

3. Interpretation

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

“**account**” includes a term deposit and an interest bearing deposit, whether or not a financial institution in receipt of such a deposit classifies the deposit as an account;

“**agent**” includes every person who in Western Australia for or on behalf of another person outside Western Australia holds or has the management or control of the business of that other person and every person who, by an order of the Commissioner, is declared to be an agent or the sole agent for any other person for the purposes of this Act and on whom notice of that order has been served;

“**another State**” means a State of the Commonwealth other than Western Australia;

“**approved**” means approved by the Commissioner;

“**approved superannuation scheme**” means —

(a) a scheme of superannuation, retirement benefit or pension —

(i) created or arranged by an employer for the benefit of his employees and operated under the terms of an instrument of trust executed by or on behalf of the employer;

(ii) created for the benefit of self-employed persons and operated under an instrument of trust; or

(iii) created for the benefit of employees or self-employed persons,

not being a scheme that the Minister, having regard to the number of persons (being less than 20) contributing to the scheme, the amount of their contributions, the amounts of the benefits provided for and such other matters as the Minister thinks fit, has declared by notice given to the person by whom the scheme is operated that the scheme is not an approved superannuation scheme for the purposes of this Act; or

(b) a scheme of superannuation, retirement benefit or pension created and operated by or under any law of the Commonwealth or of a State or Territory;

“**bank**” means a bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth, as amended and in force for the time being, or a bank constituted by or under the law of a State or a Territory or, for the purposes of section 14, the Treasury in its capacity as a banker;

“**books**” includes any register or other record of information and any accounts or accounting records (within the meaning of the *Companies (Western Australia) Code*)² however compiled, recorded or stored and also includes any other document;

“**building society**” means a society registered or incorporated as a building society, permanent building society, co-operative housing society or similar society under a law in force in a State or a Territory relating to those societies, but does not include an association registered under any such law;

“**cash**” includes cheques;

“certificate of deposit” includes an interest bearing deposit;

“certified short term dealer” means a person whose certification as a short term dealer under section 26 is in force;

“charitable institution” means —

- (a) a public benevolent or a religious institution;
- (b) a public hospital or a hospital that is carried on by an association or other body of persons otherwise than for purposes of profit or gain to the individual members of that association or other body;
- (c) a primary or secondary school or secondary college that is carried on by an association or other body of persons otherwise than for the purposes of profit or gain to the individual members of that association or other body;
- (d) a trust the moneys of which may not be applied otherwise than for charitable purposes; or
- (e) an institution, not being a tertiary educational institution and not being a charitable institution within the meaning of paragraph (a), (b), or (c), established for charitable purposes;

“charitable institution’s account” means an account kept by a registered financial institution for a charitable institution the name of which account is included in a certificate issued and in force under section 19A;

“Commissioner” means the person holding the office of Commissioner of State Taxation under the *Public Service Act 1978*;

“company” includes a body or association (corporate or unincorporate) and a partnership;

“continuing credit contract” means a continuing credit contract as defined in section 4;

“co-operative society” means a society registered under the *Co-operative and Provident Societies Act 1903*, or under a law that corresponds to that Act, being a law of another State or of a Territory, but does not include a building society;

“corresponding law” means a law of another State or Territory that imposes a duty on receipts of financial institutions;

“credit” includes any form of financial accommodation other than —

- (a) credit provided to a debtor, for the purposes of a business carried on by him, by —
 - (i) a documentary letter of credit; or
 - (ii) becoming surety for a debtor;
- (b) credit provided for the purchase of goods for re-supply;
- (c) credit provided for the purchase of goods that —
 - (i) are raw materials; or
 - (ii) are ordinarily acquired for the purpose of treating or repairing other goods or fixtures on land or of being incorporated in other goods,
for the purposes of transforming them, or incorporating them in other goods;
 - (iii) in trade or commerce;

- (iv) in the course of a process of production or manufacture; or
- (v) in the course of repairing or treating other goods or fixtures on land;
- (d) credit provided for the purchase of services, where the buyer has contracted to provide those services, or goods and services that include those services, to a third person; or
- (e) any transaction prescribed as not being credit within the meaning of this Act;

“credit contract” means —

- (a) a credit sale contract;
- (b) a loan contract; or
- (c) a continuing credit contract;

“credit sale contract” means a contract of sale of goods or services where in respect of the payment for the goods or services credit is, or is to be, provided to a buyer by a supplier in the course of a business carried on by the supplier and, under the contract —

- (a) a charge is made for the provision of credit;
- (b) the amount payable by the buyer is not required to be paid within the period of 4 months after credit is provided under the contract; or
- (c) the amount payable by the buyer may be paid by 5 or more instalments or by a deposit and 4 or more instalments;

“credit sale deposit”—

- (a) in relation to a contract of sale of goods, means an amount that, under the contract, was paid or payable on or before the delivery of the goods or, where the delivery is not completed on one day, on or before the commencement of the delivery;
- (b) in relation to a contract of sale of services, means an amount that, under the contract, was paid or payable on or before the commencement of the supply of the services; and
- (c) in relation to a contract of sale of goods and services, means an amount that, under the contract, was paid or payable on or before the commencement of the delivery or supply of the goods and services;

“credit union” means a society or other body of persons —

- (a) that is registered or incorporated as a credit union or credit society under the law in force in a State or a Territory relating to credit unions or credit societies; or
- (b) the principal business of which consists of borrowing money from its members or intended members and lending money so borrowed to its members and which is registered or incorporated under the law in force in a State or a Territory,

but does not include an association of credit unions, a union of associations of credit unions or an amalgamated association of credit unions or a building society;

“dealer” has the same meaning as in the *Securities Industry (Western Australia) Code*³;

“dealing” in relation to securities, has the same meaning as in the *Securities Industry (Western Australia) Code*³;

“depositor” means a person who is registered, or who is required to apply for registration, under section 29 and in Parts VII, VIII, IX and X includes a person who has at any time been so registered or has been required to be so registered;

“dutiabale deposit” in relation to a depositor, means a deposit by the depositor of money in Western Australia, other than a deposit to which section 12 (4) applies;

“dutiabale receipt” in relation to a financial institution, means a receipt by the financial institution in Western Australia, other than a receipt to which section 10 (4) applies;

“duty” means financial institutions duty and also additional duty or penal duty imposed by or under this Act;

“exempt account” means —

- (a) a special account;
- (b) a short term dealing account;
- (c) a trust fund account;
- [(d) *deleted*]
- (e) a sweeping account;
- (f) a Local Government account;
- (g) a Government Department account; or
- (h) a charitable institution’s account;

“exempt financial institution” means a person who —

- (a) is not a financial institution; or
- (b) is a financial institution that —
 - (i) is not a registered financial institution and has not during the preceding 12 months had receipts exceeding \$5 000 000, other than non-dutiabale receipts, or during the preceding month had receipts exceeding \$416 666, other than non-dutiabale receipts; and
 - (ii) is not a member of a group within the meaning of Part VI in respect of which the total of the receipts of the group, other than non-dutiabale receipts, during the preceding 12 months exceeded \$5 000 000 or during the preceding month exceeded \$416 666;

“financial institution”—

- (a) means —
 - (i) a bank;
 - (ii) a dealer;
 - (iii) a trustee corporation;
 - (iv) a pastoral finance company;
 - (v) a management company within the meaning of Division 6 of Part IV of the *Companies (Western Australia) Code*² or of a corresponding law in force in another State or Territory that carries on business in Western Australia;

- (vi) the Treasury in its capacity as a banker;
 - (vii) except in Parts III, IV, and V, a person who is a short term dealer but is not a financial institution by reason of a preceding subparagraph of this definition;
 - (viii) a person whose sole or principal business in Western Australia is that of the provision of finance,
- and in Parts VII, VIII, IX and X includes a person who has at any time been a financial institution under this Act; and
- (b) does not include —
 - (i) a person the sole or principal business of whom in Western Australia is the operation of an approved superannuation scheme;
 - (ii) a corporation that is registered under the *Life Insurance Act 1945* of the Commonwealth, as amended and in force for the time being;
 - (iii) a corporation the sole or principal business of which in Western Australia is insurance business as defined by section 3 (1) of the *Insurance Act 1973* of the Commonwealth, as amended and in force for the time being;
 - (iv) a corporation that is a medical benefits organization or a hospital benefits organization registered under the *National Health Act 1953* of the Commonwealth, as amended and in force for the time being;
 - (v) a dealer who is not a person referred to in paragraph (a) (i), (iii) to (vi) or (viii) and who does not carry on a business of dealing in securities except —
 - (I) in his capacity as an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* of the Commonwealth, as amended and in force for the time being; or
 - (II) in his capacity as a receiver, as a receiver and manager, or as another person appointed by a court to carry on the business concerned;
 - (vi) a dealer, being a corporation that is not a person referred to in paragraph (a) (i), (iii) to (vi) or (viii) and that carries on, or holds itself out as carrying on, a business of dealing in debentures of that body corporate but does not carry on a business of dealing in any other securities;
 - (vii) T.C.S. Computer Services Pty. Ltd.;
 - (viii) Funds Transfer Services (Australia) Limited; or
 - (ix) a person or class of persons who is prescribed not to be a financial institution for the purposes of this definition;

“financial institutions duty” means financial institutions duty chargeable under section 10, 11 or 12;

“foreign exchange dealer” means a person to whom a general authority to engage in foreign currency transactions has been granted under

regulation 38A of the Banking (Foreign Exchange) Regulations of the Commonwealth and is in force;

“Government Department account” means an account kept and designated as a Government Department account by a registered financial institution in respect of which a notice given under section 19 is in force;

“group” means a group constituted for the purposes of this Act under Part VI;

“liquidator” means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company;

“loan contract” means a contract for the provision of credit by a person to another person in one or more of the following ways —

- (a) by paying an amount to or in accordance with the instructions of that other person;
- (b) by applying an amount in satisfaction or reduction of an amount owed to him by that other person;
- (c) by varying the terms of a contract under which moneys owed to him by that other person are payable;
- (d) by deferring the obligation of that other person to pay an amount to him;
- (e) by taking from that other person a bill of exchange or other negotiable instrument on which the other person (whether alone or with another person) is liable as drawer, acceptor or endorser;

“local government” means a local government or a regional local government;

“Local Government account” means an account kept and designated as a Local Government account by a registered financial institution in respect of which a notice given under section 18 is in force;

“money” includes a bill of exchange and a promissory note;

“month” means one of the 12 months of the year;

“non-dutiable receipt” means a receipt of a kind that, if received by a registered financial institution, would not be a dutiable receipt;

“pastoral finance company” means —

- (a) a person whose sole or principal business is that of financing pastoral pursuits or whose sole or principal business is that of a stock or station agent to whom an order in force under section 11 of the *Banking Act 1959* of the Commonwealth, as amended and in force for the time being, applies; or
- (b) a person, a substantial part of whose business is, in the opinion of the Commissioner, that of financing pastoral pursuits or a substantial part of whose business is, in the opinion of the Commissioner, that of a stock or station agent to whom an order in force under section 11 of the *Banking Act 1959* of the Commonwealth, as amended and in force for the time being, applies and who is approved for the time being as a pastoral finance company by the Commissioner;

“person” includes a body or association (corporate or unincorporate) and a partnership;

“premises” includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not) and any part of such a structure, building, aircraft, vehicle, vessel or place;

“prescribed short term dealer” means a person who is certified under section 26 as a certified short term dealer who is a prescribed short term dealer;

“prescribed short term dealer not being a registered financial institution” means a person who is certified under section 26 as a certified short term dealer who is a prescribed short term dealer not being a registered financial institution;

“receipt” means a receipt of money and includes a payment or repayment received, a deposit or subscription and the crediting of an account;

“registered financial institution” means —

- (a) a financial institution that is registered under this Act;
- (b) the Treasury in its capacity as banker; and
- (c) a financial institution that, under section 33, is deemed to be so registered;

“securities” has the same meaning as in the *Securities Industry Western Australia) Code*³;

“share” includes stock;

“short term dealing account” means the account kept by a short term dealer under section 14;

“short term dealing” means —

- (a) the making or receiving of a deposit (other than a deposit to the credit of an account with a bank or pastoral finance company which is repayable on demand or to the credit of a current account, in either case, kept by the bank or pastoral finance company for another person);
- (b) a dealing in —
 - (i) securities;
 - (ii) bills of exchange;
 - (iii) promissory notes;
 - (iv) certificates of deposit;
 - [(v) deleted]
 - [(vi) deleted]
 - (vii) any matter or thing prescribed for the purposes of this definition; or
- (c) a dealing in respect of which an agreement to repurchase a security exists,

where —

- (d) the amount of the deposit or the amount involved in the dealing is not less than \$50 000 or the dealing (not being a dealing in a security) is in a bill of exchange, promissory note, certificate of deposit or any matter or thing prescribed for the purposes of this definition having a nominal value on the day on which the dealing is entered into or a face value of not less than \$50 000;

- (e) the amount of the deposit or the amount involved in the dealing (including a dealing in a security) is deposited or invested —
 - (i) at call;
 - (ii) for a term not exceeding 185 days;
 - (iii) for a term not exceeding 185 days and thereafter at call; or
 - (iv) in respect of a dealing referred to in paragraph (b), in a security, bill of exchange, promissory note, certificate of deposit or any matter or thing prescribed for the purposes of this definition having a term exceeding 185 days and the dealing is completed not later than 185 days after the date of deposit or investment of the amount;

“short term investment” means —

- (a) the making of an investment (other than a deposit to the credit of an account with a bank or pastoral finance company which is repayable on demand or to the credit of a current account, in either case, kept by the bank or pastoral finance company for another person);
- (b) a dealing in —
 - (i) securities;
 - (ii) bills of exchange;
 - (iii) promissory notes;
 - (iv) certificates of deposit;
 - [(v) deleted]*
 - [(vi) deleted]*
 - (vii) any matter or thing prescribed for the purposes of this definition; or
- (c) a dealing involving an agreement that a security will be repurchased,

where —

- (d) the amount of the investment or the amount involved in the dealing is not less than \$50 000 or the dealing (not being a dealing in a security) is in a bill of exchange, promissory note, certificate of deposit or any matter or thing prescribed for the purposes of this definition having a nominal value on the day on which the dealing is entered into or a face value of not less than \$50 000;
- (e) the amount of the investment or the amount involved in the dealing (including a dealing in a security) is deposited or invested —
 - (i) at call;
 - (ii) for a term not exceeding 185 days;
 - (iii) for a term not exceeding 185 days and thereafter at call; or
 - (iv) in respect of a dealing referred to in paragraph (b), in a security, bill of exchange, promissory note, certificate of deposit or any matter or thing prescribed for the purposes of this definition having a term exceeding 185 days and the dealing is completed not later than 185 days after the date of deposit or investment of the amount,

but excludes any amount that is a short term dealing held to the credit of a Local Government account or a charitable institution's account;

“short term liability” in relation to a short term dealer, includes a deposit with or financial accommodation received, whether by a loan or borrowing (including a borrowing in respect of which a security, bill of exchange or promissory note is issued or a security in respect of which a repurchase agreement exists) or otherwise, by the short term dealer of an amount of not less than \$50 000 (other than, in the case of a short term dealer being a bank or pastoral finance company, a deposit to the credit of an account with the bank or pastoral finance company which is repayable on demand or to the credit of a current account, in either case, kept by the bank or pastoral finance company for another person), where —

- (a) in the case of a deposit, the amount deposited is deposited at call or for a term not exceeding 185 days or for a term not exceeding 185 days and thereafter at call; or
- (b) in the case of a borrowing or liability, the amount borrowed or the liability, irrespective of the nature of the borrowing or liability, is repayable at call or within a term not exceeding 185 days or within a term not exceeding 185 days and thereafter at call,

and any other liability of a short term nature which may be prescribed for the purposes of this definition, but does not include a liability which is prescribed not to be a short term liability for the purposes of this definition or a liability arising from the crediting of an amount to a Local Government account or a charitable institution's account;

“special account” means an account in respect of which a certificate issued by the Commissioner under section 13 is in force;

“sweeping account” means an account kept by a bank in respect of which a certificate issued by the Commissioner under section 17 is in force;

“term deposit” means a deposit of money with a financial institution for a specified period, or for a specified period and then at call, in relation to which deposit the financial institution, instead of crediting a current account kept by the financial institution, issues a certificate of deposit or similar record of deposit;

“trustee”, in addition to each person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law, includes —

- (a) an executor, administrator, guardian, committee, receiver or liquidator; and
- (b) each person having or taking upon himself the administration or control of any real or personal property affected by any express or implied trust or acting in any fiduciary capacity or having the possession, control or management of any real or personal property of a person who is under any legal or other disability;

“trustee corporation” means —

- (a) the Public Trustee in and for Western Australia;

- (b) any corporation authorized by an Act of the Parliament of this State to administer the estates of deceased persons and other trust estates;
- (c) a corporation that is constituted under the law of another State or of a Territory and, in the opinion of the Commissioner, corresponds in that State or Territory to the Public Trustee or to a corporation referred to in paragraph (b); and
- (d) a corporation prescribed for the purposes of this definition;

“trust fund account” means an account kept by a bank, building society or credit union in respect of which a certificate issued by the Commissioner under section 15 is in force;

“voting share” has the same meaning as in section 5 (1) of the *Companies (Western Australia) Code*².

- (2) In this Act a reference to goods and services includes a reference to goods or services.
- (3) Unless the contrary intention appears, a reference in this Act to a preceding or succeeding month or to a preceding or succeeding number of months is a reference to the month of the year or the number of months of the year preceding or succeeding, as the case may be, the month in which the question arises.
- (4) In this Act, a reference to the provision of finance includes a reference to —
 - (a) the borrowing of money or the obtaining of other financial accommodation, including the issue of redeemable or withdrawable share capital by a financial institution that is not a bank;
 - (b) the dealing in —
 - (i) securities;
 - (ii) bills of exchange;
 - (iii) promissory notes;
 - (iv) certificates of deposit; or
 - (v) any matter or thing prescribed for the purposes of this paragraph;
 - (c) the lending of money, with or without security;
 - (d) the purchase, acquisition, discounting or factoring of debts due to another person; and
 - (e) the provision of credit, pursuant to a credit contract or proposed credit contract.
- (5) For the purposes of this Act, a debt shall be taken to be due notwithstanding that the time for payment of the debt has not arrived.
- (6) 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.
- (7) A receipt to the credit of a registered financial institution account which is an exempt account shall, unless the receipt has been credited to an account or accounts in the books of the person in whose name the account is kept, be deemed to be a receipt of that person otherwise than to the credit of the registered financial institution account.

- (8) Where a person receives a consideration, other than money (whether or not in consideration of his having given credit to any person), whereby any debt or obligation or part of a debt or obligation owing to that person is settled, satisfied, discharged or met, the person shall, when he receives the consideration, be deemed for the purposes of this Act, to have received an amount of money equal to the amount of the debt or obligation or part of the debt or obligation that has been settled, satisfied, discharged or met.
- (9) In this Act, a reference to carrying on a business of a particular kind includes a reference to carrying on that business in the course of, or as part of, or as incidental to, or in connection with, the carrying on of another business.
- (10) Where a receipt or deposit is or includes an amount of money in a currency other than Australian currency, the amount of that money is for the purposes of this Act the equivalent of that amount in Australian currency calculated at a rate of exchange that is a relevant ruling telegraphic transfer buying rate in Australia on the day on which the money is received or deposited or, with the approval of the Commissioner, the equivalent rate of exchange at the time the money is received or deposited.
- (11) A reference in this Act to depositing money with a financial institution includes a reference to paying money to a financial institution.
- (12) For the purposes of this Act, a reference to the crediting of an account includes a reference to —
 - (a) the depositing of money to the credit of the account by the person in whose name the account is kept or by another person;
 - (b) without limiting the generality of paragraph (a), the transfer of money to the credit of the account from another account of the person in whose name the account is kept or from an account of another person; and
 - (c) the transfer between ledgers or divisions in an account of a person where different terms and conditions apply in respect of those ledgers or divisions.
- (13) For the purposes of this Act, the crediting of an account of a person, including the crediting of an account effected by means of an entry or record made by use of a machine or device, shall be deemed to constitute a receipt of money by the person whose account is so credited.
- (14) Where money is, after it is received (otherwise than by the crediting of an account) by a financial institution, credited by the financial institution to an account in the books of the financial institution (being an exempt account, an account the receipts to the credit of which are dutiable receipts, a suspense account, an account of the kind referred to in subsection (19e) (b) or a prescribed account), the money shall for the purposes of this Act, be deemed not to have been received by the financial institution before it is first so credited.
- (15) The exchange of money for money does not, for the purposes of this Act, constitute a receipt, except to the extent, if any, to which a party to the exchange receives an amount which is greater than the amount paid or given by him.
- (16) Subsection (15) does not apply to or in respect of an exchange involving a bill of exchange (other than the issuing of a cheque that a financial

institution draws on itself, the issuing of travellers cheques or the cashing of a cheque) or a promissory note.

- (17) Notwithstanding subsections (12) and (13) but subject to subsection (20), where money is invested on term deposit with a financial institution and the principal is not repaid immediately and in full upon the expiration of the term, the non-repayment of the principal does not constitute a receipt of the financial institution if the money is re-invested on a term deposit.
- (18) Notwithstanding subsections (12) and (13), —
- (a) a transfer between ledgers or divisions of an internal account of a financial institution; or
 - (b) the crediting of an internal account of a financial institution where the offsetting debit is to another internal account of that financial institution,

does not constitute a receipt for the purposes of this Act.

- (19) Notwithstanding subsections (12) and (13), the crediting of a suspense account of a financial institution does not constitute a receipt for the purposes of this Act so long as any amount so credited is transferred from the suspense account within 30 days to an account kept in Western Australia by the financial institution in the name of a person other than the financial institution.
- (19a) Notwithstanding subsections (12) and (13), the crediting of an account by a financial institution for a person does not constitute a receipt for the purposes of this Act where there is an offsetting debit to another account kept by the financial institution for that person at the same branch and within the same division of the financial institution and the crediting of the account is the result of the loss of a passbook issued by the financial institution to that person.
- (19b) Notwithstanding subsections (12) and (13), where an amount is credited to an account kept by a financial institution and the credit is subsequently offset by a debit of the same amount by reason of the dishonour of a cheque or because the initial credit was made in error, the credit does not constitute a receipt for the purposes of this Act.
- (19c) Notwithstanding subsections (12) and (13), where an amount is debited to an account kept by a financial institution and the debit is subsequently offset by a credit of the same amount by reason of the dishonour of a cheque or because the initial debit was made in error, the credit does not constitute a receipt for the purposes of this Act.
- (19d) Notwithstanding subsections (12) and (13), where a bad debt arises in an account kept by a financial institution for a person and for the purpose of closing the account and cancelling the bad debt, a credit of the same amount as the bad debt is made to the account, the crediting of the account for the purpose does not constitute a receipt for the purposes of this Act.
- (19e) Notwithstanding subsections (12) and (13), where an amount —
- (a) is credited to an account kept in Western Australia by a bank in the name of a person other than the bank; and

- (b) is subsequently credited to an account kept by that bank and used only to facilitate the transfer of money to a State or Territory in which a corresponding law is in force,

the credit referred to in paragraph (b) does not constitute a receipt for the purposes of this Act.

- (20) Notwithstanding subsection (17), where the amount involved in a short term dealing is, upon the completion of the dealing, re-invested in such a manner that —

- (a) the re-investment does not constitute a short term dealing for the purposes of this Act; and
- (b) the amount involved does not become a dutiable receipt for the purposes of this Act,

that amount shall be deemed for the purposes of this Act to be a dutiable receipt and shall be included in a return submitted under section 23.

- (21) In this section, unless the context otherwise requires —

“internal account” in relation to a financial institution, means an account kept by that institution other than in the name of another person;

“suspense account” means an account of a financial institution in which receipts or disbursements are temporarily carried pending their identification and transfer.

[Section 3 amended by No. 19 of 1984 s.3; No. 110 of 1984 s.3; No. 31 of 1987 s.4; No. 30 of 1991 s.4; No. 50 of 1994 s.3; No. 14 of 1996 s.4; No. 22 of 1998 s.48.]