered” (wherever occurring);
- 5 (b) In Exemption (4) in Heading VI in the Third Schedule omit “registered”;
- (c) In Exemption (3) in Heading VIII in the Third Schedule omit “registered”.

Bookmaker’s statements

16. The Principal Act is amended as follows:

- 10 (a) In section 120 (1) for “seven days” substitute “5 days”;
- (b) In section 120 (3) for “seven days” substitute “5 days”;
- (c) In section 121 (1) for “seven days” substitute “5 days”.

Rental business

17. After section 131AB of the Principal Act, for sub-section (4) substitute—

“(4) The Comptroller of Stamps may cancel the registration of a person under this subdivision if satisfied that—

- 20 (a) the amount received by the person in respect of rental business carried on in any month in the financial year preceding the financial year in which the question arises did not exceed \$6500; or
- (b) the person has ceased to carry on rental business in Victoria.”.

Registered used car dealers

25 18. In section 137B (4) of the Principal Act, for paragraph (c) substitute—

“(c) a person fails—

- 30 (i) to give a notice of acquisition of a motor vehicle or commercial trailer that the person is required to give; or
- (ii) fails to pay duty payable by the person on a notice of acquisition of a motor vehicle or commercial trailer— within 14 days after the person acquired possession of the motor vehicle or commercial trailer;”.

35 **Registers**

19. (1) In section 137AA of the Principal Act, sub-section (3) is repealed.

(2) In section 140B (1) of the Principal Act—

- (a) before paragraph (a) insert—

- “(aa) of registered persons for the purposes of subdivision (11) of Division 3 of Part II;”;
- (b) after paragraph (c) insert—
- “; and
- (d) of registered used car dealers under subdivision (16) of Division 3 of Part II.”. 5

Demonstrator motor vehicles

20. (1) In section 137A (1) of the Principal Act, after the definition of “Commercial trailer” insert—

- “**“Demonstrator motor vehicle”** means a motor vehicle— 10
- (a) that has never been sold or has not been sold to a person other than a licensed motor car trader authorised by the manufacturer of the motor vehicle to deal in motor vehicles manufactured by that manufacturer; and 15
- (b) is not and is not to be used except by or on behalf of the motor car trader for the purpose of demonstrating it on the road to promote the sale by the trader of a motor vehicle of the same class manufactured by the same manufacturer, or for a purpose solely incidental to that purpose.”. 20

(2) In section 137AB (1) of the Principal Act, for paragraph (b) substitute—

- “(b) pay to the Comptroller of Stamps as stamp duty on that statement an amount equal to the sum of duty that, but for paragraph 1B in the exemptions under Heading XXI in the Third Schedule or any failure to give a notice of acquisition, would have been payable under that Heading on the notices of acquisition of the motor vehicles and commercial trailers disposed of by the dealer during the preceding calendar month.”. 25 30

(3) In section 137AG (1) of the Principal Act, after “purposes of sale” insert “or use as a demonstrator motor vehicle”.

(4) In Heading XXI in the Third Schedule to the Principal Act—

- (a) in paragraph (2), after “(2)”, insert “Subject to paragraph (3),”; 35
- (b) after paragraph (2) insert—
- “(3) On an application for registration of a passenger car—
- (a) the market value of which exceeds \$45 000; and 40
- (b) which has been previously registered; and

(c) where stamp duty was not payable on the previous application for registration—

for every \$200 of that market value and also for any fractional part of \$200 of that market value . . \$10.00”;

5 (c) in paragraph (4), after “(4)” insert “Subject to paragraph (4A),”;

(d) after paragraph (4) insert—

“(4A) On every notice of acquisition of a passenger car—

(a) the market value of which exceeds \$45 000; and

10 (b) which has been acquired from a registered used car dealer; and

(c) where stamp duty has not been paid on any application for its registration or any notice of its acquisition; and

15 (d) which was first registered solely for the purposes of its sale—

for every \$200 of the market value of the passenger car when the person giving the notice acquired possession of the car and also for any fractional part of \$200 of that market value \$10.00”.

20 (5) In Heading XXI in the Third Schedule to the Principal Act, for paragraph (5) substitute—

“(5) On every notice of change of use to which section 137AG (1) applies—

25 (a) in the case of a passenger car the market value of which exceeds \$45 000, for every \$200 of that market value and also for any fractional part of \$200 of that market value \$10.00

30 (b) in any other case, for every \$200 of the market value of the motor vehicle or commercial trailer, and also for any fractional part of \$200 of that market value \$8.00”

(6) In Heading XXI in the Third Schedule to the Principal Act—

35 (a) at the end of Exemption 1 insert “or solely for the purposes of sale of and using the motor vehicle as a demonstrator motor vehicle”;

(b) at the end of Exemption 1A insert “or solely for the purposes of sale of and using the motor vehicle as a demonstrator motor vehicle”;

40 (c) in paragraph (b) of Exemption 1B, after “used” insert “in Victoria or elsewhere”.

Debenture duty

21. (1) After section 137M (3) of the Principal Act insert—

“(3A) Despite sub-section (3), if a person resident or domiciled in Victoria becomes the holder of a debenture referred to in sub-section (1) which—

- (a) was subscribed for in another State or in a Territory of the Commonwealth; and
- (b) was exempt from *ad valorem* duty in that other State or Territory when issued; and
- (c) in respect of which duty under this sub-division has not been paid—

the debenture is chargeable on the date the person becomes the holder with the amount of duty that would have been chargeable under Heading XXII in the Third Schedule if the debenture had been issued in Victoria on that date, less the amount calculated in accordance with the formula—

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

where—

A is the amount of duty.

B is the value of the part of that property situated in that other State or Territory.

C is the value of the property on which the debenture is secured.

(3B) The Comptroller of Stamps shall denote on the instrument the amount of the deduction that has been allowed, the date of the allowance and the duty payable.”

(2) In section 137DA (1) of the Principal Act, after “this section” insert “and section 137M”.

(3) In section 137I (2) of the Principal Act, after “sub-section (1)” insert “but subject to section 137M”.

Corporate debentures

22. In section 137MB (6) of the Principal Act, paragraph (b) is repealed.

New section 166CA inserted

23. After section 166C of the Principal Act, insert—

Substituted service

“166CA. (1) Despite any Act or rule of court to the contrary, in any proceedings for the recovery of any amount due under this Act, including any judgment debt and costs in respect of

that amount, any process may, without leave of court, be served on a person—

- (a) personally; or
- 5 (b) by leaving it at any address shown as a business address on the last return or statement given by the person under this Act or at the person's last known place of business or abode in Victoria; or
- 10 (c) by sending it or a sealed copy of it by post addressed to the person at the person's last known place of business or abode in Australia; or
- (d) by such other method as is permitted by any Act or rule of court.

15 (2) Where sub-section (1) (c) applies, unless the contrary is proved, service of the process is deemed to have been effected two days after the date of posting.”.

Amendment of Third Schedule

24. (1) In Exemption (7) under Heading XXII in the Third Schedule to the Principal Act, for “Commission” substitute “Tribunal or the Registrar of the Tribunal”.

20 (2) After Exemption (15) under Heading IV (A) in the Third Schedule to the Principal Act insert—

“(16) A sale or purchase of marketable securities to which subdivision (5) of Division 3 of Part II applies.

25 (17) A transfer of a marketable security to or by a nominee company established by a member of Australian Stock Exchange Limited solely for the purpose of facilitating settlement of transactions relating to marketable securities traded in the ordinary course of business.”.

30 (3) In Heading XXI in the Third Schedule to the Principal Act, for Exemption 13 substitute—

“13. An application to register a motor vehicle or commercial trailer made or given by a person in whose name the motor vehicle or commercial trailer was last registered outside Victoria but within Australia, other than an application to register—

- 35 (a) a motor vehicle or commercial trailer last registered under the *Interstate Road Transport Act 1985* of the Commonwealth as amended and in force for the time being; or
- 40 (b) a passenger car registered outside Victoria but within Australia on or after 1 September 1989 the market value of which at the time of the application exceeds \$35 000.

14. An application to register a passenger car the market value of which at the time of the application exceeds \$35 000

made or given by a person in whose name the passenger car was last registered outside Victoria but within Australia if—

- (a) the passenger car was first so registered on or after 1 September 1989; and
- (b) the Comptroller of Stamps has issued a certificate stating that the Comptroller is satisfied that the registration outside Victoria was not in any way associated with the avoidance of duty under this Act.”

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Statute law revision

25. (1) In paragraph (a) of the definition of “Marketable security” in section 3 of the Principal Act, after “municipal” insert “council”. 10

(2) Item 111.1 in Schedule 2 to the *Local Government (Consequential Provisions) Act 1989* is repealed.

Amendment of *Business Franchise (Tobacco) Act 1974*

26. In section 10 (8) of the *Business Franchise (Tobacco) Act 1974*— 15

- (a) for “One sixth” substitute “One seventh”; and
- (b) for “1 February 1988” substitute “1 October 1989”.

Amendment of *Accident Compensation Act 1985*

27. After section 244 (2) (c) (iii) of the *Accident Compensation Act 1985* insert— 20

“(iv) the Comptroller of Stamps;”.