



STAMP DUTIES (MISCELLANEOUS NO. 2) AMENDMENT ACT 1997

No. 82 of 1997

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 7—Distribution of stamps, commission, etc.
4. Substitution of ss. 46 to 52 and heading
Cheques
 43. Interpretation
 44. Duty on cheques and cheque forms
 45. Duty not to be chargeable after certain date
 46. Power to make regulations
5. Amendment of s. 81D—Refinancing of primary producers' loans
6. Insertion of s. 81E
 - 81E. Refinancing of loan due to rural branch closure
7. Amendment of sched. 2
8. Transitional provision



ANNO QUADRAGESIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1997

No. 82 of 1997

An Act to amend the Stamp Duties Act 1923.

[Assented to 24 December 1997]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Stamp Duties (Miscellaneous No. 2) Amendment Act 1997*.
- (2) The *Stamp Duties Act 1923* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on 1 January 1998.

Amendment of s. 7—Distribution of stamps, commission, etc

3. Section 7 of the principal Act is amended by striking out subsections (3) and (4) and substituting the following subsection:

- (3) A bank paying duty to the Commissioner in respect of cheque forms and cheques may be allowed commission at the prescribed rate.

Substitution of ss. 46 to 52 and heading

4. Sections 46 to 52 (inclusive) of the principal Act and the heading to those sections are repealed and the following heading and sections are substituted:

Cheques

Interpretation

43. In this Act, unless the contrary intention appears—

"bank" means—

- (a) a bank or a non-bank financial institution as defined in the *Cheques and Payment Orders Act 1986*; or
- (b) a body of a prescribed class;

"cheque" means—

- (a) a cheque as defined in Division I of Part II of the *Cheques and Payment Orders Act 1986*; or
- (b) an instrument of a prescribed class;

"*Cheques and Payment Orders Act 1986*" means the *Cheques and Payment Orders Act 1986* of the Commonwealth, as amended from time to time, or an Act of the Commonwealth enacted in substitution of that Act;

"unstamped cheque" means a cheque drawn against a bank account held in South Australia on which duty or exemption from duty is not denoted in a form approved by the Commissioner.

Duty on cheques and cheque forms

44. (1) A bank must, not later than the 7th day of each month—

- (a) lodge with the Commissioner a return, in a form approved by the Commissioner, of—
 - (i) all cheque forms issued by the bank during the preceding month in respect of bank accounts held in South Australia; and
 - (ii) all unstamped cheques paid by the bank during the preceding month; and
- (b) pay to the Commissioner duty at a rate prescribed by schedule 2 less commission referred to in section 7 on each cheque form and cheque to which the return relates.

(2) A bank is entitled to recover duty on a cheque form issued or an unstamped cheque paid by the bank from the person to whom the cheque form was issued or the payee of the unstamped cheque and may deduct the amount of the duty from an account of the person at the bank or from the amount paid on the cheque.

(3) A bank that does not lodge a return as required under subsection (1) is nevertheless liable to pay duty to the Commissioner as if the bank had lodged the return required under that subsection immediately before the end of the last day for such lodgement.

(4) Duty on cheque forms issued by banks is to be denoted in a form approved by the Commissioner.

(5) If a cheque form issued by a bank in respect of a bank account held in South Australia is exempt from duty, the fact that it is so exempt is to be denoted in a form approved by the Commissioner.

Duty not to be chargeable after certain date

45. Despite any other provision of this Act, duty is not chargeable on a cheque form issued by a bank or a cheque paid by a bank on or after a day to be fixed by proclamation.

Power to make regulations

46. The power to make regulations conferred on the Governor by section 112 includes power to make regulations with respect to returns and the payment of duty under section 44 and the obligations of banks.

Amendment of s. 81D—Refinancing of primary producers' loans

5. Section 81D of the principal Act is amended—

- (a) by inserting in subsection (1)(a) "fully" after "that is being";
- (b) by striking out from subsection (5) "its commencement" and substituting "the commencement of section 5 of the *Stamp Duties (Miscellaneous No. 2) Amendment Act 1997*";
- (c) by striking out subsection (6).

Insertion of s. 81E

6. The following section is inserted after section 81D of the principal Act:

Refinancing of loan due to rural branch closure

81E. (1) If the Commissioner is satisfied—

- (a) that a mortgage over property with a financial institution as mortgagee (the "new mortgage") provides for the refinancing of a loan secured by a previous mortgage (with another financial institution as mortgagee) that is being fully discharged; and
- (b) that both the new mortgage and the previous mortgage apply to the same, or substantially the same, property; and
- (c) that the sole or principal reason for refinancing the loan is the closure of a branch office (situated in a town, township or settlement outside Metropolitan Adelaide) of the financial institution that was the mortgagee under the previous mortgage; and
- (d) that the financial institution that was the mortgagee under the previous mortgage does not have another branch office in the same town, township or settlement; and
- (e) that the mortgagee under the new mortgage is a financial institution with a branch office—
 - (i) in the same town, township or settlement as the closing branch office; or
 - (ii) if no financial institution has a branch office in that town, township or settlement—in the next closest town, township or settlement (outside Metropolitan Adelaide) in which a branch office of a financial institution is situated; and

(f) that the mortgagor under both mortgages is the same person,

duty is not chargeable on so much of the amount under the new mortgage as was subjected to the payment of duty under the previous mortgage.

(2) The Commissioner may require a party to a mortgage in respect of which a benefit is claimed under this section to provide such information or evidence as the Commissioner may require for the purpose of determining whether the mortgage is entitled to that benefit.

(3) The Commissioner may require the information or evidence to be given on oath or verified by statutory declaration.

(4) In this section—

"branch office" of a financial institution includes an agent of the financial institution who is authorised to act as a branch office of the financial institution;

"financial institution" means a financial institution within the meaning of the *Financial Institutions Duty Act 1983*;

"Metropolitan Adelaide" means the part of the State that is comprised of Metropolitan Adelaide within the meaning of the *Development Act 1993*.

(5) This section applies in relation to mortgages executed after its commencement.

Amendment of sched. 2

7. Schedule 2 of the principal Act is amended—

(a) by striking out all entries from and including:

"BILL OF EXCHANGE payable on demand other than a cheque or payment order to which either of the following two paragraphs applies 0.25"

up to and including:

"8. Cheque drawn by any registered friendly society or by, or on behalf of, any community or subsidised hospital approved by the Chief Secretary.";

(b) by inserting after:

"RETURN lodged with the Commissioner by a company, person or firm of persons under section 42AA—

There shall be paid by the person lodging the return a duty at such rate per centum of the amount of the premiums paid or payable in respect of each class of assurance or insurance to which the return relates as would have been payable if the assurance or insurance had been effected under a policy issued in this State."

the following:

"RETURN lodged with the Commissioner by a bank under section 44—

Duty is payable on each cheque form or cheque to which the return relates as follows:

For every cheque form or cheque 0.10

Exemptions—

1. A cheque form issued by a bank in respect of a bank account held—
 - (a) outside of South Australia; or
 - (b) by a part of the Public Service; or
 - (c) by or on behalf of a body established for a charitable, educational, benevolent, religious, sporting, community or philanthropic purpose; or
 - (d) by a registered friendly society or by or on behalf of a community or publicly subsidised hospital.
2. A cheque drawn (whether before or after the commencement of this provision) against a bank account held outside of South Australia.
3. A cheque drawn by any bank in South Australia upon any other bank in South Australia, not payable to bearer or to order and used solely for the purpose of settling or clearing any account between such banks.

Transitional provision

8. A bank is not required to pay duty on a cheque form or cheque under the principal Act as amended by this Act if duty has already been paid in relation to the cheque form or cheque under the repealed provisions of the principal Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor