Western Australia

# Duties Act 2008

Compare between:

[29 Nov 2023, 03-s0-03] and [01 Jul 2024, 03-t0-00]

Western Australia

# Duties Act 2008

**An Act dealing with the imposition of a number of kinds of duty.**

# Chapter 1 — Preliminary

## 1. Short title

This is the *Duties Act 2008*.

## 2. Commencement

This Act comes into operation as follows:

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on 1 July 2008.

## 3. ~~1M, 1MC~~ Terms used 1M, 1MC

In this Act, unless the contrary intention appears —

***chattel*** does not include any of the following —

(a) chattels that are stock-in-trade;

(b) chattels held for use in manufacture;

(c) chattels under manufacture;

(d) chattels held or used in connection with the business of primary production;

(e) livestock;

(f) a vehicle the transfer or grant of a licence for which is chargeable with, or exempt from, vehicle licence duty;

(g) a ship or vessel;

(ga) a thing that is land to which section 3A(1)(f) applies;

(h) any other chattel prescribed for the purpose of this definition;

***consideration*** means the amount of a monetary consideration or the value of a non-monetary consideration;

***corporate trustee*** has the meaning given in section 65;

***corporation*** has the meaning given in the Corporations Act section 57A;

***Corporations Act*** means the *Corporations Act 2001* (Commonwealth);

***court*** includes a tribunal;

***derivative mining right*** means an authorisation of a kind described in the *Mining Act 1978* section 118A (whether or not the authorisation purports to be made under that section);

***director*** has the meaning given in the Corporations Act section 9;

***discretionary trust*** means —

(a) a trust under which the vesting of the whole or any part of the capital of the trust property, or the whole or any part of the income from that capital, or both —

(i) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both; or

(ii) will occur in the event that a discretion conferred under the trust is not exercised;

or

(b) a trust that is, by regulation, declared to be a discretionary trust for the purposes of this Act,

but does not include —

(c) a trust that is solely a charitable trust; or

(ca) a unit trust scheme; or

(d) a trust that is, by regulation, declared not to be a discretionary trust for the purposes of this Act;

***diversification lease*** has the meaning given in the *Land Administration Act 1997* section 92B(1);

***diversification lessee*** has the meaning given in the *Land Administration Act 1997* section 3(1);

***duplicate*** of a transaction record for a dutiable transaction means an executed instrument that wholly reproduces the transaction record;

***dutiable property*** has the meaning given in section 15;

***dutiable transaction*** has the meaning given in section 11;

***duties Act*** means this Act or the Taxation Administration Act;

***duty*** means duty under this Act;

***duty endorsed*** has the meaning given in section 272;

***entitled*** means —

(a) in relation to a person as the trustee of a unit trust scheme or other trust — entitled for the purposes of the scheme or trust; and

(b) otherwise — beneficially entitled;

***exempt body*** means —

(a) the State of Western Australia; or

(b) a public authority declared to be an exempt body under section 92; or

(c) a local government, except when it acts in its capacity as the trustee of a superannuation fund;

***fixed infrastructure*** has the meaning given in section 91A;

***fixed infrastructure access right*** has the meaning given in section 91A;

***fixed infrastructure control right*** has the meaning given in section 91A;

***fixed infrastructure statutory licence*** has the meaning given in section 91A;

***foreign dutiable transaction*** has the meaning given in section 205H;

***foreign landholder duty*** means duty under Chapter 3A Part 3;

***foreign transfer duty*** means duty under Chapter 3A Part 2;

***general rate*** of duty means the rate set out in Schedule 2 Division 1;

***GST*** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) except that it

includes notional GST of the kind for which payments may be made under the *State Entities (Payments) Act 1999* by a person that is a State entity as defined in that Act;

***industrial association*** means any of the following —

(a) an organisation registered under the *Industrial Relations Act 1979* section 53 or 54;

(b) an association of employees, or an association of employers, registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009* (Commonwealth);

(c) an association of employees registered or recognised as a trade union (however described) under the law of another State or a Territory;

(d) an association of employers registered or recognised as such (however described) under the law of another State or a Territory;

(e) an association of employees a principal purpose of which is the protection and promotion of the employees' interests in matters concerning their employment;

***land*** has a meaning affected by section 3A;

***landholder duty*** means duty under Chapter 3;

***lease*** does not include a strata lease;

***local government*** means —

(a) a local government established under the *Local Government Act 1995*; or

(b) a regional local government or regional subsidiary established under the *Local Government Act 1995* Part 3 Division 4; or

(c) an association constituted under the *Local Government Act 1995* section 9.58;

***lodge*** means lodge with the Commissioner, and if the Commissioner has established procedures for the electronic

lodgment and recording of data on dutiable transactions, includes to lodge in accordance with those procedures;

***majority shareholder***, in relation to a corporation, means a person that would have a substantial holding in the corporation under the definition of ***substantial holding*** in the Corporations Act section 9 if the reference in that definition to 5% were a reference to 50%;

***mining tenement*** means any of the following —

(a) a mining tenement held under the *Mining Act 1978* being a mining tenement within the meaning of that Act or the *Mining Act 1904* [1];

(b) a mining tenement or right of occupancy continued in force by the *Mining Act 1978* section 5;

***nominal duty*** means the amount of duty referred to in Schedule 2 Division 3;

***order*** includes determination, judgment or decree;

***partnership*** has the meaning given in the *Partnership Act 1895* section 7;

***pastoral lease*** has the meaning given in the *Land Administration Act 1997* section 3(1);

***pastoral lessee*** has the meaning given in the *Land Administration Act 1997* section 3(1);

***political party*** means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the Parliament of the Commonwealth, or to a Parliament of a State or Territory, of a candidate or candidates endorsed by it or by a body or organisation of which it forms part;

***prescribed*** means prescribed by regulation;

***prescribed financial market*** means a financial market, as defined in the Corporations Act section 767A(1), that is prescribed for this definition;

***primary production*** has the meaning given in section 101A;

***professional association*** means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the interests of its members in any profession;

***promote trade, industry or commerce*** includes to carry out an undertaking a purpose of which includes the promotion of, or the advocacy for, trade, industry or commerce, whether generally or in respect of any particular kind of trade, industry or commerce;

***public authority*** means —

(a) a trading concern, instrumentality or public utility of the State; or

(b) any other person or body, whether corporate or not, who or which, under the authority of a written law, administers or carries on for the benefit of the State, a social service or public utility;

***public float*** has the meaning given in section 257;

***registered scheme*** has the meaning given in the Corporations Act section 9;

***related corporation*** has the meaning related body corporate is given in the Corporations Act section 9;

***relevant body*** has the meaning given in section 96A;

***relocatable home*** means a relocatable home as defined in the *Residential Parks (Long-stay Tenants) Act 2006* Glossary;

***residential park site*** means a site (as defined in the *Residential Parks (Long-stay Tenants) Act 2006* Glossary) in a residential park (as defined in that Glossary);

***residential property*** has the meaning given in section 205E;

***security interest*** means the estate or interest of a mortgagee, chargee or other secured creditor;

***share*** —

(a) in Chapter 2 Part 5 Division 3 — has the meaning given in section 63; and

(b) otherwise — means a share or stock of a corporation or an interest in a share or stock of a corporation;

***strata lease*** has the meaning given in the *Strata Titles Act 1985* section 3(1);

***supply***, in relation to an amount of GST, has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth);

***Taxation Administration Act*** means the *Taxation Administration Act 2003*;

***transaction*** includes an event;

***transaction record***, in relation to a dutiable transaction, means —

(a) an instrument that effects, or evidences, the dutiable transaction; or

(b) a transfer duty statement for the dutiable transaction; or

(c) a copy or memorandum that, under the Taxation Administration Act section 20, is treated as an instrument or statement referred to in paragraph (a) or (b);

***transfer duty*** means duty under Chapter 2;

***transfer duty statement*** means a statement referred to in section 22(1);

***vehicle licence duty*** means duty under Chapter 5;

***wound up*** has the meaning given in section 7(1).

Note for this section:

Other terms are defined or explained in the Chapters in which they are used. At the end of this Act there is an alphabetical list of all terms that are defined anywhere in this Act. See also section 4(2).

*[Section 3 amended: No. 17 of 2010 s. 11; No. 33 of 2011 s. 4; No. 2 of 2014 s. 49; No. 1 of 2015 s. 10; No. 8 of 2015 s. 4; No. 26 of 2016 s. 50; No. 24 of 2018 s. 4; No. 12 of 2019 s. 4; No. 30 of 2018 s. 131; No. 4 of 2023 s. 113.]*

*[Modification, to section 3, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999 s. 7, see Commonwealth Places (Mirror Taxes Administration) Regulations 2007 r. 7 and endnote 1M.]*

*[Modification, to section 3, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 8 and endnote 1MC.]*

### 3A. Term used: land

(1) In this Act, ***land*** includes the following —

(a) an estate or interest in land;

(b) a mining tenement;

(c) an estate or interest in a mining tenement;

(d) a pastoral lease;

(e) an interest of a pastoral lessee under a pastoral lease;

(ea) a diversification lease;

(eb) an interest of a diversification lessee under a diversification lease;

(f) anything fixed to land (including land the subject of a mining tenement, pastoral lease or diversification lease), whether or not the thing —

(i) constitutes a fixture at law; or

(ii) is owned separately from the land; or

(iii) is notionally severed or considered to be legally separate from the land as a result of the operation of any law of the State or the Commonwealth;

(g) an estate or interest in a thing to which subsection (1)(f) applies.

(2) In this Act, ***land*** does not include —

(a) a carbon right or a carbon covenant registered under the *Carbon Rights Act 2003*; or

(b) a derivative mining right.

(3) Without limiting subsection (1)(f), a thing is taken to be fixed to land if it has a physical connection to the land or is buried or partly buried under the surface of the land.

(4) Subsection (1)(f) does not apply to the following —

(a) a thing that is fixed to land on a temporary basis and only for the purpose of being used in construction works;

(b) a thing that does not constitute a fixture at law and that is held or used in connection with the business of primary production;

(c) a relocatable home fixed to a residential park site, or an addition or structure fixed or attached to the home or site for the use or enjoyment of the occupier of the home, that does not constitute a fixture at law;

(d) a thing of a kind prescribed for the purposes of this paragraph.

(5) A paragraph of subsection (1) is not to be taken into account in determining the meaning of ***land*** when used in another paragraph of subsection (1).

*[Section 3A inserted: No. 12 of 2019 s. 5; amended: No. 4 of 2023 s. 114.]*

## 4. Relationship with *Taxation Administration Act 2003*

(1) The Taxation Administration Act provides for the administration and enforcement of this Act.

(2) If a term has a meaning in the Taxation Administration Act, it has the same meaning in this Act unless the contrary intention appears in this Act.

Note for this subsection:

Under the *Taxation Administration Act 2003* section 3(2), this Act is to be read with that Act as if they formed one Act.

(3) If this Act requires duty to be paid within a period, the duty is due for payment, for the purposes of the Taxation Administration Act, on the last day of that period.

## 5. GST, effect of on value or consideration

In ascertaining the value of anything or the consideration for anything, there is to be no discount for the amount of GST (if any) payable on the supply of that thing.

## 6. Determining family relationships

(1) In this section —

***step-child***, of a person, means a child of a spouse or de facto partner of the person.

(2) In determining whether a person is a family member of, or related to, another person —

(a) an illegitimate person is to be treated as the legitimate child of that person's parents; and

(b) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by a written law.

(3) In determining for the purposes of section 43(1)(c) or (ca), 87(6)(a), (c) or (h) or 100(1)(a) or (c) whether a person is a child or remoter lineal descendant of another person, a step-child of a person is to be treated as a child.

(4) In determining for the purposes of section 162(1)(b) whether the relationship between individuals is that of parent and child, a step-child of a person is to be treated as a child.

*[Section 6 amended: No. 12 of 2019 s. 6.]*

## 7. References to being wound up

(1) A reference to being wound up is —

(a) in the case of a corporation — to it being wound up in accordance with its constitution (so far as it has a constitution that deals with its winding up) and in accordance with any law for the time being applicable; and

(b) in the case of a unit trust scheme — to it being terminated in accordance with the provisions of the trust deed or any other document constituting the scheme and in accordance with any law for the time being applicable.

(2) A winding up begins —

(a) in the case of a corporation — when the winding up is taken to begin under the Corporations Act; and

(b) in the case of a unit trust scheme —

(i) when any circumstance or event occurs, or any time arrives, that, because of the trust deed or other document constituting the scheme, requires the scheme to be wound up; or

(ii) when the holders of units issued under the scheme pass a resolution directing the trustee to wind up the scheme; or

(iii) when the trustee decides to wind up the scheme; or

(iv) when a court orders that the scheme be wound up,

whichever happens first.

*[**8A., 8B.**[1M] Modification, to insert sections 8A and 8B, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999 s. 7, see Commonwealth Places (Mirror Taxes Administration) Regulations 2007 r. 8 and endnote 1M.]*

*[**8A., 8B.**[1MC] Modification, to insert sections 8A and 8B to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 9 and endnote 1MC.]*

**8. Notes in text**

A note included in this Act is explanatory and is not part of this Act.

# Chapter 2 — Transfer duty

## Part 1 — Preliminary

### 9. Terms used

In this Chapter, unless the contrary intention appears —

***concessional farm-in transaction*** has the meaning given in section 91K(1);

***concessional rate*** of duty means a rate set out in Schedule 2 Division 2;

***conditional agreement*** has the meaning given in section 87;

***consideration*** has a meaning affected by section 30;

***de facto partner of 2 years***, in relation to a person, means a person who is living in a de facto relationship with the person and has lived on that basis with the person for at least 2 years;

***de facto partners of 2 years*** means 2 de facto partners of 2 years who are living in a de facto relationship with each other;

***declaration of trust*** means any declaration (other than by a will) that any identified property vested or to be vested in the person making the declaration is or is to be held in trust for the person or persons, or the purpose or purposes, mentioned in the declaration although the beneficial owner of the property, or the person entitled to appoint the property, may not have joined in or assented to the declaration;

***disposition***, in relation to a share, has the meaning given in section 63;

***dutiable value*** has the meaning given in Part 4 Division 5;

***duty*** means duty under this Chapter;

***entity*** has the meaning given in section 152;

***exempt transaction*** means a dutiable transaction on which duty is not chargeable;

***exploration requirement*** has the meaning given in section 91K(1);

***Family Court Act*** means the *Family Court Act 1997*;

***farmee*** has the meaning given in section 91K(1);

***farming land conditional agreement*** has the meaning given in section 88;

***general conditional agreement*** means any conditional agreement other than the following —

(a) a farming land conditional agreement;

(b) a mining tenement conditional agreement;

(c) an issue of title conditional agreement;

(d) a subdivision conditional agreement;

***interest in a discretionary trust*** has the meaning given in section 60;

***issue of title conditional agreement*** has the meaning given in section 90;

***managed investment scheme*** has the meaning given in the Corporations Act section 9;

***mining tenement conditional agreement*** has the meaning given in section 89;

***new dutiable property*** has the meaning given in section 17;

***partnership acquisition*** has the meaning given in section 72;

***partnership interest*** has the meaning given in section 74;

***person liable to pay duty***, in respect of a dutiable transaction, has the meaning given in section 20;

***right*** has the meaning given in section 16;

***scheme property***, in relation to a managed investment scheme, has the meaning given to that term in the Corporations Act in relation to a registered scheme;

***simultaneous put and call option*** has the meaning given in section 44;

***special dutiable property*** has the meaning given in section 18;

***subdivision conditional agreement*** has the meaning given in section 91;

***surrender*** includes the following —

(a) abandonment;

(b) abrogation;

(c) cancellation;

(d) extinguishment;

(e) forfeiture;

(f) redemption;

(g) relinquishment;

***taker in default*** has the meaning given in section 54;

***terminated on relevant grounds***, in relation to a conditional agreement, has the meaning given in section 88A(2);

***transfer*** includes assignment and exchange;

***trust acquisition*** has the meaning given in section 55;

***trust surrender*** has the meaning given in section 56;

***unencumbered value*** has the meaning given in section 36;

***Western Australian business*** has the meaning given in section 79;

***Western Australian business asset*** has the meaning given in section 79.

*[Section 9 amended: No. 17 of 2010 s. 4; No. 37 of 2022 s. 4.]*

## Part 2 — Imposition of transfer duty

### 10. Transfer duty imposed

Duty is imposed on dutiable transactions.

# Part 3 — Dutiable transactions and dutiable property

## Division 1 — Dutiable transactions

### 11. Dutiable transaction

(1) Subject to subsection (2), any of the following is a ***dutiable transaction*** —

(a) a transfer of dutiable property;

(b) an agreement for the transfer of dutiable property, whether conditional or not;

(c) a declaration of trust over dutiable property;

(d) a vesting of dutiable property —

(i) by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia; or

(ii) by, or as a consequence of, a court order of this or another jurisdiction, whether inside or outside Australia;

(e) a foreclosure of a mortgage over dutiable property;

(f) an acquisition of new dutiable property, on its creation, grant or issue;

(g) a surrender of special dutiable property;

(h) a trust acquisition or trust surrender;

(i) a partnership acquisition;

(j) a concessional farm-in transaction.

(2) The following transactions are not ***dutiable transactions*** —

(a) a transaction the subject of which is a right if no consideration is paid, or agreed to be paid, for the transaction;

(b) a transfer of, or an agreement for the transfer of, a lease if no consideration is paid, or agreed to be paid, for the transfer or agreement;

(c) a transfer of, or an agreement for the transfer of, a security interest, if the consideration for the transfer, or agreement, is equal to or greater than the market value of the security interest;

(d) a transaction the subject of which is a unit in a unit trust scheme;

(e) a transaction prescribed as an excluded transaction for the purposes of this section.

(3) Subsection (2)(a) does not apply to a right referred to in section 16(1)(h), (i) or (j) or (3)(aa).

(4) Subsection (2)(b) does not apply to a pastoral lease or diversification lease.

*[Section 11 amended: No. 12 of 2019 s. 7; No. 37 of 2022 s. 5; No. 4 of 2023 s. 115.]*

## 12. Vesting of property by statute law

(1) Without limiting section 11(1)(d)(i), property is vested under statute law if the law vests the property in an entity that the law states is the successor in law of, continuation of or same entity as, the entity in which the property was previously vested.

(2) However, property is not vested under statute law on the registration of a company under the Corporations Act Chapter 5B Part 5B.

(3) The merger of a corporation (***company A***) with and into another corporation (***company B***) in circumstances where neither subsection (4) nor subsection (5) applies is taken to be a vesting of the property in Western Australia of company A in company B by statute law.

(4) A merger of corporations (the ***merging corporations***) in circumstances where another corporation (***company C***) results as a consequence of the merger is taken to be a vesting of the property in Western Australia of the merging corporations in company C by statute law.

(5) A merger of corporations (the ***merging corporations***) with and into each other in circumstances where each of the merging corporations continues in existence is taken to be a vesting in the merging corporations, jointly, of 50% (in value) of the property in Western Australia of the merging corporations by statute law.

*[**13.** Deleted: No. 37 of 2022 s. 6.]*

**14. Transactions as to chattels alone not usually dutiable**

(1) Subject to subsections (2) and (3), a transaction is not a dutiable transaction if the only dutiable property the subject of the transaction is a chattel in Western Australia.

(2) A transaction referred to in subsection (1) is a dutiable transaction if, under section 37, it is aggregated with a transaction that is a dutiable transaction and the transactions are treated as a single dutiable transaction.

(3) A transaction referred to in subsection (1) is a dutiable transaction if —

(a) there is a relevant acquisition for the purposes of Chapter 3 or an agreement for the making of such an acquisition; and

(b) the transaction and the acquisition or agreement together form, evidence, give effect to or arise from what is, substantially one arrangement.

(4) Without limiting subsection (3), unless the Commissioner is satisfied to the contrary, a transaction and an acquisition or

agreement together form, evidence, give effect to or arise from what is, substantially one arrangement if —

(a) the transaction has taken place, and the acquisition or agreement has been made, within 12 months; and

(b) in respect of both the transaction and the acquisition or agreement, the person liable to pay duty is the same person (whether that person is the only person liable to pay duty or is liable to pay duty with the same or different persons).

(5) A reference in subsection (4) to a person liable to pay duty on the transaction is a reference to a person that would be liable to pay duty if the transaction were a dutiable transaction.

*[Section 14 amended: No. 12 of 2019 s. 9.]*

## Division 2 — Dutiable property

### 15. Dutiable property

Any of the following is ***dutiable property*** —

(a) land in Western Australia;

(b) a right;

(c) a chattel in Western Australia;

(d) a Western Australian business asset.

### 16. References to right

(1) A reference to a right is to any of the following —

(a) an option to acquire dutiable property, unless the option is part of a simultaneous put and call option over dutiable property;

(b) a right of pre-emption for dutiable property;

(c) a right to acquire dutiable property;

(d) a right under a joint venture relating to dutiable property of the joint venture;

(e) a right to exploit dutiable property;

(f) a right to income from dutiable property;

(g) a right to the capital growth of dutiable property;

(h) a fixed infrastructure control right;

(i) a fixed infrastructure access right;

(j) a fixed infrastructure statutory licence.

(2) A right referred to in subsection (1)(a) to (g) exists in relation to dutiable property only if the transfer of the property would be a dutiable transaction.

(3) Without limiting subsection (1), a right includes the following —

(a) a right under an application under the *Mining Act 1978* for a mining tenement;

(aa) a derivative mining right;

(b) a licence, or a water entitlement under a licence, under the *Rights in Water and Irrigation Act 1914* section 5C;

(ba) a part of, or an interest in, a right referred to in subsection (1) or this subsection;

(c) any other thing prescribed for the purposes of this section.

(4) Subsection (1)(a) to (g) do not apply to a right to the extent that the right is a fixed infrastructure control right, a fixed infrastructure access right or a fixed infrastructure statutory licence.

*[Section 16 amended: No. 12 of 2019 s. 10.]*

## 17. New dutiable property

(1) Any of the following is ***new dutiable property*** —

(a) land in Western Australia;

(b) the following rights —

(i) an option to acquire dutiable property, unless the option is part of a simultaneous put and call option over dutiable property;

(ii) a right to acquire dutiable property;

(iia) a fixed infrastructure control right;

(iib) a fixed infrastructure access right;

(iic) a derivative mining right;

(iii) any other right prescribed for the purposes of this subsection;

(c) in section 81(4) and (5), the following Western Australian business assets —

(i) intellectual property;

(ii) a restraint of trade arrangement;

(iii) a business identity.

(2) The following are not ***new dutiable property*** —

(a) a security interest in dutiable property;

(aa) an estate in land created as a community lot in a community titles scheme on the registration of the community titles scheme or an amendment of the community titles scheme under the *Community Titles Act 2018*;

Note for this subparagraph:

Common property created on the registration or amendment of a community titles scheme is also not new dutiable property.

(ab) an estate in land referred to in the *Community Titles Act 2018* section 154(2)(b)(ii), (c)(ii) or (d)(iii) created on termination of a community titles scheme under that Act;

(ac) an estate in land created as a strata lot in a freehold or a leasehold scheme on the registration of the strata titles

scheme or an amendment of the strata titles scheme under the *Strata Titles Act 1985*;

Note for this paragraph:

Common property created on the registration or amendment of a strata titles scheme is also not new dutiable property.

(ad) an estate in land created on termination of a strata titles scheme under the *Strata Titles Act 1985*;

(b) a partner's interest in a partnership;

(c) a lease (including a diversification lease but not including a pastoral lease) if no consideration is paid, or agreed to be paid, for the grant of the lease;

(ca) a pastoral lease, or an interest of a pastoral lessee under a pastoral lease, if the grant of the lease under the *Land Administration Act 1997* section 101 is not subject to the payment of a sale price;

(d) a mining tenement;

*[(e) deleted]*

(f) a licence, or a water entitlement under a licence, under the *Rights in Water and Irrigation Act 1914* section 5C;

(g) a profit à prendre created under a timber sharefarming agreement under the *Conservation and Land Management Act 1984* or the *Forest Products Act 2000*, unless a profit à prendre had been previously created in respect of a crop of trees to which the agreement applies;

(h) a plantation interest, created under an agreement under the *Tree Plantation Agreements Act 2003*, unless the interest had been previously created in respect of a plantation to which the agreement applies;

(i) any other dutiable property prescribed as excluded property for the purposes of this section.

(3) Without limiting section 11(1)(f), new dutiable property that is land in Western Australia includes an extension of the term of a

strata lease for a lot in a leasehold scheme by the postponement of the expiry day for the scheme as referred to in the *Strata Titles Act 1985* section 50(3).

*[Section 17 amended: No. 12 of 2019 s. 11; No. 30 of 2018 s. 132; No. 32 of 2018 s. 204; No. 4 of 2023 s. 116.]*

## 18. Special dutiable property

Any of the following is ***special dutiable property*** —

(a) a life interest in land;

(b) a remainder interest in land;

(c) a lease (other than a pastoral lease or diversification lease), if consideration is paid, or agreed to be paid, by the lessor for the surrender of the lease;

(caa) a pastoral lease or diversification lease (the ***old lease***), in whole or in part, if —

(i) the surrender of the old lease is made as part of an agreement, arrangement or understanding that a pastoral lease or diversification lease (the ***new lease***) be granted to another person; and

(ii) there is, or will be, consideration for the surrender of the old lease; and

(iii) in the case where the new lease is a pastoral lease, the grant of the new lease under the *Land Administration Act 1997* section 101 is not subject to the payment of a sale price, or, in the case where the new lease is a diversification lease, there is not, and will not be, any consideration for the grant of the new lease;

(ca) a strata lease;

(d) an easement;

(e) a right of way;

(f) a mining tenement in whole or in part, if the surrender is made in contemplation of, or as part of an agreement

that, the tenement, or the part of the tenement, be granted to, or acquired by, another person;

(g) a right under an application under the *Mining Act 1978* for a mining tenement;

(ga) a fixed infrastructure control right, if consideration is paid, or agreed to be paid, for the surrender of the right;

(gb) a fixed infrastructure access right, if consideration is paid, or agreed to be paid, for the surrender of the right;

(gc) a derivative mining right, if consideration is paid, or agreed to be paid, for the surrender of the right;

(h) any other dutiable property prescribed for the purposes of this section.

*[Section 18 amended: No. 12 of 2019 s. 12; No. 30 of 2018 s. 133; No. 4 of 2023 s. 117.]*

### 18A. Things fixed to land that are to be permanently removed

(1) Despite section 3A(1)(f) and (g), a thing fixed to land, or an estate or interest in such a thing, is taken not to be land in relation to a particular transaction if —

(a) the transaction is the transfer, or an agreement for the transfer, of the thing or the estate or interest in the thing; and

(b) none of the following are transferred as part of the transaction or another transaction that is aggregated with the transaction under section 37 —

(i) the land, or an estate or interest in the land, to which the thing is fixed;

(ii) if the land to which the thing is fixed is land the subject of a mining tenement — the mining tenement, or an estate or interest in the mining tenement;

and

(c) there is an agreement, arrangement or understanding relating to the transaction under which the thing is to be permanently removed from the land.

(2) Subsection (1) applies whether or not the thing constitutes a fixture at law.

(3) If subsection (1) applies to a thing fixed to land, or an estate or interest in such a thing, the thing is taken to be a chattel for the purposes of this Act.

(4) Subsection (1) ceases to apply to a thing fixed to land, or an estate or interest in such a thing, if the thing is not permanently removed from the land within —

(a) the period of 90 days after the day on which the transfer referred to in subsection (1)(a) occurs; or

(b) any longer period allowed, on application within the period referred to in paragraph (a), by the Commissioner on any conditions the Commissioner thinks fit.

(5) If a failure to remove a thing as referred to in subsection (4) occurs, the transferee must lodge a notice of the failure in the approved form within 2 months after the last day of the period that applies under subsection (4)(a) or (b).

Penalty for this subsection: a fine of $20 000.

(6) Subject to the Taxation Administration Act section 17, the Commissioner must make any reassessment necessary as a result of the operation of subsection (4).

*[Section 18A inserted: No. 12 of 2019 s. 13.]*

# Part 4 — Collection of transfer duty

## Division 1 — Liability for transfer duty

### 19. When liability for duty arises

(1) Subject to subsection (2), liability for duty chargeable on a dutiable transaction described in Schedule 1 column 2, arises at the earlier of —

(a) the time referred to opposite the transaction in column 3; or

(b) if the transaction is, or will be, effected by an instrument, when the instrument is executed.

(2) If a general conditional agreement is terminated on relevant grounds before an instrument is required to be lodged under section 23 in respect of the agreement then liability for duty does not arise in respect of the general conditional agreement.

*[Section 19 amended: No. 17 of 2010 s. 5.]*

### 20. Who is liable to pay duty

The person liable to pay duty chargeable on a dutiable transaction described in Schedule 1 column 2 is the person described opposite that transaction in Schedule 1 column 4, unless another person is required under this Chapter to pay the duty.

### 21. Joint tenants to be treated as tenants in common in equal shares

For the purpose of charging duty, joint tenants of dutiable property are taken to hold the dutiable property as tenants in common in equal shares.

## Division 2 — Lodging transaction records

### 22A. Terms used

In this Division —

***digitally sign*** has the meaning given in the *Electronic Conveyancing Act 2014* section 3(1);

***electronic conveyancing instrument*** means an instrument in electronic form that, on being digitally signed, has, under the *Electronic Conveyancing Act 2014* section 9(2), the same effect as if a paper document having the equivalent effect had been executed as provided in section 9(2)(a) or (b) of that Act.

*[Section 22A inserted: No. 2 of 2014 s. 50.]*

### 22. Transfer duty statement to be made if no instrument

(1) The person liable to pay duty on a dutiable transaction must make a transfer duty statement in the approved form within the time provided under section 23 for lodging the statement unless the transaction is effected, or evidenced, by an instrument in hard copy form.

Penalty: a fine of $20 000.

(2) For the purposes of subsection (1) and section 23(1)(a), an electronic conveyancing instrument that has been digitally signed is to be taken to be an instrument in hard copy form.

*[Section 22 amended: No. 2 of 2014 s. 51.]*

### 23. Instrument or statement for dutiable transaction, duty to lodge

(1) Subject to subsection (2), the person liable to pay duty on a dutiable transaction must lodge —

(a) if the transaction is effected by an instrument in hard copy form — that instrument and if there is more than one such instrument, each of them; or

(b) if the transaction is not effected by an instrument in hard copy form — an instrument in hard copy form that evidences the transaction and if there is more than one instrument, each of them, or a transfer duty statement for the transaction,

within 2 months after the day on which liability for duty on the transaction arises.

Penalty: a fine of $5 000.

(2) A person is not required to lodge an instrument in respect of a general conditional agreement in respect of which liability for duty does not arise under section 19(2).

(3) If a transaction is effected by an electronic conveyancing instrument, the person liable to pay duty on the transaction is to be taken to have complied with subsection (1) when the instrument is digitally signed.

*[Section 23 amended: No. 17 of 2010 s. 6; No. 2 of 2014 s. 52.]*

### 24. Form of dutiable transaction

It does not matter whether a dutiable transaction —

(a) is effected by an instrument or another way; or

(b) involves one party, or more than one party.

## Division 3 — Payment of transfer duty

### 25. When duty must be paid

(1) A person liable to pay duty on a dutiable transaction is to pay the duty within one month after the date of the assessment notice issued in relation to an assessment of the duty, unless a later time is provided under subsection (2) or (3) in respect of the transaction.

(2) Unless subsection (3) applies, duty is to be paid within 12 months after the day on which liability for duty on the transaction arises if the transaction is —

(a) a conditional agreement; or

(b) a dutiable transaction referred to in section 11(1)(a), (b), (c) or (d) if a document relating to the transaction must be registered under —

(i) the *Mining Act 1978*; or

(ii) the *Registration of Deeds Act 1856*; or

(iii) the *Transfer of Land Act 1893*.

(3) Duty is to be paid within 3 years after the day on which liability for duty on the transaction arises if the transaction is —

(a) a subdivision conditional agreement; or

(b) an issue of title conditional agreement.

*[Section 25 inserted: No. 17 of 2010 s. 7; amended: No. 10 of 2013 s. 4.]*

## Division 4 — Rate of transfer duty

### 26. Rate of transfer duty

(1) Unless otherwise provided in this Chapter, duty is chargeable —

(a) by reference to the dutiable value of a dutiable transaction; and

(b) at the general rate of duty.

(2) The general rate of duty, concessional rates of duty and the amount of nominal duty are set out in Schedule 2.

## Division 5 — Dutiable value

### Subdivision 1 — Dutiable value

**27. Dutiable value of dutiable transactions, unless otherwise provided**

Unless otherwise provided in this Chapter, the dutiable value of a dutiable transaction is —

(a) the consideration for the dutiable transaction; or

(b) the unencumbered value of the dutiable property the subject of the transaction when liability for duty on the transaction arises if —

(i) there is no consideration for the transaction; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the consideration for the transaction.

**28. Dutiable value of certain dutiable transactions**

(1) If the value of a dutiable transaction referred to in section 11(1)(d)(ii) or (e) is stated in a court order the value stated in the order is the dutiable value of the transaction.

(2) Subject to subsection (1), the dutiable value of a dutiable transaction that is the foreclosure of a mortgage over dutiable property is the unencumbered value of the dutiable property and not the value of the debt secured by the mortgaged property.

(3) The dutiable value of a dutiable transaction that is the surrender of a lease (other than a pastoral lease or diversification lease) is the consideration for the surrender of the lease paid or payable by the lessor.

(3A) The dutiable value of a dutiable transaction that is the surrender of a pastoral lease or diversification lease in the circumstances

referred to in section 18(caa) is the consideration for the surrender of the lease referred to in section 18(caa)(ii).

(4) The dutiable value of a dutiable transaction that is the grant of a lease (other than a pastoral lease or diversification lease) is the total of the following amounts —

(a) the amount of any consideration for the grant of the lease;

(b) any amount paid or payable under the lease as rent that —

(i) is in excess of a fair market rent for the leased property; and

(ii) represents an amount paid or payable for the grant of the lease.

(4A) The dutiable value of a dutiable transaction that is the grant of a pastoral lease is the sale price subject to the payment of which the lease is granted under the *Land Administration Act 1997* section 101.

(4B) The dutiable value of a dutiable transaction that is the grant of a diversification lease is the consideration for the grant of the lease.

(5) The dutiable value of a dutiable transaction under a discretionary trust that would be a transaction described in section 114(1) or 115 except that —

(a) consideration is paid or payable for the transaction; and

(b) that consideration is consideration referred to in section 30(1),

is that consideration.

(6) The dutiable value of a dutiable transaction that is a transfer of, or an agreement for the transfer of, dutiable property from the trustee of a superannuation fund on which nominal duty would be chargeable under section 127 but for section 127(2)(d), is the

amount by which the unencumbered value of the dutiable property transferred exceeds the value of the member's interest in the superannuation fund.

*[Section 28 amended: No. 30 of 2008 s. 24; No. 32 of 2012 s. 4; No. 12 of 2019 s. 14; No. 4 of 2023 s. 118.]*

### 29. Dutiable value of certain dutiable transactions relating to corporation or unit trust scheme property on winding up

(1) A reference in this section to a transfer of corporation or unit trust scheme property is to a transfer, or agreement for the transfer, of property (some or all of which is dutiable property) by —

(a) the liquidator of the corporation to any of its shareholders in the course of a distribution of its assets as a consequence of the winding up of the corporation; or

(b) the trustee of a unit trust scheme to any unit holder in the scheme in the course of the winding up of the unit trust scheme.

(2) The dutiable value of a dutiable transaction that is a transfer of corporation or unit trust scheme property is —

(a) in relation to a corporation — determined in accordance with the following formula —

~~$DV = A \times \frac{X}{Y}$~~

$DV = A \times \frac{X}{Y}$

where —

DV is the dutiable value;

A is the greater of the following amounts —

(i) the amount (if any) by which the value, when the winding up begins, of all the assets distributed,

or to be distributed, to the shareholder exceeds the value, at that time, of the shareholder's entitlement to the net assets of the corporation; or

(ii) the amount that is the total of —

(I) the amount (if any) owing to the shareholder that the shareholder has released the corporation from paying in the relevant period; and

(II) the amount (if any) of any liability that the shareholder, or a person related to the shareholder, has assumed or discharged on behalf of the corporation in the relevant period;

X is the unencumbered value of all dutiable property the subject of the transfer;

Y is the unencumbered value of all property the subject of the transfer;

and

(b) in relation to a unit trust scheme — determined in accordance with the following formula —

~~$DV = A \times \frac{X}{Y}$~~

$DV = A \times \frac{X}{Y}$

where —

DV is the dutiable value;

A is the greater of the following amounts —

(i) the amount (if any) by which the value, when the winding up begins, of all the assets distributed, or to be distributed, to the unit holder exceeds the value, at that time, of the unit holder's entitlement to the net assets held by the trustee of the unit trust scheme as trustee of that trust; or

(ii) the amount that is the total of —

(I) the amount (if any) owing to the unit holder that the unit holder has released the trustee of the unit trust scheme from paying in the relevant period; and

(II) the amount (if any) of any liability that the unit holder, or a person related to the unit holder, has assumed or discharged on behalf of the trustee of the unit trust scheme in the relevant period;

X is the unencumbered value of all dutiable property the subject of the transfer;

Y is the unencumbered value of all property the subject of the transfer.

Note for this subsection:

For example, Company X has 2 equal shareholders A and B. The company has total assets of $800 000, total liabilities of $100 000 and net assets of $700 000. The shareholder entitlement of each of A and B is $350 000.

There are no liquid assets to satisfy the liability and the liquidator distributes the assets subject to the liability. A receives assets of $450 000 ($100 000 in excess of A's entitlement) comprising $400 000 of dutiable property and $50 000 non-dutiable property and assumes the whole mortgage. B receives assets comprising dutiable property of $350 000.

A's duty assessment:

$$\frac{\text{\$100 000 (excess entitlement)} \times \text{\$400 000 (value of dutiable property)}}{\text{\$450 000 (value of all property received)}}$$

Transfer duty is charged on $88 888.

B's duty assessment:

Nominal duty is charged, as B has received a distribution of assets equal to the shareholder entitlement.

(3) In subsection (2) —

***person related***, to a shareholder or unit holder, means that the person and the shareholder or unit holder are related persons within the meaning of section 162(1)(a) to (g);

***relevant period*** means the period beginning on the day that is 12 months before the day on which the winding up begins and ending on the day that the property is transferred.

(4A) For the purposes of paragraph (a)(ii)(II) or (b)(ii)(II) of the definition of the variable "A" in subsection (2), the Commissioner may exclude part or all of the amount of any liability that a person related to a shareholder or unit holder, as the case requires, has assumed or discharged if the Commissioner is satisfied that it is appropriate to do so having regard to the application of subsection (2) to all other transfers of corporation or unit trust scheme property in respect of the same corporation or unit trust scheme.

(4) Subject to subsection (2), nominal duty is chargeable on a dutiable transaction that is a transfer of corporation or unit trust scheme property if —

(a) in relation to a transfer of corporation property — the total value of the transaction to the shareholder, when the winding up begins, is equal to or less than the value of the shareholder's entitlement to the net assets of the corporation at that time; or

(b) in relation to a transfer of unit trust scheme property — the total value of the transaction to the unit holder, when the winding up begins, is equal to or less than the value of the unit holder's entitlement to the net assets held in the unit trust scheme at that time.

(5) This section does not apply to a transfer of corporation or unit trust scheme property if the Commissioner is satisfied that the corporation or unit trust scheme is being wound up as a scheme or arrangement, or part of a scheme or arrangement, for which a

dominant purpose of any party was the reduction of the duty otherwise chargeable on the transaction.

(6) In considering whether or not the Commissioner is satisfied for the purposes of subsection (5), the Commissioner may have regard to any of the following in relation to a corporation —

(a) the duration of the shareholder's shareholding in the corporation;

(b) whether or not the shareholder held shares in a related corporation of the corporation that owned the property before it was owned by the corporation;

(c) the period for which the property has been owned by the corporation or a related corporation of the corporation;

(d) any dealing in shares of the corporation or a related corporation of the corporation by any one or more of the following —

(i) the shareholder;

(ii) a previous owner of the property;

(e) whether there is any commercial efficacy to a scheme or arrangement of transactions involving any one or more of the following —

(i) the corporation;

(ii) the shareholder;

(iii) a related corporation of the corporation;

(iv) a person that has a substantial holding (within the meaning given in the Corporations Act) in a person referred to in subparagraph (i), (ii) or (iii),

in relation to the winding up, other than to reduce the duty otherwise chargeable on the transfer;

(f) whether the transfer is pursuant to a right, attaching to any of the shares in the corporation, to select or receive any particular property of the corporation;

(g) any other matters the Commissioner considers relevant.

(7) In considering whether or not the Commissioner is satisfied for the purposes of subsection (5), the Commissioner may have regard to any of the following in relation to a unit trust scheme —

(a) the duration of the unit holder's unit holding in the unit trust scheme;

(b) whether or not the unit holder held units in a related unit trust scheme that owned the property before it was owned by the trustee of the unit trust scheme;

(c) the period for which the property has been owned by the trustee of the unit trust scheme or a related unit trust scheme of the unit trust scheme;

(d) any dealing in units of the unit trust scheme or a related unit trust scheme of the unit trust scheme by any one or more of the following —

(i) the unit holder;

(ii) a previous owner of the property;

(e) whether there is any commercial efficacy to a scheme or arrangement of transactions involving any one or more of the following —

(i) the trustee of the unit trust scheme;

(ii) the unit holder;

(iii) a related unit trust scheme,

in relation to the winding up, other than to reduce the duty otherwise chargeable on the transfer;

(f) whether the transfer is pursuant to a right, attaching to any of the units in the unit trust scheme, to select or receive any particular property held by the trustee of the unit trust scheme as trustee of that trust;

(g) any other matters the Commissioner considers relevant.

(8) For the purposes of subsection (7), unit trust schemes are related if a unit trust holder in one unit trust scheme holds units that

provides the holder to an entitlement to the capital of another unit trust scheme if it were to be wound up.

*[Section 29[2] amended: No. 29 of 2012 s. 4.]*

## Subdivision 2 — Consideration

### 30. Consideration for dutiable transaction

(1) The consideration for a dutiable transaction includes —

(a) the amount of any liabilities assumed under the transaction, including an obligation, whether contingent or otherwise, to pay any unpaid purchase money payable under an agreement for the transfer of dutiable property; and

(b) the amount or value of any debt to the extent it is released or extinguished under the transaction.

(2) If the consideration, or any part of the consideration, for a dutiable transaction on which duty is chargeable consists of an amount payable periodically and the total amount to be paid can be ascertained, the consideration or part of the consideration is the total amount.

(3) It does not matter whether the consideration for a transaction on which duty is chargeable is paid or given or is required to be paid or given.

### 31. Changes to consideration before transfer, consequences of

(1) If after an agreement for the transfer of dutiable property is entered into and before the property is transferred —

(a) the consideration under the agreement is reduced and the reduced consideration is not less than the unencumbered value of the dutiable property when the consideration was reduced; or

(b) the consideration under the agreement is reduced because the parties have agreed not to transfer some of

the dutiable property previously agreed to be transferred and the reduced consideration is not less than the unencumbered value of the dutiable property that remained to be transferred when the consideration was reduced,

the Commissioner is to assess or, on the application of the taxpayer, reassess the liability to duty of the agreement in accordance with the reduced consideration.

(2) Subsection (1) does not apply in respect of an agreement to which section 32 applies.

(3) If after an agreement for the transfer of dutiable property is entered into and before the property is transferred —

(a) the consideration under the agreement is reduced and the reduced consideration is less than the unencumbered value of the dutiable property when the consideration was reduced; or

(b) the consideration under the agreement is reduced because the parties have agreed not to transfer some of the dutiable property previously agreed to be transferred and the reduced consideration is less than the unencumbered value of the dutiable property that remained to be transferred when the consideration was reduced,

the Commissioner is to assess or, on the application of the taxpayer, reassess the liability to duty of the agreement in accordance with the dutiable value of the agreement being the unencumbered value when the consideration was reduced.

(4) If after an agreement for the transfer of dutiable property is entered into and before the property is transferred —

(a) the consideration under the agreement is increased; and

(b) the increased consideration is not less than the unencumbered value of the dutiable property when the agreement was entered into,

the Commissioner is to assess or reassess the liability to duty of the agreement in accordance with the increased consideration.

(5) If after a dutiable transaction is duty endorsed the consideration under the transaction is increased as referred to in subsection (4), the person liable to pay duty must lodge —

(a) if the increase in consideration is effected by an instrument in hard copy form — that instrument and if there is more than one such instrument, each of them; or

(b) if the increase in consideration is not effected by an instrument in hard copy form — an instrument in hard copy form that evidences the increase in consideration and if there is more than one such instrument each of them, or a transfer duty statement for the transaction that shows the increase in consideration,

within 2 months after the day on which consideration under the transaction is increased.

Penalty: a fine of $20 000.

(6) Duty is chargeable on a reassessment under this section in relation to a transaction at the same rate and using the same thresholds that applied when liability for duty on the transaction initially arose.

## 32. Contingent consideration not paid, consequences of

(1) If an agreement for the transfer of dutiable property is duty endorsed and any part of the consideration under the agreement was dependent on the happening of a future event (the ***contingent consideration***) and —

(a) the contingent consideration has not been paid; and

(b) the event did not happen, or did not happen within the time specified for the happening of the event, in an instrument effecting or evidencing the agreement; and

(c) either —

(i) the event cannot happen in the future; or

(ii) the time specified for the happening of the event in an instrument effecting or evidencing the agreement has passed or expired;

and

(d) the taxpayer makes an application for a reassessment under this section in the approved form,

the Commissioner is to reassess the liability to duty of the agreement in accordance with the consideration not including the contingent consideration.

(2) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made when liability to duty on the agreement arose.

(3) In this section, a reference to the happening of an event includes a reference to an event not happening.

### 33. Agreement by instalments determined before final payment, consequences of

(1) In this section —

***agreement by instalments*** means an agreement for the transfer of dutiable property —

(a) wholly or partly in consideration of the making of 2 or more payments at intervals specified in an instrument effecting or evidencing the agreement; and

(b) which is subject to the right of the purchaser or transferee to determine the agreement at any time before the property is transferred on making such of the

payments as are due and payable at the time of the determination.

(2) If, after an agreement by instalments has been duty endorsed, the agreement is determined before the final payment had become due and payable under the agreement, the Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the agreement in accordance with the consideration paid, or due and payable, when the agreement is determined.

(3) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made when the determination was made.

### 34. Options conferred by dutiable transactions that are exercised or not renewed, consequences of

(1) If —

(a) after a dutiable transaction that —

(i) confers on a person the right of an option to acquire dutiable property; and

(ii) provides for the renewal of that right on one, or more than one, occasion specified in an instrument effecting or evidencing the transaction,

is duty endorsed based on the consideration for the transaction which includes the sum of the amounts paid by way of consideration for the right of the option and the amount or amounts, as the case may be, payable for the renewal or renewals of the option; and

(b) the person on whom the right of the option was conferred under the transaction, before the occurrence of the final occasion specified in an instrument effecting or evidencing the transaction —

(i) exercised the option; or

(ii) failed to renew the right of option,

the Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the transaction as if the consideration was an amount equal to the amount paid or payable in respect of any occasion or occasions specified in an instrument effecting or evidencing the transaction that have occurred before the person exercised the option, or failed to renew the right of option.

(2) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made when the person exercised the option, or failed to renew the right of option.

## 35. Option to acquire dutiable property, duty paid on to be credited

If —

(a) a transaction record for the grant or renewal of an option to acquire dutiable property is duty endorsed; and

(b) the consideration for the grant or renewal will form part of the consideration for the transaction if the option is exercised; and

(c) the option is exercised,

the amount of duty payable on the transfer of, or the agreement for the transfer of, dutiable property is to be reduced by the amount of duty paid on the grant or renewal of the option to acquire the property.

Note for this section:

For example, consideration is paid for the grant of an option to acquire dutiable property. The transaction provides for the renewal of the right for further consideration.

The transaction also provides that the consideration paid for the grant and renewal of the option forms part of the consideration for the property if the option is exercised.

Duty of $200 is charged on the total consideration for the grant and renewal of the option (the ***first dutiable transaction***).

The option is exercised after the renewal of the option and an agreement for the transfer of dutiable property is entered into for consideration (the ***second dutiable transaction***).

The amount of duty payable on the second dutiable transaction is reduced by the amount of duty paid on the first dutiable transaction.

If the duty payable on the second dutiable transaction would be $2 000, it is reduced by the duty of $200 paid on the first dutiable transaction. The duty payable on the agreement to transfer the property is therefore $1 800.

## Subdivision 3 — Unencumbered value

### 36. Determining unencumbered value of property

(1) The ***unencumbered value*** of property is the value of the property determined without regard to —

(a) any encumbrance to which the property is subject, whether contingently or otherwise; or

(b) any overriding power of revocation or reconveyance; or

(c) any scheme or arrangement —

(i) that results in the reduction of the value of the property; and

(ii) for which a dominant purpose of any party to the scheme or arrangement was, in the opinion of the Commissioner, the reduction of the value of the property.

Note for this subsection:

Example for paragraph (c) —

A owns land that B wishes to purchase. The land is valued at $1m. Before the purchase, A grants B a 50 year lease of the land. B is not required to pay any rent under the lease. A and B then enter into an agreement for the transfer of the land for $50 000, being the value of A's interest in the land taking into account that it is subject to the lease to B.

The unencumbered value of the land is determined without regard to the grant of the lease if the Commissioner is of the opinion there is a scheme or arrangement under which A or B's purpose in entering into it was to reduce the value of the land.

(2) Subsection (1)(c) does not apply to or in respect of a scheme or arrangement that was entered into before 27 December 1996.

(3) For the purposes of subsection (1)(c), the Commissioner may have regard to —

(a) the duration of the scheme or arrangement before the dutiable transaction or the relevant transaction concerning the property; and

(b) whether the scheme or arrangement has been entered into with a related person within the meaning given in section 162; and

(c) whether there is any commercial efficacy to the making of the scheme or arrangement other than to reduce duty; and

(d) any other matters the Commissioner considers relevant.

(4) When determining the unencumbered value of property —

(aa) the ordinary principles of valuation apply, except to the extent that those principles are modified due to the operation of another paragraph of this subsection; and

(a) the unencumbered value of an undivided share in the property, whether held jointly or in common, is to be ascertained by multiplying the total unencumbered value of the property by the share expressed as a fraction; and

(b) it is to be assumed that a hypothetical purchaser would, when negotiating the price of property, have knowledge of all existing information relating to the property; and

(ca) information relating to the property (including the right to and use of the information) —

(i) will be regarded as an attribute of the property; and

(ii) will not be regarded as something to which an independent value can be ascribed.

(5) When determining the unencumbered value of property that is land —

(a) if the land is the subject of an agreement for transfer, any improvement made to the land at the expense of the purchaser or transferee before the date liability to duty arises on the agreement is to be taken not to have been made to the land; and

(b) if the land is the subject of a transfer, any improvement made to the land at the expense of the transferee before the land is transferred is to be taken not to have been made to the land; and

(c) the value is to be determined having regard to the use of the land that would best enhance its commercial value; and

(d) the value is to be determined having regard to commercial advantages (such as goodwill) that —

(i) attach to the location or other aspects of the land; and

(ii) would affect the price that a reasonable purchaser would be willing to pay for the land;

and

(e) if section 36A applies, the value is to be determined having regard to that section.

*[Section 36 amended: No. 1 of 2015 s. 24; No. 12 of 2019 s. 15.]*

## 36A. Determining unencumbered value: fixtures and mining tenement fixtures

(1) In this section —

***mining tenement fixture***, in relation to a mining tenement, means a thing that —

(a) under the authority (whether direct or indirect) of the mining tenement, is fixed to land that is the subject of the mining tenement; and

(b) would be part of that land as a fixture if the mining tenement were a freehold estate in the land.

(2) In determining the unencumbered value of dutiable property that is land, anything that is part of the land as a fixture is to be taken into account even if the dutiable transaction does not, or purports not to, apply to the fixture as well as the land.

(3) Subsection (2) does not apply if the value of the fixture would, apart from that subsection, be taken into account separately in determining the dutiable value of the dutiable transaction relating to the land or another dutiable transaction that is aggregated with that dutiable transaction under section 37.

(4) In determining the unencumbered value of dutiable property that is a mining tenement or an estate or interest in a mining tenement, anything that is a mining tenement fixture in relation to the mining tenement is to be taken into account even if the dutiable transaction does not, or purports not to, apply to the mining tenement fixture as well as the mining tenement or the estate or interest in the mining tenement.

(5) Subsection (4) does not apply if the value of the mining tenement fixture would, apart from that subsection, be taken into account separately in determining the dutiable value of the dutiable transaction relating to the mining tenement or the estate or interest in the mining tenement or another dutiable transaction that is aggregated with that dutiable transaction under section 37.

(6) In this section, a reference to land does not include anything that is land under section 3A(1)(b), (c), (f) or (g).

*[Section 36A inserted: No. 12 of 2019 s. 16.]*

## Subdivision 4 — Miscellaneous

### 37. Aggregation of dutiable transactions

(1) Dutiable transactions relating to separate items of dutiable property that together form, evidence, give effect to or arise from what is, substantially one arrangement are to be aggregated and treated as a single dutiable transaction.

(2) Without limiting subsection (1), unless the Commissioner is satisfied to the contrary, dutiable transactions relating to separate items of dutiable property together form, evidence, give effect to or arise from what is, substantially one arrangement if —

(a) the transactions have taken place within 12 months; and

(b) in respect of each of the transactions, the person liable to pay duty is the same person (whether that person is the only person liable to pay duty or is liable to pay duty with the same or different persons).

(3) Dutiable transactions relating to separate items of dutiable property are not to be aggregated under this section unless the transactions to be aggregated —

(a) are all chargeable at the same rate of duty; or

(b) are all chargeable with nominal duty; or

(c) are all exempt transactions.

(4) If dutiable transactions are aggregated, then they are to be treated as a single dutiable transaction that took place at the time that the last of the aggregated transactions took place.

(5) This section does not apply to a dutiable transaction to the extent that it relates to the grant of an option to acquire dutiable property, other than as required under section 34.

(6) Duty chargeable on the dutiable transaction aggregated under this section is to be —

(a) assessed on the total of the dutiable values for each of the transactions (calculated as if each transaction was a dutiable transaction) at the time when liability for duty on each transaction arose; and

(b) apportioned between the transactions as decided by the Commissioner.

(7) The amount of duty payable in accordance with this section is to be reduced by the amount of any duty paid on a previous dutiable transaction that is, or previous dutiable transactions that are, aggregated under this section.

(8) Transactions aggregated and treated as a single dutiable transaction under this section may include a transaction that would not otherwise be a dutiable transaction, and where such a transaction is included, that transaction is taken to be a dutiable transaction and is liable to duty accordingly.

### 38. Transactions as to dutiable and not dutiable property, duty on

If a dutiable transaction relates to dutiable property and property that is not dutiable property, duty is chargeable only to the extent that the transaction relates to dutiable property.

### 39. Partitions of property, dutiable values in case of

(1) For the purposes of this section, a partition occurs when property (some or all of which is dutiable property) that is held by persons jointly (as joint tenants or tenants in common) and beneficially is transferred or agreed to be transferred to one or more of those persons.

(2) The dutiable value of a partition is to be determined in accordance with the following formula —

~~$DV = A \times \frac{X}{Y}$~~

$$DV = A \times \frac{X}{Y}$$

where —

DV is the dutiable value;

A is the greater of the following amounts —

(i) the sum of the amounts by which the unencumbered value of the property transferred or agreed to be transferred to a person exceeds the unencumbered value of the interest held by the person in all of the property immediately before the partition; or

(ii) the sum of any consideration for the partition paid by any of the parties;

X is the unencumbered value of all dutiable property the subject of the partition;

Y is the unencumbered value of all property the subject of the partition.

(3) The minimum amount of duty payable on a transaction that effects a partition is the amount of nominal duty.

Note for this section:

For example, A and B own lot 1 which has an unencumbered value of $400 000 and a boat that has an unencumbered value of $300 000.

The total value of the property being partitioned is $700 000 and A and B are each entitled to $350 000.

A is taking lot 1 by way of partition and the value of that lot exceeds A's entitlement by $50 000.

A's duty assessment:

$$\frac{\text{\$50 000 (excess entitlement)} \times \text{\$400 000 (value of dutiable property)}}{\text{\$700 000 (value of all property)}}$$

The dutiable value for the transfer of land to A is $28 571.

(4) This section does not apply to a transaction if section 78 or 78A applies to the transaction or if the transaction is a subsequent transfer referred to in section 120A.

*[Section 39 amended: No. 12 of 2019 s. 17.]*

### 40. Exchanges of dutiable property, duty on

Duty is chargeable on any dutiable transactions effecting an exchange of dutiable property for any other dutiable property as if the exchange involved —

(a) the transfer of the first-mentioned property for consideration equal to the unencumbered value of that property; and

(b) the transfer of the second-mentioned property for consideration equal to the unencumbered value of that property.

## Division 6 — No double duty

### 41. No double duty — general

(1) If a transaction for property constitutes more than one dutiable transaction for the property and the charging of duty on all of the dutiable transactions for the property would result in duty being imposed more than once on the transaction, the Commissioner is to decide the dutiable transaction on which duty is imposed and duty is not chargeable on the other dutiable transaction, or dutiable transactions.

(2) For the purposes of subsection (1), the Commissioner is to decide the dutiable transaction for the property that is the most applicable dutiable transaction having regard to this Chapter and the sole or dominant purpose of the transaction.

### 42. No double duty — particular dutiable transactions

(1) Duty is not chargeable on the transfer of dutiable property to a transferee in conformity with an agreement for the transfer of dutiable property if that agreement is duty endorsed.

(2) Duty is not chargeable on the transfer of dutiable property to a transferee under an agreement for the transfer of dutiable property if —

(a) when liability for duty on the agreement arises, the transferee and the purchaser of the property under the agreement are related as referred to in section 43; and

(b) the agreement is duty endorsed on the basis that duty has been paid or is payable at the general or a concessional rate (that is, under Schedule 2 Division 1 or 2); and

(c) duty would, but for this section, be chargeable on the transfer of the property at the rate at which duty was chargeable on the agreement.

(3) If an agreement for the transfer of dutiable property is duty endorsed and either, or both, of the following applies —

(a) there is a difference in the parties liable to duty under the agreement and the transferees under the transfer, and subsection (2)(a) does not apply;

(b) there is a difference between the division of the property between the transferees under the transfer and the division of the property between the parties liable to duty under the agreement, and subsection (2)(a) does not apply,

duty is not chargeable on the transfer of the property except to the extent of the change between the agreement and the transfer.

Note for this subsection:

Example for subsection (3) —

On 1 July, under an agreement for the transfer of dutiable property, A agrees to sell land in Western Australia to B and C as tenants in common in the undivided shares of 90/100 to B and 10/100 to C for $100 000.

At settlement, under the transfer, B and a new party, D are tenants in common in equal shares.

Transfer duty is chargeable on the transfer of the property only to the extent of the change in the interests in the property between the agreement and the transfer.

Transfer duty would be chargeable on the transfer of the property on 50/100 X $100 000, which is $50 000 i.e. 10/100 from C to D and 40/100 from B to D.

(4A) If, but for this subsection, subsections (1) and (3) would both apply to the transfer of dutiable property, subsection (1) does not apply.

(4B) If an agreement is for the transfer of dutiable property to a purchaser acting in the purchaser's own capacity, but the property is transferred to the purchaser acting in a capacity as a trustee of a trust, subsection (1) does not apply to the transfer of the property unless —

(a) the purchaser is an individual and the trust is a unit trust scheme in which the purchaser is the sole unit holder; or

(b) the trust is a unit trust scheme in which the purchaser is a unit holder and each of the other unit holders are related, as referred to in section 43(1)(a), (b), (c), (ca), (cb), (d) or (e), to the purchaser; or

(c) the trust is not a discretionary trust or a unit trust scheme and each beneficiary of the trust is related, as referred to in section 43(1)(a), (b), (c), (ca), (cb), (d) or (e), to the purchaser.

(4C) A reference in subsection (4B) to a unit holder or to a beneficiary is limited to a reference to a unit holder or beneficiary acting in their own capacity and not as agent, trustee or otherwise on behalf of any other person.

(4) If an agreement for the transfer of dutiable property is duty endorsed, duty is not chargeable on the subsequent transfer of the property if, when liability for duty on the agreement arose, the person named in the instrument effecting, or evidencing, the

agreement as the purchaser was acting as the agent of the transferee of the subsequent transfer.

(5) If —

(a) an agreement for the transfer of dutiable property is duty endorsed; and

(b) the person named in the agreement as the purchaser entered into the agreement with the intention that the property would be transferred to —

(i) a corporation that the person intended to be incorporated; or

(ii) a dormant corporation, the shares in which the person intended to be acquired,

and that property will not be held by the corporation as trustee of a trust; and

(c) when liability for duty on the agreement arose, action was being taken to —

(i) incorporate the corporation referred to in paragraph (b)(i); or

(ii) acquire the shares in the corporation referred to in paragraph (b)(ii),

duty is not chargeable on the subsequent transfer of the property to the corporation referred to in paragraph (b)(i) or (ii).

(6) In subsection (5) —

***dormant corporation*** means a corporation that, since it was incorporated —

(a) has not had any assets or liabilities other than share capital for subscriber shares or shares issued to replace subscriber shares of the same value on their redemption; and

(b) has not been party to an agreement or a beneficiary or trustee of a trust; and

(c) has not issued or sold any shares or rights relating to shares other than subscriber shares, rights relating to subscriber shares or shares issued to replace subscriber shares of the same value on their redemption.

(7) Duty is not chargeable on a transfer of dutiable property by the vendor under an agreement for the transfer of the property that results in the property becoming scheme property for a managed investment scheme if —

(a) the Commissioner is satisfied that a managed investment scheme has been, or is to be, established by means of an offer to subscribe to the scheme made to the public; and

(b) the Commissioner is satisfied that before the establishment of the scheme —

(i) the person named as purchaser in an agreement for the transfer of dutiable property entered into that agreement; or

(ii) the person promoting the scheme arranged for that agreement to be entered into by the person named in the agreement,

with the intention that the property concerned would become scheme property; and

(c) the agreement provides to the effect that, if the scheme is not established, the agreement is terminated; and

(d) the agreement is duty endorsed.

(8) If —

(a) there is an agreement for the transfer of dutiable property (the ***first agreement***); and

(b) after the first agreement takes place, one or more dutiable transactions over all or part of the dutiable property the subject of the first agreement takes place (the ***intervening transactions***); and

(c) to give effect to the first agreement and the intervening transactions, one or more transfers of dutiable property (the ***transfers***) are effected by one or more parties to the first agreement and the intervening transactions; and

(d) the first agreement and the intervening transactions are duty endorsed,

duty is not chargeable on the transfers.

Note for this subsection:

Example for subsection (8) —

On 1 July, under an agreement for the transfer of dutiable property, A agrees to sell land in Western Australia to B for $100 000. Settlement is to take place on 31 July. On 7 July, under an agreement for transfer, B agrees to sell the land to C for $120 000. Again, settlement is to take place on 31 July. Before 31 July, B directs A, that at settlement, A transfer the land to C.

The agreement between A and B is the first agreement. The agreement between B and C is the intervening transaction. Transfer duty is not chargeable on the transfer from A to C if the first agreement and intervening transactions are duty endorsed.

(9) Duty is not chargeable on a transfer to a trustee of dutiable property subject to a declaration of trust in respect of the same dutiable property if the declaration of trust is duty endorsed, or under subsection (11) duty is not chargeable on the declaration of trust.

(10) Duty is not chargeable on a declaration of trust that declares the same trusts as those upon and subject to which the same dutiable property was transferred, or agreed to be transferred, to the person declaring the trust if the transfer, or agreement, is duty endorsed.

(11) Duty is not chargeable on a declaration of trust if —

(a) the declaration of trust supersedes another declaration of trust which is duty endorsed and declares the same trusts as were declared under the superseded declaration of trust; and

(b) the beneficiary under the declaration of trust is the same as under the superseded declaration of trust; and

(c) the dutiable property subject to the declaration of trust —

(i) is wholly or substantially the same as the property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust; or

(ii) represents the proceeds of re-investment of property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust; or

(iii) is property to which both subparagraphs (i) and (ii) apply.

(12) Duty is not chargeable on a transfer of dutiable property resulting from a dutiable transaction referred to in section 11(1)(d) if the vesting of the dutiable property is duty endorsed.

(13) Duty is not chargeable on a transfer of dutiable property in accordance with a foreclosure order if the foreclosure order is duty endorsed.

(14) Duty is not chargeable on a transfer of dutiable property in accordance with a partnership acquisition if the partnership acquisition is duty endorsed.

*[(15) deleted]*

(16) Duty is not chargeable in respect of a dutiable transaction prescribed, on such condition and under such circumstances as are prescribed, if the dutiable transaction is one of 2 dutiable transactions that relate to the same transaction for the same dutiable property.

*[Section 42 amended: No. 32 of 2012 s. 5 and 6; No. 12 of 2019 s. 18; No. 37 of 2022 s. 7.]*

### 43. Persons related to purchaser for s. 42(2)(a)

(1) For the purposes of section 42(2)(a), the following persons are related to a purchaser who is an individual —

(a) the purchaser's spouse or de facto partner;

(b) a parent or remoter lineal ancestor of —

(i) the purchaser; or

(ii) the purchaser's spouse or de facto partner;

(c) a child or remoter lineal descendant of the purchaser;

(ca) a spouse or de facto partner of a child, or remoter lineal descendant, of the purchaser;

(cb) a spouse or de facto partner of a parent, or remoter lineal ancestor, of the purchaser;

(d) a sibling of —

(i) the purchaser; or

(ii) the purchaser's spouse or de facto partner;

(e) a spouse or de facto partner of a sibling mentioned in paragraph (d);

(f) a corporation if —

(i) the purchaser is the sole shareholder of the corporation; or

(ii) the purchaser is a shareholder of the corporation and is related (within the meaning of this section) to each of the other shareholders;

(g) a trustee of a unit trust scheme in the trustee's capacity as trustee of the unit trust scheme if —

(i) the purchaser is the sole unit holder in the unit trust; or

(ii) the purchaser is a unit holder in the unit trust and is related (within the meaning of this section) to each of the other unit holders.

(2) For the purposes of section 42(2)(a), a person is related to a purchaser that is a corporation if —

(a) the person is the sole shareholder of the corporation; or

(b) the person is a shareholder of the purchaser and, if the person were a purchaser, would be related (within the meaning of this section) to each of the other shareholders.

(3) For the purposes of section 42(2)(a), a person is related to a purchaser that is the trustee of a unit trust scheme if —

(a) the person is the sole unit holder in the unit trust scheme; or

(b) the person is a unit holder in the unit trust scheme and, if the person were a purchaser, would be related (within the meaning of this section) to each of the other unit holders.

(4) However, persons referred to in subsection (1), (2) or (3) are not related for the purpose of section 42(2)(a) if the dutiable property the subject of the transaction is to be held by a person on behalf of another person (the ***beneficiary***) —

(a) as the trustee of a discretionary trust; or

(b) as a trustee of a unit trust scheme, other than as referred to in subsection (1)(g); or

(c) as a trustee other than a trustee referred to in paragraph (a) or (b), unless —

(i) the purchaser and the transferee are related as referred to in subsection (1)(a), (b), (c), (ca), (cb), (d) or (e); and

(ii) the purchaser and the beneficiary are related as referred to in subsection (1)(a), (b), (c), (ca), (cb), (d) or (e).

*[Section 43 amended: No. 32 of 2012 s. 7; No. 12 of 2019 s. 19.]*

## Division 7 — Interim assessment of transfer duty

*[Heading inserted: No. 10 of 2013 s. 5.]*

### 44A. Interim assessment of transfer duty

(1) The Commissioner may make an assessment (an ***interim assessment***) of a portion of the duty payable on a dutiable transaction if —

(a) the Commissioner is satisfied that duty is payable on the transaction; and

(b) one of the following applies —

(i) more than 6 months have elapsed since the day on which a transaction record was lodged under section 23;

(ii) more than 6 months have elapsed since the day on which a transaction record ought to have been lodged under section 23;

(iii) the Commissioner is satisfied that it will not be possible to obtain the information necessary to determine the dutiable value of the transaction within the 6 months referred to in subparagraph (ii);

and

(c) the Commissioner is satisfied that a portion of the dutiable value of the transaction can be determined.

(2) For the purposes of subsection (1)(b)(ii), the day on which a transaction record ought to have been lodged is the last day of the 2-month period referred to in section 23(1).

(3) For the purpose of being satisfied of the matter in subsection (1)(c), the Commissioner may have regard to any

information that the Commissioner considers relevant, including the following —

(a) the value, as agreed between the Commissioner and the taxpayer, of anything;

(b) the consideration (if any) given for the dutiable transaction;

(c) any evidence, whether provided by the taxpayer or obtained by the Commissioner, of the value of anything;

(d) any document or other record kept by or on behalf of a party to the dutiable transaction;

(e) any information held by a regulatory authority in the State, another Australian jurisdiction or an overseas jurisdiction;

(f) any information that is publicly available.

(4) For the purposes of making an interim assessment, the duty payable is to be determined as if the portion of the dutiable value of the dutiable transaction were the full dutiable value of the transaction.

(5) Section 37 may apply, when relevant, for the purposes of this section, and when so applying, the reference in section 37(6)(a) to the dutiable value for a transaction includes a reference to a portion of the dutiable value for a transaction.

*[Section 44A inserted: No. 10 of 2013 s. 5.]*

# Part 5 — Application of this Chapter to certain transactions

## Division 1 — Simultaneous put and call options

### Subdivision 1 — Terms used in this Division

**44. Terms used**

(1) In this Division —

***call option*** means the right referred to in subsection (2)(a);

***option property*** means —

(a) the dutiable property to which the call option applies; or

(b) if the put option applies only to a part of the dutiable property to which the call option applies, that part of the dutiable property;

***put option*** means the right referred to in subsection (2)(b).

(2) Subject to subsection (3), a put option and a call option constitute a simultaneous put and call option if, at the same time —

(a) a person (***A***) has a right to require another person (***B***) to sell dutiable property to A, or to a person that has an agreement, arrangement or understanding with A relating to the dutiable property; and

(b) B has a right to require A, or a person referred to in paragraph (a), to purchase —

(i) the dutiable property; or

(ii) a part of the dutiable property; or

(iii) property that includes the dutiable property,

from B.

(3) For the purposes of subsection (2), it is irrelevant when the call option or the put option is exercisable.

## Subdivision 2 — Simultaneous put and call options

### 45. Call option of simultaneous put and call option to be taken to be agreement for transfer of option property

(1) When a simultaneous put and call option comes into existence, the call option is taken to be an agreement for the transfer of the option property to A and is liable to duty accordingly, unless —

(a) the call option and the put option are only for the purpose of obtaining finance or making other financial arrangements; or

(b) the call option and the put option form part of a scheme of call options and put options given by the proprietors of a business that —

(i) are only for the purpose of facilitating the continuation of the business by one or some of the proprietors (the ***continuing proprietor or proprietors***); and

(ii) are not exercisable except on the occurrence of an event specified in them that would cause the continuing proprietor or proprietors to seek to acquire the interest of another of the proprietors.

(2) In subsection (1)(b) —

***proprietor*** means —

(a) in the case of a partnership — a partner; or

(b) in the case of a company — a shareholder; or

(c) in the case of a unit trust scheme — a unit holder; or

(d) in any other case — a person the Commissioner determines to be a proprietor of the business.

(3) For the purposes of subsection (1), it is irrelevant whether or not the call option is assigned as referred to in section 49.

### 46. Simultaneous put and call option, dutiable value of

The dutiable value of a dutiable transaction referred to in section 45 is —

(a) the sum of —

(i) the amount paid by way of consideration for the granting of the call option in respect of the option property; and

(ii) the amount payable in the event of the call option being exercised in respect of the option property;

or

(b) the unencumbered value of the option property at the time when liability for duty on the transaction arises, if —

(i) there are no amounts paid or payable under paragraph (a); or

(ii) the amounts paid or payable under paragraph (a) cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the sum of the amounts paid or payable under paragraph (a).

### 47. Dutiable transaction referred to in s. 45, duty paid on to be credited

If —

(a) a transaction record for a dutiable transaction referred to in section 45 for option property is duty endorsed (the ***first dutiable transaction***); and

(b) as a result of the call option or the put option being exercised either, or both, of the following occur (the ***second dutiable transaction***) —

(i) an agreement for the transfer of the option property is executed;

(ii) the option property is transferred,

the amount of duty payable on the second dutiable transaction is to be reduced by the amount of duty paid on the first dutiable transaction.

### 48. Simultaneous put and call option not exercised or assigned, consequences of

(1) If, in relation to a call option of a simultaneous put and call option taken to be an agreement for the transfer of option property under section 45 —

(a) the call option and the put option of the simultaneous put and call option —

(i) both expire without being exercised; or

(ii) are rescinded or cancelled by agreement, or either is rescinded or cancelled and the other expires without being exercised;

and

(b) the call option has not been assigned as referred to in section 49,

this Division does not apply and the Commissioner, on the application of the taxpayer, is to assess or reassess the liability to duty of the call option.

(2) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made when the call option and the put option had both expired or were rescinded or cancelled.

## Subdivision 3 — Assignment of call option

### 49. Assignment of call option to be taken to be agreement for transfer of option property

(1) If, in respect of a simultaneous put and call option —

(a) A has assigned the call option to another person (***C***) so that C has a right to require B to sell the option property to C, or to a person that has an agreement, arrangement or understanding with C relating to the property; and

(b) B has a right to require C, or a person referred to in paragraph (a), to purchase the option property from B,

the assignment of the call option is taken to be an agreement for the transfer of the option property to C and is liable to duty accordingly.

(2) If subsection (1) applies, section 45 does not apply in relation to the rights of C and B referred to in subsection (1).

### 50. Assignment of call option, dutiable value of

The dutiable value of a dutiable transaction referred to in section 49 is —

(a) the sum of —

(i) the amount paid by way of consideration for the assignment of the call option in respect of the option property; and

(ii) the amount payable in the event of the exercise of the call option in respect of the option property;

or

(b) the unencumbered value of the option property at the time when liability for duty on the transaction arises, if —

(i) there are no amounts paid or payable under paragraph (a); or

(ii) the amounts paid or payable under paragraph (a) cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the sum of the amounts paid or payable under paragraph (a).

### 51. Dutiable transaction referred to in s. 49, duty paid on to be credited

If —

(a) a transaction record for a dutiable transaction referred to in section 49 for option property is duty endorsed (the ***first dutiable transaction***); and

(b) as a result of the put option, or the assigned call option, being exercised either, or both, of the following occur (the ***second dutiable transaction***) —

(i) an agreement for the transfer of the option property is executed;

(ii) the option property is transferred,

the amount of duty payable on the second dutiable transaction is to be reduced by the amount of duty paid on the first dutiable transaction.

### 52. Assigned call option not exercised or further assigned, consequences of

(1) If, in relation to an assignment of a call option taken to be an agreement for the transfer of the option property under section 49 —

(a) the call option and the put option of the simultaneous put and call option —

(i) both expire without being exercised; or

(ii) are rescinded or cancelled by agreement, or either is rescinded or cancelled and the other expires without being exercised;

and

(b) the call option has not been further assigned as referred to in section 49,

this Division does not apply and the Commissioner, on the application of the taxpayer, is to assess or reassess the liability to duty of the assignment of the call option.

(2) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been when the call option and the put option had both expired or were rescinded or cancelled.

## Division 2 — Discretionary trust acquisitions and surrenders

### Subdivision 1 — Terms used in this Division

#### 53. References to partnership or trust holding property

A reference to a partnership or trust holding property is a reference to the holding of the property by the partners for the partnership or the trustees under the trust.

#### 54. References to taker in default

A reference to a taker in default is to a beneficiary of a discretionary trust that has an interest in the discretionary trust in default of an appointment by the trustee, or trustees, of the discretionary trust.

#### 55. References to trust acquisition

A reference to a trust acquisition is to the acquisition by a taker in default of an interest in a discretionary trust that holds —

(a) dutiable property; or

(b) an indirect interest in dutiable property.

### 56. References to trust surrender

A reference to a trust surrender is to the surrender by a taker in default of an interest in a discretionary trust that holds —

(a) dutiable property; or

(b) an indirect interest in dutiable property.

### 57. When discretionary trust holds indirect interest in dutiable property

(1) A discretionary trust holds an indirect interest in dutiable property if an entity linked to the trustee of the discretionary trust is entitled to dutiable property.

(2) Sections 156 and 156A apply where it is necessary to determine whether an entity is linked to a trustee of a discretionary trust for the purposes of subsection (1) or section 59(a)(ii) or 61(b).

(3) In applying sections 156 and 156A, the trustee of the discretionary trust is the main entity, despite section 152(2) and (3).

*[Section 57 amended: No. 12 of 2019 s. 20.]*

## Subdivision 2 — Trust acquisitions and trust surrenders

### 58. When person acquires interest in discretionary trust

A person acquires an interest in a discretionary trust if the person —

(a) becomes a taker in default of the discretionary trust —

(i) on creation of the discretionary trust; or

(ii) otherwise, other than because of the surrender of another person's interest in the discretionary trust for which duty has been paid or in respect of which duty was not chargeable;

or

(b) is a taker in default of the discretionary trust whose interest increases, other than because of the surrender of another person's interest in the discretionary trust for which duty has been paid or in respect of which duty was not chargeable.

### 59. Trust acquisition or trust surrender, dutiable value of

The dutiable value of a trust acquisition or trust surrender is —

(a) the consideration for the acquisition or surrender so far as the consideration relates to dutiable property —

(i) held by the discretionary trust; or

(ii) to which an entity linked to the trustee of the discretionary trust is entitled;

or

(b) the value of the taker in default's interest in the discretionary trust at the time when liability for duty on the transaction arises if —

(i) there is no consideration for the acquisition or surrender; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the value of the taker in default's interest is greater than the consideration for the acquisition or surrender.

### 60. References to interest in discretionary trust of taker in default

(1) A reference to an interest in a discretionary trust of a taker in default in the discretionary trust is —

(a) the percentage of —

(i) the trust income; or

(ii) the trust property,

that the taker in default would receive in default of appointment by the trustee; or

(b) if the taker in default would receive both trust income and trust property in default of appointment by the trustee, the percentage of either the trust income or the trust property that the taker in default would receive that is the greater.

(2) Despite subsection (1), if the Commissioner considers it appropriate to do so, an interest in a discretionary trust of a taker in default is to be determined by the Commissioner taking into account the rights or entitlements of the taker in default under the trust.

### 61. Taker in default's interest, value of for s. 59(b)

For the purposes of section 59(b), the value of the taker in default's interest in a discretionary trust is the total of the following amounts —

(a) in respect of the dutiable property held by the discretionary trust — an amount determined by applying the interest in the discretionary trust of the taker in default to the unencumbered value, when liability for duty on the transaction arises, of the dutiable property;

(b) in respect of the dutiable property to which an entity linked to the trustee of the discretionary trust is entitled — an amount determined by applying the interest in the discretionary trust of the taker in default to an amount determined by applying section 157 as if a reference in that section —

(i) to land assets were a reference to dutiable property; and

(ii) to the main entity's total direct or indirect interest in the linked entity calculated under section 154A were a reference to the total direct or indirect interest that the trustee of the

discretionary trust has in the linked entity, calculated under section 154A(2) to (5) as if the trustee of the discretionary trust were a higher entity referred to in that section.

Note for this section:

For example, if the taker in default had a 50% interest in the trust and the trust held dutiable property of $1 000 000, the value of the taker in default's interest would be $500 000.

*[Section 61 amended: No. 12 of 2019 s. 21.]*

### 62. When trust acquisition or trust surrender is not dutiable transaction

(1) Duty is not chargeable on a trust acquisition or trust surrender if the trust acquisition or trust surrender is a result of —

(a) a person becoming or ceasing to be a member of a class of beneficiaries of the discretionary trust because of the birth or death of the person; or

(b) a person becoming or ceasing to be a member of a class of beneficiaries of the discretionary trust because of the marriage or divorce of the person, or the beginning or ending of a de facto relationship of the person.

(2) In subsection (1)(b) —

***de facto relationship*** means a de facto relationship that comes within the Family Court Act section 205Z(1)(a), (b) or (c).

## Division 3 — Corporate trustees

### Subdivision 1 — Terms used in this Division

### 63. Terms used

In this Division —

***authorised trustee corporation*** means a corporation declared under the Corporations Act to be an authorised trustee corporation for any provision of that Act;

***disposition***, in relation to a share, includes —

(a) a transfer or other disposition of the share; and

(b) the allotment or issue of the share; and

(c) the redemption, surrender or cancellation of the share; and

(d) the variation, abrogation or alteration of a right pertaining to the share with respect to the capital of the corporate trustee; and

(e) any means by which a share is disposed of or the rights of its holder are diminished;

***share*** means —

(a) a share or stock of an unlisted corporation; or

(b) an interest in such a share or stock;

***unlisted corporation*** means a corporation not listed on an official list of a prescribed financial market.

### 64. References to trustee of discretionary trust holding property

A reference to a trustee of a discretionary trust holding property is a reference to the holding of the property by the trustee under the trust.

### 65. References to corporate trustee

A reference to a corporate trustee is to the trustee of a discretionary trust if that trustee —

(a) is an unlisted corporation, other than an authorised trustee corporation; and

(b) holds —

(i) dutiable property; or

(ii) an indirect interest in dutiable property.

### 66. When corporate trustee holds indirect interest in dutiable property

(1) A corporate trustee holds an indirect interest in dutiable property if an entity linked to the trustee is entitled to dutiable property.

(2) Sections 156 and 156A apply where it is necessary to determine whether an entity is linked to a corporate trustee for the purposes of subsection (1).

(3) In applying sections 156 and 156A, the corporate trustee is the main entity, despite section 152(2) and (3).

*[Section 66 amended: No. 12 of 2019 s. 22.]*

## Subdivision 2 — Disposition of shares in a corporate trustee

### 67. Share disposition taken to be agreement for transfer of trust property

(1) A disposition of a share in a corporate trustee is taken to be an agreement for the transfer of dutiable property and is liable to duty accordingly if it is a transaction, or part of a transaction, that is a scheme or arrangement, or part of a scheme or arrangement, that results, or will or may result, in a change in any beneficial interest, whether vested or contingent, in dutiable property held directly or indirectly by the corporate trustee of a discretionary trust.

(2) Subsection (1) does not apply to the disposition of a share by which the personal representative of a deceased person disposes of a share to a beneficiary in the administration of the estate of the deceased.

*[Section 67 amended: No. 12 of 2019 s. 23.]*

### 68. Transaction referred to in s. 67, dutiable value of

(1) The dutiable value of a transaction referred to in section 67 is the proportion of the dutiable value of the dutiable property

held, directly or indirectly, by the corporate trustee at the time of the share disposition that is equivalent to the proportion of the total issued capital of the corporate trustee represented by the share.

(2) The dutiable value of the dutiable property held indirectly by a corporate trustee is an amount determined by applying section 157 as if a reference in that section —

(a) to land assets were a reference to dutiable property; and

(b) to the main entity's total direct or indirect interest in the linked entity calculated under section 154A were a reference to the total direct or indirect interest that the corporate trustee has in the linked entity, calculated under section 154A(2) to (5) as if the corporate trustee were a higher entity referred to in that section.

(3) In determining the proportion of the total issued capital of a corporate trustee represented by a share for the purposes of subsection (1), the respective rights and obligations pertaining to the share and the other shares in the capital of the corporate trustee are to be taken into account.

*[Section 68 amended: No. 12 of 2019 s. 24.]*

### 69. Person liable to pay duty on disposition of share

The person liable to pay duty on a disposition of a share in a corporate trustee referred to in section 67 is each person that holds a share in the corporate trustee.

## Division 4 — Partnerships

### Subdivision 1 — Terms used in this Division

### 70. Term used: dutiable property

In this Division, other than section 78 —

***dutiable property*** means each of the following —

(a) land in Western Australia;

(b) a chattel in Western Australia;

(c) a fixed infrastructure control right;

(d) a fixed infrastructure access right;

(e) a fixed infrastructure statutory licence;

(f) a derivative mining right.

*[Section 70 amended: No. 17 of 2010 s. 12; No. 12 of 2019 s. 25.]*

### 71. References to partnership or trust holding property

A reference to a partnership or trust holding property is a reference to the holding of the property by the partners for the partnership or the trustees under the trust.

### 72. References to partnership acquisition

A reference to a partnership acquisition is to a person acquiring a partnership interest in a partnership that holds —

(a) land in Western Australia; or

(b) a fixed infrastructure control right; or

(c) a fixed infrastructure access right; or

(d) a derivative mining right; or

(e) an indirect interest in property referred to in paragraph (a), (b), (c) or (d).

*[Section 72 amended: No. 17 of 2010 s. 13; No. 12 of 2019 s. 26.]*

### 73. When partnership holds indirect interest in property

(1) A partnership holds an indirect interest in property of a kind referred to in section 72(a), (b), (c) or (d) if an entity linked to the partnership is entitled to property of that kind.

(2) Sections 156 and 156A apply where it is necessary to determine whether an entity is linked to a partnership for the purposes of subsection (1) or section 76(a)(ii) or 77(1)(b).

(3) In applying sections 156 and 156A, the partnership is the main entity, despite section 152(2) and (3).

*[Section 73 amended: No. 12 of 2019 s. 27.]*

### 74. References to partner's partnership interest

A reference to a partner's partnership interest is to the greater of —

(a) the percentage of the capital of the partnership the partner has contributed or is obliged to contribute; or

(b) the percentage of the losses of the partnership the partner is required to bear.

## Subdivision 2 — Acquiring partnership interests

### 75. When person acquires partnership interest

(1) A person acquires a partnership interest if a partnership is formed or the person's partnership interest increases.

(2) Without limiting subsection (1) —

(a) a partnership may be formed on —

(i) a change in the membership of a partnership; or

(ii) the merger of 2 or more partnerships;

or

(b) a person's partnership interest may increase —

(i) under the terms of a partnership agreement; or

(ii) on the retirement of a partner from a partnership; or

(iii) on a change in the terms of a partnership agreement effecting a change in the interests of the partners.

### 76. Partnership acquisition, dutiable value of

The dutiable value of a partnership acquisition is —

(a) the consideration for the acquisition so far as the consideration relates to dutiable property —

(i) held by the partnership; or

(ii) to which an entity linked to the partnership is entitled;

or

(b) the value of the partnership interest the subject of the acquisition at the time when liability for duty on the transaction arises if —

(i) there is no consideration for the acquisition; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the value of the partnership interest is greater than the consideration for the acquisition.

### 77. Partnership interest, value of for s. 76(b)

(1) For the purpose of section 76(b), the value of a partnership interest the subject of a partnership acquisition is the total of the following amounts —

(a) in respect of the dutiable property held by the partnership — an amount determined by applying the partner's partnership interest to the unencumbered value, when liability for duty on the transaction arises, of the dutiable property;

(b) in respect of the dutiable property to which an entity linked to the partnership is entitled — an amount determined by applying the partner's partnership interest

to an amount determined by applying section 157 as if a reference in that section —

(i) to land assets were a reference to dutiable property; and

(ii) to the main entity's total direct or indirect interest in the linked entity calculated under section 154A were a reference to the total direct or indirect interest that the partnership has in the linked entity, calculated under section 154A(2) to (5) as if the partnership were a higher entity referred to in that section.

(2) In determining the value of a partnership interest the subject of a new partner's partnership acquisition on formation of a partnership, the value of any dutiable property the partner contributed to the partnership on its formation (other than any joint property) is to be disregarded.

(2A) In determining the value of a partnership interest the subject of a new partner's partnership acquisition on formation of a partnership, the value determined under subsections (1) and (2) is to be reduced, for each interest in joint property the new partner contributed to the partnership on its formation, by —

(a) the unencumbered value, when liability for duty on the transaction arises, of that interest; or

(b) if the amount determined under paragraph (a) is greater than the amount (the ***cap amount***) determined by applying the new partner's partnership interest to the total unencumbered value, when liability for duty on the transaction arises, of the joint property to which that interest relates — the cap amount.

(2B) For the purposes of subsections (2) and (2A), joint property is property held by the new partner jointly with 1 or more other partners.

(3) For the purposes of subsections (2) and (2A), a person is a new partner only if —

(a) the person was not in partnership with any partners of the partnership immediately before its formation; or

(b) on the person's partnership acquisition, the person becomes a partner in an additional partnership to a partnership in which the person is a partner with any partners of the additional partnership immediately before its formation.

(4) However, subsection (3)(b) does not apply to a person that makes a partnership acquisition in a partnership that was formed because of a change in the membership of the partners of another partnership (the ***old partnership***) if the person had a partnership interest in the old partnership.

(5) In determining the value of a partner's partnership interest the subject of an acquisition that is an increase in the partner's partnership interest, the partner's partnership interest is taken to be the increase in the partner's partnership interest.

*[Section 77 amended: No. 12 of 2019 s. 28.]*

## 78. Dutiable value of transfer of dutiable property to retiring partner

(1) This section applies if —

(a) a person (the ***retiring partner***) ceases to be a partner in a partnership because of the retiring partner's retirement from the partnership or its dissolution; and

(b) on the retirement or dissolution, dutiable property (the ***transfer property***) of the partnership is transferred or agreed to be transferred to the retiring partner; and

(c) the transfer property is, or is an interest in, a particular item of dutiable property (the ***relevant partnership property***) held by the partnership immediately before the retirement or dissolution.

(2) In determining the dutiable value of the dutiable transaction that is the transfer or agreement referred to in subsection (1)(b), the unencumbered value of the transfer property is to be determined as follows —

(a) first, the aggregate unencumbered value of the following is to be determined —

(i) the transfer property;

(ii) if the transfer property is an interest in the relevant partnership property — relevant retained property (if any) in relation to the transfer property;

(b) second, the value determined in accordance with paragraph (a) is to be reduced by an amount calculated by applying the retiring partner's partnership interest in the partnership to the unencumbered value, immediately before the retirement or dissolution, of the relevant partnership property.

(3) Property is relevant retained property in relation to the transfer property for the purposes of subsection (2)(a)(ii) if —

(a) the property is also an interest in the relevant partnership property; and

(b) immediately before the retirement or dissolution, the retiring partner was the legal owner of the property and held it for the partnership; and

(c) immediately after the retirement or dissolution, the retiring partner remains the legal owner of the property but no longer holds it for the partnership.

(4) This section does not apply to a transfer that is taken to occur under section 78A(2).

*[Section 78 inserted: No. 12 of 2019 s. 29.]*

### 78A. Certain retained property taken to be transferred to retiring partner

(1) This section applies if —

(a) a person (a ***retiring partner***) ceases to be a partner in a partnership because of the retiring partner's retirement from the partnership or its dissolution; and

(b) immediately before the retirement or dissolution, the retiring partner was the legal owner of dutiable property (the ***retained property***) and held the property for the partnership; and

(c) immediately after the retirement or dissolution, the retiring partner remains the legal owner of the retained property but no longer holds it for the partnership; and

(d) the retained property is, or is an interest in, a particular item of dutiable property (the ***relevant partnership property***) held by the partnership immediately before the retirement or dissolution; and

(e) the retained property is or includes property referred to in section 72(a) to (d).

(2) When the retirement or dissolution occurs, there is taken to be a dutiable transaction consisting of the transfer of the retained property to the retiring partner.

(3) In determining the dutiable value of a dutiable transaction under subsection (2) (a ***deemed transaction***), the unencumbered value of the retained property is to be determined as follows —

(a) first, the unencumbered value of the retained property when liability for duty on the deemed transaction arises is to be determined;

(b) second, the value determined in accordance with paragraph (a) is to be reduced by an amount calculated by applying the retiring partner's partnership interest in the partnership to the unencumbered value, immediately

before the retirement or dissolution, of the relevant partnership property.

(4) This section does not apply to retained property if the unencumbered value of the retained property is to be taken into account in determining the dutiable value of a transaction to which section 78 applies.

*[Section 78A inserted: No. 12 of 2019 s. 29.]*

## Division 5 — Western Australian business assets

### Subdivision 1 — Terms used in this Division

**79. Terms used**

In this Division —

***business asset*** means any of the following —

(a) goodwill of a business;

(b) a restraint of trade arrangement for a business;

(c) a business identity;

(d) a business licence;

(e) a right of a business under an uncompleted agreement to supply commodities or provide services;

(f) intellectual property of a business;

(g) things that a business has that are in the nature of rent rolls and client lists,

but does not include a trade debt;

***business identity*** means a business name, trading name or internet domain name, or a right to use a business name, trading name or internet domain name;

***business licence*** —

(a) means a licence, permit or authority which is issued, granted or given under —

(i) a written law and which is required by a written law to be held by a person carrying out an activity for gain or reward; or

(ii) a law of the Commonwealth and which is required by a law of the Commonwealth to be held by a person carrying out an activity in Western Australia for gain or reward;

but

(b) does not include a fixed infrastructure access right, a fixed infrastructure control right or a fixed infrastructure statutory licence;

***circuit layout right*** means an exclusive right under the *Circuit Layouts Act 1989* (Commonwealth) for an eligible layout under that Act;

***commodities*** includes land, money, credit and goods and any interest in them;

***franchise arrangement*** means an agreement or other arrangement under which a person (the ***franchisor***) that carries on a business authorises or permits another person (the ***franchisee***) —

(a) to engage in the business of producing, supplying or providing commodities or services, or both, at a place other than the place of business of the franchisor as long as the franchisee does so under —

(i) a stated marketing, business or technical plan or system; and

(ii) a common format or common procedure, or both;

and

(b) to use a mark or common trade name in such a way that the business carried on by the franchisee is or is capable of being identified by the public as being substantially associated with the mark or name identifying, commonly connected with or controlled by the franchisor or a person that is a related person to the franchisor;

***intellectual property*** means —

(a) a patent, trademark, industrial design, copyright, registered design, plant breeder right or circuit layout right; or

(b) anything else that has the following characteristics —

(i) it is in the nature of a strategy, process, procedure, mode of operation or way of working that enables a commodity or service to be produced, supplied or provided or that enhances the production, supply, provision or quality of a commodity or service;

(ii) it was created, devised or developed to be used for business purposes or, having been created, devised or developed for other purposes, has been applied, adapted or modified for use for business purposes;

or

(c) a right to use or exploit —

(i) anything mentioned in paragraph (a) or (b); or

(ii) an adaptation or modification of anything mentioned in paragraph (a) or (b);

***plant breeder right*** means —

(a) a plant breeder's right under the *Plant Breeder's Rights Act 1994* (Commonwealth); or

(b) a plant breeder's right corresponding to a right mentioned in paragraph (a);

***related person*** has the meaning given in section 162;

***restraint of trade arrangement*** for a business means a restraint of trade arrangement which, in the opinion of the Commissioner, enhances or is likely to enhance the value of the business;

***Western Australian business***, in relation to a dutiable transaction, means —

(a) a business that, in the year preceding the transaction has —

(i) been carried on in or from Western Australia; or

(ii) supplied commodities or provided services to customers in Western Australia;

or

(b) carrying out an activity for gain or reward under a licence referred to in paragraph (a) of the definition of ***business licence***; or

(c) carrying out an activity in Western Australia for gain or reward under a licence referred to in paragraph (b) of the definition of ***business licence***;

***Western Australian business asset*** means a business asset of a Western Australian business.

*[Section 79 amended: No. 12 of 2019 s. 30.]*

## Subdivision 2 — Particular transactions involving business assets

### 80. Some transactions involving business licences to be taken to be agreements for transfer

When a person agrees to relinquish a business licence held by that person, or agrees not to apply for a renewal of such a business licence, so that it, or another business licence in respect of the same kind of activity, can be issued, granted or given to another person that agreement is taken to be an agreement for the transfer to the other person of the business licence that is to be relinquished or is not to be renewed.

*[Section 80 amended: No. 12 of 2019 s. 31.]*

### 81. Transactions for particular WA business assets that are not dutiable transactions

(1) The transfer, or an agreement for the transfer, of a Western Australian business asset from a franchisor in accordance with a franchise arrangement, is not a dutiable transaction unless another person has relinquished, or agreed not to extend, that

business asset or a business asset of the same kind so that the franchisee could acquire that business asset.

(2) A transaction is not a dutiable transaction if the only dutiable property the subject of the transaction is intellectual property of a business.

(3) A transaction referred to in subsection (2) is a dutiable transaction if, under section 37, it is aggregated with a transaction that is a dutiable transaction for a Western Australian business asset, a fixed infrastructure control right, a fixed infrastructure access right or a fixed infrastructure statutory licence, and the transactions are treated as a single dutiable transaction.

(4) For the purposes of section 11(1)(f), new dutiable property that is a Western Australian business asset referred to in section 17(1)(c) is not acquired unless subsection (5) applies.

(5) If a person —

(a) carries on, or has carried on, a business (the ***first business***); and

(b) creates intellectual property, a restraint of trade arrangement or a business identity related to the first business for the purpose of the carrying on of the first business or another business by another person,

then, subject to subsections (2) and (3), the creation of the intellectual property, restraint of trade arrangement or business identity is the acquisition by that other person of a Western Australian business asset of the first business.

*[Section 81 amended: No. 12 of 2019 s. 32.]*

## Subdivision 3 — Dutiable value of dutiable transactions for business assets

### 82. Dutiable transaction for business asset, dutiable value of

The dutiable value of a dutiable transaction for a business asset is to be determined —

(a) under section 83 if —

(i) the business asset is a business licence referred to in paragraph (b) of the definition of that term in section 79; and

(ii) the asset is of a Western Australian business referred to in paragraph (c) of the definition of that term in section 79;

or

(b) under section 84 if the business asset is a business licence referred to in paragraph (a) of the definition of that term in section 79; or

(c) under section 85 or 86, as is relevant; or

(d) if the Commissioner decides that it is not appropriate to determine the dutiable value of a dutiable transaction for business assets under any of those sections, on such other basis as the Commissioner decides is appropriate.

### 83. Certain business licences required by Cwlth law, dutiable value of for s. 82(a)

The dutiable value of a dutiable transaction referred to in section 82(a) is the greater of the following —

(a) the value of the business licence so far as it authorises the carrying out of an activity in Western Australia; or

(b) the portion of the consideration for the transaction that relates to the carrying out of an activity in Western Australia under the authority of the business licence.

### 84. Business licences required by WA law, dutiable value of for s. 82(b)

The dutiable value of a dutiable transaction referred to in section 82(b) is —

(a) the consideration for the dutiable transaction; or

(b) the unencumbered value of the business licence the subject of the transaction at the time when liability for duty on the transaction arises if —

(i) there is no consideration for the transaction; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the consideration for the transaction.

### 85. Dutiable value of business asset where principal place of business is in WA

The dutiable value of a dutiable transaction for a business asset where the principal place of business or head office of the Western Australian business is in Western Australia is to be determined using the following formula —

~~$DV = \frac{CUV \times (TS - IS)}{TS}$~~

$$DV = \frac{CUV \times (TS - IS)}{TS}$$

where —

DV is the dutiable value;

CUV is —

(a) the consideration for the transaction; or

(b) the unencumbered value of the business asset the subject of the transaction if —

(i) there is no consideration for the transaction; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the consideration for the transaction;

TS is the gross amount (in Australian dollars) of all the commodities supplied and services provided by the business in the last 3 completed financial years preceding the transaction;

IS is the gross amount (in Australian dollars) of the commodities supplied and services provided by the business to customers elsewhere in Australia in the last 3 completed financial years preceding the transaction.

**86. Dutiable value of business asset where principal place of business is out of WA**

The dutiable value of a dutiable transaction for a business asset where neither the principal place of business nor the head office of the Western Australian business is in Western Australia is to be determined using the following formula —

~~$DV = \frac{CUV \times WAS}{TS}$~~

$$DV = \frac{CUV \times WAS}{TS}$$

where —

DV is the dutiable value;

CUV is —

(a) the consideration for the transaction; or

(b) the unencumbered value of the business asset the subject of the transaction if —

(i) there is no consideration for the transaction; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the consideration for the transaction;

TS is the gross amount (in Australian dollars) of all the commodities supplied and services provided by the business in the last 3 completed financial years preceding the transaction;

WAS is the gross amount (in Australian dollars) of the commodities delivered and services provided by the business to customers in Western Australia in the last 3 completed financial years preceding the transaction.

## Division 6 — Conditional agreements

### 87. References to conditional agreement

(1) A reference to a conditional agreement is to an agreement for the transfer of dutiable property where —

(a) completion of the agreement is conditional on the happening of one or more of the events described in subsection (2) and specified in an instrument effecting or evidencing the agreement; and

(b) the parties to the agreement do not have control over the happening of the event, except to the extent that they are required under the agreement to use their best endeavours to secure the happening of the event; and

(c) a person related to a party to the agreement does not have control over the happening of the event,

unless —

(d) it is a call option of a simultaneous put and call option taken to be an agreement for the transfer of option property under section 45; or

(e) it is an agreement that is subject to a condition which, in the opinion of the Commissioner, constitutes a scheme or arrangement, or part of a scheme or arrangement, the

sole or dominant purpose of which is to defer the payment of duty.

(2) The following events are specified for the purposes of subsection (1)(a) —

(a) the obtaining by a purchaser under the agreement of a satisfactory private taxation ruling by the Commissioner of Taxation of the Commonwealth as to the consequences of the agreement with respect to taxation under a law of the Commonwealth;

(b) the obtaining, to the satisfaction of a purchaser under the agreement, of funds or of approval to obtain funds to finance the purchase;

(c) the obtaining by a purchaser under the agreement of a satisfactory building inspection, geotechnical or environmental report from a third party in relation to the property the subject of the agreement;

(d) the obtaining by a vendor under the agreement of the consent of the Minister responsible for administering the *Land Administration Act 1997* to transfer a lease of leasehold land to a purchaser under the agreement;

(e) the authorisation of the payment to a purchaser under the agreement of a first home owner grant under the *First Home Owner Grant Act 2000* in relation to a property the subject of the agreement;

(f) the obtaining by a purchaser under the agreement of a licence to trade or the grant of a franchise;

(g) where the subject of the agreement is a commercial property, the obtaining by a vendor under the agreement of the renewal of an existing lease of the property;

(h) the obtaining from the landlord of a leasehold business by a vendor of the business the subject of the agreement, of a new lease, or of an assignment of the current lease to a purchaser under the agreement;

(i) the sale of another property by a purchaser under the agreement;

(j) the obtaining by a vendor under the agreement of —

(i) the approval under the *Planning and Development Act 2005* section 135 for the subdivision of the land, or part of the land, the subject of the agreement; or

(ia) the registration of a community titles scheme or an amendment of a community titles scheme under the *Community Titles Act 2018*; or

(ii) the registration of a strata titles scheme or an amendment of a strata titles scheme under the *Strata Titles Act 1985*;

(k) the obtaining by a purchaser under the agreement of approval from a regulatory body;

(l) the results of the making of due diligence inquiries by a purchaser under the agreement where the results are to be measured against objective criteria set out in an instrument that effects or evidences the agreement;

(m) the issue of a certificate of title (however described) for the property the subject of the agreement;

(n) the obtaining by a purchaser of consent required under the *Mining Act 1978* for the transfer of a mining tenement the subject of the agreement;

(o) a prescribed event.

*[(3), (4) deleted]*

(5) For the purposes of subsection (1)(c), the following persons are related persons —

(a) joint owners of property;

(b) individuals who are in partnership with each other;

(c) participants in the same joint venture;

(d) family members;

(e) related corporations;

(f) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;

(g) an individual and a corporation, if the individual is a majority shareholder, director or secretary of the corporation or a related corporation;

(h) an individual and a trustee, if the individual is a beneficiary under the trust of which the trustee is a trustee, whether the beneficiary has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust;

(i) a corporation and a trustee if —

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

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

whether the beneficiary has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust.

(6) A reference in subsection (5)(d) to a family member of a person is to —

(a) a child or remoter lineal descendant of the person; or

(b) a parent or remoter lineal ancestor of the person; or

(c) a brother or sister of the person or a child or remoter lineal descendant of a brother or sister of the person; or

(d) an aunt or uncle of the person; or

(e) the spouse, former spouse, de facto partner or former de facto partner of the person; or

(f) a family member referred to in paragraph (b), (c) or (d) of a person referred to in paragraph (e); or

(g) the spouse or de facto partner of a person mentioned in paragraph (a), (b), (c) or (d); or

(h) a child or remoter lineal descendant of a former spouse or former de facto partner of a person,

or more than one of them.

*[Section 87 amended: No. 17 of 2010 s. 8; No. 12 of 2019 s. 33; No. 30 of 2018 s. 134; No. 32 of 2018 s. 205.]*

### 88A. General conditional agreements, no duty on if terminated on relevant grounds

(1) Duty is not chargeable on a general conditional agreement if, after an instrument effecting or evidencing the agreement has been lodged under section 23 but before duty on the transaction is paid, or is due to be paid, under section 25 (whichever is the earlier in time) —

(a) the agreement is terminated on relevant grounds; and

(b) the Commissioner is notified of the termination of the agreement in the approved form.

(2) A general conditional agreement is terminated on relevant grounds if —

(a) it is not carried into effect because the condition to which it is or was subject cannot be fulfilled for reasons that are not within the control of a party to the agreement, or a person that is related (within the meaning given in section 87(5)) to a party to the agreement; and

(b) duty is not chargeable on the agreement under section 107 because it is a cancelled transaction.

*[Section 88A inserted: No. 17 of 2010 s. 9.]*

### 88. References to farming land conditional agreement

A reference to a farming land conditional agreement is to a conditional agreement the subject of which is solely or dominantly farming land within the meaning of section 99(1).

### 89. References to mining tenement conditional agreement

A reference to a mining tenement conditional agreement is to a conditional agreement the subject of which is a mining tenement.

### 90. References to issue of title conditional agreement

A reference to an issue of title conditional agreement is to a conditional agreement —

(a) for the sale of land conditional on the happening of one or more of the events described in section 87(2)(j) or (m); or

(ab) for —

(i) the sale of a lot in a community titles (building) scheme (within the meaning of the *Community Titles Act 2018*); and

(ii) the construction on the lot, after liability for duty on the agreement arises, of a building for commercial, residential or mixed use purposes;

or

(b) for —

(i) the sale of a lot in a strata scheme (within the meaning of the *Strata Titles Act 1985*); and

(ii) the construction on the lot, after liability for duty on the agreement arises, of a building for commercial, residential or mixed use purposes.

*[Section 90 inserted: No. 17 of 2010 s. 10; amended: No. 30 of 2018 s. 135; No. 32 of 2018 s. 206.]*

### 91. References to subdivision conditional agreement

A reference to a subdivision conditional agreement is to a conditional agreement for the sale of land conditional on the obtaining by a purchaser under the agreement of approval from the relevant authorities to the subdivision of the land, or part of the land, the subject of the agreement.

## Division 7 — Rights relating to fixed infrastructure

*[Heading inserted: No. 12 of 2019 s. 34.]*

### 91A. Terms used

(1) In this Division —

***fixed infrastructure*** means dutiable property that is land in Western Australia that is a thing to which section 3A(1)(f) applies;

***fixed infrastructure access right*** means a licence or other right that authorises access to or use of any land for —

(a) a purpose related to the control, operation, use, construction, inspection, testing, maintenance or repair of fixed infrastructure or of things used in conjunction with fixed infrastructure; or

(b) any other purpose associated with fixed infrastructure;

***fixed infrastructure control right*** —

(a) means a lease, licence or other right that enables the holder to have the day-to-day control, and the operation or use, of fixed infrastructure; but

(b) does not include —

(i) a security interest; or

(ii) a fixed infrastructure statutory licence;

***fixed infrastructure statutory licence*** means a licence, permit or authority that is issued, granted or given under a written law or a law of the Commonwealth (the ***issuing law***) if —

(a) the licence, permit or authority authorises the ownership, control, operation or use of a thing (the ***relevant activity***); and

(b) the issuing law prohibits a person that does not hold such a licence, permit or authority from engaging in the relevant activity; and

(c) the thing referred to in paragraph (a) is fixed infrastructure;

***landholder*** has the meaning given in section 148(1);

***linked entity*** has the meaning given in section 148(1).

(2) In the definition of ***fixed infrastructure access right*** in subsection (1), a reference to land does not include anything that is land under section 3A(1)(f) or (g).

(3) Despite subsection (1), anything that is land is not a fixed infrastructure control right, fixed infrastructure access right or fixed infrastructure statutory licence.

(4) The regulations may prescribe classes of right that, despite subsection (1), are excluded from the definition of ***fixed infrastructure access right***, ***fixed infrastructure control right*** or ***fixed infrastructure statutory licence*** in that subsection.

*[Section 91A inserted: No. 12 of 2019 s. 34.]*

### 91B. Some transactions involving fixed infrastructure statutory licences to be taken to be agreements for transfer

When a person agrees to relinquish a fixed infrastructure statutory licence held by that person, or agrees not to apply for a renewal of such a fixed infrastructure statutory licence, so that it, or another, can be issued, granted or given to another person, that agreement is taken to be an agreement for the transfer to the other person of the fixed infrastructure statutory licence that is to be relinquished or is not to be renewed.

*[Section 91B inserted: No. 12 of 2019 s. 34.]*

### 91C. Which transactions as to fixed infrastructure access rights and fixed infrastructure statutory licences are dutiable

(1) For the purposes of this section, a transaction (the ***fixed infrastructure transaction***) is not a dutiable transaction to the extent that the fixed infrastructure transaction relates to dutiable property that consists of a fixed infrastructure access right or a fixed infrastructure statutory licence unless subsection (2), (3) or (4) applies.

(2) This subsection applies if the dutiable property to which the fixed infrastructure transaction relates also includes any of the following —

(a) fixed infrastructure (***relevant fixed infrastructure***) to which the fixed infrastructure access right or fixed infrastructure statutory licence relates;

(b) an estate or interest in relevant fixed infrastructure;

(c) a fixed infrastructure control right that relates to relevant fixed infrastructure.

(3) This subsection applies if —

(a) there is another transaction that is a dutiable transaction and that relates to any dutiable property referred to in subsection (2)(a), (b) or (c); and

(b) the fixed infrastructure transaction and the other transaction together form, evidence, give effect to or arise from what is, substantially one arrangement.

(4) This subsection applies if —

(a) there is a relevant acquisition of an interest in a landholder for the purposes of Chapter 3 or an agreement for the making of such an acquisition; and

(b) the landholder, or a linked entity in respect of the landholder, is entitled to any property referred to in subsection (2)(a), (b) or (c); and

(c) the fixed infrastructure transaction and the acquisition or agreement together form, evidence, give effect to or arise from what is, substantially one arrangement.

(5) Section 37(2) applies in relation to transactions referred to in subsection (3)(b) as if the fixed infrastructure transaction were a dutiable transaction.

(6) Section 14(4) and (5) apply in relation to a fixed infrastructure transaction and acquisition or agreement referred to in subsection (4)(c) as if they were a transaction and acquisition or agreement referred to in section 14(3).

(7) For the purposes of the application of this section to a transaction that is a partnership acquisition, the partnership acquisition is taken to relate to the property of a kind referred to in section 72(a) to (d) held by the partnership or in which the partnership has an indirect interest under section 73.

*[Section 91C inserted: No. 12 of 2019 s. 34.]*

### 91D. Dutiable value of fixed infrastructure statutory licences

(1) The dutiable value of a dutiable transaction for a fixed infrastructure statutory licence issued, granted or given under a law of the Commonwealth is the greater of —

(a) the value of the fixed infrastructure statutory licence so far as it authorises the ownership, control, operation or use of fixed infrastructure (a ***fixed infrastructure activity***); or

(b) the portion of the consideration for the transaction that relates to the carrying out of a fixed infrastructure activity under the authority of the licence.

(2) The dutiable value of a dutiable transaction for a fixed infrastructure statutory licence issued, granted or given under a law of Western Australia is —

(a) the consideration for the dutiable transaction; or

(b) the unencumbered value of the fixed infrastructure statutory licence at the time when liability for duty on the transaction arises if —

(i) there is no consideration for the transaction; or

(ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or

(iii) the unencumbered value is greater than the consideration for the transaction.

*[Section 91D inserted: No. 12 of 2019 s. 34.]*

## Division 7A — Prospecting licences and related dutiable property

*[Heading inserted: No. 16 of 2022 s. 19.]*

### 91DA. Transactions as to prospecting licences or related dutiable property alone not usually dutiable

(1) Subject to subsections (2) and (3), a transaction is not a dutiable transaction if the only dutiable property the subject of the transaction consists of any or all of the following —

(a) a prospecting licence granted under the *Mining Act 1978* section 40;

(b) an estate or interest in a prospecting licence granted under the *Mining Act 1978* section 40;

(c) a derivative mining right in relation to a prospecting licence granted under the *Mining Act 1978* section 40;

(d) a right under an application for a prospecting licence under the *Mining Act 1978* section 41;

(e) a part of, or an interest in, a right of a kind referred to in paragraph (c) or (d).

(2) A transaction referred to in subsection (1) is a dutiable transaction if, under section 37, it is aggregated with a

transaction that is a dutiable transaction and the transactions are treated as a single dutiable transaction.

(3) A transaction referred to in subsection (1) is a dutiable transaction if —

(a) there is a relevant acquisition for the purposes of Chapter 3 or an agreement for the making of such an acquisition; and

(b) the transaction and the acquisition or agreement together form, evidence, give effect to or arise from what is, substantially one arrangement.

(4) Without limiting subsection (3), unless the Commissioner is satisfied to the contrary, a transaction and an acquisition or agreement together form, evidence, give effect to or arise from what is, substantially one arrangement if —

(a) the transaction has taken place, and the acquisition or agreement has been made, within 12 months; and

(b) in respect of both the transaction and the acquisition or agreement, the person liable to pay duty is the same person (whether that person is the only person liable to pay duty or is liable to pay duty with the same or different persons).

(5) A reference in subsection (4) to a person liable to pay duty on the transaction is a reference to a person that would be liable to pay duty if the transaction were a dutiable transaction.

*[Section 91DA inserted: No. 16 of 2022 s. 19.]*

## Division 8 — Derivative mining rights

*[Heading inserted: No. 12 of 2019 s. 34.]*

### 91E. Agreement for transfer of mining tenement conditional on grant of derivative mining right to transferor

(1) This section applies if —

(a) there is an agreement for the transfer of a mining tenement from a person (***person A***) to another person (***person B***); and

(b) it is a condition of the agreement for the transfer that after the transfer person B is to grant a derivative mining right (the ***prospective right***) in relation to the mining tenement to person A.

(2) In determining the dutiable value of the agreement referred to in subsection (1)(a), the unencumbered value of the mining tenement is to be determined, despite section 36(1), having regard to the effect of the prospective right on the value of the mining tenement, as if the prospective right were in force when liability for duty on the agreement arose.

(3) If the agreement referred to in subsection (1)(a) is duty endorsed, duty is not chargeable on the acquisition of the prospective right on its grant by person B.

*[Section 91E inserted: No. 12 of 2019 s. 34.]*

### 91F. Agreement for transfer of mining tenement conditional on grant of derivative mining right to current right holder

(1) This section applies if —

(a) there is an agreement for the transfer of a mining tenement to a person (***person A***); and

(b) it is a condition of the agreement for the transfer that after the transfer person A is to grant a derivative mining

right (the ***prospective right***) in relation to the mining tenement to another person (***person B***) who —

(i) when the agreement is made, holds a derivative mining right (the ***previous right***) in relation to the mining tenement that is substantially the same as the prospective right; and

(ii) will hold the previous right until immediately before the transfer of the mining tenement.

(2) In determining the dutiable value of the agreement referred to in subsection (1)(a), the unencumbered value of the mining tenement is to be determined, despite section 36(1), having regard to the effect of the previous right on the value of the mining tenement when liability for duty on the agreement arose.

(3) Duty is not chargeable on the acquisition of the prospective right on its grant by person A if both of the following are duty endorsed —

(a) the agreement referred to in subsection (1)(a);

(b) the acquisition, on its grant, of the previous right.

*[Section 91F inserted: No. 12 of 2019 s. 34.]*

### 91G. Transfer or agreement for transfer of mining tenement to holder of derivative mining right

(1) This section applies if —

(a) a person (***person A***) holds a derivative mining right (the ***previous right***) in relation to a mining tenement held by another person (***person B***); and

(b) the acquisition of the previous right, on its grant, is duty endorsed; and

(c) there is a transfer, or agreement for the transfer, of the mining tenement from person B to person A; and

(d) person A holds, or will hold, the previous right until immediately before the transfer of the mining tenement.

(2) In determining the dutiable value of a transfer referred to in subsection (1)(c), the unencumbered value of the mining tenement is to be determined, despite section 36(1), having regard to the effect of the previous right on the value of the mining tenement, as if the previous right were in force when liability for duty on the transfer arose.

(3) In determining the dutiable value of an agreement referred to in subsection (1)(c), the unencumbered value of the mining tenement is to be determined, despite section 36(1), having regard to the effect of the previous right on the value of the mining tenement when liability for duty on the agreement arose.

*[Section 91G inserted: No. 12 of 2019 s. 34.]*

### 91H. Acquisition of derivative mining right substantially the same as was held in relation to previous mining tenement

(1) Duty is not chargeable on an acquisition of a derivative mining right by a person (***person A***) on its grant by another person (***person B***) if —

(a) the derivative mining right relates to a mining lease granted to person B; and

(b) before the grant of the mining lease, person B held a prospecting licence or an exploration licence in relation to land including the land the subject of the mining lease; and

(c) person A held a derivative mining right in relation to the prospecting licence or exploration licence that was substantially the same as the derivative mining right in relation to the mining lease; and

(d) the acquisition of the derivative mining right in relation to the prospecting licence or exploration licence, on its grant, is duty endorsed or is not a dutiable transaction.

(2) A reference in this section to a mining lease, prospecting licence or exploration licence is to a mining lease, prospecting licence

or exploration licence (as the case requires) granted or continued under the *Mining Act 1978*.

*[Section 91H inserted: No. 12 of 2019 s. 34; amended: No. 16 of 2022 s. 20.]*

### 91I. Failure to grant, or surrender of, derivative mining right after transfer of mining tenement

(1) In this section —

***mining tenement valuation provision*** means section 91E(2) or 91F(2);

***prospective right***, in relation to a mining tenement valuation provision, means the prospective right referred to in whichever of section 91E(1)(b) or 91F(1)(b) is relevant.

(2) A mining tenement valuation provision that applies to an agreement for the transfer of a mining tenement when liability for duty on the agreement arises ceases to apply to the agreement if —

(a) the prospective right is not granted within the period that applies under subsection (3); or

(b) the prospective right is surrendered for no consideration within 12 months after the day on which the mining tenement is transferred.

(3) For the purposes of subsection (2)(a), the period is —

(a) the period of 90 days starting on the day on which the mining tenement is transferred; or

(b) any longer period allowed, on application within the period referred to in paragraph (a), by the Commissioner on any conditions the Commissioner thinks fit.

(4) If a failure to grant the prospective right referred to in subsection (2)(a) occurs, the transferee in respect of the agreement for transfer referred to in subsection (2) must lodge a

notice of the failure in the approved form within 2 months after the last day of the period that applies under subsection (3).

Penalty for this subsection: a fine of $20 000.

(5) If a surrender referred to in subsection (2)(b) occurs, the person who surrenders the prospective right must lodge a notice of the surrender in the approved form within 2 months after the day on which the surrender occurs.

Penalty for this subsection: a fine of $20 000.

(6) Subject to the Taxation Administration Act section 17, the Commissioner must make any reassessment necessary as a result of the operation of subsection (2).

*[Section 91I inserted: No. 12 of 2019 s. 34.]*

## Division 9 — Farm-in agreements and farm-in transactions

*[Heading inserted: No. 37 of 2022 s. 8.]*

### Subdivision 1 — Preliminary

*[Heading inserted: No. 37 of 2022 s. 8.]*

#### 91J. Introduction to Division

This Division —

(a) explains farm-in agreements, farm-in transactions and related concepts; and

(b) includes various provisions dealing with the treatment of farm-in agreements and farm-in transactions for duty purposes.

*[Section 91J inserted: No. 37 of 2022 s. 8.]*

#### 91K. Terms used

(1) In this Division —

***concessional farm-in transaction*** has the meaning given in section 91L(3), subject to section 91L(4), Subdivision 4 and section 91U;

***exploration*** includes development that is carried out solely —

(a) for the purpose of facilitating exploration; or

(b) otherwise incidentally to exploration;

***exploration amount*** has the meaning given in section 91N(5), subject to section 91N(6);

***exploration licence*** means an exploration licence granted under the *Mining Act 1978* section 57;

***exploration requirement*** has the meaning given in section 91N(1) to (4), subject to section 91N(6);

***farmee*** has the meaning given in section 91L(1)(b);

***farm-in agreement*** has the meaning given in section 91L(1) and (2);

***farm-in transaction*** has the meaning given in section 91M(1), subject to section 91M(2) to (5);

***farmor*** has the meaning given in section 91L(1)(a);

***minerals*** has the meaning given in the *Mining Act 1978* section 8(1);

***mining*** has the meaning given in the *Mining Act 1978* section 8(1);

***primary farmor*** —

(a) means a person who is the holder, or 1 of the holders, of a mining tenement; and

(b) includes a person (the ***transferee***) who is not the holder, or 1 of the holders, of a mining tenement in a case where —

(i) there is a transfer of an interest in the mining tenement to the transferee in order to make the transferee the holder, or 1 of the holders, of the mining tenement; and

(ii) the transfer is still to be registered under the *Mining Act 1978* section 103C; and

(iii) but for the application of the *Mining Act 1978* section 103C(8) to the transfer, the transferee would be the holder, or 1 of the holders, of the mining tenement; and

(iv) subsection (2) of this section applies to the transfer;

and

(c) includes a person who is the applicant, or 1 of the applicants, under the *Mining Act 1978* for a mining tenement in a case where the application is still to be determined;

***prospecting licence*** means a prospecting licence granted under the *Mining Act 1978* section 40;

***purchase agreement*** has the meaning given in section 91M(9);

***relevant derivative mining right***, in relation to a farm-in transaction, means a derivative mining right that is a relevant derivative mining right for the farm-in transaction under section 91M(1)(a)(ii), subject to subsection (3) of this section;

***relevant mining tenement***, in relation to a farm-in transaction, means a mining tenement that is a relevant mining tenement for

the farm-in transaction under section 91M(1)(a)(i), subject to subsection (3) of this section;

***replacement derivative mining right*** has the meaning given in section 91M(7) and (8);

***replacement mining tenement*** has the meaning given in section 91M(6);

***vary***, in relation to an agreement, includes to modify the agreement's effect.

(2) This subsection applies to a transfer for the purposes of paragraph (b)(iv) of the definition of ***primary farmor*** in subsection (1) if —

(a) the transfer is made to the transferee —

(i) under a farm-in transaction as contemplated in section 91M(1)(c)(i); and

(ii) without limiting subparagraph (i), after the transferee has fulfilled the exploration requirement;

or

(b) the transfer is made to the transferee as a purchaser of the interest in the mining tenement.

(3) In sections 91M(1)(c) and (d) and (3) to (5), 91N(2) and (4), 91Q(2), 91T(3) and (4)(b) and 91V(1), references to a relevant mining tenement or relevant derivative mining right include, respectively —

(a) a replacement mining tenement for the relevant mining tenement; or

(b) a replacement derivative mining right for the relevant derivative mining right.

(4) In this Division, references to a mining tenement or derivative mining right being granted to replace another mining tenement or derivative mining right include cases where the mining tenement or derivative mining right is granted in substitution,

conversion or renewal of the other mining tenement or derivative mining right.

(5) In this Division, references to exploration of a mining tenement or derivative mining right are to exploration of land the subject of the mining tenement or derivative mining right.

*[Section 91K inserted: No. 37 of 2022 s. 8.]*

## Subdivision 2 — Explanation of farm-in agreements, farm-in transactions and related concepts

*[Heading inserted: No. 37 of 2022 s. 8.]*

### 91L. Farm-in agreements and concessional farm-in transactions

(1) A ***farm-in agreement*** is an agreement, whether conditional or not, that is made between the following persons and contains 1 or more farm-in transactions —

(a) a person (the ***farmor***) who is either or both of the following —

(i) a primary farmor for 1 or more mining tenements;

(ii) the holder, or 1 of the holders, of 1 or more derivative mining rights;

(b) another person (the ***farmee***).

(2) In addition to the 1 or more farm-in transactions, a farm-in agreement may contain other types of transactions.

(3) A farm-in transaction contained in a farm-in agreement is a ***concessional farm-in transaction***.

(4) Despite subsection (3), a farm-in transaction contained in a farm-in agreement is not a ***concessional farm-in transaction*** if, when the farm-in agreement is made —

(a) the farmee —

(i) is a primary farmor for a relevant mining tenement; or

(ii) is the holder, or 1 of the holders, of a derivative mining right that authorises exploitation of land the subject of a relevant mining tenement; or

(iii) otherwise has any interest in a relevant mining tenement or in a derivative mining right of the type referred to in subparagraph (ii);

or

(b) the farmee —

(i) is 1 of the holders of a relevant derivative mining right; or

(ii) is a primary farmor for a mining tenement to which a relevant derivative mining right relates; or

(iii) is the holder, or 1 of the holders, of a derivative mining right (other than a relevant derivative mining right) that authorises exploitation of land the subject of a mining tenement of the type referred to in subparagraph (ii); or

(iv) otherwise has any interest in a relevant derivative mining right, in a mining tenement of the type referred to in subparagraph (ii) or in a derivative mining right of the type referred to in subparagraph (iii).

*[Section 91L inserted: No. 37 of 2022 s. 8.]*

### 91M. Farm-in transactions and other concepts

(1) A ***farm-in transaction*** is an agreement, whether conditional or not, to the effect that —

(a) as set out in paragraphs (b) to (d), the agreement relates to either or both of the following —

(i) the mining tenement, or 1 or more of the mining tenements, referred to in section 91L(1)(a)(i) (each such mining tenement to which the agreement relates being a ***relevant mining tenement***);

(ii) the derivative mining right, or 1 or more of the derivative mining rights, referred to in section 91L(1)(a)(ii) (each such derivative mining right to which the agreement relates being a ***relevant derivative mining right***);

and

(b) the farmee is to fulfil, or has the option of fulfilling, an exploration requirement; and

(c) if paragraph (a)(i) applies — after the farmee fulfils the exploration requirement, the farmor is to do, or the farmee has the option of requiring the farmor to do, either or both of the following —

(i) transfer to the farmee an interest in each relevant mining tenement;

(ii) grant the farmee a derivative mining right in relation to each relevant mining tenement;

and

(d) if paragraph (a)(ii) applies — after the farmee fulfils the exploration requirement, the farmor is to arrange, or the farmee has the option of requiring the farmor to arrange, for the farmee to acquire an interest in each relevant derivative mining right.

(2) Despite subsection (1), an agreement is not a ***farm-in transaction*** if —

(a) otherwise than under a purchase agreement, the farmee is to acquire, or has the option of acquiring, a beneficial interest without fulfilling the exploration requirement; and

(b) the beneficial interest corresponds (wholly or partly) to a legal interest that the farmee is to acquire, or has the option of acquiring, after fulfilling the exploration requirement as contemplated in subsection (1)(c)(i) or (ii) or (d).

(3) The requirement of subsection (1)(c)(i) is met only if —

(a) the agreement specifies —

(i) the interest or interests to be transferred; or

(ii) the way in which the interest or interests are to be determined;

and

(b) in relation to each relevant mining tenement, the interest to be transferred is, or will be, such that, were the transfer to be made, the farmor and farmee would both be, or would still both be, holders of the relevant mining tenement.

(4) The requirement of subsection (1)(c)(ii) is met only if —

(a) the agreement specifies —

(i) the mining to be authorised by each derivative mining right; or

(ii) the way in which that mining is to be determined;

and

(b) in relation to each relevant mining tenement, were the derivative mining right to be granted, the grant would not result in the farmee having, at any time, substantially the same authority to carry out mining that the farmor has, at that time, under the relevant mining tenement.

(5) The requirement of subsection (1)(d) is met only if —

(a) the agreement specifies —

(i) the interest or interests to be acquired; or

(ii) the way in which the interest or interests are to be determined;

and

(b) in relation to each relevant derivative mining right, the interest to be acquired is, or will be, such that, were it to be acquired, the farmor and farmee would both be, or would still both be, holders of the relevant derivative mining right.

(6) A ***replacement mining tenement***, for a relevant mining tenement, is a mining tenement —

(a) that is granted, after the making of the farm-in transaction concerned, to replace (wholly or partly) —

(i) the relevant mining tenement; or

(ii) an earlier replacement mining tenement for the relevant mining tenement; or

(iii) a mining tenement referred to in subparagraph (i) or (ii), together with 1 or more other mining tenements each of which is also a relevant mining tenement for the farm-in transaction or a replacement mining tenement for such a relevant mining tenement;

and

(b) that relates only to the land, or to a part of the land, the subject of —

(i) the mining tenement that is replaced; or

(ii) the mining tenements that are replaced (taken together as if they were a single mining tenement);

and

(c) of which the farmor is the holder or 1 of the holders.

(7) A ***replacement derivative mining right***, for a relevant derivative mining right, is a derivative mining right —

(a) that is granted, after the making of the farm-in transaction concerned, to replace (wholly or partly) —

(i) the relevant derivative mining right; or

(ii) an earlier replacement derivative mining right for the relevant derivative mining right; or

(iii) a derivative mining right referred to in subparagraph (i) or (ii), together with 1 or more other derivative mining rights each of which is also a relevant derivative mining right for the farm-in transaction or a replacement derivative mining right for such a relevant derivative mining right;

and

(b) that relates only to the land, or to a part of the land, the subject of —

(i) the derivative mining right that is replaced; or

(ii) the derivative mining rights that are replaced (taken together as if they were a single derivative mining right);

and

(c) subject to subsection (8), that does not authorise any mining beyond the mining authorised by —

(i) the derivative mining right that is replaced; or

(ii) the derivative mining rights that are replaced;

and

(d) of which the farmor is the holder or 1 of the holders.

(8) The requirement of subsection (7)(c) does not have to be met if —

(a) the derivative mining right is granted in relation to a mining tenement (the ***new mining tenement***) that was granted to replace (wholly or partly) another mining tenement (the ***previous mining tenement***); and

(b) the new mining tenement authorises mining beyond the mining authorised by the previous mining tenement; and

(c) the derivative mining right only authorises mining for minerals for which mining is authorised by —

(i) the derivative mining right that is replaced; or

(ii) the derivative mining rights that are replaced.

(9) A ***purchase agreement***, in relation to a farm-in transaction, is an agreement made between the farmor and farmee to the effect that —

(a) the farmee is to provide consideration, or has the option of providing consideration, to the farmor; and

(b) the providing of the consideration by the farmee would be in lieu of the farmee fulfilling a part (but not the whole) of the exploration requirement; and

(c) were the farmee to provide the consideration — the farm-in transaction would be varied —

(i) so as to reduce the exploration requirement by excluding the part referred to in paragraph (b); and

(ii) so that, accordingly, the reduced exploration requirement would become the exploration requirement for the farm-in transaction.

*[Section 91M inserted: No. 37 of 2022 s. 8.]*

### 91N. Exploration requirement and exploration amount

(1) For the purposes of section 91M(1), an ***exploration requirement*** is a requirement to do either or both of the following after the farm-in transaction is made —

(a) expend, on exploration carried out by the farmee after the farm-in transaction is made, an amount that is specified in, or determined in accordance with, the farm-in transaction;

(b) carry out exploration as specified in, or determined in accordance with, the farm-in transaction.

(2) In subsection (1)(a) and (b), references to exploration are to —

(a) subject to paragraph (b) and subsection (4), exploration that consists, and only consists, of the following —

(i) if only section 91M(1)(a)(i) applies — exploration of each relevant mining tenement;

(ii) if only section 91M(1)(a)(ii) applies — exploration of each relevant derivative mining right;

(iii) if both section 91M(1)(a)(i) and (ii) apply — exploration of each relevant mining tenement and each relevant derivative mining right;

and

(b) in relation to exploration of a relevant derivative mining right, exploration that consists only of either or both of the following —

(i) mining that is authorised by the relevant derivative mining right;

(ii) activities that are solely incidental to mining that is so authorised.

(3) Subsection (4) —

(a) applies to any relevant mining tenement that has not been granted when the farm-in transaction is made; but

(b) cannot be relied upon in a way that would mean, in effect, that —

(i) no amount is required to be expended as referred to in subsection (1)(a); and

(ii) no exploration is required to be carried out as referred to in subsection (1)(b).

(4) Despite subsection (2)(a)(i) and (iii), the exploration on which an amount is required to be expended as referred to in subsection (1)(a), or that is required to be carried out as referred to in subsection (1)(b), need not include any exploration of the relevant mining tenement.

(5) In relation to a concessional farm-in transaction, the ***exploration amount*** is, as the case requires —

(a) the amount required to be expended as referred to in subsection (1)(a); or

(b) the amount expended by the farmee after the concessional farm-in transaction is made on the exploration required to be carried out as referred to in subsection (1)(b); or

(c) the amount required to be expended as referred to in subsection (1)(a) and any additional amount expended by the farmee after the concessional farm-in transaction is made on the exploration required to be carried out as referred to in subsection (1)(b).

(6) The Commissioner may, in relation to an agreement, allow expenditure on administrative costs that would not otherwise be regarded as expenditure on exploration for the purposes of this section to be so regarded, subject to any limits or other conditions imposed by the Commissioner.

*[Section 91N inserted: No. 37 of 2022 s. 8.]*

## Subdivision 3 — Treatment of farm-in agreements and farm-in transactions for duty purposes

*[Heading inserted: No. 37 of 2022 s. 8.]*

### 91O. Consideration

(1) For the purposes of this Act, the exploration amount for a concessional farm-in transaction is taken not to be consideration for the concessional farm-in transaction.

(2) Section 11(2) does not prevent a concessional farm-in transaction from being a dutiable transaction.

(3) Subsections (4) to (6) apply if —

(a) a farm-in agreement is made; and

(b) there is, or will be, consideration (the ***relevant consideration***) that is, or will be, consideration for the farm-in agreement (as opposed to being, for example, consideration for a concessional farm-in transaction, or for another type of transaction, contained in the farm-in agreement).

(4) The farm-in agreement is taken to contain, in addition to the 1 or more transactions that it actually contains, a dutiable transaction that is the acquisition by the farmee of a derivative mining right.

(5) The derivative mining right is taken to be acquired by the farmee on the making of the farm-in agreement.

(6) The dutiable value of the dutiable transaction is taken to be the relevant consideration.

*[Section 91O inserted: No. 37 of 2022 s. 8.]*

### 91P. General rules relating to charging of duty

(1) Nominal duty is chargeable on a concessional farm-in transaction if there is not, and will not be, any consideration for the concessional farm-in transaction.

(2) Subsection (3) applies if —

(a) a farm-in agreement contains 2 or more concessional farm-in transactions; and

(b) apart from subsection (3), nominal duty would be chargeable on all of the concessional farm-in transactions contained in the farm-in agreement.

(3) Nominal duty is chargeable on all of the concessional farm-in transactions taken together as if they were a single dutiable transaction.

(4) The dutiable value of a dutiable transaction that is a concessional farm-in transaction is the consideration for the concessional farm-in transaction.

(5) Duty is not chargeable on a concessional farm-in transaction if —

(a) apart from this subsection, the concessional farm-in transaction would be chargeable with nominal duty; and

(b) the farm-in agreement that contains the concessional farm-in transaction also contains 1 or more other concessional farm-in transactions on which duty is chargeable at the general rate of duty.

(6) If a farm-in agreement contains 2 or more concessional farm-in transactions on which duty is chargeable at the general rate of duty, the amount of duty chargeable on each of those concessional farm-in transactions must be determined as follows —

(a) first, aggregate the dutiable values of the concessional farm-in transactions;

(b) second, apply the general rate of duty to the aggregate dutiable value;

(c) third, apportion the resulting amount of duty between the concessional farm-in transactions in the way determined by the Commissioner.

(7) If a farm-in agreement contains 2 or more concessional farm-in transactions and the Commissioner is, at any time, reassessing the duty chargeable on any of the concessional farm-in transactions, the Commissioner must also reassess the duty chargeable on any of the other concessional farm-in transactions as necessary for the purpose of applying subsection (3), (5) or (6).

(8) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (7).

*[Section 91P inserted: No. 37 of 2022 s. 8.]*

### 91Q. Changes to consideration

(1) Subsection (3) applies to a concessional farm-in transaction if, before the concessional farm-in transaction is completed, the consideration for the concessional farm-in transaction is increased or reduced.

Example for this subsection:

There is a purchase agreement in relation to a concessional farm-in transaction and the farmee provides the consideration referred to in section 91M(9)(a).

(2) For the purposes of subsection (1), a concessional farm-in transaction is ***completed*** when either of the following applies after the farmee has fulfilled the exploration requirement —

(a) as contemplated in section 91M(1)(c) or (d), the farmee —

(i) acquires an interest in a relevant mining tenement; or

(ii) is granted a derivative mining right in relation to a relevant mining tenement; or

(iii) acquires an interest in a relevant derivative mining right;

(b) paragraph (a) cannot apply because all of the farmee's options, as contemplated in section 91M(1)(c) and (d), have terminated without being exercised.

(3) The Commissioner must assess or reassess the duty chargeable on the concessional farm-in transaction on the basis of the increased or reduced consideration.

(4) However, if it is reduced consideration, the Commissioner does not have to reassess the duty unless the taxpayer makes an application for the reassessment.

(5) If there is increased consideration after the concessional farm-in transaction is duty endorsed, section 31(5) applies with any necessary modifications.

(6) Duty is chargeable on a reassessment under subsection (3) in relation to a concessional farm-in transaction at the same rate and using the same thresholds that applied when liability for duty on the concessional farm-in transaction initially arose.

(7) Subsection (3) does not apply in a case where a taxpayer may apply for a reassessment because of subsection (8).

(8) If any part of the consideration for a concessional farm-in transaction is dependent on the happening of a future event, or on a future event not happening, section 32(1) and (3) apply, with any necessary modifications, as if references to an agreement for the transfer of dutiable property were to the concessional farm-in transaction.

(9) For the purposes of subsection (8), the Taxation Administration Act section 17 applies as if —

(a) despite subsection (1) of that section, a person is not entitled to apply for a reassessment after the later of the following —

(i) 5 years after the day on which the concessional farm-in transaction was made;

(ii) 12 months after the day on which the requirements of section 32(1)(b) and (c) (as applied under subsection (8)) were fulfilled;

and

(b) despite subsection (4) of that section, the Commissioner may only make a reassessment on an application if the application was made within that time.

*[Section 91Q inserted: No. 37 of 2022 s. 8.]*

### 91R. No double duty

(1) In this section —

***consideration***, in relation to a dutiable transaction, does not include the exploration amount for the concessional farm-in transaction concerned.

(2) Duty is not chargeable on a dutiable transaction if —

(a) the dutiable transaction —

(i) is under a concessional farm-in transaction as contemplated in section 91M(1)(c) or (d); and

(ii) without limiting subparagraph (i), occurs after the farmee has fulfilled the exploration requirement;

and

(b) the concessional farm-in transaction is duty endorsed.

(3) Duty is not chargeable on a dutiable transaction (the ***replacement dutiable transaction***) if —

(a) the replacement dutiable transaction —

(i) is in lieu of a dutiable transaction that, had it occurred, would have been under a concessional farm-in transaction as contemplated in section 91M(1)(c) or (d); and

(ii) would be a dutiable transaction under the concessional farm-in transaction as contemplated in section 91M(1)(c) or (d) except only that the replacement dutiable transaction involves a replacement mining tenement for a relevant mining tenement, or a replacement derivative mining right for a relevant derivative mining right, that was not anticipated in the concessional farm-in transaction; and

(iii) without limiting subparagraphs (i) and (ii), occurs after the farmee has fulfilled the exploration requirement for the concessional farm-in transaction;

and

(b) the concessional farm-in transaction is duty endorsed.

(4) Duty is chargeable on a dutiable transaction to which subsection (2) or (3) would otherwise apply if there is, or will be, consideration for the dutiable transaction.

(5) For the purposes of subsection (4), the dutiable value of the dutiable transaction is the consideration for the dutiable transaction to the extent that the consideration was not taken into account when the concessional farm-in transaction was duty endorsed.

(6) In subsection (3)(a)(i), the reference to a dutiable transaction includes a transaction that would be a dutiable transaction but for the application of section 91DA to the transaction.

*[Section 91R inserted: No. 37 of 2022 s. 8.]*

## Subdivision 4 — Variations and other events affecting farm-in agreements and farm-in transactions

*[Heading inserted: No. 37 of 2022 s. 8.]*

### 91S. Farm-in transaction added to farm-in agreement

(1) This section applies if a farm-in transaction (the ***additional farm-in transaction***) is added to a farm-in agreement after the farm-in agreement is made.

(2) The additional farm-in transaction is a concessional farm-in transaction only —

(a) if the additional farm-in transaction —

(i) is a concessional farm-in transaction under subsection (3) or (4); and

(ii) if both section 91M(1)(a)(i) and (ii) apply — is a concessional farm-in transaction under both subsections (3) and (4);

or

(b) in any circumstances prescribed for the purposes of this paragraph.

(3) The additional farm-in transaction is a concessional farm-in transaction if —

(a) section 91M(1)(a)(i) and (c)(i) apply; and

(b) each relevant mining tenement for the additional farm-in transaction is also either of the following —

(i) a relevant mining tenement for a concessional farm-in transaction that was contained in the farm-in agreement when the farm-in agreement was made;

(ii) a replacement mining tenement for a relevant mining tenement referred to in subparagraph (i);

and

(c) when the additional farm-in transaction is added to the farm-in agreement, the farmee is not the holder, or 1 of the holders, of any relevant mining tenement for the additional farm-in transaction.

(4) The additional farm-in transaction is a concessional farm-in transaction if —

(a) section 91M(1)(a)(ii) applies; and

(b) each relevant derivative mining right for the additional farm-in transaction is also either of the following —

(i) a relevant derivative mining right for a concessional farm-in transaction that was contained in the farm-in agreement when the farm-in agreement was made;

(ii) a replacement derivative mining right for a relevant derivative mining right referred to in subparagraph (i);

and

(c) the Commissioner is satisfied that, when the additional farm-in transaction is added to the farm-in agreement, the farmee is not the holder, or 1 of the holders, of any relevant derivative mining right for the additional farm-in transaction.

(5) If the additional farm-in transaction is a concessional farm-in transaction, the Commissioner may, for the purpose of applying section 91P(3), (5) or (6), reassess the duty chargeable on any other concessional farm-in transaction contained in the farm-in agreement —

(a) on the Commissioner's own initiative; or

(b) on the application of the taxpayer.

(6) For the purposes of a reassessment under subsection (5) of the duty chargeable on a concessional farm-in transaction, the concessional farm-in transaction is to be taken to have been made when the additional farm-in transaction is added to the farm-in agreement.

(7) For the purposes of a reassessment under subsection (5), the Taxation Administration Act section 17 applies as if —

(a) in subsection (1) of that section, the reference to 5 years after the original assessment was made were to the later of the following —

(i) 5 years after the day on which the original assessment was made;

(ii) 12 months after the day on which the additional farm-in transaction is added to the farm-in agreement;

and

(b) in subsection (4) of that section, references to 5 years after the date of the original assessment were to the later of the following —

(i) 5 years after the day on which the original assessment was made;

(ii) 12 months after the day on which the additional farm-in transaction is added to the farm-in agreement.

*[Section 91S inserted: No. 37 of 2022 s. 8.]*

### 91T. Variation to farm-in transaction

(1) If an agreement that is a concessional farm-in transaction ceases to meet the requirements for a farm-in transaction set out in section 91M(1) to (5), the agreement ceases to be a concessional farm-in transaction accordingly.

(2) Subsection (4) applies if an agreement that is a concessional farm-in transaction is varied so as to add a relevant mining

tenement or relevant derivative mining right, except that subsection (4) does not apply in any of the following circumstances —

(a) subsection (1) applies as a result of the variation;

(b) all of the following apply —

(i) the relevant mining tenement is a prospecting licence or exploration licence or the relevant derivative mining right relates to a prospecting licence or exploration licence;

(ii) the relevant mining tenement or relevant derivative mining right was granted after the concessional farm-in transaction was made;

(iii) the variation occurs within 3 months after the day on which the relevant mining tenement or relevant derivative mining right was granted or within a longer period allowed by the Commissioner;

(c) any circumstances prescribed for the purposes of this paragraph.

(3) Subsection (4) also applies if an agreement that is a concessional farm-in transaction is varied so as to increase the interest in a relevant mining tenement, or in a relevant derivative mining right, that the farmee is to acquire, or might acquire, as contemplated in section 91M(1)(c)(i) or (d), except that subsection (4) does not apply in any of the following circumstances —

(a) subsection (1) applies as a result of the variation;

(b) as the case requires —

(i) the farmee is not the holder, or 1 of the holders, of the relevant mining tenement when the variation occurs; or

(ii) the Commissioner is satisfied that, when the variation occurs, the farmee is not the holder, or 1 of the holders, of the relevant derivative mining right;

(c) any circumstances prescribed for the purposes of this paragraph.

(4) The agreement is taken not to be a concessional farm-in transaction to the extent that the agreement relates to —

(a) the relevant mining tenement or relevant derivative mining right that is added; or

(b) the increase in the interest in the relevant mining tenement or relevant derivative mining right.

(5) Regulations may prescribe circumstances in which, if an agreement that is a concessional farm-in transaction is varied, the agreement —

(a) ceases to be a concessional farm-in transaction; or

(b) is taken not to be a concessional farm-in transaction to a prescribed extent.

(6) Subsections (7) to (10) apply if, at any time (the ***relevant time***), under this section or under regulations made for the purposes of subsection (5) —

(a) an agreement ceases to be a concessional farm-in transaction; or

(b) an agreement is taken not to be a concessional farm-in transaction to an extent.

(7) If, as the agreement stands at the relevant time, the agreement gives effect to, or evidences, a dutiable transaction that is not a concessional farm-in transaction —

(a) duty is chargeable on the dutiable transaction as if the dutiable transaction had occurred at the relevant time; and

(b) the other provisions of this Act apply accordingly.

(8) If subsection (7) applies because of subsection (6)(b), the reference in subsection (7) to the agreement is to the agreement to the extent that it is taken not to be a concessional farm-in transaction.

(9) The ceasing of the agreement to be a concessional farm-in transaction, or the taking of the agreement not to be a concessional farm-in transaction to an extent, does not affect any liability for duty that arose before the relevant time.

(10) However, nothing in this section, or in regulations made for the purposes of subsection (5), prevents section 107 from applying to the agreement as a concessional farm-in transaction if the event giving rise to the application of this section or those regulations would, apart from this section or those regulations, cause the agreement to become a cancelled transaction as defined in that section.

*[Section 91T inserted: No. 37 of 2022 s. 8.]*

## Subdivision 5 — Other provisions

*[Heading inserted: No. 37 of 2022 s. 8.]*

### 91U. Farm-in transactions relating to prospecting licences

(1) In this section —

***non-prospecting interest***, in relation to a farm-in transaction, means —

(a) an interest in a non-prospecting mining tenement in a case where the non-prospecting mining tenement is a replacement mining tenement for a relevant mining tenement; or

(b) a derivative mining right that relates to a non-prospecting mining tenement in a case where the non-prospecting mining tenement is a replacement mining tenement for a relevant mining tenement; or

(c) an interest in a derivative mining right in a case where the derivative mining right —

(i) is a replacement derivative mining right for a relevant derivative mining right; and

(ii) relates to a non-prospecting mining tenement;

***non-prospecting mining tenement*** means a mining tenement that is not a prospecting licence;

***prospecting farm-in transaction*** means a farm-in transaction contained in a farm-in agreement in a case where —

(a) if only section 91M(1)(a)(i) applies —

(i) each relevant mining tenement is a prospecting licence; and

(ii) apart from this section, section 91L(4) would not prevent the farm-in transaction from being a concessional farm-in transaction;

or

(b) if only section 91M(1)(a)(ii) applies —

(i) each relevant derivative mining right relates to a mining tenement that is a prospecting licence; and

(ii) apart from this section, section 91L(4) would not prevent the farm-in transaction from being a concessional farm-in transaction;

or

(c) if both section 91M(1)(a)(i) and (ii) apply —

(i) each relevant mining tenement is a prospecting licence; and

(ii) each relevant derivative mining right relates to a mining tenement that is a prospecting licence; and

(iii) apart from this section, section 91L(4) would not prevent the farm-in transaction from being a concessional farm-in transaction.

(2) Section 91DA does not prevent a concessional farm-in transaction from being a dutiable transaction.

(3) Subject to subsections (6) and (8), a prospecting farm-in transaction is neither a concessional farm-in transaction nor a dutiable transaction.

(4) Subsection (6) applies to a farm-in transaction that is a prospecting farm-in transaction if a dutiable transaction involving a non-prospecting interest (the ***non-prospecting dutiable transaction***) occurs —

(a) under the farm-in transaction as contemplated in section 91M(1)(c) or (d); and

(b) without limiting paragraph (a), after the farmee has fulfilled the exploration requirement.

(5) Subsection (6) also applies to a farm-in transaction that is a prospecting farm-in transaction if —

(a) a dutiable transaction involving a non-prospecting interest (the ***non-prospecting dutiable transaction***) occurs; and

(b) the non-prospecting dutiable transaction —

(i) is in lieu of a transaction that, had it occurred, would have been under the farm-in transaction as contemplated in section 91M(1)(c) or (d); and

(ii) would be a transaction under the farm-in transaction as contemplated in section 91M(1)(c) or (d) except only that the non-prospecting dutiable transaction involves a replacement mining tenement for a relevant mining tenement, or a replacement derivative mining right for a relevant derivative mining right, that was not anticipated in the farm-in transaction; and

(iii) without limiting subparagraphs (i) and (ii), occurs after the farmee has fulfilled the exploration requirement for the farm-in transaction.

(6) The following apply in relation to the farm-in transaction —

(a) the farm-in transaction ceases to be a prospecting farm-in transaction when the non-prospecting dutiable transaction occurs;

(b) the farm-in transaction is, and is taken always to have been, a concessional farm-in transaction and, accordingly, a dutiable transaction;

(c) liability for duty chargeable on the farm-in transaction arises when the non-prospecting dutiable transaction occurs (despite the item for a concessional farm-in transaction in Schedule 1).

(7) Subsection (8) applies if, at any time (the ***relevant time***), a farm-in transaction that is a prospecting farm-in transaction is varied so as to add —

(a) a relevant mining tenement that is a non-prospecting mining tenement; or

(b) a relevant derivative mining right that relates to a non-prospecting mining tenement.

(8) The following apply in relation to the farm-in transaction —

(a) the farm-in transaction ceases to be a prospecting farm-in transaction at the relevant time;

(b) the farm-in transaction is, and is taken always to have been, a concessional farm-in transaction and, accordingly, a dutiable transaction;

(c) liability for duty chargeable on the farm-in transaction arises at the relevant time (despite the item for a concessional farm-in transaction in Schedule 1).

(9) The Commissioner may reassess the duty chargeable on any dutiable transaction for the purpose of applying subsection (6) or (8) —

(a) on the Commissioner's own initiative; or

(b) on the application of the taxpayer.

(10) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (9).

*[Section 91U inserted: No. 37 of 2022 s. 8.]*

### 91V. Treatment of certain options under farm-in agreements

(1) Subsection (2) applies if —

(a) separately from any concessional farm-in transaction contained in it, a farm-in agreement provides, whether conditionally or not, for the grant to the farmee, after the making of the farm-in agreement, of an option to acquire an interest in —

(i) a mining tenement that is a relevant mining tenement for a concessional farm-in transaction contained in the farm-in agreement; or

(ii) a derivative mining right that is a relevant derivative mining right for a concessional farm-in transaction contained in the farm-in agreement;

and

(b) were the option to be granted, the farmee's acquisition of the option on the grant would be a dutiable transaction under section 11(1)(f).

(2) The option is taken to have been granted, and therefore to have been acquired by the farmee, on the making of the farm-in agreement.

(3) Duty is not chargeable on the acquisition of an option that is taken to have occurred under subsection (2) if, subsequently, the option will not actually be granted because —

(a) the time for the grant of the option, as specified in, or determined in accordance with, the farm-in agreement, passes or expires without the option being granted; or

(b) the farmor and farmee otherwise agree that the option is not to be granted.

(4) If subsection (3) applies, the Commissioner must, on the application of the taxpayer, reassess the liability to duty on the acquisition of the option.

(5) For the purposes of subsection (4), the Taxation Administration Act section 17 applies as if —

(a) despite subsection (1) of that section, a person is not entitled to apply for a reassessment after the later of the following —

(i) 5 years after the day on which the original assessment was made;

(ii) 12 months after the day on which the event referred to in subsection (3)(a) or (b) occurred;

and

(b) despite subsection (4) of that section, the Commissioner may only make a reassessment on an application if the application was made within that time.

*[Section 91V inserted: No. 37 of 2022 s. 8.]*

### 91W. Derivative mining right granted for purposes of exploration requirement for farm-in transaction

Duty is not chargeable on a dutiable transaction that is the acquisition of a derivative mining right if —

(a) the person who acquires the derivative mining right is the farmee under a farm-in agreement; and

(b) the derivative mining right authorises mining only for the purpose of fulfilling the exploration requirement for a concessional farm-in transaction contained in the farm-in agreement; and

(c) there is not, and will not be, any consideration for the dutiable transaction.

*[Section 91W inserted: No. 37 of 2022 s. 8.]*

# Part 6 — Exemptions, nominal duty and concessions

## Division 1 — Exemptions

### Subdivision 1 — Exemptions for public and governmental purposes

#### 92. Public authorities, declaration of as exempt bodies

(1) The Minister may declare a public authority to be an exempt body for the purposes of this Subdivision.

Note for this subsection:

There are other exempt bodies. See the definition of ***exempt body*** in section 3.

(2) The Minister may withdraw a declaration made under subsection (1).

(3) The Minister is to publish notice of the making or withdrawal of a declaration in the *Gazette*.

#### 93. Transactions for which exempt body would be solely liable

Duty is not chargeable on a dutiable transaction to which an exempt body is a party if the exempt body is the only party that would be liable to pay duty that would, but for this section, be chargeable on the transaction.

#### 94. Transactions for which exempt body and another party would be liable, duty reduction for etc.

(1) This section applies to a dutiable transaction to which an exempt body is a party if —

(a) the exempt body would, apart from subsection (2), be liable to pay duty chargeable on the transaction; and

(b) at least one other party to the transaction is liable to pay duty chargeable on the transaction and is not an exempt body.

(2) The exempt body is not liable to pay duty on the transaction.

(3) The amount of duty payable on the transaction (AD) is the amount determined under the formula —

$$AD = TD - (TD \times EI)$$

where —

TD is the amount of duty that would be payable on the transaction if this section did not apply to it;

EI is —

(a) if the interest in the dutiable property that the exempt body has under the transaction is of a kind that enables the proportion which that interest bears to the whole of the dutiable property to be ascertained — that proportion expressed as a percentage; or

(b) in any other case — a percentage determined by the Commissioner to represent the proportion which the interest in the dutiable property that the exempt body has under the transaction bears to the whole of the dutiable property.

(4) The amount of duty payable by any party referred to in subsection (1)(b) is the amount AD determined under subsection (3).

Note for this section:

For example, an exempt body and another party acquire dutiable property as tenants in common. The exempt body acquires 40 of 100 undivided shares and the other party acquires 60 of 100 undivided shares. But for this section the transfer duty chargeable on the transaction would be $3 000. Under the operation of this section the amount of duty payable on the transaction is calculated as follows:

~~$3 000 − ($3 000 × 40/100) = $3 000 − $1 200 = $1 800~~

$3 000 − ($3 000 × 40/100) = $3 000 − $1 200 = $1 800

This amount (i.e. $1 800) is the amount of transfer duty payable by the other party.

### 95. Transactions for charitable etc. purposes

(1) Duty is not chargeable on a dutiable transaction that has been entered into or occurred for charitable or similar public purposes.

(2) However, subsection (1) does not apply if the person liable to pay duty on the dutiable transaction is a relevant body, or is related to a relevant body as referred to in subsection (3), unless a beneficial body determination is in force for the purposes of this Act in respect of the relevant body.

(3) A person liable to pay duty on a dutiable transaction is related to a relevant body if —

(a) the person holds the dutiable property the subject of the transaction as trustee of a trust; and

(b) the relevant body is a beneficiary under the trust, whether the relevant body has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust, unless —

(i) the trust is a discretionary trust; and

(ii) the Commissioner decides in a particular case that it would be inequitable for the person to be treated as related to the relevant body.

*[Section 95 amended: No. 8 of 2015 s. 5.]*

### 96A. What is a relevant body

A reference to a relevant body is to any of the following —

(a) a political party;

(b) an industrial association;

(c) a professional association;

(d) a body, other than a body referred to in paragraph (a), (b), (c) or (e), that promotes trade, industry or commerce, unless the main purposes of the body are charitable purposes that fall within the first 3 categories

(being relief of poverty, advancement of education and advancement of religion) identified by Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 as developed by the common law of Australia from time to time;

(e) a body that is a member of a class of bodies prescribed for the purposes of this paragraph;

(f) a body that —

(i) is a member of a group, as defined in the *Pay-roll Tax Assessment Act 2002* Glossary, of which a body referred to in another paragraph is also a member; or

(ii) is a related body corporate, as defined in the Corporations Act section 9, of a body referred to in another paragraph; or

(iii) has as its sole or dominant purpose or object the conferral of a benefit, whether financial or non-financial, on a body referred to in another paragraph.

*[Section 96A inserted: No. 8 of 2015 s. 6.]*

### 96B. Application for a beneficial body determination

(1) An application may be made to the Minister for a determination under section 96C that a relevant body is a beneficial body for the purposes of the taxation Acts if —

(a) the Commissioner has decided (the ***decision***) that —

(i) a dutiable transaction is not an exempt transaction under section 95; or

(ii) an acquisition is not exempt under section 168(3) because the transfer referred to in that section would not be an exempt transaction under section 95;

and

(b) that decision is made solely on the ground that the person liable to pay duty on the dutiable transaction, or who would be liable to pay duty on the transfer, is —

(i) a relevant body referred to in section 96A(c), (d), (e) or (f); or

(ii) related to such a relevant body as referred to in section 95(3).

(2) An application referred to in subsection (1) can be made only if —

(a) an objection was made to the decision and the objection and any subsequent review proceedings are exhausted, discontinued or finally determined; or

(b) under the Taxation Administration Act section 34B —

(i) all rights of objection or review conferred by that Act in respect of the decision have been surrendered; or

(ii) an objection to the decision has been determined and all rights to take review proceedings on the Commissioner's decision on the objection have been surrendered.

(3) However, an application referred to in subsection (1) cannot be made if the decision was made, or confirmed, on a reassessment made on an application made by the taxpayer —

(a) under the Taxation Administration Act section 16(2)(b); and

(b) after the right to object to the original assessment had expired.

(4) An application referred to in subsection (1) must be made within 60 days after subsection (2) first applies in respect of the decision.

*[Section 96B inserted: No. 8 of 2015 s. 6; amended: No. 12 of 2019 s. 35.]*

### 96C. Beneficial body determination

(1) On an application under section 96B the Minister, with the Treasurer's concurrence, may determine that a relevant body is a beneficial body for the purposes of the taxation Acts.

(2) The Minister, with the Treasurer's concurrence, may amend or revoke a beneficial body determination.

(3) The Minister may make, amend or revoke a beneficial body determination only if the Minister is of the opinion that it is in the public interest to do so and after considering any information that the Minister considers relevant.

(4) The Minister must —

(a) provide written reasons to the applicant for a decision in relation to an application under section 96B; and

(b) provide written reasons for a decision to amend or revoke a beneficial body determination to the body in respect of which the determination is made.

(5) The Minister is to publish notice of the making, amendment or revocation of a beneficial body determination in the *Gazette*.

(6) A beneficial body determination is subject to the conditions specified in the determination (if any).

(7) A beneficial body determination made under this section comes into force —

(a) for the purposes of this Act — on the day on which the determination is made; and

(b) for the purposes of the *Land Tax Assessment Act 2002* and the *Pay-roll Tax Assessment Act 2002* — on the day specified in the notice in respect of each Act.

(8) Despite subsection (7)(a), a beneficial body determination made under this section applies in relation to the relevant body in respect of —

(a) the dutiable transaction, or acquisition, that is the subject of the application under section 96B (the ***original transaction***); and

(b) any other transaction —

(i) that was entered into or occurred after the original transaction but before the determination was made; and

(ii) on which duty would not have been chargeable under section 95 (including for the purposes of section 168) had the determination been in force for the purposes of this Act in respect of the relevant body.

(9) The Commissioner is to reassess the liability to duty of each transaction in respect of which a beneficial body determination applies under subsection (8).

(10) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (9).

(11) A beneficial body determination continues in force until the day on which notice of the revocation is published in the *Gazette*, and different days may be specified for each Act in respect of which the determination is in force.

*[Section 96C inserted: No. 8 of 2015 s. 6.]*

## Subdivision 2 — Certain transactions between spouses or de facto partners

### 96. Terms used

In this Subdivision —

***lot*** means either of the following —

(a) a lot within the meaning given in the *Land Tax Assessment Act 2002* Glossary clause 2;

(b) 2 or more such lots in the same ownership —

(i) on which is constructed a residence, parts of which stand on each of the lots; and

(ii) which have common boundaries and which in the opinion of the Commissioner should be treated as a single lot for the purpose of this Subdivision;

***residence*** includes flat, apartment or other residential unit.

### 97. Some transactions between spouses or de facto partners

Duty is not chargeable on a transfer of, or an agreement for the transfer of, dutiable property where —

(a) the person from whom, and the person to whom, the dutiable property is transferred, or agreed to be transferred, are married to each other or are de facto partners of 2 years; and

(b) the dutiable property is a lot on which a residence is erected which, when liability for duty on the transaction arises, was used solely or dominantly as the ordinary place of residence of the persons referred to in paragraph (a); and

(c) the lot on which the residence is erected is used solely or dominantly for residential purposes associated with that residence; and

(d) the person from whom the dutiable property is transferred, or agreed to be transferred, is the sole owner of the property; and

(e) the result of the transaction is or will be that the dutiable property is owned solely by the persons referred to in paragraph (a) as joint tenants or tenants in common in equal shares.

### 98. Application for exemption under this Subdivision

An application for assessment or reassessment under this Subdivision must be —

(a) made in the approved form by the persons referred to in section 97(a); and

(b) accompanied by such transaction record for the transaction as is required to be lodged under section 23.

## Subdivision 3 — Family farm transactions

### 99. Terms used

(1) In this Subdivision —

***exempt family farm transaction*** has the meaning given in section 102;

***family member*** has the meaning given in section 100;

***farming land*** means land in Western Australia that is used solely or dominantly for the purpose of primary production;

***farming property*** means —

(a) farming land; or

(b) other dutiable property that is used solely or dominantly in connection with the business of primary production;

***transferee*** has the meaning given in section 101;

***transferor***, in respect of a dutiable transaction the subject of which is farming property, means —

(a) an individual (other than a trustee) from whom the property is, or is to be, acquired; or

(b) if the property was held by a trustee (other than a trustee of a unit trust scheme or a discretionary trust) immediately before the transaction took place, an individual on whose behalf, and at whose direction, the trustee carried out the transaction.

(2) For the purposes of this Subdivision, a person controls a discretionary trust if —

(a) the person is in a position to influence, either directly or indirectly, the vesting of the whole or any part of the capital of the trust property, or of the whole or any part of the income from the trust property; or

(b) in a case where a corporation is in a position to influence, either directly or indirectly, the vesting of the whole or any part of the capital of the trust property, or of the whole or any part of the income from that trust property, the person is beneficially entitled to a share in that corporation or a related corporation or to act as a director or secretary of that corporation or related corporation.

(3) For the purposes of this Subdivision, farming property is the subject of a dutiable transaction that is a partnership acquisition to the extent that the property of a kind referred to in section 72(a) to (d) held by the partnership, or in which the partnership has an indirect interest under section 73, is farming property.

*[Section 99 amended: No. 12 of 2019 s. 36.]*

### 100. References to family member

(1) A reference in this Subdivision to a family member of a person is to —

(a) a child or remoter lineal descendant of the person; or

(b) a parent or remoter lineal ancestor of the person; or

(c) a brother or sister of the person or a child or remoter lineal descendant of a brother or sister of the person; or

(d) an aunt or uncle of the person; or

(e) the spouse, former spouse, de facto partner of 2 years or former de facto partner of 2 years of the person; or

(f) the spouse or de facto partner of 2 years of a person mentioned in paragraph (a), (b), (c) or (d); or

(g) a brother or sister of the person's spouse or of the person's de facto partner of 2 years; or

(h) the spouse or de facto partner of 2 years of a brother or sister to whom paragraph (g) applies,

or more than one of them.

(2) A reference in this Subdivision to a family member is to a family member acting in their own capacity and not as agent, trustee or otherwise on behalf of any other person.

*[Section 100 amended: No. 12 of 2019 s. 37.]*

### 101A. References to primary production

(1) A reference to ***primary production*** is a reference to any of the following —

(a) the growing or rearing of plants (including trees, fungi or any crop) for the purpose of selling them, parts of them or their produce;

(b) the breeding, rearing or maintenance of living creatures for any of the following purposes (***produce animals***) —

(i) selling them, or their progeny, for food;

(ii) the production or collection of their skins, shells or bodily produce;

(iii) selling parts of them or their skins, shells or bodily produce;

(c) the breeding, rearing or maintenance of produce animals for the purpose of selling them or their progeny —

(i) for stud purposes; or

(ii) to be used for a purpose set out in paragraph (b)(i), (ii) or (iii);

(d) the breeding or rearing of horses for the purpose of selling them or their progeny;

(e) any other thing prescribed for the purposes of this subsection.

(2) In determining whether or not something is primary production —

(a) it is irrelevant whether a thing is sold, or to be sold, in a natural, processed or converted state; but

(b) the processing or converting of anything for the purpose of selling it is not primary production.

*[Section 101A inserted: No. 1 of 2015 s. 11.]*

## 101. References to transferee

A reference in this Subdivision to a transferee in respect of a dutiable transaction the subject of which is farming property is to a person described in Schedule 1 column 4 opposite the description of the transaction, that is —

(a) a family member of the transferor; or

(b) a trustee of a trust, other than a unit trust scheme or a discretionary trust, if each beneficiary of the trust is a family member of the transferor; or

(c) a trustee of a discretionary trust, if —

(i) each beneficiary of the trust is the transferor or a family member of the transferor; and

(ia) the transferor is not the only beneficiary of the trust; and

(ii) the transferor does not control the discretionary trust.

*[Section 101 amended: No. 12 of 2019 s. 38.]*

### 102. References to exempt family farm transaction

(1) A reference in this Subdivision to an exempt family farm transaction is to a dutiable transaction to the extent to which the subject of the transaction is farming property which, as a result of the transaction is, or is to be, acquired by a transferee or transferees.

(2) A transaction is an exempt family farm transaction only if —

(a) each transferor was using the farming property in the business of primary production immediately before the transaction took place; and

(b) when liability to duty on the transaction arose, each transferee intends to continue to use the farming property in the business of primary production.

(3) It is irrelevant for the purposes of subsection (2) whether a transferor was using, or a transferee intends to continue to use, the farming property in the business of primary production —

(a) personally or with others; or

(b) through a trust or corporation (an ***entity***) to which the transferor or transferee, as is relevant, is related under section 102A; or

(c) through a combination of entities to which the transferor or transferee, as is relevant, is related under section 102A.

(4) The Commissioner may treat the requirement in subsection (2)(a) as being satisfied, even though any of the transferors was not using the farming property in the business of primary production immediately before the transaction took place, if the Commissioner is satisfied that —

(a) the relevant transferor had previously used the farming property in the business of primary production; and

(b) a family member of the relevant transferor, or an entity to which a family member of the relevant transferor is related under section 102A, was using the farming property in the business of primary production immediately before the transaction took place.

*[(5) deleted]*

(6) For the purposes of this section, a farming property is being used in the business of primary production even if —

(a) some, but not all, of the farming land of that property is leased to another person; and

(b) under the lease, the lessee is using the leased land solely or dominantly for the purposes of silviculture or reafforestation.

*[Section 102 amended: No. 12 of 2019 s. 39.]*

### 102A. Related entities for s. 102

(1) For the purposes of section 102(3), a transferor is related to an entity that is —

(a) a trust (other than a unit trust scheme) if the transferor is a beneficiary of the trust and every other beneficiary is a family member of the transferor; or

(b) a unit trust scheme if the transferor holds a unit in the unit trust scheme and every other person who holds a unit in the unit trust scheme is a family member of the transferor; or

(c) a corporation if the transferor is a shareholder in the corporation and every other shareholder is a family member of the transferor.

(2) For the purposes of section 102(3), a transferee is related to an entity that is —

(a) a trust (other than a unit trust scheme or a discretionary trust) if the transferee is a beneficiary of the trust and

every other beneficiary is the transferor or a family member of the transferor; or

(b) a discretionary trust if —

(i) the transferee is a beneficiary of the trust; and

(ii) every other beneficiary is the transferor or a family member of the transferor; and

(iii) the transferor does not control the discretionary trust;

or

(c) a unit trust scheme if the transferee holds a unit in the unit trust scheme and every other person who holds a unit in the unit trust scheme is the transferor or a family member of the transferor; or

(d) a corporation if the transferee is a shareholder in the corporation and every other shareholder is the transferor or a family member of the transferor.

(3) If a transferee is a trustee of a trust to which section 101(b) applies, subsection (2) applies to the transferee as if the references to the transferee in subsection (2)(a), (b), (c) and (d) were references to each beneficiary of that trust.

(4) For the purposes of section 102(4)(b), subsection (2) applies in determining whether a family member of a relevant transferor is related to an entity as if the family member were a transferee referred to in that subsection.

*[Section 102A inserted: No. 12 of 2019 s. 40.]*

### 103. Exempt family farm transactions, exemption for

Duty is not chargeable on an exempt family farm transaction.

### 104. No exemption for subsequent transactions for same farming property within 5 years

Despite section 103, duty is chargeable on a transaction (a ***subsequent transaction***) that would otherwise be an exempt family farm transaction if —

(a) duty was not charged on an exempt family farm transaction (the ***first transaction***); and

(b) liability to duty on the subsequent transaction arose —

(i) within 5 years of the first transaction; and

(ii) the transaction relates, in the opinion of the Commissioner, to the same farming property that was the subject of the first transaction.

### 105. Subsequent liability to duty in certain circumstances

(1) If, after an exempt family farm transaction as a result of which farming property was acquired by a transferee referred to in section 101(c) has taken place, any of the following events take place, the event is taken to be a transfer of farming property —

(a) during the lifetime of the transferor, a person that is not the transferor or a family member of the transferor —

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

(ii) otherwise benefits from the trust;

(b) the transferor gains control of the trust,

unless —

(c) when the event took place, the trust did not hold any farming property that was the subject of an exempt family farm transaction; or

(d) an event taken to be a transfer of the farming property is already duty endorsed under this section.

(2) The trustee of the trust is to lodge a transfer duty statement not later than 2 months after the day on which an event referred to in subsection (1) takes place.

Penalty: a fine of $20 000.

(3) The person liable to pay the duty is the trustee.

(4) The dutiable value of an event subsequent to an exempt family farm transaction, taken to be a transfer under subsection (1), is the unencumbered value of the farming property that was the subject of the exempt family farm transaction held by the trust when the event took place.

*[Section 105 amended: No. 12 of 2019 s. 41.]*

### 106. Application for exemption under this Subdivision

(1) An application for assessment or reassessment under this Subdivision must be —

(a) made in the approved form jointly by all of the transferees; and

(b) accompanied by such transaction record for the transaction as is required to be lodged under section 23.

(2) For the purposes of this Subdivision, the Taxation Administration Act section 17 applies as if —

(a) despite subsection (1) of that section, a person is not entitled to apply for a reassessment more than 12 months after the day on which the transaction was duty endorsed; and

(b) despite subsection (4) of that section, the Commissioner may make a reassessment on an application only if the application was made within that time.

## Subdivision 4 — Other exempt transactions

### 107. Cancelled transactions

(1) In this section —

***cancelled transaction*** has the meaning given in subsection (2);

***replacement transaction***, in relation to a cancelled transaction, means another dutiable transaction that —

(a) is between all of the same parties as the parties to the cancelled transaction; and

(b) is substantially similar in effect to the cancelled transaction; and

(c) in the opinion of the Commissioner, is a scheme or arrangement, or part of a scheme or arrangement, for which the sole or dominant purpose of any party is to avoid, reduce or defer the payment of tax;

***subsale transaction***, in relation to a cancelled transaction, means another dutiable transaction which results in a beneficial interest in the dutiable property the subject of the cancelled transaction being held by —

(a) a person who is not a party to the cancelled transaction, a result which is contemplated or provided for under the cancelled transaction; or

(b) a person who is not a party to the cancelled transaction, a result which is substantially similar in effect to the effect of the cancelled transaction; or

(c) another person, as a result of an agreement, arrangement or understanding between a person liable to pay duty on the cancelled transaction and any other party to the transaction (including any other person liable to pay duty on the cancelled transaction).

(2) A reference to a cancelled transaction is to a dutiable transaction that has not been, and will not be, carried into effect but the following transactions are not cancelled transactions —

(a) a call option of a simultaneous put and call option taken to be an agreement for the transfer of the option property under section 45;

(b) an assignment of a call option taken to be an agreement for the transfer of the option property under section 49;

(c) a terms contract (within the meaning given in the *Sale of Land Act 1970*) if the person liable to pay duty on the transaction has under the contract, obtained exclusive use or control of the dutiable property, whether or not that contract is not fully carried into effect for any reason;

(d) a concessional farm-in transaction if the farmee has fulfilled the exploration requirement for the concessional farm-in transaction.

(3A) To avoid doubt, for the purposes of subsection (2), a dutiable transaction has not been, and will not be, carried into effect if —

(a) the transaction is a transfer of dutiable property; and

(b) the transaction is effected or evidenced by an electronic conveyancing instrument (as defined in section 22A); and

(c) under section 42, no duty is chargeable on the transfer; and

(d) the instrument, having been digitally signed (as defined in the *Electronic Conveyancing Act 2014* section 3(1)) is unsigned in accordance with the participation rules (as so defined) applicable to that instrument.

(3) Subject to subsection (4), duty is not chargeable on a cancelled transaction.

(4) Duty is chargeable on a cancelled transaction if the transaction has been cancelled so that a replacement transaction or a subsale transaction can be entered into.

(5) The Commissioner, on the application of a taxpayer, is to reassess the liability to duty of a dutiable transaction that is not liable to duty because of this section.

(6) An application for assessment or reassessment under this section in relation to a cancelled transaction must be —

(a) in the approved form; and

(b) accompanied by such transaction record for the transaction as is required to be lodged under section 23.

(7) For the purposes of this section, in relation to an agreement for the transfer of dutiable property or to a concessional farm-in transaction, the Taxation Administration Act section 17 applies as if —

(a) despite subsection (1) of that section, a person is not entitled to apply for a reassessment —

(i) more than 5 years after the original assessment was made; or

(ii) more than 12 months after the day on which the agreement for the transfer of dutiable property, or the concessional farm-in transaction, became a cancelled transaction,

whichever is the later; and

(b) despite subsection (4) of that section, the Commissioner may only make a reassessment on an application if the application was made within that time.

*[Section 107 amended: No. 29 of 2012 s. 6; No. 2 of 2014 s. 53; No. 12 of 2019 s. 42; No. 37 of 2022 s. 9.]*

### 108. Bankruptcy transactions

(1) In this section —

***bankruptcy trustee*** means —

(a) the Official Trustee in Bankruptcy; or

(b) a registered trustee,

under the *Bankruptcy Act 1966* (Commonwealth).

(2) Duty is not chargeable on a dutiable transaction —

(a) that is a vesting of dutiable property in a bankruptcy trustee; or

(b) that is the transfer, or agreement for the transfer, of dutiable property for no consideration to a former bankrupt from the estate of the former bankrupt.

### 109. Transfer etc. to foreign country's representative etc.

Duty is not chargeable on a transfer of, or an agreement for the transfer of, dutiable property to a representative in Australia of the Government of another country, a foreign consul, or a trade commissioner of another country, if that property is intended for official use.

### 110. *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Cwlth) Part 4 transactions

Duty is not chargeable on a vesting of dutiable property by, or expressly authorised by, statute law (as referred to in section 11(1)(d)(i)) that is a compulsory transfer of dutiable property under the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Commonwealth) Part 4.

*[Section 110 amended: No. 31 of 2008 s. 32.]*

### 111. Special disability trust transactions

Duty is not chargeable on a transfer of, or an agreement for the transfer of, dutiable property —

(a) to a special disability trust, within the meaning given in the *Social Security Act 1991* (Commonwealth) section 1209L; and

(b) if there is no consideration for the transfer.

### 112. Some transactions under other Acts

(1) Duty is not chargeable on a transfer of, or an agreement for the transfer of, the fee simple in Crown land under the *Land Administration Act 1997* section 87 to complete a land exchange under section 11(1)(b) of that Act.

(2) Duty is not chargeable on a transfer of, or an agreement for the transfer of, the fee simple in Crown land by way of exchange where the decision to exchange the land is given effect under the *Land Administration Act 1997* Schedule 2 clause 4.

(3) Duty is not chargeable on a transfer of, or an agreement for the transfer of, the fee simple in —

(a) Crown land the subject of a licence referred to in the *Land Administration Act 1997* Schedule 2 clause 21; or

(b) Crown land the subject of a lease referred to in the *Land Administration Act 1997* Schedule 2 clause 22; or

(c) Crown land the subject of a conditional purchase lease referred to in the *Land Administration Act 1997* Schedule 2 clause 26; or

(d) Crown land the subject of a conditional purchase lease referred to in the *Land Administration Act 1997* Schedule 2 clause 27; or

(e) war service land referred to in the *Land Administration Act 1997* Schedule 2 clause 30; or

(f) Crown land referred to in the *Land Administration Act 1997* Schedule 2 clause 32.

(4) Duty is not chargeable on a transfer of, or an agreement for the transfer of, or the grant of the fee simple or other less estate in Crown land pursuant to —

(a) a request under the *Land Administration Act 1997* section 212; or

(b) an agreement under the *Land Administration Act 1997* section 255; or

(c) an award under the *Land Administration Act 1997* section 256; or

(d) the *Land Administration Act 1997* section 257.

(5) Duty is not chargeable on a transfer of the fee simple in Crown land —

(a) pursuant to a request under the *Public Works Act 1902* section 45A; or

(b) granted under the *Public Works Act 1902* section 80,

as in force immediately before the commencement of the *Acts Amendment (Land Administration) Act 1997*[3].

(6) Duty is not chargeable on a transaction —

(a) that is the passing of any property that occurs by operation of the *Strata Titles Act 1985* Schedule 2A clause 21I; or

*[(b), (c) deleted]*

(d) under, or to give effect to, the *Strata Titles Act 1985* Schedule 2A Part 4 Division 1 or 2,

to the extent that the consideration for the transaction is an interest in common property, within the meaning of that term in that Act.

*[Section 112 amended: No. 30 of 2018 s. 136.]*

### 113. Transactions effected by matrimonial instrument or de facto relationship instrument

(1) Duty is not chargeable on a dutiable transaction to the extent that it is effected by a matrimonial instrument mentioned in section 129 or a de facto relationship instrument mentioned in section 130.

(2) A dutiable transaction that is duty endorsed to indicate that duty is not chargeable because of subsection (1) is taken not to be duty endorsed for the purposes of section 42.

*[Section 113 amended: No. 16 of 2022 s. 4.]*

### 113A. Certain incorporated association transactions

(1) In this section —

***Commissioner*** has the meaning given in the *Associations Incorporation Act 2015* section 3;

***prescribed body corporate*** has the meaning given in the *Associations Incorporation Act 2015* section 92;

***surplus property*** has the meaning given in the *Associations Incorporation Act 2015* section 3;

***surplus receiving body*** means a body described in the *Associations Incorporation Act 2015* section 24(1).

(2) Duty is not chargeable on the following transactions —

(a) a vesting of dutiable property by, or expressly authorised by, statute law (as referred to in section 11(1)(d)(i)) in an incorporated association (that is an amalgamation of 2 or more former associations) on the incorporation of the association under the *Associations Incorporation Act 2015* Part 7;

(b) a transfer of, or an agreement for the transfer of, dutiable property from an incorporated association to a prescribed body corporate on the transfer of

incorporation by the association under the *Associations Incorporation Act 2015* Part 6;

(c) a transfer of, or an agreement for the transfer of, dutiable property that is surplus property to a surplus receiving body —

(i) from an incorporated association on the winding up of the association under the *Associations Incorporation Act 2015* Part 9; or

(ii) from an incorporated association under a distribution plan approved under the *Associations Incorporation Act 2015* Part 10 Division 1; or

(iii) where the property is vested in the State under the *Associations Incorporation Act 2015* section 148(1)(a), from the Commissioner, acting under subsection (1)(b) of that section.

*[Section 113A inserted: No. 12 of 2019 s. 43.]*

## Division 2 — Nominal duty

### Subdivision 1 — Certain trust transactions

#### 114. Some transfers etc. on vesting or termination of discretionary trust

(1) This section applies to a transfer of, or an agreement for the transfer of, dutiable property to a taker in default on the vesting or termination of the discretionary trust.

(2) Nominal duty is chargeable on a transaction to which this section applies if there is, or will be, no consideration for the transaction.

### 115. Some transfers etc. on exercise of power of appointment by trustee of discretionary trust

Nominal duty is chargeable on a transfer of, or an agreement for the transfer of, dutiable property to a beneficiary of a discretionary trust in the exercise by the trustee of a power of appointment over the property if —

(a) there is, or will be, no consideration for the transfer or agreement; and

(b) the beneficiary is an individual who does not intend to hold the property as agent, trustee or otherwise on behalf of any other person; and

(c) at the time when the trustee acquired the property the beneficiary was named or described in the instrument which created the power of appointment as a beneficiary or as a member of a class of beneficiaries in favour of which the trustee was empowered by that instrument to appoint the property; and

(d) evidence of the acquisition by the trustee, as trustee, of the property is produced to the Commissioner.

### 116. Some transfers etc. of dutiable property to beneficiary

(1) Nominal duty is chargeable on a transfer of, or an agreement for the transfer of, dutiable property by the trustee of a trust, other than a unit trust scheme or a discretionary trust, to a beneficiary of the trust if —

(a) there is no consideration for the transfer or agreement; and

(b) the transfer, or agreement, is under and in conformity with the trusts contained in the declaration of trust.

(2) Subsection (1) applies only if the property the subject of the agreement or transfer is —

(a) wholly or substantially the same as the property the subject of the declaration of trust and the declaration of trust is —

(i) duty endorsed; or

(ii) an exempt transaction;

or

(b) dutiable property representing the proceeds of re-investment of property referred to in paragraph (a); or

(c) property to which both paragraphs (a) and (b) apply.

(3) Subsection (1) does not apply to a subsequent transfer to which section 118(1) applies.

*[Section 116 amended: No. 12 of 2019 s. 44.]*

## 117. Transactions involving apparent purchaser

(1) Nominal duty is chargeable on —

(a) a declaration of trust made by an apparent purchaser in respect of identified dutiable property —

(i) vested in the apparent purchaser upon trust for the real purchaser that provided the money for the purchase of the dutiable property; or

(ii) to be vested in the apparent purchaser upon trust for the real purchaser if the Commissioner is satisfied that when liability for duty arose in respect of the transfer, or agreement for the transfer of, the dutiable property, the money for the purchase of the dutiable property was or was to be provided by the real purchaser;

or

(b) a transfer of dutiable property from an apparent purchaser to the real purchaser if —

(i) the dutiable property is property, or part of property, vested in the apparent purchaser upon trust for the real purchaser; and

(ii) the Commissioner is satisfied that, when liability for duty on the transaction arose, the money for the purchase of the dutiable property and for any improvements made to the dutiable property after the purchase has been or will be provided by the real purchaser.

(2) For the purposes of subsection (1), money provided by a person other than the real purchaser is taken to have been provided by the real purchaser if the Commissioner is satisfied that the money was provided as a loan and has been or will be repaid by the real purchaser.

(3) This section applies whether or not there has been a change in the legal description of the dutiable property between the purchase of the property by the apparent purchaser and the transfer to the real purchaser.

Note for this subsection:

For example, a change in the legal description of dutiable property in the issuing of a new certificate of title following a subdivision of land.

## 118. Transfers to and from bare trustee

(1) Nominal duty is chargeable on a transfer (the ***subsequent transfer***) if —

(a) there has been a dutiable transaction (the ***original transfer***) that is a transfer of dutiable property from a person (the ***transferor***) to another person who is to hold the property solely as a bare trustee for the transferor; and

(b) any of the following transactions (the ***endorsed transaction***) is duty endorsed —

(i) the original transfer;

(ii) the agreement for the original transfer;

(iii) the declaration of trust;

and

(c) the subsequent transfer is a transfer of the dutiable property back to the transferor or to a person to whom the transferor's beneficial interest in the property has been transmitted by death or bankruptcy; and

(d) the Commissioner is satisfied that, between the original transfer and the subsequent transfer, no person other than the transferor has held a beneficial interest in the dutiable property (other than the trustee's right of indemnity).

(2) In subsection (1) —

***bare trustee*** —

(a) means a trustee of a trust, other than a unit trust scheme or a discretionary trust, if the trustee has no active duties or powers in relation to the trust other than conveying the dutiable property to the transferor or as directed by the transferor; and

(b) includes a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees.

(3) If nominal duty is chargeable on a subsequent transfer under subsection (1), nominal duty is also chargeable on the endorsed transaction.

(4) The Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the endorsed transaction in accordance with subsection (3).

(5) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (4).

*[Section 118 inserted: No. 12 of 2019 s. 45.]*

## 118A. Transfers to and from bare trustee: failure to lodge subsequent transfer

(1) This section applies if —

(a) under section 118, nominal duty is chargeable on a subsequent transfer and an endorsed transaction referred to in that section; and

(b) the subsequent transfer is required to be lodged for registration under —

(i) the *Transfer of Land Act 1893*; or

(ii) the *Registration of Deeds Act 1856*; or

(iii) the *Mining Act 1978*;

and

(c) the liability to duty of the subsequent transfer is assessed in accordance with section 118(1) on the basis that nominal duty is chargeable; and

(d) the liability to duty of the endorsed transaction is reassessed in accordance with section 118(3) on the basis that nominal duty is chargeable; and

(e) the subsequent transfer is not lodged for registration under the *Transfer of Land Act 1893*, the *Registration of Deeds Act 1856* or the *Mining Act 1978* (whichever is relevant) within 60 days after it is duty endorsed.

(2) Despite section 118(1) and (3), nominal duty is not chargeable on the subsequent transfer or the endorsed transaction.

(3) The Commissioner must make any reassessment necessary as a result of the operation of subsection (2).

(4) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (3).

*[Section 118A inserted: No. 12 of 2019 s. 45.]*

## 119. Transactions related to changes in trustees and managed investment schemes

(1) In this section —

***new trustee*** means a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees;

***old public unit trust*** means an undertaking, together with the prescribed interests to which it relates and the trustee or representative and the management company in relation to those interests, to which the Corporations Law Chapter 11 Part 11.2 Division 11 (sections 1451 to 1465) applied by reason of section 1452 of that Law;

***responsible entity*** has the meaning given in the Corporations Act section 9.

(2) A reference in this section to an old public unit trust that has become a managed investment scheme is a reference to an old public trust that has become, in accordance with the Corporations Law Chapter 11 Part 11.2 Division 11 (sections 1451 to 1465), a managed investment scheme that is a registered scheme.

(3) Nominal duty is chargeable on a transfer, or agreement for the transfer, of dutiable property —

(a) to a trustee as a consequence of the retirement of a trustee or the appointment of a new trustee if the transfer is not a scheme or arrangement, or part of a scheme or arrangement, for conferring an interest, in relation to the trust property, on a new trustee or any other person, whether as a beneficiary or otherwise, to the detriment

of the beneficial interest or potential beneficial interest of any person; or

(b) as a consequence of the retirement of a responsible entity of a managed investment scheme or the appointment of a new responsible entity of a managed investment scheme if the only beneficial interest acquired by a person in relation to the property as a result of the transfer is a beneficial interest acquired by the replacement or new responsible entity solely because of its appointment as responsible entity for the scheme; or

(c) as a consequence of an old public unit trust that has become a managed investment scheme if, after the transfer takes place, the members of the managed investment scheme have the same beneficial interests in the scheme's property as they had in the old public unit trust's property before the instrument was executed.

(4) Nominal duty is chargeable on a declaration of trust —

(a) made by a trustee in respect of dutiable property that, immediately before the trust is declared, is held by the trustee as trustee of an old public unit trust that has become a managed investment scheme the members of which have the same beneficial interests in the property as they had in the old public unit trust property before the trust was declared; and

(b) to hold the dutiable property on trust for the responsible entity of the managed investment scheme.

(5) Nominal duty is chargeable on a transfer, or agreement for the transfer, of dutiable property —

(a) from a responsible entity of a managed investment scheme to a custodian or agent of the responsible entity as custodian or agent of the scheme in which the transferor held the dutiable property; or

(b) from a custodian of the responsible entity of a managed investment scheme as custodian or agent of the scheme to the responsible entity of the managed investment scheme in which the transferor held the property.

(6) Nominal duty is chargeable on a vesting of dutiable property by, or expressly authorised by, statute law (as referred to in section 11(1)(d)(i)) in a trustee or responsible entity if subsection (3)(a) or (b) or (5)(b) would apply in respect of the dutiable transaction if it were a transfer of dutiable property.

### 120. Transfer by way of security

(1) Nominal duty is chargeable on a transfer of dutiable property if —

(a) there has been a dutiable transaction that is a transfer of the dutiable property by way of security (the ***original transfer***); and

(b) the original transfer is duty endorsed; and

(c) the property is transferred back to the person that transferred it by way of security or is transferred to a person to whom the property has been transmitted by death or bankruptcy.

(2) If nominal duty is chargeable on a transfer under subsection (1), nominal duty is also chargeable on the original transfer.

(3) The Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the original transfer under subsection (2).

(4) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (3).

## Subdivision 1A — Transfers to facilitate subdivision of land

*[Heading inserted: No. 12 of 2019 s. 46.]*

### 120A. Transfers to facilitate subdivision of land

(1) Nominal duty is chargeable on a dutiable transaction (the ***original transfer***) if —

(a) the transaction is a transfer, or agreement for the transfer, of land in Western Australia from a person (the ***original transferor***) to another person; and

(b) the Commissioner is satisfied that —

(i) the transfer is for the sole purpose of facilitating a subdivision of the land; and

(ii) after the subdivision there is to be a transfer back to the original transferor of the land or part of the land.

(2) If nominal duty is chargeable on an original transfer under subsection (1), nominal duty is also chargeable on a transfer (the ***subsequent transfer***) of the land, or part of the land, back to the original transferor after the subdivision.

(3) If the land the subject of the subsequent transfer includes land that was not the subject of the original transfer, then despite subsection (2) nominal duty is chargeable on the subsequent transfer only to the extent that it relates to land that is also the subject of the original transfer.

*[Section 120A inserted: No. 12 of 2019 s. 46.]*

### 120B. Land retained by transferee following transfer to facilitate subdivision

(1) This section applies if —

(a) nominal duty is chargeable under section 120A(1) on an original transfer of land from a person (the ***original transferor***) to another person (the ***original transferee***)

for the purpose of facilitating a subdivision of the land; and

(b) after the subdivision, there is a transfer (the ***subsequent transfer***) of the land, or part of the land, back to the original transferor; and

(c) either or both of the following applies —

(i) the land the subject of the subsequent transfer is only a part of the land the subject of the original transfer and the remainder of that land is retained by the original transferee after the subsequent transfer;

(ii) after the subsequent transfer, the land the subject of the subsequent transfer, or part of that land, is held jointly by the original transferor with the original transferee.

(2) When the subsequent transfer is made, there is taken to be a dutiable transaction consisting of the transfer to the original transferee of the following —

(a) any land the subject of the original transfer that is not also the subject of the subsequent transfer;

(b) the original transferee's interest in any land held jointly with the original transferor as referred to in subsection (1)(c)(ii).

(3) In determining the dutiable value of a dutiable transaction under subsection (2) (a ***deemed transaction***), the unencumbered value of the dutiable property the subject of the deemed transaction is the unencumbered value of that property when liability for duty arose on the original transfer.

(4) Subsection (1)(c)(i) does not apply if the original transferee is to transfer the remainder of the land to another person for the purposes of the subdivision.

*[Section 120B inserted: No. 12 of 2019 s. 46.]*

### 120C. Transfers to facilitate subdivision: failure to lodge subsequent transfer within 5 years

(1) If a subsequent transfer referred to in section 120A is not lodged for registration under the *Transfer of Land Act 1893* within the period of 5 years after the day on which the original transfer referred to in that section was registered under the *Transfer of Land Act 1893*, then, despite that section, nominal duty is not chargeable on the original transfer or the subsequent transfer.

(2) The Commissioner may on application extend the period of 5 years referred to in subsection (1) and may do so on any conditions the Commissioner thinks fit.

(3) The Commissioner must make any reassessment necessary as a result of the operation of subsection (1).

(4) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (3).

*[Section 120C inserted: No. 12 of 2019 s. 46.]*

### 120D. Subdivisions of land excluded from s. 120A and 120B

Sections 120A and 120B do not apply in relation to —

(a) a subdivision under —

(i) before the coming into operation of the *Strata Titles Amendment Act 2018* section 7 — a strata plan registered under the *Strata Titles Act 1985* (other than under a strata plan for a single tier strata scheme as defined in the *Strata Titles Act 1985* section 3(1)); or

(ii) after the coming into operation of the *Strata Titles Amendment Act 2018* section 7 — a strata scheme as defined in the *Strata Titles Act 1985* section 3(1) (other than a single tier strata

scheme as defined in the *Strata Titles Act 1985* Schedule 2A clause 3);

or

(b) a subdivision of land in circumstances prescribed by the regulations.

*[Section 120D inserted: No. 12 of 2019 s. 46.]*

### 120E. References to transfer of land back to person

For the purposes of sections 120A and 120B, land that is transferred by a person for the purposes of a subdivision of the land is to be treated as being transferred back to the person after the subdivision —

(a) even though there will be a change in the legal description of the land between the transfers; and

(b) whether or not, after the transfer back to the person, the land is to be held jointly with 1 or more other persons.

*[Section 120E inserted: No. 12 of 2019 s. 46.]*

## Subdivision 2 — Certain superannuation transactions

### 121. Terms used

In this Subdivision —

***Commonwealth Act*** means the *Superannuation Industry (Supervision) Act 1993* (Commonwealth);

***complying approved deposit fund*** means an entity that is a complying approved deposit fund in accordance with the Commonwealth Act section 43;

***complying superannuation fund*** means an entity that is —

(a) a complying superannuation fund in accordance with the Commonwealth Act section 42 or 42A; or

(b) an exempt public sector superannuation scheme within the meaning given to that term in the Commonwealth Act section 10(1);

***eligible rollover fund*** means an entity that is an eligible rollover fund in accordance with the Commonwealth Act section 242 and includes an entity the trustee of which is satisfied will be an eligible rollover fund within 12 months after the day on which a liability to duty arises;

***pooled superannuation trust*** means an entity that is a pooled superannuation trust in accordance with the Commonwealth Act section 44;

***superannuation fund*** means a complying approved deposit fund, a complying superannuation fund, an eligible rollover fund or a pooled superannuation trust.

### 122. Relevant superannuation transactions for consideration

(1) Nominal duty is chargeable on a relevant superannuation transaction if there is, or will be, consideration for the transaction.

(2) A reference in this section to a relevant superannuation transaction is to a transfer of, or an agreement for the transfer of, dutiable property by a person (the ***transferor***) to a trustee, or a custodian of a trustee, of a superannuation fund that meets the following criteria (an ***approved superannuation fund***) —

(a) either of the following apply to the superannuation fund —

(i) only the transferor can be a member of the superannuation fund;

(ii) property can only be held in the superannuation fund specifically for the transferor and cannot be pooled with the contributions or other assets of another member and no other member can obtain an interest in the property;

(b) property can only be held in the superannuation fund to be provided to the transferor as a retirement benefit.

(3) In subsection (2)(a)(ii) and (b) —

***property*** —

(a) means —

(i) dutiable property the subject of a relevant superannuation transaction; or

(ii) if such dutiable property is sold so that the proceeds can be provided to the transferor as a retirement benefit, those proceeds;

and

(b) includes any net income from property referred to in paragraph (a), including income retained by a trustee of a superannuation fund while legal ownership of the property is held by a custodian of a trustee of the fund.

(4) An application for assessment or reassessment under this section must be made in the approved form.

*[Section 122 inserted: No. 15 of 2015 s. 4.]*

## 123. Subsequent liability in certain circumstances

(1) A reference in this section to a subsequent event in relation to a superannuation fund is to an event the effect of which is that the superannuation fund ceases to be an approved superannuation fund, as defined in section 122(2).

(2) Subsection (3) applies if, after a transaction is duty endorsed under section 122, a subsequent event takes place in relation to the superannuation fund while the dutiable property the subject of the transaction (the ***original dutiable property***), or part of it, is held —

(a) by a custodian of a trustee of the superannuation fund; or

(b) in the superannuation fund.

(3) A subsequent event is taken to be a transfer of the original dutiable property and is liable to duty accordingly.

(4) Not later than 2 months after the day on which a subsequent event takes place a trustee, or a custodian of a trustee, of the superannuation fund, as is relevant, is to lodge a transfer duty statement for the event.

Penalty: a fine of $20 000.

(5) The person liable to pay the duty is a trustee, or a custodian of a trustee, of the superannuation fund, as is relevant.

*[Section 123 inserted: No. 15 of 2015 s. 4.]*

### 124. Some transfers etc. of dutiable property to superannuation fund without consideration

(1) Nominal duty is chargeable on a transfer of, or an agreement for the transfer of, dutiable property by a person to the trustee of a superannuation fund that is an employer-sponsored fund within the meaning given by the Commonwealth Act section 16(3) where —

(a) there is, or will be, no consideration for the transfer; and

(b) the transfer is not a transaction to which section 126 applies.

(2) An application for assessment or reassessment under this section must be made in the approved form.

### 125. Transfer from one superannuation fund to another

(1) In this section —

***relevant transfer*** means —

(a) a transfer of dutiable property from a trustee of an entity, or a custodian of a trustee of an entity, to the trustee of another entity, or to a custodian of a trustee of another entity; or

(b) a transfer of dutiable property from a trustee of an entity to a custodian of a trustee of the entity, or from a custodian of a trustee of an entity to a trustee of the entity;

***superannuation fund*** does not include a pooled superannuation trust.

(2) Nominal duty is chargeable on a relevant transfer that occurs in connection with a person —

(a) ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, a superannuation fund or an entity that was a superannuation fund within the period of 12 months before the day the property is transferred; and

(b) becoming a member of, or otherwise becoming entitled to benefits in respect of, another entity (the ***chosen entity***) that is also a superannuation fund or that, in the opinion of the trustees of both entities concerned, will be a superannuation fund before the end of the period of 12 months after the day on which the property is transferred,

and for which there is no consideration.

(3) An application for assessment or reassessment under this section —

(a) must be made in the approved form; and

(b) if the chosen entity is not a superannuation fund when liability to duty arises — is to be accompanied by a statutory declaration from a trustee (or a director of a trustee that is a corporation) of each of the entities concerned stating that, in the opinion of the trustee (or director), the chosen entity will be a superannuation fund before the end of the period of 12 months after the day on which the property is transferred.

### 126. Some transfers etc. of dutiable property between trustees and custodians of superannuation funds

(1) In this section —

***relevant entity***, in relation to a transfer of, or an agreement for the transfer of, dutiable property, means —

(a) a superannuation fund; or

(b) an entity that, in the opinion of its trustee, will be a superannuation fund before the end of the period of 12 months after the day on which the property is transferred.

(2) Nominal duty is chargeable on a transfer of, or an agreement for the transfer of, dutiable property from —

(a) a trustee of a relevant entity to a custodian of the trustee of the relevant entity; or

(b) a custodian of a trustee of a relevant entity to a trustee of the relevant entity; or

(c) a custodian of a trustee of a relevant entity to another custodian of the trustee of the relevant entity,

if there is no change in the beneficial ownership of the property.

(3) An application for assessment or reassessment under this section —

(a) must be made in the approved form; and

(b) if the relevant entity is not a superannuation fund when liability to duty arises — is to be accompanied by a statutory declaration from a trustee (or a director of a trustee that is a corporation) of the relevant entity stating that, in the opinion of the trustee (or director), the relevant entity will be a superannuation fund before the end of the period of 12 months after the day on which the property is transferred.

*[Section 126 amended: No. 15 of 2015 s. 5.]*

### 127. Some transfers etc. of dutiable property from superannuation fund to member, dependant or representative

(1) In this section, each of these terms has the meaning given in the Commonwealth Act section 10(1) —

***dependant***

***legal personal representative***

(2) Nominal duty is chargeable in respect of a transfer of, or an agreement for the transfer of, dutiable property from the trustee of a superannuation fund to —

(a) a member of the fund; or

(b) where the member has died — a dependant of, or the legal personal representative of, the member,

if —

(c) the member was a member of the fund when the property first became part of the fund; and

(d) the unencumbered value of the property transferred does not exceed the value of the member's interest in the fund; and

(e) there is, or will be, no consideration for the transfer or agreement.

*[Section 127 inserted: No. 32 of 2012 s. 8.]*

## Subdivision 3 — Transactions related to the break-up of a marriage or de facto relationship

Note for this Subdivision:

Section 113 provides for an exemption from duty to the extent that a dutiable transaction is effected by a matrimonial instrument or a de facto relationship instrument.

### 128. Terms used

(1) In this Subdivision —

***child*** means a person who is under 18 years of age;

***de facto flag lifting agreement*** means a flag lifting agreement as defined in the Family Law Act section 90YS;

***de facto relationship*** means a de facto relationship that comes within the Family Court Act section 205Z(1)(a), (b) or (c);

***de facto relationship instrument*** has the meaning given in section 130;

***de facto relationship property*** of a de facto relationship, means property of the de facto partners to the relationship or of either of them and includes a superannuation interest as defined in the Family Law Act section 90YD;

***de facto splitting agreement*** means —

(a) a de facto superannuation agreement that has effect under the Family Law Act Part VIIIC; or

(b) a de facto flag lifting agreement that has effect under the Family Law Act Part VIIIC;

***de facto superannuation agreement*** means a superannuation agreement as defined in the Family Law Act section 90YK;

***Family Law Act*** means the *Family Law Act 1975* (Commonwealth);

***flag lifting agreement*** has the meaning given in the Family Law Act section 90XN;

***matrimonial instrument*** has the meaning given in section 129;

***matrimonial property*** of a marriage, means property of the parties to the marriage or of either of them and includes a superannuation interest as defined in the Family Law Act section 90XD;

***splitting agreement*** means —

(a) a superannuation agreement; or

(b) a flag lifting agreement,

that has effect under the Family Law Act Part VIIIB;

***superannuation agreement*** has the meaning given in the Family Law Act section 90XH;

***superannuation fund*** has the meaning given in section 121.

(2) A reference in this Subdivision to persons who are married to each other or have been married to each other includes persons who are married to each other or who have been married to each other by a marriage that is void under the Family Law Act.

*[Section 128 amended: No. 28 of 2022 s. 36; No. 28 of 2022 s. 37]*

### 129. References to matrimonial instrument

A reference to a matrimonial instrument is to any of the following instruments to the extent that it deals with matrimonial property —

(a) a maintenance agreement registered under the Family Law Act section 86 or approved under the Family Law Act section 87;

(b) a financial agreement made under the Family Law Act section 90B, 90C or 90D;

(c) a splitting agreement;

(d) an order of a court under the Family Law Act.

### 130. References to de facto relationship instrument

A reference to a de facto relationship instrument is to any of the following instruments to the extent it deals with de facto relationship property —

(a) a financial agreement or a former financial agreement, within the meaning of those terms in the Family Court Act section 205T, or a de facto splitting agreement;

(b) an order of a court under —

(i) the Family Court Act Part 5A; or

(ia) the Family Law Act Part VIIIC; or

(ii) a law of the Commonwealth or another State or Territory that substantially corresponds to a provision referred to in subparagraph (i) or (ia).

*[Section 130 amended: No. 28 of 2022 s. 38.]*

### 131. Transactions in accordance with matrimonial instrument or de facto relationship instrument

(1) Nominal duty is chargeable on a dutiable transaction to the extent that it is in accordance with a matrimonial instrument if —

(c) the parties to the marriage are separated or divorced from each other or the marriage has irretrievably broken down; and

(d) under the transaction, the matrimonial property is, or is to be, transferred to —

(i) either, or both, of the parties to the marriage; or

(ii) a child, or children, of either of the parties to the marriage, or a trustee of such a child or children; or

(iii) a trustee of a superannuation fund.

(2) Nominal duty is chargeable on a dutiable transaction to the extent that it is in accordance with a de facto relationship instrument if —

(c) the de facto relationship between the de facto partners has ended; and

(d) under the transaction, the de facto relationship property is, or is to be, transferred to —

(i) either, or both, of the de facto partners to the relationship; or

(ii) a child, or children, of either of the de facto partners to the relationship, or a trustee of such a child or children; or

(iii) a trustee of a superannuation fund.

*[Section 131 amended: No. 16 of 2022 s. 5; No. 28 of 2022 s. 39.]*

## 132. Reassessment of transaction if s. 131 becomes applicable

(1) If a dutiable transaction —

(a) is chargeable with duty other than under section 131 and is duty endorsed; and

(b) is in accordance with —

(i) a matrimonial instrument or a de facto relationship instrument that came into existence; or

(ii) an instrument that became a matrimonial instrument or de facto relationship instrument,

within the period of 12 months after the day on which liability to duty on the transaction arose,

the Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the transaction under section 131.

(2) For the purposes of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made when the instrument became a matrimonial instrument or a de facto relationship instrument.

*[Section 132 amended: No. 16 of 2022 s. 6.]*

## 133. Evidence as to marriage or de facto relationship

(1) For the purposes of this Subdivision, the Commissioner is to have regard to any statutory declaration made by a party to the marriage to the effect that —

(a) the party intends to apply for dissolution or annulment of the marriage; or

(b) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed.

(2) For the purposes of this Subdivision, the Commissioner is to have regard to any statutory declaration made by a de facto partner to the de facto relationship to the effect that the relationship has ended.

## Subdivision 4 — Other transactions

### 134. Some transfers etc. of certain lots under planning scheme

(1) Nominal duty is chargeable on a transfer of, or an agreement for the transfer of, a lot under a planning scheme by the responsible authority for a planning scheme to a person that, when the scheme came into operation, was the owner of —

(a) the land comprised in the lot; or

(b) land comprised in the scheme and to whom the lot is transferred, or agreed to be transferred, in substitution or exchange for that land or part thereof,

where the lot is comprised in the scheme and a transfer of, or an agreement for the transfer of, the lot is made in order to carry out or facilitate the carrying out of the scheme.

(2) If a term is given a meaning in the *Planning and Development Act 2005*, it has the same meaning in this section.

*[**135.** Deleted: No. 37 of 2022 s. 10.]*

### 136. Business licences held under *Fish Resources Management Act 1994*

Nominal duty is chargeable on a dutiable transaction, the subject of which is a business licence (within the meaning given in section 79) held under the *Fish Resources Management Act 1994* if the Commissioner is satisfied that the transaction has not, and will not, result in the passing of a beneficial interest in the business licence.

### 137. Transfers etc. to change joint tenancy to tenancy in common etc.

Nominal duty is chargeable on a transfer, or an agreement for a transfer, that effects a change in the ownership of property from joint tenants to tenants in common or vice versa, if the value of the co-owners' interests at the time of the transaction is not changed.

### 138. Transactions to correct clerical errors in previous dutiable transactions

(1) Nominal duty is chargeable on a dutiable transaction to correct a clerical error in a previous dutiable transaction about the same or other property if —

(a) no additional consideration is paid or payable; and

(b) the beneficial interests in the property change only to the extent necessary to correct the error.

(2) To remove any doubt, it is declared that an error by a party about the appropriateness of a transaction to achieve a particular intended legal result is not a clerical error in the transaction.

*[Section 138 amended: No. 32 of 2012 s. 9.]*

### 139. Some transactions involving deceased estates

(1) In this section —

***distribution*** means a distribution under a will or on an intestacy.

(2) Nominal duty is chargeable on the following dutiable transactions —

(a) a transfer, or agreement for the transfer, of dutiable property to the extent that —

(i) the transfer gives effect to a distribution in the estate of a deceased person; and

(ii) there is no consideration for the agreement or transfer;

(b) a declaration of trust over dutiable property to the extent that it gives effect to a distribution in the estate of a deceased person;

(c) a vesting of dutiable property by, or as a consequence of, a court order made —

(i) under the *Family Provision Act 1972*; or

(ii) under the *Trustees Act 1962* section 65 on an application under the *Family Provision Act 1972*;

(d) a partnership acquisition, to the extent that —

(i) the partnership acquisition gives effect to a distribution in the estate of a deceased person; and

(ii) there is no consideration for the partnership acquisition.

*[Section 139 amended: No. 48 of 2011 s. 15; No. 12 of 2019 s. 47.]*

### 139A. Some transfers and vestings under orders made under *Guardianship and Administration Act 1990*

(1) In this section —

***administration order*** means —

(a) an administration order (as defined in the *Guardianship and Administration Act 1990* section 3(1)); or

(b) an order or instrument referred to in paragraph (b) or (c) of the definition of ***administrator*** in this subsection;

***administrator*** means —

(a) an administrator (as defined in the *Guardianship and Administration Act 1990* section 3(1)); or

(b) a person acting under the authority of an order made under the *Guardianship and Administration Act 1990* section 66; or

(c) the Public Trustee acting under the authority of an instrument referred to in the *Guardianship and Administration Act 1990* section 83B.

(2) Nominal duty applies to a dutiable transaction that is —

(a) a transfer to an administrator of dutiable property of the person to whom the administration order relates (the ***represented person***) made under the authority of the administration order; or

(b) a vesting in an administrator of dutiable property of a person to whom the administration order relates (the ***represented person***) by, or as a consequence of, an order of the State Administrative Tribunal under the *Guardianship and Administration Act 1990*.

(3) If nominal duty is chargeable on a transfer or vesting of dutiable property under subsection (2), nominal duty is also chargeable on —

(a) any transfer of the dutiable property back from an administrator to the represented person; or

(b) any subsequent vesting in the represented person of the dutiable property by, or as a consequence of, an order of the State Administrative Tribunal under the *Guardianship and Administration Act 1990*.

*[Section 139A inserted: No. 12 of 2019 s. 48.]*

## 140. Prescribed dutiable transactions

(1) Nominal duty is chargeable on such dutiable transactions as are prescribed, or are of a class prescribed, for the purposes of this section.

(2) Despite subsection (1), nominal duty is not chargeable in respect of a dutiable transaction that passes, or is part of a scheme or arrangement that passes, a beneficial interest in dutiable property.

## Division 3 — First home owner concessions

### 141. Terms used

(1) In this Division —

***concessional first home owner*** has the meaning given in section 142A;

***deposit***, in relation to a terms contract, includes any part of the purchase price which the contract specifies as being a deposit and provides is to be paid, whether in one or more payments, within 28 days of the execution of the contract;

***FHOG Act*** means the *First Home Owner Grant Act 2000*;

***first concessional transaction*** has the meaning given in section 142(2);

***first home owner concessional rate*** of duty means the concessional rate of duty applicable under section 143;

***first home owner concessional transaction*** has the meaning given in section 142(1);

***further concessional transaction*** has the meaning given in section 142(2);

***terms contract*** means a contract for the sale and purchase of land under which the purchaser is obliged to make 2 or more payments to the vendor (over and above any deposit) before the purchaser is entitled to a conveyance or transfer of the land;

***transferee***, in respect of a transaction, means a person to whom the property the subject of the transaction —

(a) is transferred; or

(b) is agreed to be transferred,

other than —

(c) a person who, under the FHOG Act, would not be required to join in making an application for a first home owner grant; or

(d) a prescribed person.

(2) If a term is given a meaning in the FHOG Act, it has the same meaning in this Division.

(3) For the purposes of this Division, a person is a ***substituted transferee*** in relation to a dutiable transaction if —

(a) the dutiable transaction is an agreement for the transfer of dutiable property referred to in section 11(1)(b); and

(b) due to the operation of section 42(2) or (4), duty is not chargeable on the transfer to the person of the dutiable property under the agreement.

*[Section 141 amended: No. 27 of 2015 s. 9; No. 12 of 2019 s. 49.]*

### 142A. Concessional first home owners

(1) A reference in this Division to a concessional first home owner, in relation to the transfer of, or an agreement for the transfer of, dutiable property means —

(a) a transferee who is paid a first home owner grant in relation to the property or to whom a first home owner grant is or will be payable in relation to the property; or

(b) a transferee to whom a first home owner grant would be, or would have been, payable in relation to the property had the requirements of either, or both, of the paragraphs of subsection (2) applied.

(2) The requirements are —

(a) consideration had been given for the transfer of the property;

(b) if the transaction is a contract for the purchase of an established home, the transaction would be, or would have been, an eligible transaction but for the FHOG Act section 14(5A).

(3) If a transaction described in subsection (2)(b) is a terms contract then, for the purposes of this section —

(a) the interest in the property of the transferee as purchaser under the contract is to be taken to be a relevant interest, unless the interest does not conform with the FHOG Act section 6(2); and

(b) the transaction is to be taken to be completed for the purposes of the FHOG Act, despite section 14AA(2)(a) of that Act, when the purchaser becomes entitled to possession of the home under the contract.

*[Section 142A inserted: No. 27 of 2015 s. 10; amended: No. 12 of 2019 s. 50.]*

### 142. First home owner concessional transactions

(1) A reference in this Division to a first home owner concessional transaction is to a transfer of, or an agreement for the transfer of, dutiable property where —

(a) either —

(i) each transferee is a concessional first home owner; or

(ii) if the transaction is an agreement for transfer in relation to which there are 1 or more substituted transferees — each substituted transferee is a concessional first home owner;

and

(b) the unencumbered value of the land, or the land and home, the subject of the transaction does not exceed —

(i) if there is no home on the land — $400 000; or

(ii) otherwise — $530 000.

(2) A reference in this Division to a further concessional transaction is to a transfer of, or an agreement for the transfer of, a further interest in the dutiable property the subject of a first home

owner concessional transaction (the ***first concessional transaction***) —

(a) from a person excluded from the operation of the FHOG Act section 16(1); and

(b) where an instrument that effects the further concessional transaction is executed within 10 years of an instrument that effected the first concessional transaction; and

(c) where each transferee in respect of the further concessional transaction is a transferee in relation to the first concessional transaction.

*[Section 142 amended: No. 29 of 2012 s. 7; No. 15 of 2014 s. 4; No. 27 of 2015 s. 11; No. 12 of 2019 s. 51.]*

### 143. First home owner concessional rate of duty

(1) Duty is chargeable on a first home owner concessional transaction at the applicable concessional rate of duty.

(2) Duty is chargeable on a further concessional transaction at the same rate and using the same thresholds that applied when duty became chargeable on the first concessional transaction.

(3) The dutiable value of a further concessional transaction is the greater of the following amounts —

(a) the consideration for the first concessional transaction;

(b) the unencumbered value of the whole of the dutiable property the subject of the first concessional transaction at the time when liability for duty on the first concessional transaction arose.

(4) When subsection (2) applies —

(a) the liability of the transferee to pay duty on the further concessional transaction is to bear the same proportion to the whole of the amount of duty payable as the interest in the dutiable property held by the transferee

after the further concessional transaction bears to the whole of the dutiable property; and

(b) the amount of duty payable is to be reduced by the amount of the duty paid by the transferee on the first concessional transaction and any other further concessional transactions on which duty has been paid; and

(c) there is no liability to pay any remaining portion of the duty that would, but for this paragraph be payable.

*[Section 143 amended: No. 27 of 2015 s. 12.]*

### 144. Application for first home owner concessional rate of duty

(1) An application for assessment or reassessment under this Division must be —

(a) made in the approved form by the transferee or, if there is more than one, each transferee; and

(b) accompanied by such transaction record for the transaction as is required to be lodged under section 23.

(2) For the purposes of this Division, the Taxation Administration Act section 17 applies as if —

(a) in respect of a first home owner concessional transaction —

(i) despite subsection (1) of that section, a person is not entitled to apply for a reassessment other than within the period beginning on the commencement date of the first home owner concessional transaction to which the application relates and ending whichever is the later of the day that is —

(I) 12 months after the day on which the first home owner concessional transaction was completed; or

(II) if an application for a first home owner grant has been made, 3 months after the day on which the grant is paid;

and

(ii) despite subsection (4) of that section, the Commissioner is to make a reassessment on an application in respect of a first home owner concessional transaction made within that time;

and

(b) in respect of a further concessional transaction —

(i) despite subsection (1) of that section, a person is not entitled to apply for a reassessment more than 12 months after whichever is the later of the day on which an instrument effecting the transaction was executed or the day on which the transaction was effected; and

(ii) despite subsection (4) of that section, the Commissioner is to make a reassessment on an application in respect of a first home owner concessional transaction made within that time.

*[Section 144 amended: No. 27 of 2015 s. 13.]*

### 145. Subsequent liability in certain circumstances

(1) Despite section 143, duty is not chargeable on a transaction referred to in section 142 at the first home owner concessional rate if —

(a) a transferee described in section 142A(1)(a) is required to repay an amount under the FHOG Act section 21(2) or 51; or

(b) a transferee described in section 142A(1)(b) would be required to repay an amount under the FHOG Act —

(i) section 21(2) had a first home owner grant been authorised to be paid to that person under the FHOG Act section 21(1); or

(ii) section 51 had a first home owner grant been authorised to be paid to that person under the FHOG Act.

(2A) For the purposes of subsection (1)(b)(i), a first home owner grant would be, or would have been, authorised to be paid under the FHOG Act section 21(1) if the transaction was assessed in anticipation of compliance by the transferee —

(a) with the residence requirements; or

(b) if the requirement under the FHOG Act section 13(4) had already been complied with by the transferee, with the requirement under section 13(1) of that Act.

(2B) Written notice referred to in the FHOG Act section 21(2)(d) must be given to the Commissioner —

(a) by a transferee referred to in subsection (1)(b)(i) who would be required to repay an amount under the FHOG Act section 21(2), had a first home owner grant been authorised to be paid to that person under the FHOG Act section 21(1);

(b) as if the conditions set out in the FHOG Act section 21(2)(a), (b) or (c) applied in respect of that person.

(2) The previous assessment of a transaction referred to in subsection (1) is taken to be incorrect for the purposes of the Taxation Administration Act section 16(2)(a).

*[Section 145 amended: No. 27 of 2015 s. 14.]*

### 146. Other provisions about first home owner concessions

For the purposes of this Division and for the purposes of applying the Taxation Administration Act in relation to the operation of this Division —

(a) the FHOG Act is to be treated as if it were a taxation Act; and

(b) the FHOG Act applies to and in relation to an application under this Division, to the extent that it can be applied for those purposes, as if —

(i) a reference in the FHOG Act to an application or an applicant were a reference to the application or applicant under this Division; and

(ii) the reference in the FHOG Act section 37(1)(a) to functions of the Commissioner were a reference to functions of the Commissioner related to an application under this Division;

and

(c) this Act and the Taxation Administration Act apply in relation to any information given to the Commissioner for the purposes of the FHOG Act by a person who is an applicant under this Division as if the information had been given to the Commissioner for the purposes of this Division.

*[Section 146 amended: No. 12 of 2019 s. 52.]*

*[Division 4A (s. 147A-147G) deleted: No. 16 of 2022 s. 21.]*

## Division 4 — Residential or business concessions

### 147. Concessional rates for transactions referred to in *Stamp Act 1921* s. 75AE

(1) A dutiable transaction is a ***concessional transaction*** for the purposes of this section if the instrument effecting or evidencing it would have been chargeable with duty under the *Stamp*

*Act 1921* Second Schedule item 4(5), if it had been first executed before 1 July 2008.

(2) Duty is chargeable on a concessional transaction at the applicable concessional rate of duty.

*[(3) deleted]*

*[Section 147 amended: No. 30 of 2008 s. 27; No. 16 of 2022 s. 22.]*

# Chapter 3 — Landholder duty

## Part 1 — Preliminary

### 148. Terms used

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

***duty*** means duty under this Chapter;

***entity*** has the meaning given in section 152;

***further interest*** means an interest in a landholder acquired by a relevant acquisition to which section 163(1)(c) or (d) applies;

***interest*** has the meaning given in section 153;

***land*** does not include a security interest in land;

***land asset*** means any of the following —

(a) land;

(b) a fixed infrastructure control right;

(c) a derivative mining right;

(d) subject to section 204A, a fixed infrastructure access right;

***landholder*** means an entity that is a landholder under section 155;

***linked entity*** means an entity that is a linked entity under section 156(2) in respect of a main entity as defined in section 156(1);

***listed corporation*** means a corporation that is on the official list of a prescribed financial market;

***listed landholder*** means —

(a) a listed corporation; or

(b) a listed unit trust scheme,

that is a landholder;

***listed unit trust scheme*** means a unit trust scheme that is on the official list of a prescribed financial market;

***related person*** has the meaning given in section 162;

***relevant acquisition*** has the meaning given in section 163(1);

***surplus property***, in relation to a landholder or other entity, means property remaining after satisfaction of —

(a) any right attached to a share or unit that entitles the holder, if the landholder or other entity is wound up, to receive a fixed amount of its capital; and

(b) the debts and liabilities of the landholder or other entity; and

(c) the costs, charges and expenses of winding it up;

***unencumbered value*** has the meaning given in sections 36 and 36A as applied by sections 150 and 204C.

(2) For the purposes of this Chapter, a land asset referred to in paragraph (b), (c) or (d) of the definition of ***land asset*** in subsection (1) is taken to be a land asset in Western Australia.

*[Section 148 amended: No. 32 of 2012 s. 10; No. 12 of 2019 s. 56.]*

### 149. Determining entitlement to land assets and chattels

(1) In determining the entitlement of a landholder or other entity to land assets, chattels, or land assets and chattels, for the purposes of this Chapter —

(a) if the landholder or other entity has entered into an agreement to acquire an interest in land assets, chattels, or land assets and chattels the agreement is to be regarded as having been completed even if it has not yet been completed; and

(b) if the landholder or other entity has entered into an agreement to dispose of an interest in land assets, chattels, or land assets and chattels, but the agreement has not yet been completed, the agreement is to be disregarded.

(2) In determining the entitlement of an entity to land assets, chattels, or land assets and chattels, for the purposes of this Chapter —

(a) an entity that is a partnership is taken to be entitled to land assets or chattels if the partnership property is or includes those land assets or chattels; and

(b) an entity that is a unit trust scheme or the trustee of a discretionary trust is taken to be entitled to land assets or chattels if the trust property is or includes those land assets or chattels.

*[(2A), (3) and (4) deleted]*

*[Section 149 amended: No. 33 of 2011 s. 5; No. 12 of 2019 s. 57.]*

### 149A. Determining entitlement to land assets: fixtures and mining tenement fixtures

(1) In this section —

***mining tenement fixture***, in relation to a mining tenement, means a thing that —

(a) under the authority (whether direct or indirect) of the mining tenement, is fixed to land that is the subject of the mining tenement; and

(b) would be part of that land as a fixture if the mining tenement were a freehold estate in the subject land.

(2) In determining the entitlement of an entity to a land asset that is land, anything that is part of the land as a fixture is to be taken into account even if the fixture is, or purports to be, the subject of an entitlement separate from the ownership of the rest of the land.

(3) In determining the entitlement of an entity to a land asset that is a mining tenement or an estate or interest in a mining tenement (a ***mining tenement land asset***), anything that is a mining tenement fixture in relation to the mining tenement is to be

taken into account even if the mining tenement fixture is, or purports to be, the subject of an entitlement separate from the ownership of the rest of the mining tenement land asset.

(4) Subsection (2) or (3) (whichever is relevant) does not apply for the purposes of determining the land assets to which an entity is entitled in relation to an acquisition if the fixture or the mining tenement fixture would, apart from that subsection, be taken into account separately in relation to that acquisition in determining the land assets to which that entity or another entity is entitled.

(5) In this section, a reference to land does not include anything that is land under section 3A(1)(b), (c), (f) or (g).

*[Section 149A inserted: No. 12 of 2019 s. 58.]*

### 150. Unencumbered value of land assets or chattels

Sections 36 and 36A apply, with any appropriate modifications, where it is necessary to determine the unencumbered value of land assets or chattels for the purposes of section 155(5)(a), 157(2) or 186.

*[Section 150 amended: No. 12 of 2019 s. 59.]*

## Part 2 — Imposition of landholder duty

### 151. Landholder duty imposed

Duty is imposed in respect of any relevant acquisition under Part 5 of an interest in an entity that under Part 4 is a landholder for the purposes of this Chapter.

# Part 3 — Certain key concepts defined and related provisions

## 152. References to entity

(1) A reference in this Chapter to an entity is to —

(a) a corporation; and

(b) a unit trust scheme.

(2) Each of the following —

(a) the trustee of a discretionary trust;

(b) a partnership,

is also an entity to the extent set out in subsection (3), but not otherwise.

(3) The trustee of a discretionary trust or a partnership may be —

(a) an entity in an ownership chain referred to in section 154A (other than the main entity referred to in that section); or

(b) an entity referred to in section 154B; or

(c) a linked entity under section 156; or

(d) a relevant entity referred to in section 156A(1)(b)(i).

*[Section 152 amended: No. 12 of 2019 s. 60.]*

## 153. References to interest in landholder or other entity

(1) A reference in this Chapter to an interest (other than a reference to an indirect interest) in a landholder or other entity is to an entitlement to the surplus property of the landholder or other entity if it were to be wound up.

(2) A reference in this Chapter to an interest in a landholder or other entity together with —

(a) a reference to a percentage; or

(b) a reference to a percentage determined by the Commissioner,

is to an entitlement to receive that percentage, or the percentage so determined, of the surplus property of the landholder or other entity if it were to be wound up.

(3) This section has effect subject to sections 153A and 153B.

*[Section 153 amended: No. 12 of 2019 s. 61.]*

### 153A. References to interest in, or held by, trustee of discretionary trust

For the purposes of section 154A, if a trustee of a discretionary trust is an entity in an ownership chain referred to in that section —

(a) an entity has an interest in the trustee of the discretionary trust if the entity is a potential beneficiary under the trust; and

(b) the trustee of the discretionary trust has an interest in an entity if the trust property is or includes the interest; and

(c) the percentage of the interest that the entity immediately above the trustee of the discretionary trust in the ownership chain has in the trustee of the discretionary trust is taken to be —

(i) a 100% interest; or

(ii) if the Commissioner decides in a particular case that the operation of subparagraph (i) would be inequitable — an interest of some other percentage, or no interest, as determined by the Commissioner.

*[Section 153A inserted: No. 12 of 2019 s. 62.]*

### 153B. References to interest in, or held by, partnership

For the purposes of section 154A, if a partnership is an entity in an ownership chain referred to in that section —

(a) an entity has an interest in the partnership if the entity is a partner in the partnership or, in the case of a unit trust

scheme, the trustee, as trustee of the scheme, is a partner in the partnership; and

(b) the partnership has an interest in an entity if the partnership property is or includes the interest; and

(c) the percentage of the interest that the entity immediately above the partnership in the ownership chain has in the partnership is taken to be the greater of the following —

(i) the percentage of the capital of the partnership that the entity has contributed or is required to contribute;

(ii) the percentage of the losses of the partnership that the entity is required to bear.

*[Section 153B inserted: No. 12 of 2019 s. 62.]*

### 154. Calculating interest in entity

(1) In this section —

***person*** includes an entity.

(2) This section applies where it is necessary for the purposes of this Chapter to calculate the interest of a person (the ***relevant person***) in a landholder or other entity.

(3) This section does not apply where section 153A(c) or 153B(c) applies.

(4) The interest is to be first calculated as if the landholder or other entity were wound up without regard to the notional exercise of the powers and discretions referred to in subsection (5).

(5) The interest is to be then calculated as if the landholder or other entity were wound up and as if each interested person had exercised all powers and discretions exercisable by the person —

(a) to effect or compel an alteration to the constitution of the landholder or other entity; and

(b) to vary the rights attached to units or shares in the landholder or other entity; and

(c) to effect or compel the substitution or replacement of units or shares in the landholder or other entity with other units or shares in it,

in such a manner as would maximise the value of the relevant person's interest.

(6) The reference in subsection (5) to an interested person is —

(a) to the relevant person; and

(b) if the relevant person is a unit trust scheme, to the trustee of the scheme; and

(c) to any person that the relevant person or a person referred to in paragraph (b) has power to direct with respect to a distribution; and

(d) where the calculation is required in order to determine the extent of a relevant person's interest for the purposes of section 163, to a related person under section 162 in respect of the relevant person or a person referred to in paragraph (b).

(7) The relevant person's interest is the greater of the interest calculated under subsection (4) and the interest calculated under subsection (5).

(8) If the calculation under subsection (5) results in the greater interest the Commissioner may, after considering the circumstances of the case, determine that —

(a) the application of subsection (7) would be inequitable; and

(b) the relevant person's interest is that calculated under subsection (4).

*[Section 154 amended: No. 12 of 2019 s. 63.]*

### 154A. Calculating total direct or indirect interest in entity

(1) This section applies where it is necessary in relation to an acquisition of an interest in an entity (the ***main entity***) to calculate the total direct or indirect interest that one entity (a ***higher entity***) has in another entity (a ***lower entity***).

(2) A higher entity has a direct or indirect interest in a lower entity if there are 1 or more ownership chains between the higher entity and the lower entity.

(3) An ownership chain exists if —

(a) the higher entity has an interest as defined in whichever of section 153, 153A or 153B is applicable (a ***direct interest***) in the lower entity; or

(b) there is a series of at least 3 entities, starting with the higher entity and ending with the lower entity, each of which successively has a direct interest in the next.

(4) The percentage of the interest that a higher entity has in a lower entity through a particular ownership chain is —

(a) for an ownership chain referred to in subsection (3)(a) — the percentage of the higher entity's direct interest in the lower entity calculated under whichever of section 153A(c), 153B(c) or 154 is applicable; or

(b) for an ownership chain referred to in subsection (3)(b) — the percentage calculated by multiplying the percentage of the higher entity's direct interest in the entity immediately below it in the ownership chain by the percentage of the direct interest that each entity in the ownership chain between the higher entity and the lower entity has in the entity immediately below it in the ownership chain.

(5) The percentage of the total direct or indirect interest that a higher entity has in a lower entity is the aggregate of the

percentage interests calculated under subsection (4) for each ownership chain between the higher entity and the lower entity.

*[Section 154A inserted: No. 12 of 2019 s. 64.]*

### 154B. Determining interest in entity: uncompleted agreements

In determining the interest that an entity has in another entity for the purposes of section 154A, 156, or 156A —

(a) if the entity has entered into an agreement to acquire an interest in the other entity, the agreement is to be regarded as having been completed even if it has not yet been completed; and

(b) if the entity has entered into an agreement to dispose of an interest in the other entity but the agreement has not yet been completed, the agreement is to be disregarded.

*[Section 154B inserted: No. 12 of 2019 s. 64.]*

## Part 4 — Landholders to which this Chapter applies

### 155. Which entities are landholders

(1) This section applies where it is necessary to determine in relation to an acquisition of an interest in an entity whether the entity is a landholder for the purposes of section 163.

(2) An entity is a landholder if immediately before the acquisition —

(a) it is entitled to land assets in Western Australia or an entity linked to the entity is so entitled; and

(b) the total value of all such entitlements is $2 000 000 or more.

(3) An entity to which subsection (2) does not apply is a landholder if —

(a) immediately before the acquisition, it is entitled to land assets, chattels, or land assets and chattels, in Western

Australia or an entity linked to the entity is so entitled; and

(b) the acquisition is part of a relevant arrangement under subsection (4).

(4) An acquisition of an interest in an entity (the ***relevant entity***) is part of a relevant arrangement for the purposes of subsection (3)(b) if —

(a) there are 1 or more acquisitions of interests in 1 or more other entities (the ***other entities***), which may occur before or after the acquisition of the interest in the relevant entity; and

(b) the acquisition of the interest in the relevant entity and the acquisitions of the interests in the other entities together form, evidence, give effect to or arise from what is, substantially one arrangement; and

(c) either or both of the following applies —

(i) at least 1 of the other entities is, at the time the acquisition of the interest in that entity occurs, a landholder to which subsection (2) applies;

(ii) the total value of all of the entitlements to land assets in Western Australia referred to in subsection (4A) is $2 000 000 or more.

(4A) For the purposes of subsection (4)(c)(ii), the total value of the following entitlements is to be determined —

(a) the entitlements to land assets in Western Australia, immediately before the acquisition of the interest in the relevant entity, of the relevant entity and each entity linked to the relevant entity;

(b) for each of the other entities — the entitlements to land assets in Western Australia, immediately before the acquisition of the interest in that other entity, of that other entity and each entity linked to that other entity.

(5) For the purposes of this section —

(a) land assets to which an entity is entitled are to be valued at their unencumbered value; and

(b) the value of a linked entity's entitlement to land assets is to be determined under section 157.

(6) An entity that, under subsection (3), is a landholder in relation to an acquisition is taken to be a landholder in relation to that acquisition even if the acquisition does not become part of a relevant arrangement referred to in subsection (4) until after the acquisition occurs.

*[Section 155 amended: No. 12 of 2019 s. 65.]*

### 156. Which entities are linked to an entity

(1) This section applies where it is necessary to determine in relation to an acquisition of an interest in an entity (the ***main entity***) whether there is any other entity that is linked to the entity for the purposes of section 155.

(2) Each entity (a ***linked entity***) below the main entity in a linkage chain that exists immediately before the acquisition is linked to the main entity.

(3) A linkage chain exists if a series of entities starting with the main entity are successively linked to one another.

(4) An entity is linked to another entity if —

(a) where the other entity is a listed corporation or a listed unit trust scheme — it has an interest in the other entity of at least 90%; or

(b) in any other case — it has a total direct or indirect interest in the other entity, calculated under section 154A, of at least 50%.

*[(5), (6) deleted]*

(7) A series of entities under subsection (3) may consist of the main entity and one other entity to which it is linked as mentioned in subsection (4).

*[(8) deleted]*

*[Section 156 amended: No. 1 of 2015 s. 25; No. 12 of 2019 s. 66.]*

### 156A. Linked entities: acquisitions forming one arrangement

(1) Subsection (3) applies if —

(a) there are acquisitions (the ***related acquisitions***) of interests in 2 or more entities (the ***main entities***) that together form, evidence, give effect to or arise from what is, substantially one arrangement; and

(b) either —

(i) each of the main entities has a direct or indirect interest (as referred to in section 154A(2)) in an entity (the ***relevant entity***) that is not a listed corporation or listed unit trust scheme; or

(ii) one of the main entities (the ***relevant entity***) is an entity that is not a listed corporation or listed unit trust scheme and each of the other main entities has a direct or indirect interest (as referred to in section 154A(2)) in the relevant entity;

and

(c) there is at least 1 main entity that has a total direct or indirect interest in the relevant entity, calculated under section 154A, that is less than 50%; and

(d) the aggregated direct or indirect interest in the relevant entity determined under subsection (2) is at least 50%.

(2) The aggregated direct or indirect interest for the purposes of subsection (1)(d) is —

(a) if subsection (1)(b)(i) applies, the aggregate of the total direct or indirect interests, calculated under section 154A, that each of the main entities has in the relevant entity; or

(b) if subsection (1)(b)(ii) applies, the aggregate of —

(i) the interests in the relevant entity acquired by each related acquisition that is an acquisition of an interest in the relevant entity; and

(ii) the total direct or indirect interests, calculated under section 154A, that each of the main entities (other than the relevant entity) has in the relevant entity.

(3) The relevant entity is taken, in relation to a related acquisition of an interest in a main entity to which subsection (1)(c) applies, to be linked to that main entity under section 156(2).

(4) A relevant entity that is linked to a main entity for the purposes of an acquisition because of subsection (3) is taken to be linked in relation to that acquisition even if that subsection does not become applicable in relation to the acquisition until after the acquisition occurs.

(5) For the purposes of this section, the direct or indirect interest, or total direct or indirect interest, that a main entity has in the relevant entity is to be determined immediately after the related acquisition of an interest in that main entity.

*[Section 156A inserted: No. 12 of 2019 s. 67.]*

## 157. Value of land assets of linked entity for s. 155

(1) This section applies where a linked entity is entitled to land assets in Western Australia and it is necessary to determine the value of that entitlement for the purposes of section 155.

(2) The value of the entitlement is an amount equal to the same percentage of the unencumbered value of the land assets as the percentage of the main entity's total direct or indirect interest in the linked entity calculated under section 154A.

*[(3), (4) deleted]*

*[Section 157 amended: No. 12 of 2019 s. 68.]*

*[**158, 159.** Deleted: No. 12 of 2019 s. 69.]*

# Part 5 — Acquisitions to which this Chapter applies

## Division 1 — Means by which interest acquired

### 160. How person acquires interest in entity

(1) A person acquires an interest in an entity if —

(a) the person obtains an interest in the entity; or

(b) the person's interest in the entity increases,

regardless of how it is obtained or increased.

(2) Without limiting subsection (1), a person may acquire an interest in a corporation or a unit trust scheme in the following ways —

(a) by the purchase, gift, allotment or issue of a share or unit;

(b) by the cancellation, redemption or surrender of a share or unit;

(c) by the abrogation or alteration of any right in respect of a share or unit;

(d) by the payment of an amount owing for a share or unit.

(3) To remove any doubt, it is declared that an interest in a corporation or a unit trust scheme may be acquired without the acquisition of shares in the corporation or units in the scheme.

(4) This section is subject to section 160A.

*[Section 160 amended: No. 12 of 2019 s. 70.]*

### 160A. Acquisition of interest by merger of corporations

(1) If a corporation (***company A***) has an interest in an entity and there is a merger of company A with and into another corporation (***company B***) in circumstances where neither subsection (2) nor subsection (3) applies, company B is taken to acquire that interest.

(2) If 2 or more corporations (the ***merging corporations***) merge in circumstances where another corporation (***company C***) results as a consequence of the merger, and any of the merging corporations has an interest in an entity, company C is taken to acquire that interest.

(3) If 2 or more corporations (the ***merging corporations***) merge with and into each other in circumstances where each of the merging corporations continues in existence, and any of the merging corporations has an interest in an entity, the merging corporations are taken to acquire, jointly, 50% of that interest.

*[Section 160A inserted: No. 12 of 2019 s. 71.]*

## Division 2 — Relevant acquisitions of interests in landholders

### Subdivision 1 — Definitions

### 161. Term used: significant interest

In this Division —

***significant interest***, in a landholder, means —

(a) if the landholder is a listed landholder — an interest of at least 90%; or

(b) otherwise — an interest of at least 50%.

*[Section 161 amended: No. 32 of 2012 s. 11; No. 12 of 2019 s. 72.]*

## 162. Related persons for s. 163

(1) For the purposes of section 163 the following persons or entities are related persons —

(a) individuals who are spouses, or de facto partners, of each other;

(b) individuals between whom the relationship is that of parent and child;

(c) related corporations;

(d) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether the beneficiary has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust;

(e) an individual and a corporation if the individual is a majority shareholder, director or secretary of the corporation or a related corporation;

(f) an individual and a trustee if the individual is a beneficiary under the trust of which the trustee is a trustee, whether the person has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust;

(g) a corporation and a trustee if —

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

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

whether the beneficiary has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust;

(h) persons or entities that acquire interests in a landholder by virtue of acquisitions that together form, evidence, give effect to or arise from what is, substantially one arrangement;

(i) persons or entities that acquire interests in a landholder by virtue of acquisitions that arise from those persons or entities acting in concert with each other.

(1A) Subsection (1)(h) and (i) do not apply —

(a) in circumstances where the acquisitions result from a public float; or

(b) in prescribed circumstances.

(2) If the Commissioner is satisfied, in the case of a particular acquisition of an interest in an entity, that subsection (3) applies to persons that would otherwise be related persons under subsection (1), the Commissioner may determine that, despite that subsection, the persons are not related persons for the purposes of section 163.

(2A) The Commissioner cannot make a determination under subsection (2) in relation to persons or entities that are related persons under subsection (1)(c), (h) or (i).

(3) This subsection applies to persons if their interests in the entity —

(a) were acquired independently and are, and will be, employed independently; and

(b) were not acquired for a common purpose and are not, and will not be, employed for a common purpose.

*[Section 162 amended: No. 12 of 2019 s. 73.]*

## Subdivision 2 — Relevant acquisitions

### 163. Relevant acquisitions

(1) An acquisition by a person (the ***acquirer***) of an interest in an entity that is a landholder in relation to the acquisition is a ***relevant acquisition*** in any of the following circumstances —

(a) if —

(i) immediately before the acquisition, the acquirer does not have a significant interest in the landholder; and

(ii) immediately after the acquisition, the acquirer has a significant interest in the landholder;

(b) if —

(i) immediately before the acquisition, the aggregated group interest in the landholder does not amount to a significant interest; and

(ii) immediately after the acquisition, the aggregated group interest in the landholder amounts to a significant interest;

(c) if —

(i) immediately before the acquisition, the acquirer has a significant interest in the landholder; and

(ii) as a result of the acquisition, the acquirer's interest in the landholder increases;

(d) if —

(i) immediately before the acquisition, the aggregated group interest in the landholder amounts to a significant interest; and

(ii) as a result of the acquisition, the aggregated group interest in the landholder increases.

(2) In subsection (1) —

***aggregated group interest*** means the aggregate of —

(a) the interest (if any) that the acquirer has in the landholder; and

(b) if 1 or more related persons have an interest in the landholder — all of those interests.

*[Section 163 inserted: No. 12 of 2019 s. 74.]*

*[**164.** Deleted: No. 12 of 2019 s. 74.]*

## Subdivision 3 — Exempt acquisitions

### 165. Term used: acquisition

In this Subdivision —

***acquisition*** means an acquisition by a person of an interest in a landholder.

### 166. Effect of acquisition being exempt

An acquisition that is exempt under this Subdivision —

(a) is not a relevant acquisition for the purposes of this Chapter, other than Part 6 Division 7; and

(b) the interest acquired by the acquisition is not to be taken into account for the purposes of section 188(1) or (3) and is not an excluded interest under section 189.

*[Section 166 amended: No. 32 of 2012 s. 13.]*

### 167. Exemption or reduction of duty if nominal duty would be chargeable on transfer

(1) In this section —

***acquiring person***, in relation to an acquisition, means the person making the acquisition;

***notional transfer***, in relation to an acquisition, means a notional transaction consisting of the transfer, at the time of the

acquisition, by the relinquishing person to the acquiring person of the relevant land assets, as if the relevant land assets were those of the relinquishing person;

***relevant land assets***, in relation to an acquisition of an interest in a landholder, means the land assets to which the landholder, and each linked entity in respect of the landholder, are entitled;

***relinquishing person***, in relation to an acquisition, means the person from whom the interest in the landholder was acquired.

(2) This section applies to an acquisition of an interest in a landholder if nominal duty would be chargeable, to any extent, on the notional transfer in relation to the acquisition.

(3) If only nominal duty would be chargeable on the notional transfer, the acquisition is exempt.

(4) If nominal duty would be chargeable on the notional transfer only to a particular extent, then despite Part 6 Division 5, the amount of duty chargeable in respect of the acquisition is the amount of duty calculated under that Division in respect of the acquisition reduced by the same proportion as the proportion of the notional transfer on which nominal duty would be chargeable.

(5) If the acquiring person did not acquire the interest in the landholder from another person, the reference to the relinquishing person in the definition of ***notional transfer*** in subsection (1) is to be read (according to what is relevant) as a reference to the or a person —

(a) whose interest in the landholder is decreased because of the acquisition; or

(b) whose interest in the landholder decreased resulting in the acquisition.

Note for this subsection:

An acquiring person may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

*[Section 167 inserted: No. 12 of 2019 s. 75.]*

### 168. Exemption or reduction of duty if transfer duty would not be chargeable

(1) In this section —

***acquiring person***, in relation to an acquisition, means the person making the acquisition;

***notional transfer***, in relation to an acquisition, means a notional transaction consisting of the transfer, at the time of the acquisition, by the relinquishing person to the acquiring person of the relevant land assets, as if the relevant land assets were those of the relinquishing person;

***relevant land assets***, in relation to an acquisition of an interest in a landholder, means the land assets to which the landholder, and each linked entity in respect of the landholder, are entitled;

***relinquishing person***, in relation to an acquisition, means the person from whom the interest in the landholder was acquired.

(2) This section applies to an acquisition of an interest in a landholder if no transfer duty would be chargeable, or transfer duty would be chargeable only to a particular extent, on the notional transfer in relation to the acquisition.

(3) If no transfer duty would be chargeable on the notional transfer, the acquisition is exempt.

(4) If transfer duty would be chargeable on the notional transfer only to a particular extent, then despite Part 6 Division 5, the amount of duty chargeable in respect of the acquisition is the amount of duty calculated under that Division in respect of the acquisition reduced by the same proportion as the proportion of the notional transfer on which no transfer duty would be chargeable.

(5) If the acquiring person did not acquire the interest in the landholder from another person, the reference to the relinquishing person in the definition of ***notional transfer*** in

subsection (1) is to be read (according to what is relevant) as a reference to the or a person —

(a) whose interest in the landholder is decreased because of the acquisition; or

(b) whose interest in the landholder decreased resulting in the acquisition.

Note for this subsection:

An acquiring person may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

(6) This section does not apply if —

(a) no transfer duty would be chargeable, or transfer duty would be chargeable only to a particular extent, on the notional transfer because of an exemption or reduction under Chapter 6; or

(b) section 171 or 194 applies to the acquisition.

*[Section 168 inserted: No. 12 of 2019 s. 75.]*

### 169. Exemption if acquisition is dutiable under s. 67

An acquisition is exempt if the landholder concerned is a corporation and the acquisition is taken, by operation of section 67, to be an agreement for the transfer of dutiable property.

### 170. Exemption relating to approved arrangements with creditors under Corporations Act

An acquisition is exempt if it occurs solely as the result of the making of a compromise or arrangement with creditors of the landholder under the Corporations Act Part 5.1 that has been approved by the court.

### 171. Exemption of acquisition by family member of interest in landholder engaged in primary production

*[(1) deleted]*

(2) An acquisition by a person (the ***acquirer***) is exempt if it is an acquisition from another person of an interest in a landholder which, or a linked entity in respect of which, uses land assets solely or dominantly in the business of primary production and —

(a) it would have been an exempt transaction under section 102(1) if —

(i) it had been a transfer, from that other person to the acquirer, of land assets to which the landholder or a linked entity in respect of the landholder is entitled; and

(ii) section 102(2) had not been enacted;

and

(b) immediately after the acquisition the landholder, or a linked entity in respect of the landholder, intends to continue to use the land assets solely or dominantly in the business of primary production.

(2A) If the acquirer did not acquire the interest in the landholder from another person, the reference in subsection (2) to the person from whom the interest in the landholder was acquired is to be read (according to what is relevant) as a reference to the or a person —

(a) whose interest in the landholder is decreased because of the acquisition; or

(b) whose interest in the landholder decreased resulting in the acquisition.

Note for this subsection:

An acquirer may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

(3) For the purposes of subsection (2), a land asset that is land is being used in the business of primary production even if —

(a) some, but not all, of the land is leased to another person; and

(b) under the lease, the lessee is using the leased land solely or dominantly for the purposes of silviculture or reafforestation.

(4) This section has effect subject to Subdivision 4.

*[Section 171 amended: No. 12 of 2019 s. 76.]*

## Subdivision 4 — Further provisions in respect of exemptions under section 171

### 172. Calculation of duty where some land assets of landholder not used for primary production

(1) This section applies to an acquisition referred to in section 171 if immediately before the acquisition the landholder concerned, or a linked entity in respect of the landholder, is entitled to —

(a) land assets in Western Australia that are used solely or dominantly in the business of primary production; and

(b) land assets in Western Australia that are not so used.

(2) The following provisions apply to the acquisition (the ***partially exempt acquisition***) —

(a) section 166 is not applicable to or in relation to the partially exempt acquisition;

(b) despite Part 6 Division 5, the amount of duty payable in respect of the partially exempt acquisition is an amount that bears to the amount of duty calculated under that Division in respect of the acquisition the same proportion as the value of the land assets referred to in subsection (1)(b) bears to the value of the landholder concerned, as determined under section 186.

*[Section 172 amended: No. 12 of 2019 s. 77.]*

### 173. Reversal of exemption where certain changes made to discretionary trust

(1) This section applies if —

(a) an acquisition from a person (the ***transferor***) of an interest in an entity that is a landholder by the trustee of a discretionary trust was —

(i) exempt under section 171; or

(ii) a partially exempt acquisition under section 172;

and

(b) after the acquisition occurs there is a material alteration to the operation of the discretionary trust; and

(c) at the time of the material alteration —

(i) the entity is a landholder; and

(ii) the entity, or a linked entity in respect of the entity, is using solely or dominantly in the business of primary production any of the land assets to which it was entitled when the acquisition occurred.

(2) There is a material alteration to the operation of the discretionary trust, as mentioned in subsection (1)(b), if —

(a) during the lifetime of the transferor, a person that is not the transferor or a family member of the transferor —

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

(ii) otherwise benefits from the trust;

or

(b) the transferor gains control of the trust.

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

(a) the reference to a family member is to a person who is a family member within the meaning given in section 100; and

(b) the matter in paragraph (b) is to be determined in accordance with section 99(2).

(4) On the occurrence of a material alteration to the operation of the discretionary trust —

(a) an acquisition of an interest in the entity by the trustee of the trust is taken to have occurred; and

(b) that interest is taken to be an interest of the same percentage as that mentioned in subsection (1)(a); and

(c) the acquisition is taken to have occurred at the time when the material alteration occurred.

(5) If the acquisition mentioned in subsection (1)(a) was a partially exempt acquisition under section 172 the amount of duty payable in respect of the acquisition that is taken to have occurred under subsection (4) is to be reduced by the amount of the duty paid in respect of the partially exempt acquisition.

*[Section 173 amended: No. 12 of 2019 s. 78.]*

### 174. No exemption where interest transferred within 5 years

(1) This section applies if —

(a) an acquisition of an interest in a landholder (the ***first acquisition***) was exempt under section 171; and

(b) a further acquisition of an interest in the landholder occurs within 5 years after the day on which the first acquisition occurred; and

(c) at the time when the further acquisition occurs the landholder, or a linked entity in respect of the landholder, is using solely or dominantly in the business of primary production any of the land assets to which it was entitled when the first acquisition occurred; and

(d) in the opinion of the Commissioner the further acquisition is by way of a transfer of an interest, or part of an interest, in the landholder that was acquired under the first acquisition.

(2) The further acquisition is not exempt under section 171 even if it comes within the provisions of that section.

*[Section 174 amended: No. 12 of 2019 s. 79.]*

# Part 6 — Collection of landholder duty

## Division 1 — Preliminary

### 175. Term used: acquirer

In this Part —

***acquirer*** means a person that acquires an interest in a landholder by a relevant acquisition and, if there is more than one, each of them.

### 176. When acquisition occurs

(1) In making an assessment of duty in relation to an acquisition of an interest in an entity, the time when that acquisition occurs is, for the purposes of this Chapter but subject to section 173(4)(c) and 204G, to be determined under this section.

(2) If an agreement is made for the making of the acquisition, whether conditional or not, and subsection (3) does not apply to the agreement —

(a) the acquisition is taken to occur when the agreement is made; and

(b) until the agreement is completed, the interests of persons in the entity are to be determined for the purposes of this Chapter as if the agreement had been completed.

Notes for this subsection:

1. Section 195C provides for the assessment of duty if an agreement referred to in this subsection is terminated before the assessment is made.
2. Section 196 provides for the reassessment of duty if an agreement referred to in this subsection is terminated after an assessment of duty is made.

(3) If there is an agreement for the making of the acquisition, whether conditional or not, and the entity concerned is not a landholder when the agreement is made but is a landholder when the agreement is completed, the acquisition occurs when the agreement is completed.

(3A) If the acquisition results from a merger of corporations in accordance with section 160A, the acquisition occurs when the merger is completed.

(4) If subsections (2), (3) and (3A) do not apply, the acquisition occurs when the interest to which it relates is acquired.

*[Section 176 amended: No. 32 of 2012 s. 15; No. 1 of 2015 s. 26; No. 12 of 2019 s. 80.]*

### 177. Certain transactions to be treated as agreements

(1) In this section and in section 178 —

***call option***, ***put option*** and ***simultaneous put and call option*** have the meanings those terms would have under section 44 if references in that section to dutiable property were references to a relevant interest;

***relevant interest*** means an interest in a landholder or other entity.

(2) For the purposes of sections 154B and 176, where a simultaneous put and call option that applies to a relevant interest comes into existence —

(a) subject to section 178, the call option is taken to be an agreement for the making of an acquisition of the

relevant interest by the holder of the call option rights; and

(b) paragraph (a) applies even if the call option is assigned as mentioned in subsection (3).

(3) If, in respect of a simultaneous put and call option that applies to a relevant interest —

(a) the call option has been assigned to another person so that the other person has a right to require the sale of the relevant interest —

(i) to the other person; or

(ii) to a person that has an agreement, arrangement or understanding with the other person relating to the interest;

and

(b) the put option obligations have passed to any person referred to in paragraph (a),

the assignment of the call option to the other person is taken, for the purposes of section 176, to be an agreement for the acquisition of the relevant interest by that person.

(4) If subsection (3) applies, subsection (2) does not apply to the right referred to in subsection (3)(a) or the rights under the put option referred to in subsection (3)(b).

Note for this section:

1. Sections 195B and 195C provide for the assessment of duty if a deemed agreement is not completed.
2. Sections 195 and 196 provide for the reassessment of duty if a deemed agreement is not completed.

*[Section 177 amended: No. 12 of 2019 s. 81.]*

### 178. Exceptions to s. 177

(1) In this section —

***proprietor of a business*** means a person that has an interest in a landholder or other entity that carries on a business.

(2) It is an exception to section 177(2) if the call option and the put option are for, and only for, the purpose of obtaining finance or making other financial arrangements.

(3) It is also an exception to section 177(2) if the call option and the put option form part of a scheme of call options and put options given by the proprietors of a business that —

(a) are for, and only for, the purpose of facilitating the continuation of the business by one or some of those proprietors (the ***continuing proprietor or proprietors***); and

(b) are not exercisable except on the occurrence of an event specified in them that would cause the continuing proprietor or proprietors to seek to acquire the interest of another of the proprietors.

## Division 2 — Liability

### 179. Who is liable to pay duty

(1) The duty chargeable in respect of a relevant acquisition is payable by the person or persons determined under subsection (2) in relation to the acquisition.

(2) The following persons are jointly and severally liable to pay duty chargeable in respect of a relevant acquisition of an interest in a landholder —

(a) in every case, the acquirer;

(b) if the landholder is a corporation, the corporation;

(c) if the landholder is a unit trust scheme, the trustee of the scheme;

(d) any person that is a related person in respect of the acquirer and has an interest in the landholder immediately after the relevant acquisition, other than a person whose interest in the landholder is, for the purpose of calculating the duty, an excluded interest under section 189.

(3) To the extent that a person referred to in subsection (2)(b), (c) or (d) has paid the duty chargeable in respect of a relevant acquisition the person may recover the amount of duty paid from the acquirer concerned, or if there is more than one from any of them, as a debt due to the person.

*[Section 179 amended: No. 32 of 2012 s. 16; No. 12 of 2019 s. 82.]*

### 180. Application to Commissioner for determination of liability

(1) A person mentioned in subsection (2) may, within 2 months after the day on which an acquisition of an interest in an entity occurs, apply to the Commissioner for a determination whether any liability has arisen under this Chapter in respect of the acquisition.

(2) The persons that may apply are —

(a) any person that by the acquisition acquires an interest in the entity; or

(b) any person that is a related person in respect of a person referred to in paragraph (a) and has an interest in the entity immediately after the acquisition; or

(c) if the entity is a corporation, the corporation; or

(d) if the entity is a unit trust scheme, the trustee of the scheme.

(3) An application under subsection (1) must be made in the approved form.

(4) Where an application is made under subsection (1) —

(a) the Commissioner is to make the requested determination; and

(b) any liability of a person under section 200 in respect of the acquisition ceases unless it is revived under section 182(5),

but the obligation imposed by paragraph (a) is qualified so far as it is inconsistent with the exercise of a power conferred on the Commissioner by section 182(1) or (4).

*[Section 180 amended: No. 12 of 2019 s. 83.]*

### 181. Determination of s. 180 application

(1) If, on an application under section 180, the Commissioner determines that liability has not arisen under section 151 in respect of the acquisition in question, the Commissioner is to give notice of that determination to the applicant.

(2) If, on an application under section 180, the Commissioner determines that liability has arisen under section 151 in respect of the acquisition in question, the Commissioner is to issue an assessment notice under the Taxation Administration Act section 23 in respect of the acquisition.

### 182. Powers of Commissioner where further information required for determination of s. 180 application

(1) If on an application under section 180 further information or evidence is necessary for the making of a determination, the Commissioner may —

(a) defer the making of a determination; and

(b) by written notice require the applicant to provide further information or evidence to the Commissioner within a specified period,

and the Commissioner may exercise those powers as often as the Commissioner thinks fit until all necessary information and evidence have been provided.

(2) The Commissioner may at any time extend the period specified in a notice under subsection (1)(b).

(3) The powers of the Commissioner under subsection (1) are in addition to, and do not limit, the powers that the Commissioner has under the Taxation Administration Act to obtain information or carry out an investigation.

(4) If —

(a) the Commissioner has under subsection (1) required the applicant to provide further information or evidence; and

(b) the Commissioner considers that the applicant has not within the required period provided the information or evidence,

the Commissioner is to give the applicant written notice of that opinion and of the effect of subsection (5).

(5) If the Commissioner gives notice under subsection (4) —

(a) section 180(4)(a) does not apply; and

(b) any liability that ceased under section 180(4)(b) is revived as if the application under section 180(1) had never been made.

## Division 3 — Payment of landholder duty

### 183. When landholder duty must be paid

(1) Liability to pay the duty chargeable in respect of a relevant acquisition arises when the relevant acquisition occurs.

(2) The duty is due for payment within one month after the date of an assessment notice issued in relation to an assessment of the duty.

## Division 4 — Rates of landholder duty

### 184. Rates of landholder duty

(1) Duty is chargeable at the general rate of duty set out in Schedule 2.

(2) For the purposes of subsection (1) the value referred to in section 188(1) or 189(1), as the case may require, is taken to be the dutiable value.

*[Section 184 amended: No. 32 of 2012 s. 17.]*

## Division 5 — Calculation of landholder duty

### 185. References to interest of acquirer in landholder

A reference in this Division to the interest of the acquirer in a landholder after a relevant acquisition is to the aggregated interests, immediately after the relevant acquisition, of —

(a) the acquirer; and

(b) each person that is a related person in respect of the acquirer and has an interest in the landholder.

*[Section 185 amended: No. 12 of 2019 s. 84.]*

### 186. Value of landholder

(1) For the purposes of calculating duty in respect of a relevant acquisition the value of a landholder is taken to be the sum of —

(a) the unencumbered value of the land assets, chattels, or land assets and chattels, in Western Australia (whichever is relevant) to which the landholder is entitled; and

(b) the same percentage of the unencumbered value of the land assets, chattels, or land assets and chattels, in Western Australia (whichever is relevant) to which any linked entity in respect of the landholder is entitled as the percentage of the landholder's total direct or indirect

interest in the linked entity calculated under section 154A.

*[(2A) deleted]*

(2) Except where section 187 applies, the entitlements referred to in subsection (1) are to be those that exist immediately after the relevant acquisition.

*[Section 186 amended: No. 32 of 2012 s. 18; No. 12 of 2019 s. 85.]*

### 187. Determining value of further interest for duty calculation

(1) This section applies where —

(a) it is necessary to determine the value of an interest of an acquirer in a landholder after a relevant acquisition for the purposes of section 188(3) or 189(3); and

(b) the relevant acquisition concerned is of a further interest in either —

(i) a listed landholder; or

(ii) a landholder that is not listed but was previously listed and in which, at a time when it was listed, the interest of the acquirer was not less than a 90% interest.

(2) The value is to be determined —

(a) as if the further interest was acquired at the same time as the interest of the acquirer became not less than a 90% interest in the landholder concerned; and

(b) on the basis of the value of the landholder at that time.

*[Section 187 amended: No. 32 of 2012 s. 19; No. 12 of 2019 s. 86.]*

### 188. Calculating duty payable

(1) To calculate the amount of duty payable in respect of a relevant acquisition an amount is first calculated by applying the

appropriate rate of duty under section 184(1) to the value of the interest of the acquirer in the landholder immediately after the relevant acquisition and then, if applicable, a reduction is made under section 189.

(2) The resulting amount is the duty payable in respect of the relevant acquisition.

(3) The value of the interest referred to in subsection (1) is the same percentage of the value of the landholder as the percentage of the interest of the acquirer in the landholder after the relevant acquisition.

*[Section 188 amended: No. 32 of 2012 s. 20.]*

### 189. Reduction for s. 188

(1) The amount calculated under section 188(1) is to be reduced by an amount determined by applying the appropriate rate of duty under section 184(1) to the value of the excluded interest or the sum of the values of each excluded interest.

(2) An excluded interest is an interest of the acquirer in the landholder concerned after the relevant acquisition referred to in section 188, other than the interest acquired by that relevant acquisition, that is —

(a) an interest, other than one which cannot be excluded because of subsection (4), that was held by the person or a related person, or by the person and a related person, before the day that is 3 years before the day on which the relevant acquisition occurred; or

(b) an interest acquired by a relevant acquisition that occurred on or after the day first referred to in paragraph (a) if duty was chargeable in respect of that acquisition; or

(c) an interest in the landholder concerned acquired by an acquisition if immediately before the acquisition neither the landholder nor a linked entity in respect of the

landholder was entitled to land assets in Western Australia.

(3) The value of an excluded interest is the same percentage of the value of the landholder concerned as the percentage of all interests in the landholder that is represented by the excluded interest.

(4) An interest in the landholder acquired by an acquisition (the ***earlier acquisition***) cannot be excluded under subsection (2)(a) if the relevant acquisition in respect of which duty is to be calculated under section 188(1) —

(a) is described in section 163(1)(a) or (b); and

(b) was made under an arrangement entered into during the prescribed period in respect of the earlier acquisition.

(5) The reference in subsection (4) to the prescribed period in respect of the earlier acquisition is to the period beginning on the day that is 3 years before the day on which the earlier acquisition occurred and ending on the day that is 3 years after the day on which the earlier acquisition occurred.

(6) Despite subsections (4) and (5), an interest that was held by the person or a related person, or by the person and a related person, before 1 July 2008 (the ***earlier acquisition***) is an excluded interest unless the relevant acquisition in respect of which duty is to be calculated under section 188(1) was made pursuant to an arrangement entered into —

(a) during the prescribed period in respect of the earlier acquisition; and

(b) in the opinion of the Commissioner, for a purpose of avoiding or reducing the amount of duty payable.

*[Section 189 inserted: No. 32 of 2012 s. 21; amended: No. 32 of 2012 s. 22; No. 12 of 2019 s. 87.]*

*[**190-192.** Deleted: No. 32 of 2012 s. 21.]*

### 193. Calculation of duty where statement lodged under s. 201

(1) This section applies to the calculation of duty if a statement is lodged under section 201(6) in respect of a relevant acquisition referred to in section 163(1)(c) or (d) that occurred during a period (a ***relevant period***) provided for by an approval under section 201(2).

(2) The Commissioner is not required to make a separate calculation under this Division of duty in respect of each relevant acquisition that occurred during the relevant period.

(3) Instead, the Commissioner may calculate the duty under this Division in respect of all relevant acquisitions that occurred during the relevant period as if all such acquisitions had been made by a single relevant acquisition that occurred at the end of the relevant period.

*[Section 193 amended: No. 12 of 2019 s. 88.]*

### 194. Calculation of duty on certain acquisitions on winding up of corporation or unit trust scheme

(1) Despite anything else in this Division, duty is to be calculated under this section in respect of a relevant acquisition by a person of an interest in a landholder if the acquisition —

(a) occurs in the circumstances referred to in subsection (2); and

(b) is not exempt under section 167 because the effect of the acquisition is that the person receives a benefit in excess of the person's entitlement.

Note for this subsection:

The combined operation of sections 29(4) and 167 will make the acquisition exempt if the value of the person's benefit is not in excess of the person's entitlement.

(2) The circumstances referred to are that —

(a) the relevant acquisition occurs as a result of a transfer of shares in a corporation or units in a unit trust scheme by —

(i) the liquidator of a corporation in the course of a distribution of its assets as a consequence of the winding up of the corporation; or

(ii) the trustee of a unit trust scheme in the course of the winding up of the scheme;

and

(b) the person concerned is —

(i) a shareholder in the corporation; or

(ii) a unit holder in the unit trust scheme,

that is being wound up; and

(c) the Commissioner is satisfied that the winding up is not a scheme or arrangement, or part of a scheme or arrangement, for which a dominant purpose of any party is the reduction of the duty otherwise payable.

(3) The amount of duty payable in respect of the relevant acquisition is an amount that bears to the amount of duty that would otherwise be calculated under this Division in respect of the acquisition the same proportion as the value of the benefit received by the person in excess of the person's entitlement bears to the value of all the assets distributed or to be distributed to the person as a consequence of the winding up.

(4) For the purposes of this section —

(a) a shareholder in a corporation receives a benefit in excess of the shareholder's entitlement if the value, when the winding up begins, of all the assets distributed or to be distributed to the shareholder (the ***distributed value***) exceeds the value at that time of the shareholder's entitlement to the net assets of the corporation (the ***entitlement value***); and

(b) a unit holder in a unit trust scheme receives a benefit in excess of the unit holder's entitlement if the value, when the winding up begins, of all the assets distributed or to be distributed to the unit holder (also the ***distributed value***) exceeds the value at that time of the unit holder's entitlement to the net assets held by the trustee of the unit trust scheme as trustee of that trust (also the ***entitlement value***).

(5) For the purpose of calculating duty under subsection (3), the value of a benefit received by a shareholder or unit holder in excess of the person's entitlement is the greater of —

(a) the amount by which the distributed value exceeds the entitlement value in relation to the person; and

(b) the amount that is the total of —

(i) any amount owing to the shareholder or unit holder that the shareholder or unit holder has, in the relevant period, released the corporation or the trustee of the unit trust scheme from paying; and

(ii) the amount of any liability that the shareholder or unit holder, or a person related to the shareholder or unit holder, has, in the relevant period, assumed or discharged on behalf of the corporation or the trustee of the unit trust scheme.

(6) In subsection (5)(b) —

***person related***, to a shareholder or unit holder, means that the person and the shareholder or unit holder are related persons within the meaning of section 162(1)(a) to (g);

***relevant period*** means the period beginning on the day that is 12 months before the day on which the winding up begins and ending on the day on which the relevant acquisition occurs.

(7A) For the purposes of subsection (5)(b)(ii), the Commissioner may exclude part or all of the amount of any liability that a person related to a shareholder or unit holder, as the case requires, has assumed or discharged if the Commissioner is satisfied that it is appropriate to do so having regard to the application of subsection (5) to all relevant acquisitions occurring as a consequence of the winding up.

(7) Section 29(6), (7) and (8) apply for the purposes of subsection (2)(c) as if —

(a) a reference to the property were a reference to the shares or the units, as the case may require; and

(b) a reference to the duty chargeable were a reference to the duty payable in respect of the relevant acquisition.

*[Section 194[2] amended: No. 29 of 2012 s. 5.]*

## Division 6A — Interim assessment of landholder duty

*[Heading inserted: No. 10 of 2013 s. 6.]*

### 195A. Interim assessment of landholder duty

(1) The Commissioner may make an assessment (an ***interim assessment***) of a portion of the duty payable in respect of a relevant acquisition if —

(a) the Commissioner is satisfied that duty is payable in respect of the relevant acquisition; and

(b) one of the following applies —

(i) more than 6 months have elapsed since the day on which an acquisition statement or agreement for the relevant acquisition was lodged or an application was made under section 180 in relation to the relevant acquisition;

(ii) more than 6 months have elapsed since the day on which an acquisition statement or agreement

for the relevant acquisition ought to have been lodged;

(iii) the Commissioner is satisfied that it will not be possible to obtain the information necessary to determine the value of the landholder within the 6 months referred to in subparagraph (ii);

and

(c) the Commissioner is satisfied that a portion of the value of the landholder can be determined.

(2) For the purposes of subsection (1)(b)(ii), the day on which an acquisition statement or agreement ought to have been lodged is the last day of the period within which the statement or agreement must be lodged under section 200, 201 or 202 (whichever is relevant).

(3) For the purpose of being satisfied of the matter in subsection (1)(c), the Commissioner may have regard to any information that the Commissioner considers relevant, including the following —

(a) the value, as agreed between the Commissioner and the taxpayer, of anything;

(b) the consideration (if any) given for the relevant acquisition;

(c) any evidence, whether provided by the taxpayer or obtained by the Commissioner, of the value of anything;

(d) any document or other record kept by or on behalf of a party to the relevant acquisition;

(e) any information held by a regulatory authority in the State, another Australian jurisdiction or an overseas jurisdiction;

(f) any information that is publicly available.

(4) For the purposes of making an interim assessment, the duty payable is to be determined as if the portion of the value of the landholder were the full value of the landholder.

(5) The Commissioner can make a determination of a portion of the value of a landholder for the purposes of making an interim assessment even though the Commissioner has ascertained —

(a) the value of only some of the land assets or chattels to which section 186(1) applies; or

(b) only a portion of the value of particular land assets or chattels to which section 186(1) applies.

*[Section 195A inserted: No. 10 of 2013 s. 6; amended: No. 12 of 2019 s. 89.]*

## Division 6 — Assessment or reassessment of liability for landholder duty if uncompleted agreements terminated or completed

*[Heading inserted: No. 12 of 2019 s. 90.]*

### 195B. Assessment of duty where s. 149(1) or 154B applied at acquisition time

(1) Subsection (2) applies if —

(a) at the time an acquisition (the ***main acquisition***) of an interest in an entity (the ***main entity***) occurs —

(i) there is an agreement to which section 149(1)(a) applies in determining the entitlement to land assets, chattels, or land assets and chattels, of the main entity or a linked entity in respect of the main entity; or

(ii) there is an agreement to which section 154B(a) applies in determining the interest that the main entity, or a linked entity in respect of the main entity, has in another entity;

and

(b) after the main acquisition occurs but before an assessment is made in relation to the main acquisition, the agreement has been rescinded, annulled or otherwise terminated without being completed.

(2) Section 149(1)(a) or 154B(a) (whichever is relevant) applies to the agreement for the purposes of making an assessment in relation to the main acquisition despite the rescission, annulment or other termination of the agreement, unless the Commissioner is satisfied that the rescission, annulment or other termination of the agreement was not part of a scheme or arrangement under which the object of the agreement has been or may be achieved in another way.

(3) Subsection (4) applies if —

(a) at the time an acquisition (the ***main acquisition***) of an interest in an entity (the ***main entity***) occurs —

(i) there is an agreement to which section 149(1)(b) applies in determining the entitlement to land assets, chattels, or land assets and chattels, of the main entity or a linked entity in respect of the main entity; or

(ii) there is an agreement to which section 154B(b) applies in determining the interest that the main entity, or a linked entity in respect of the main entity, has in another entity;

and

(b) after the main acquisition occurs but before an assessment is made in relation to the main acquisition, the agreement is completed.

(4) Despite section 149(1)(b) or 154B(b) (whichever is relevant), the agreement is not to be disregarded for the purposes of making an assessment in relation to the main acquisition.

*[Section 195B inserted: No. 12 of 2019 s. 91.]*

### 195C. Assessment of duty where s. 176(2) applied at acquisition time

(1) This section applies if —

(a) under section 176(2), an acquisition is taken to occur when the agreement for the acquisition is made; and

(b) after the agreement is made but before an assessment is made in relation to the acquisition, the agreement has been rescinded, annulled or otherwise terminated without being completed.

(2) Section 176(2) applies to the terminated agreement, despite the rescission, annulment or other termination of the agreement, unless the Commissioner is satisfied that the rescission, annulment or other termination of the agreement was not part of a scheme or arrangement under which the object of the agreement has been or may be achieved in another way.

(3) If the Commissioner is satisfied as described in subsection (2), section 176(2) ceases to apply to the terminated agreement.

*[Section 195C inserted: No. 12 of 2019 s. 91.]*

### 195. Reassessment of duty where s. 149(1) or 154B applied

(1) A reassessment of duty in respect of a relevant acquisition is required if —

(a) for the purposes of an assessment —

(i) an agreement to acquire an interest in land assets, chattels, or land assets and chattels has, under section 149(1)(a), been regarded as having been completed; or

(ii) an agreement to acquire an interest in an entity has, under section 154B(a), been regarded as having been completed;

and

(b) since that determination the agreement has been rescinded, annulled or otherwise terminated without being completed; and

(c) had the agreement not been regarded as having been completed —

(i) the liability for duty in respect of the relevant acquisition would not have arisen; or

(ii) the amount of the duty payable would have been less.

(2) A reassessment of duty in respect of a relevant acquisition is also required if —

(a) for the purposes of an assessment —

(i) an agreement to dispose of an interest in land assets, chattels, or land assets and chattels has, under section 149(1)(b), been disregarded; or

(ii) an agreement to dispose of an interest in an entity has, under section 154B(b), been disregarded;

and

(b) since that determination the agreement has been completed; and

(c) had the agreement not been disregarded —

(i) the liability for duty in respect of the relevant acquisition would not have arisen; or

(ii) the amount of the duty payable would have been less.

(3) On application made by a person that has paid or is liable to pay the duty, the Commissioner is to make a reassessment of the duty —

(a) if subsection (1) applies — disregarding the agreement referred to in that subsection; or

(b) if subsection (2) applies — having regard to the agreement referred to in that subsection.

*[Section 195 amended: No. 1 of 2015 s. 27; No. 12 of 2019 s. 92.]*

### 196. Reassessment of duty where s. 176(2) applied

(1) A reassessment of duty in respect of a relevant acquisition is required if —

(a) an assessment of duty is made on an acquisition that, under section 176(2), is taken to have occurred when the agreement for the acquisition was made; and

(b) since that assessment, the agreement has been rescinded, annulled or otherwise terminated without being completed; and

(c) had the acquisition not been taken to have occurred when the agreement for the acquisition was made as mentioned in paragraph (a), the liability for duty in respect of the relevant acquisition would not have arisen.

(2) On application made by a person that has paid or is liable to pay the duty, if subsection (1) applies, the Commissioner is to make a reassessment of the duty disregarding that terminated agreement.

(3) Section 176(2) does not apply to a terminated agreement for the purposes of a reassessment required under subsection (1).

*[Section 196 inserted: No. 12 of 2019 s. 93.]*

### 197. Condition precedent to reassessment under s. 195 or 196

Despite section 195(3)(a) or 196(2), the Commissioner is not to make a reassessment of the duty under that provision unless the Commissioner is also satisfied that the rescission, annulment or other termination of the agreement was not part of a scheme or

arrangement under which the object of the agreement has been or may be achieved in another way.

*[Section 197 amended: No. 12 of 2019 s. 94.]*

### 197A. Expired put and call options taken to be terminated

(1) In this section —

***call option*** means the call option of a simultaneous put and call option referred to in section 177(2) or (3);

***put option*** means the put option of a simultaneous put and call option referred to in section 177(2) or (3).

(2) For the purposes of this Division and section 200, an agreement that is taken to exist under section 177(2) or (3) is taken to be terminated without being completed if —

(a) the call option and the put option both expire without being exercised; or

(b) the call option and the put option are both rescinded or cancelled by agreement; or

(c) either the call option or the put option is rescinded or cancelled by agreement and the other expires without being exercised.

(3) Subsection (2) does not apply if the call option has been assigned or further assigned as referred to in section 177(3).

(4) If a reassessment is required under section 195 or 196 as a result of an agreement that was taken to exist under section 177(2) or (3) being taken to be terminated under subsection (2) of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made as soon as subsection (2) of this section became applicable.

*[Section 197A inserted: No. 12 of 2019 s. 95.]*

### 198. Taxation Administration Act not affected

Sections 195 and 196 are in addition to the provisions of the Taxation Administration Act relating to the reassessment of duty and do not affect the operation of those provisions.

## Division 7 — Lodgment of statements

### 199. Term used: acquisition statement

In this Division —

***acquisition statement*** means a statement required to be lodged under section 200(2), 201(6) or 202(2).

### 200. Acquisition statement or agreement to be lodged

(1) This section applies where by a relevant acquisition a person —

(a) acquires an interest in a landholder; or

(b) is taken by section 173(4) to have acquired such an interest.

(2) A statement in respect of the acquisition must be lodged unless —

(a) section 180(4)(b) applies in relation to the acquisition; or

(b) it is covered by an approval under section 201; or

(c) the agreement for the making of the acquisition has been lodged in accordance with subsection (2A).

(2A) If there is an agreement for the making of the acquisition, the agreement may be lodged instead of an acquisition statement.

(3) An acquisition statement under subsection (2) or agreement under subsection (2A) must be lodged not later than 2 months after the day on which the relevant acquisition occurred or is taken to have occurred or within such further time as is allowed under subsection (4).

(4) The Commissioner may from time to time, on application by a person or entity referred to in section 204, extend the time allowed for the lodgment of an acquisition statement or agreement under this section, and may do so on such conditions as the Commissioner thinks fit.

(5) An application under subsection (4) in respect of an acquisition statement or agreement must be made —

(a) before the expiry of the allowed time applicable to the statement or agreement; and

(b) in the approved form.

(6) The obligation to lodge an acquisition statement under subsection (2) or agreement under subsection (2A) applies in relation to an acquisition even if the agreement for the making of the acquisition has been rescinded, annulled or otherwise terminated without being completed, whether that rescission, annulment or termination occurs before or after the expiry of the allowed time applicable to the statement or agreement.

*[Section 200 amended: No. 12 of 2019 s. 96.]*

## 201. Acquisition of further interests, lodgment of periodical statements may be approved

(1) This section applies where —

(a) by a relevant acquisition referred to in section 163(1)(c) or (d) a person has acquired a further interest in a landholder; and

(b) it is contemplated that the acquirer or a person that under section 162 is related to the acquirer (a ***related person***) will acquire more of such interests in the landholder.

(2) The Commissioner may, on application made by a person mentioned in subsection (3), approve the lodgment of periodical statements in respect of particular approved periods (a ***relevant period***).

(3) The persons that may apply are —

(a) the acquirer; or

(b) a related person; or

(c) if the landholder is a corporation, the corporation; or

(d) if the landholder is a unit trust scheme, the trustee of the scheme.

(4) An application under subsection (2) must be made —

(a) within 2 months after the day on which the relevant acquisition occurred; and

(b) in the approved form.

(5) The first relevant period is to begin with the day on which the relevant acquisition occurred and a subsequent relevant period is to begin with the day after the day on which the immediately preceding relevant period ends.

(6) While an approval under subsection (2) is in force —

(a) a statement must be lodged within 14 days after the first relevant period ends in respect of —

(i) the relevant acquisition referred to in subsection (1)(a); and

(ii) any other relevant acquisition by which the acquirer or a related person acquired any further interest in the landholder during that period;

and

(b) within 14 days after each subsequent relevant period ends, a statement must be lodged in respect of any relevant acquisition by which the acquirer or a related person acquired any further interest in the landholder during that period.

*[Section 201 amended: No. 12 of 2019 s. 97.]*

### 202. Lodgment obligations if s. 201 application refused

(1) If the Commissioner decides not to grant an approval under section 201, the Commissioner is to give written notice of the decision and of the reasons for it to —

(a) the applicant; and

(b) every other person that appears to the Commissioner to be a person that would be liable under section 204 if a statement is not lodged under subsection (2) in respect of an acquisition mentioned in that subsection.

(2) Within 2 months after the day on which a notice is given under subsection (1), statements must be lodged in respect of —

(a) the relevant acquisition referred to in section 201(1)(a); and

(b) any relevant acquisition by which the acquirer or a person that under section 162 is related to the acquirer acquired any further interest in the landholder after the relevant acquisition referred to in section 201(1)(a) and before the notice was given,

and section 200 does not apply to those acquisitions.

### 203. Form of acquisition statements

(1) An acquisition statement must be in the approved form.

(2) The Commissioner may approve different forms of acquisition statements for different circumstances or for different provisions of this Chapter.

*[Section 203 amended: No. 12 of 2019 s. 98.]*

### 204. Failure to lodge acquisition statement

The following persons commit an offence if there is a contravention of section 200(2), 201(6) or 202(2) in relation to an acquisition —

(a) in every case, the acquirer;

(b) if the landholder concerned is a corporation, the corporation;

(c) if the landholder concerned is a unit trust scheme, the trustee of the scheme;

(d) any person that is a related person in respect of the acquirer and has an interest in the landholder concerned immediately after the acquisition, other than a person whose interest in the landholder is, for the purpose of calculating the duty, an excluded interest under section 189.

Penalty: a fine of $20 000.

*[Section 204 amended: No. 32 of 2012 s. 23; No. 12 of 2019 s. 99.]*

*[Division 8 (s. 205) omitted under the Reprints Act 1984 s. 7(4)(e).]*

# Part 7 — Application of this Chapter to certain acquisitions

*[Heading inserted: No. 12 of 2019 s. 100.]*

## Division 1 — Rights relating to fixed infrastructure

*[Heading inserted: No. 12 of 2019 s. 100.]*

### 204A. When fixed infrastructure access rights are taken into account in determining entitlement to land assets

(1) In determining, in relation to an acquisition of an interest in an entity (the ***main entity***), the entitlement to land assets of the main entity, or a linked entity in respect of the main entity, the value of any fixed infrastructure access right to which the main entity or linked entity is entitled is not to be taken into account unless subsection (2) applies to the fixed infrastructure access right.

(2) This subsection applies to the fixed infrastructure access right if the main entity, or an entity that is associated with the main entity under section 204D, is entitled to any of the following —

(a) fixed infrastructure (***relevant fixed infrastructure***) to which the fixed infrastructure access right relates;

(b) an estate or interest in relevant fixed infrastructure;

(c) a fixed infrastructure control right that relates to relevant fixed infrastructure.

(3) The entitlement referred to in subsection (2) is to be determined —

(a) for the main entity or an associated entity referred to in section 204D(2)(a), (b) or (c) — when the acquisition referred to in subsection (1) of this section occurs; or

(b) for an associated entity referred to in section 204D(2)(d) or (e) — when the acquisition referred to in section 204D(2)(d)(i) occurs.

(4) The value of a fixed infrastructure access right that is to be taken into account for the purposes of an acquisition because subsection (2) applies is to be taken into account in relation to that acquisition even if that subsection does not become applicable until after the acquisition occurs.

*[Section 204A inserted: No. 12 of 2019 s. 100.]*

### 204B. When fixed infrastructure statutory licences are treated as land assets in calculating duty

(1) A fixed infrastructure statutory licence is to be treated as if it were a land asset for the purposes of calculating duty in respect of a relevant acquisition under section 186 if —

(a) the landholder, or a linked entity in respect of the landholder, is entitled to the fixed infrastructure statutory licence; and

(b) the landholder, or an entity that is associated with the landholder under section 204D, is entitled to any of the following —

(i) fixed infrastructure (***relevant fixed infrastructure***) to which the fixed infrastructure statutory licence relates;

(ii) an estate or interest in relevant fixed infrastructure;

(iii) a fixed infrastructure control right that relates to relevant fixed infrastructure.

(2) For the purposes of subsection (1)(a), a landholder or linked entity is taken to be entitled to the fixed infrastructure statutory licence if —

(a) the landholder or linked entity held the fixed infrastructure statutory licence immediately before the relevant acquisition; and

(b) as a result of the relevant acquisition, the fixed infrastructure statutory licence is cancelled or surrendered by operation of law; and

(c) there is an agreement, arrangement or understanding relating to the acquisition under which, after the acquisition, the fixed infrastructure statutory licence, or another fixed infrastructure statutory licence of that kind, will be issued, granted or given to the landholder or an entity that is associated with the landholder under section 204D.

(3) The entitlement referred to in subsection (1)(b) is to be determined —

(a) for the landholder or an associated entity referred to in section 204D(2)(a), (b) or (c) — when the relevant acquisition referred to in subsection (1) of this section occurs; or

(b) for an associated entity referred to in section 204D(2)(d) or (e) — when the acquisition referred to in section 204D(2)(d)(i) occurs.

(4) A fixed infrastructure statutory licence that under subsection (1) is to be treated as a land asset for the purposes of section 186 in relation to an acquisition is to be so treated even if subsection (1) does not become applicable until after the acquisition occurs.

(5) A fixed infrastructure statutory licence to which subsection (1) applies is also to be treated as a land asset in relation to the relevant acquisition referred to in that subsection for the purposes of sections 167, 168, 195A(5), 266B and 266C.

*[Section 204B inserted: No. 12 of 2019 s. 100.]*

### 204C. Unencumbered value of fixed infrastructure statutory licences treated as land assets

(1) Section 36 applies, with any appropriate modifications, where it is necessary to determine the unencumbered value of a fixed infrastructure statutory licence that under section 204B(1) is to be treated as if it were a land asset for the purposes of calculating duty in respect of a relevant acquisition under section 186.

(2) The unencumbered value to be determined under section 36 (as applied by subsection (1)) for a fixed infrastructure statutory licence issued, granted or given under a law of the Commonwealth is the unencumbered value of that licence so far as it authorises the ownership, control, operation or use of fixed infrastructure.

*[Section 204C inserted: No. 12 of 2019 s. 100.]*

### 204D. Associated entities for s. 204A and 204B

(1) This section applies where it is necessary to determine for the purposes of section 204A(2) or 204B(1) or (2), in relation to an acquisition, which entities are associated with the main entity referred to in section 204A(2), or the landholder referred to in section 204B(1) or (2), as the case requires.

(2) The associated entities are as follows —

(a) a linked entity in respect of the main entity or landholder;

(b) an entity (a ***higher entity***) in respect of which the main entity or landholder is a linked entity;

(c) another linked entity in respect of a higher entity to which paragraph (b) applies;

(d) another entity if —

(i) there is an acquisition of an interest in the entity, which may occur before or after the acquisition referred to in subsection (1); and

(ii) the acquisition referred to in subsection (1) and the acquisition referred to in subparagraph (i) together form, evidence, give effect to, or arise from what is, substantially one arrangement;

(e) an entity that is a linked entity in respect of an entity to which paragraph (d) applies in relation to the acquisition referred to in paragraph (d)(i).

(3) A reference in subsection (2)(b) or (c) to a linked entity is a reference to an entity that would be a linked entity if, at the time of the acquisition referred to in subsection (1), the higher entity referred to in subsection (2)(b) or (c) were a main entity referred to in section 156(1).

*[Section 204D inserted: No. 12 of 2019 s. 100.]*

## Division 2 — Derivative mining rights

*[Heading inserted: No. 12 of 2019 s. 100.]*

### 204E. Unencumbered value of mining tenement subject to derivative mining right

(1) This section applies where it is necessary to determine, in relation to an acquisition of an interest in an entity, the unencumbered value of a land asset that is a mining tenement in relation to which a derivative mining right is in force.

(2) If the acquisition of the derivative mining right, on its grant, is duty endorsed or is not a dutiable transaction, the unencumbered value of the mining tenement is to be determined, despite section 36(1) as applied by section 150, having regard to the effect of the derivative mining right on the value of the mining tenement.

(3) Subsection (2) ceases to apply in relation to an acquisition of an interest in an entity if, within 12 months after the acquisition, the derivative mining right is surrendered for no consideration.

(4) If a surrender referred to in subsection (3) occurs, each of the following persons must lodge a notice of the surrender in the approved form within 2 months after the day on which the surrender occurs —

(a) the entity referred to in subsection (1);

(b) the person that acquired the interest referred to in subsection (1).

Penalty for this subsection: a fine of $20 000.

(5) Subject to the Taxation Administration Act section 17, the Commissioner must make any reassessment necessary as a result of the operation of subsection (3).

*[Section 204E inserted: No. 12 of 2019 s. 100; amended: No. 16 of 2022 s. 23.]*

## Division 3 — Acquisitions forming one arrangement

*[Heading inserted: No. 12 of 2019 s. 100.]*

### 204F. Acquisitions in 2 or more entities forming one arrangement

(1) For the purposes of sections 155(4)(b), 156A(1)(a) and 204D(2)(d), unless the Commissioner is satisfied to the contrary, acquisitions of interests in 2 or more entities together form, evidence, give effect to or arise from what is, substantially one arrangement if —

(a) the acquisitions have occurred within 12 months; and

(b) in respect of each of the acquisitions, the person that acquires the interest is the same person (whether the person is the only person that acquires the interest or acquires the interest with the same or different persons).

(2) Subsection (1) does not limit section 155(4)(b), 156A(1)(a) or 204D(2)(d).

*[Section 204F inserted: No. 12 of 2019 s. 100.]*

### 204G. Modified application of s. 176 if entity becomes landholder because of acquisitions forming one arrangement

(1) This section modifies the application of section 176 in relation to an acquisition (the ***main acquisition***) of an interest in an entity (the ***main entity***) if —

(a) at the time the agreement for the main acquisition is made, the main entity is not a landholder in relation to the main acquisition; and

(b) after the agreement is made and either before or after it is completed, 1 or more other acquisitions of interests in entities occur; and

(c) as a result of the occurrence of the acquisition or acquisitions referred to in paragraph (b), the main entity becomes a landholder in relation to the main acquisition because any of the following occurs —

(i) section 155(3) becomes applicable to the main entity in relation to the main acquisition;

(ii) an entity becomes a linked entity in respect of the main entity in relation to the main acquisition under section 156A(3);

(iii) section 204A(2) becomes applicable, in relation to the main acquisition, to a fixed infrastructure access right to which the main entity or a linked entity in respect of the main entity is entitled.

(2) From the time at which section 155(3), 156A(3) or 204A(2) (whichever is relevant) becomes applicable, the application of section 176 in relation to the main acquisition is modified as follows —

(a) section 176(2) applies in relation to the acquisition subject to subsection (3) of this section;

(b) section 176(3) does not apply in relation to the acquisition.

(3) For the purposes of the following provisions, the main acquisition is taken to occur at the time at which section 155(3), 156A(3) or 204A(2) (whichever is relevant) becomes applicable —

(a) section 180(1);

(b) section 183;

(c) section 200(3);

(d) section 201(5).

*[Section 204G inserted: No. 12 of 2019 s. 100.]*

### 204H. Reassessment of landholder duty if amount of duty chargeable changes because of acquisitions forming one arrangement

(1) This section applies if —

(a) an assessment of duty is made in relation to a relevant acquisition (the ***main acquisition***) of an interest in a landholder; and

(b) after the assessment is made, 1 or more other acquisitions of interests in entities occur; and

(c) as a result of the occurrence of the acquisition or acquisitions referred to in paragraph (b), there is a change in the amount of duty chargeable in relation to the main acquisition because any of the following occurs —

(i) an entity becomes a linked entity in respect of the landholder in relation to the main acquisition under section 156A(3);

(ii) section 204A(2) becomes applicable, in relation to the main acquisition, to a fixed infrastructure access right to which the landholder or a linked entity in respect of the landholder is entitled;

(iii) section 204B(1) becomes applicable, in relation to the main acquisition, to a fixed infrastructure

statutory licence to which the landholder or a linked entity in respect of the landholder is entitled.

(2) Subject to the Taxation Administration Act section 17, the Commissioner must make any reassessment necessary as a result of the change in amount of duty chargeable referred to in subsection (1)(c).

*[Section 204H inserted: No. 12 of 2019 s. 100.]*

# Chapter 3A — Additional duty for foreign persons

*[Heading inserted: No. 24 of 2018 s. 8.]*

## Part 1 — Preliminary

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205A. Terms used

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

***associate*** has the meaning given in section 205B;

***dwelling*** means a building, or part of a building, that is or is intended to be used solely or dominantly as a place of residence;

***foreign corporation*** has the meaning given in section 205C;

***foreign individual*** means an individual who is not —

(a) an Australian citizen as defined in the *Australian Citizenship Act 2007* (Commonwealth) section 3; or

(b) the holder of a permanent visa as defined in the *Migration Act 1958* (Commonwealth) section 5(1); or

(c) the holder of a special category visa as defined in the *Migration Act 1958* (Commonwealth) section 5(1);

***foreign person*** means —

(a) a foreign corporation; or

(b) a foreign individual; or

(c) a foreign trustee;

***foreign trust*** has the meaning given in section 205D(1);

***foreign trustee*** means a person that is the trustee of a foreign trust;

***parcel of land*** means —

(a) a lot as defined in the *Land Tax Assessment Act 2002* Glossary clause 2; or

(b) 2 or more such lots which have common boundaries and which in the opinion of the Commissioner should be treated as a single lot for the purpose of this Chapter.

(2) If a term is given a meaning in section 9 it has the same meaning in this Chapter unless the contrary intention appears in this Chapter.

(3) If a term is given a meaning in section 148(1) or 161 (as applied by section 205ZE(1)) it has the same meaning in this Chapter unless the contrary intention appears in this Chapter.

*[Section 205A inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 101.]*

### 205B. Associate

(1) A person is an ***associate*** of another person if —

(a) the person is a family member (within the meaning given in section 100) of the other person; or

(b) the person and the other person are related persons under section 162(1)(c) to (g); or

(c) the person and the other person are partners in the same partnership.

(2) If a beneficiary of a trust, other than a unit trust scheme or a discretionary trust, is an associate under subsection (1) of a person, a trustee of the trust is also an ***associate*** of that person.

*[Section 205B inserted: No. 24 of 2018 s. 8.]*

### 205C. Foreign corporation

(1) In this section —

***potential voting power*** has the meaning given in the *Foreign Acquisitions and Takeovers Act 1975* (Commonwealth) section 4;

***voting power*** has the meaning given in the *Foreign Acquisitions and Takeovers Act 1975* (Commonwealth) section 4.

(2) A corporation is a ***foreign corporation*** if —

(a) the corporation is incorporated outside Australia; or

(b) the corporation is a corporation in which foreign persons have a controlling interest.

(3) For the purposes of subsection (2)(b), foreign persons have a controlling interest in a corporation if 1 or more foreign persons or their associates —

(a) control at least 50% of the voting power in the corporation; or

(b) control at least 50% of the potential voting power in the corporation; or

(c) hold at least 50% of the issued shares in the corporation.

(4) In subsection (3) references to control are to control that is direct or indirect, including control that is exercisable as a result or by means of arrangements or practices, whether or not having legal or equitable force, and whether or not based on legal or equitable rights.

*[Section 205C inserted: No. 24 of 2018 s. 8.]*

### 205D. Foreign trust

(1) A trust is a ***foreign trust*** if it is —

(a) a discretionary trust controlled by a foreign person; or

(b) a discretionary trust and 1 or more foreign persons that are takers in default, together with their associates, hold at least a 50% interest in the discretionary trust; or

(c) a trust other than a discretionary trust and 1 or more foreign persons, together with their associates, hold beneficial interests in at least 50% of the income or property of the trust.

(2) For the purposes of subsection (1)(a), a discretionary trust is controlled by a foreign person if the person is in a position to influence, either directly or indirectly, the vesting of the whole

or any part of the capital of the trust property, or of the whole or any part of the income from the trust property.

*[Section 205D inserted: No. 24 of 2018 s. 8.]*

### 205E. Residential property

(1) Subject to subsection (3), any of the following is ***residential property*** —

(a) land in Western Australia that is, is capable of being, or is intended to be, used solely or dominantly for residential purposes;

(b) land in Western Australia that is vacant or substantially vacant and zoned solely for residential purposes under a planning scheme as defined in the *Planning and Development Act 2005* section 4(1);

(c) in the case of land described in paragraph (a) or (b) —

(i) any estate or interest in the land;

(ii) anything to which section 3A(1)(f) applies that is fixed to the land or an estate or interest in such a thing.

(2) For the purposes of Part 2, other than sections 205S(2)(b) and (h) and 205X, ***residential property*** includes a chattel in Western Australia if —

(a) the chattel is the subject of a dutiable transaction; and

(b) under section 37, the dutiable transaction in respect of the chattel is aggregated with a dutiable transaction in respect of residential property as defined in subsections (1) and (3); and

(c) the use of the chattel is directly linked to, or is incidental to, the use of residential property for residential purposes.

(3) The following are not ***residential property*** —

(a) land that is intended to be used solely or dominantly for the purposes of an aged care facility as defined in the *Land Tax Assessment Act 2002* section 38A(1);

(b) land that is intended to be used solely or dominantly for the purposes of commercial residential premises as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) section 195-1;

(c) land that is intended to be used solely or dominantly for the purposes of a retirement village as defined in the *Retirement Villages Act 1992* section 3(1);

(d) an easement;

(e) a security interest;

(f) a carbon right or a carbon covenant registered under the *Carbon Rights Act 2003*;

(fa) anything to which section 18A(1) applies;

(fb) a mining tenement or an estate or interest in a mining tenement;

(fc) a pastoral lease or an interest of a pastoral lessee under a pastoral lease;

(fd) a derivative mining right;

(g) land prescribed for the purposes of this subsection.

*[Section 205E inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 102.]*

# Part 2 — Foreign transfer duty

*[Heading inserted: No. 24 of 2018 s. 8.]*

## Division 1 — Preliminary

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205F. Terms used

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

***dutiable value*** has the meaning given in Chapter 2 Part 4 Division 5 as applied by section 205P(1);

***foreign transfer duty endorsed*** has the meaning given in subsections (2) and (3);

***new residential property*** has the meaning given in section 205I;

***residential partnership acquisition*** has the meaning given in section 205X;

***residential trust acquisition*** has the meaning given in section 205T;

***residential trust surrender*** has the meaning given in section 205U;

***special residential property*** means any of the following —

(a) a life interest in residential property;

(b) a remainder interest in residential property;

(c) a lease of residential property, if consideration is paid, or agreed to be paid, by the lessor for the surrender of the lease.

(2) A foreign dutiable transaction is ***foreign transfer duty endorsed*** if a transaction record for it is foreign transfer duty endorsed.

(3) A transaction record, or a duplicate of a transaction record, for a foreign dutiable transaction is ***foreign transfer duty endorsed*** if it is duty endorsed and the duty endorsement indicates —

(a) the amount of foreign transfer duty paid on the transaction; or

(b) that foreign transfer duty is not chargeable on the transaction.

*[Section 205F inserted: No. 24 of 2018 s. 8.]*

## Division 2 — Imposition of foreign transfer duty

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205G. Foreign transfer duty imposed

Foreign transfer duty is imposed on foreign dutiable transactions.

*[Section 205G inserted: No. 24 of 2018 s. 8.]*

## Division 3 — Foreign dutiable transactions

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205H. Foreign dutiable transaction

(1) Subject to subsection (2), any of the following is a ***foreign dutiable transaction*** —

(a) a transfer of residential property to a foreign person;

(b) an agreement, whether conditional or not, for the transfer of residential property to a foreign person;

(c) a declaration of trust over residential property if the trust is a foreign trust;

(d) a vesting of residential property in a foreign person —

(i) by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia; or

(ii) by, or as a consequence of, a court order of this or another jurisdiction, whether inside or outside Australia;

(e) a foreclosure of a mortgage over residential property by a mortgagee that is a foreign person;

(f) an acquisition by a foreign person of new residential property, on its creation, grant or issue;

(g) a surrender of special residential property to a foreign person;

(h) a residential trust acquisition or residential trust surrender;

(i) a residential partnership acquisition.

(2) The following transactions are not ***foreign dutiable transactions*** —

(a) a transaction the subject of which is a right if no consideration is paid, or agreed to be paid, for the transaction;

(b) a transfer of, or an agreement for the transfer of, a lease if no consideration is paid, or agreed to be paid, for the transfer or agreement;

(c) a transaction prescribed as an excluded transaction for the purposes of this section.

(3) Without limiting subsection (1)(d)(i), section 12 applies for the purposes of determining when residential property is vested under statute law.

*[Section 205H inserted: No. 24 of 2018 s. 8.]*

### 205I. New residential property

(1) Subject to subsection (2), any of the following is ***new residential property*** —

(a) residential property;

(b) the following rights —

(i) an option to acquire residential property, unless the option is part of a simultaneous put and call option over residential property;

(ii) a right to acquire residential property;

(iii) any other right prescribed for the purposes of this subsection.

(2) The following are not ***new residential property*** —

(a) a lease if no consideration is paid, or agreed to be paid, for the grant of the lease;

(b) any other residential property prescribed as excluded property for the purposes of this section.

*[Section 205I inserted: No. 24 of 2018 s. 8.]*

## Division 4 — Collection of foreign transfer duty

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205J. When liability for duty arises

Liability for foreign transfer duty chargeable on a foreign dutiable transaction arises when the liability for transfer duty chargeable on the transaction arises under section 19.

*[Section 205J inserted: No. 24 of 2018 s. 8.]*

### 205K. Who is liable to pay duty

(1) A person is liable to pay foreign transfer duty on a foreign dutiable transaction if the person is —

(a) liable to pay transfer duty on the transaction; and

(b) a foreign person.

(2) A person is liable to pay foreign transfer duty, regardless of whether the person is a foreign person, if —

(a) the person is liable to pay transfer duty on a foreign dutiable transaction referred to in section 205H(1)(h); or

(b) the person is, under section 69 as applied by section 205S(1), the person liable to pay foreign transfer duty.

(3) A foreign individual or foreign corporation is not liable to pay foreign transfer duty on a foreign dutiable transaction if —

(a) the individual or corporation is acting in their capacity as trustee; and

(b) the individual or corporation is not a foreign trustee.

*[Section 205K inserted: No. 24 of 2018 s. 8.]*

### 205L. Joint tenants to be treated as tenants in common in equal shares

For the purpose of charging foreign transfer duty, joint tenants of residential property are taken to hold the property as tenants in common in equal shares.

*[Section 205L inserted: No. 24 of 2018 s. 8.]*

### 205M. Foreign transfer duty declaration to be lodged

(1) Subject to subsection (2), the person liable to pay foreign transfer duty on a foreign dutiable transaction must lodge a foreign transfer duty declaration in the approved form within 2 months after the day on which liability for foreign transfer duty on the transaction arises.

Penalty for this subsection: a fine of $5 000.

(2) A person is not required to lodge a foreign transfer duty declaration in respect of a general conditional agreement in respect of which liability for transfer duty does not arise under section 19(2).

*[Section 205M inserted: No. 24 of 2018 s. 8.]*

### 205N. When duty must be paid

(1) A person liable to pay foreign transfer duty on a foreign dutiable transaction must pay the duty within 1 month after the date of the assessment notice issued in relation to an assessment of the duty, unless a later time is provided under subsection (2) or (3) in respect of the transaction.

(2) Unless subsection (3) applies, foreign transfer duty must be paid within 12 months after the day on which liability for foreign transfer duty on the transaction arises if the transaction is —

(a) a conditional agreement; or

(b) a foreign dutiable transaction referred to in section 205H(1)(a), (b), (c) or (d) if a document relating to the transaction must be registered under —

(i) the *Registration of Deeds Act 1856*; or

(ii) the *Transfer of Land Act 1893*.

(3) Foreign transfer duty must be paid within 3 years after the day on which liability for foreign transfer duty on the transaction arises if the transaction is —

(a) a subdivision conditional agreement; or

(b) an issue of title conditional agreement.

*[Section 205N inserted: No. 24 of 2018 s. 8.]*

### 205O. Rate of foreign transfer duty

Foreign transfer duty is chargeable at the rate of 7% of the dutiable value of the foreign dutiable transaction.

*[Section 205O inserted: No. 24 of 2018 s. 8.]*

### 205P. Dutiable value

(1) The provisions of Chapter 2 Part 4 Division 5 other than sections 28(4A), 31(5), 36A(1), (4) and (5), 37, 39(3) and 40 apply, with all appropriate modifications, in respect of foreign transfer duty in the same way as they apply in respect of transfer duty.

(2) Without limiting subsection (1), the provisions applied by that subsection apply as if —

(a) a reference to dutiable property were a reference to residential property; and

(b) a reference to a dutiable transaction were a reference to a foreign dutiable transaction; and

(c) other than in sections 28(6) and 29(4), a reference to duty were a reference to foreign transfer duty; and

(d) a reference to duty endorsed were a reference to foreign transfer duty endorsed; and

(e) the reference in section 28(1) to section 11(1)(d)(ii) or (e) were a reference to section 205H(1)(d)(ii) or (e); and

(f) the reference in section 29(4) to nominal duty were a reference to no foreign transfer duty.

(3) If a foreign dutiable transaction is aggregated with another dutiable transaction under section 37, then the foreign dutiable transaction is treated as having taken place at the time that the last of the aggregated transactions took place.

(4) Foreign transfer duty is chargeable on any foreign dutiable transaction effecting an exchange of residential property to a foreign person for dutiable property as if the exchange involved the transfer of the residential property for consideration equal to the unencumbered value of the residential property.

*[Section 205P inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 103.]*

### 205Q. No double foreign transfer duty

(1) The provisions of Chapter 2 Part 4 Division 6 apply, with all appropriate modifications, in respect of foreign transfer duty in the same way as they apply in respect of transfer duty.

(2) Without limiting subsection (1), the provisions applied by that subsection apply as if —

(a) a reference to dutiable property were a reference to residential property; and

(b) a reference to a dutiable transaction were a reference to a foreign dutiable transaction; and

(c) a reference to duty were a reference to foreign transfer duty; and

(d) a reference to duty endorsed were a reference to foreign transfer duty endorsed; and

(e) a reference to the general or a concessional rate were a reference to the rate of foreign transfer duty; and

(f) the reference in section 42(12) to section 11(1)(d) were a reference to section 205H(1)(d).

*[Section 205Q inserted: No. 24 of 2018 s. 8; amended: No. 37 of 2022 s. 11.]*

### 205R. Interim assessment of foreign transfer duty

(1) The Commissioner may make an assessment (an ***interim assessment***) of a portion of the foreign transfer duty payable on a foreign dutiable transaction if, under section 44A(1), the Commissioner makes an assessment of a portion of the transfer duty payable on the transaction.

(2) For the purposes of making an interim assessment, the foreign transfer duty payable is to be determined as if the portion of the dutiable value of the foreign dutiable transaction were the full dutiable value of the transaction.

*[Section 205R inserted: No. 24 of 2018 s. 8.]*

### 205RA. Foreign transfer duty on deemed transaction under s. 120B(2)

Foreign transfer duty is chargeable on a transaction that is taken to occur under section 120B(2) if the transaction is a foreign dutiable transaction.

*[Section 205RA inserted: No. 12 of 2019 s. 104.]*

## Division 5 — Application of Chapter 2 Part 5 to certain transactions

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205S. Application of Chapter 2 Part 5 to foreign dutiable transactions

(1) The provisions of Chapter 2 Part 5 other than section 70 and Divisions 5 to 9 apply, with all appropriate modifications, in respect of foreign transfer duty in the same way as they apply in respect of transfer duty.

(2) Without limiting subsection (1), the provisions applied by that subsection apply as if —

(a) a reference to dutiable property (other than in Chapter 2 Part 5 Division 4) were a reference to residential property; and

(b) a reference to dutiable property in Chapter 2 Part 5 Division 4 were a reference to each of the following —

(i) residential property;

(ii) a chattel in Western Australia, the use of which is directly linked to, or is incidental to, the use of residential property for residential purposes;

and

(c) a reference to a dutiable transaction were a reference to a foreign dutiable transaction; and

(d) a reference to duty were a reference to foreign transfer duty; and

(e) a reference to duty endorsed were a reference to foreign transfer duty endorsed; and

(f) a reference to a trust acquisition were a reference to a residential trust acquisition; and

(g) a reference to a trust surrender were a reference to a residential trust surrender; and

(h) the reference in section 73 to property of a kind referred to in section 72(a), (b), (c) or (d) were a reference to residential property; and

(i) a reference in section 76 or 77 to a partnership acquisition were a reference to a residential partnership acquisition; and

(ia) a reference in section 78(1)(a) or 78A(1)(a) to a person ceasing to be a partner in a partnership were a reference to a foreign person ceasing to be a partner in a partnership; and

(j) each provision specified in Column 1 of the Table were replaced by the provision specified opposite it in Column 2 of the Table.

**Table**

| **Column 1** | **Column 2** |
|---|---|
| s. 55 | s. 205T |
| s. 56 | s. 205U |
| s. 59 | s. 205V |
| s. 67 | s. 205W |
| s. 72 | s. 205X |

*[Section 205S inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 105; No. 37 of 2022 s. 12.]*

### 205T. References to residential trust acquisition

A reference to a residential trust acquisition is to the acquisition by a taker in default that is a foreign person of an interest in a discretionary trust that holds —

(a) residential property; or

(b) an indirect interest in residential property.

*[Section 205T inserted: No. 24 of 2018 s. 8.]*

### 205U. References to residential trust surrender

A reference to a residential trust surrender is to the surrender by a taker in default of an interest in a discretionary trust that holds residential property or an indirect interest in residential property, if the surrender results in a foreign person acquiring an interest in the discretionary trust.

*[Section 205U inserted: No. 24 of 2018 s. 8.]*

### 205V. Dutiable value of residential trust acquisition or residential trust surrender

(1) The dutiable value of a residential trust acquisition is —

(a) the consideration for the acquisition so far as the consideration relates to residential property —

(i) held by the discretionary trust; or

(ii) to which an entity linked to the trustee of the discretionary trust is entitled;

or

(b) the value of the taker in default's interest in the discretionary trust at the time when liability for foreign transfer duty on the acquisition arises if —

(i) there is no consideration for the acquisition; or

(ii) the consideration cannot be ascertained when liability for foreign transfer duty on the acquisition arises; or

(iii) the value of the taker in default's interest is greater than the consideration for the acquisition.

(2) The dutiable value of a residential trust surrender is —

(a) the consideration for the surrender so far as the consideration relates to —

(i) residential property held by the discretionary trust or to which an entity linked to the trustee of the discretionary trust is entitled; and

(ii) the interests in the discretionary trust acquired by a foreign person as a result of the surrender;

or

(b) the value of a foreign person's interest in the discretionary trust at the time immediately after liability for foreign transfer duty on the surrender arises less the value of the foreign person's interest in the discretionary trust immediately before liability for foreign transfer duty on the surrender arises if —

(i) there is no consideration for the surrender; or

(ii) the consideration cannot be ascertained when liability for foreign transfer duty on the surrender arises; or

(iii) the value of the taker in default's interest is greater than the consideration for the surrender.

*[Section 205V inserted: No. 24 of 2018 s. 8.]*

### 205W. Share disposition taken to be agreement for transfer of trust property

(1) A disposition of a share in a corporate trustee is taken to be an agreement for the transfer of residential property and is liable to foreign transfer duty accordingly if —

(a) it is a transaction, or part of a transaction, that is a scheme or arrangement, or part of a scheme or arrangement; and

(b) the transaction results, or will or may result, in —

(i) a foreign person increasing its beneficial interest, whether vested or contingent, in residential property held directly or indirectly by the corporate trustee of a discretionary trust; or

(ii) a foreign person acquiring a beneficial interest, whether vested or contingent, in residential property held directly or indirectly by the corporate trustee of a discretionary trust.

(2) Subsection (1) does not apply to the disposition of a share by which the personal representative of a deceased person disposes of a share to a beneficiary in the administration of the estate of the deceased person.

*[Section 205W inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 106.]*

### 205X. References to residential partnership acquisition

A reference to a residential partnership acquisition is to a foreign person acquiring a partnership interest in a partnership that holds —

(a) residential property; or

(b) an indirect interest in residential property.

*[Section 205X inserted: No. 24 of 2018 s. 8.]*

## Division 6 — Exemptions and reassessment

*[Heading inserted: No. 24 of 2018 s. 8.]*

## Subdivision 1 — Exempt transactions

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205Y. Transactions on which minimum, nominal or no transfer duty payable

(1) Foreign transfer duty is not chargeable on a transaction to which section 39 applies if the minimum amount of transfer duty referred to in section 39(3) is payable on the transaction.

(2) Except as provided in subsection (3), foreign transfer duty is not chargeable on a foreign dutiable transaction to the extent that —

(a) transfer duty is not chargeable on the transaction under Chapter 2 Part 5 Division 6; or

(b) transfer duty is not chargeable on the transaction under Chapter 2 Part 6 Division 1; or

(c) nominal duty is chargeable on the transaction under Chapter 2 Part 6 Division 2.

(3) Foreign transfer duty is chargeable on a foreign dutiable transaction if —

(a) section 97 applies to the transaction, the person to whom the property is transferred or agreed to be transferred is a foreign person, and foreign transfer duty was not chargeable on the acquisition of the property by the person from whom the property is transferred or agreed to be transferred; or

(b) section 114 applies to the transaction, the taker in default is a foreign person, and foreign transfer duty was not chargeable on the acquisition of the property by the trustee of the trust or on any acquisition by which the taker in default acquired its interest in the trust; or

(c) section 115 applies to the transaction, the beneficiary is a foreign person, and foreign transfer duty was not chargeable on the acquisition of the property by the trustee of the trust; or

(d) section 116 applies to the transaction, the beneficiary is a foreign person, and the declaration of trust has not been foreign transfer duty endorsed; or

(e) section 117(1)(a) or (b) applies to the transaction, the real purchaser is a foreign person, and foreign transfer duty was not chargeable on the acquisition of the property by the apparent purchaser.

*[Section 205Y inserted: No. 24 of 2018 s. 8.]*

### 205Z. Transactions relating to agreements for transfer of residential property

(1) Foreign transfer duty is not chargeable on an agreement for the transfer of residential property if —

(a) the agreement is an agreement referred to in section 42(2) or (4), the purchaser is a foreign person, and the transferee is not a foreign person; or

(b) the agreement is an agreement referred to in section 42(4B), the purchaser is a foreign person, and the trust is not a foreign trust; or

(c) the agreement is an agreement referred to in section 42(5), the person named in the agreement as the purchaser is a foreign person, and the corporation is not a foreign corporation.

(2) Foreign transfer duty is not chargeable on an agreement for the transfer of residential property to a transferee if the property is transferred in conformity with the agreement and the transferee is not a foreign person when the property is transferred.

*[Section 205Z inserted: No. 24 of 2018 s. 8.]*

## Subdivision 2 — Exemptions relating to construction, refurbishment and subdivision

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZA. Exemption relating to construction or refurbishment of 10 or more dwellings

(1A) In this section —

***substantial refurbishment*** does not include minor works to a building or part of a building.

(1) Foreign transfer duty is not chargeable on a foreign dutiable transaction to the extent that the transaction relates to a parcel of land to which this section applies.

(2) This section applies to a parcel of land if —

(a) the person liable to pay foreign transfer duty on the transaction or an associate of the person intends to —

(i) construct or complete the construction of 10 or more dwellings on the parcel of land; or

(ii) provide 10 or more dwellings on the parcel of land by carrying out, or completing the carrying out of, substantial refurbishment of a building, or part of a building, that is not capable of being used solely or dominantly as a place of residence;

and

*[(b) deleted]*

(c) within the period of 5 years beginning on the day on which the transaction is completed, the person or associate complies with subsection (3) in relation to 10 or more dwellings on the parcel of land; and

(d) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.

(3) A person or an associate of a person complies with this subsection in relation to —

(a) a dwelling the person or associate intends to construct — if the person or associate begins construction of that dwelling or another dwelling on the parcel of land; or

(b) a dwelling the person or associate intends to provide by carrying out substantial refurbishment of a building, or part of a building — if all licences, approvals, registrations, exemptions and other kinds of authorisation necessary to carry out the refurbishment for that dwelling or another dwelling on the parcel of land are issued, granted or obtained; or

(c) a dwelling the person or associate intends to complete the construction of — if that dwelling or another dwelling on the parcel of land, construction of which is completed by the person or associate, is ready for occupation as a place of residence; or

(d) a dwelling the person or associate intends to provide by completing the carrying out of substantial refurbishment of a building, or part of a building — if that dwelling, or another dwelling on the parcel of land for which substantial refurbishment is completed by the person or associate, is ready for occupation as a place of residence.

(4) For the purposes of subsection (3)(a), construction of a dwelling begins on —

(a) the day on which laying the foundations for the dwelling begins; or

(b) another day the Commissioner considers appropriate in the circumstances of the case.

(5) An application for reassessment under section 205ZC(2) because of this section must be made on or before the later of the following —

(a) the last day of the period of 1 year beginning on the day on which the person or associate complies with subsection (3) in relation to 10 or more dwellings;

(b) the last day of the period of 5 years beginning on the day on which the transaction is completed.

*[Section 205ZA inserted: No. 24 of 2018 s. 8; amended: No. 29 of 2023 s. 4.]*

### 205ZB. Exemption relating to subdivision for purpose of constructing 10 or more dwellings

(1) Foreign transfer duty is not chargeable on a foreign dutiable transaction to the extent that the transaction relates to a parcel of land to which this section applies.

(2) This section applies to a parcel of land if —

*[(a) deleted]*

(b) the person liable to pay foreign transfer duty on the transaction or an associate of the person intends to subdivide or complete subdividing the parcel of land for the purpose of a person constructing 10 or more dwellings on the land; and

(c) within the period of 5 years beginning on the day on which the transaction is completed, the person or associate —

(i) begins subdividing the parcel of land; or

(ii) if subdividing the parcel of land has begun when the transaction is completed, completes subdividing the parcel of land;

and

(d) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.

(3) An application for reassessment under section 205ZC(2) because of this section must be made on or before the later of the following —

(a) the last day of the period of 1 year beginning on the day on which the person or associate —

(i) begins subdividing the parcel of land; or

(ii) if subdividing the parcel of land has begun when the transaction is completed, completes subdividing the parcel of land;

(b) the last day of the period of 5 years beginning on the day on which the transaction is completed.

(4) For the purposes of subsections (2)(c) and (3)(a) —

(a) a person begins subdividing land on the day on which the land is subdivided under the *Land Tax Assessment Act 2002* Glossary clause 3; and

(b) a person completes subdividing land on the day on which the new certificate of title is created and registered for the subdivided land.

*[Section 205ZB inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 107; No. 29 of 2023 s. 5.]*

## Subdivision 3 — Reassessment

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZC. Reassessment

(1) If the Commissioner is required to reassess the liability to transfer duty of a foreign dutiable transaction that is not liable to foreign transfer duty because of section 205Y —

(a) the Commissioner, on the application of a taxpayer, must reassess the liability to foreign transfer duty of the transaction; and

(b) the limitation as to time (if any) that applies in respect of the reassessment of transfer duty applies in respect of the reassessment of foreign transfer duty; and

(c) if the reassessment of transfer duty is under section 107 — the application for reassessment under this subsection must be made in the approved form.

(2) The Commissioner, on the application of a taxpayer, must reassess the liability to foreign transfer duty of a foreign dutiable transaction if the liability is affected by section 205Z, 205ZA or 205ZB.

(3) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment because of section 205ZA or 205ZB.

(4) An application for reassessment under subsection (2) must be made in the approved form.

*[Section 205ZC inserted: No. 24 of 2018 s. 8.]*

# Part 3 — Foreign landholder duty

*[Heading inserted: No. 24 of 2018 s. 8.]*

## Division 1 — Preliminary

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZD. Terms used

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

***foreign acquirer*** means —

(a) in relation to a foreign landholder acquisition to which section 205ZH(1)(a)(i) applies —

(i) a foreign person that acquires an interest in a residential landholder by the acquisition; and

(ii) if there is more than 1 person referred to in subparagraph (i), each of them;

or

(b) in relation to a foreign landholder acquisition to which section 205ZH(1)(a)(ii) applies —

(i) a foreign person that is a related person in respect of the acquirer of the interest in the residential landholder and has an interest in the residential landholder immediately after the acquisition; and

(ii) if there is more than 1 person referred to in subparagraph (i), each of them.

***foreign landholder acquisition*** has the meaning given in section 205ZH;

***residential landholder*** means an entity that is a residential landholder under section 205ZG.

(2) Unless the contrary intention appears, a reference in this Part to a provision of Chapter 3 that is applied by section 205ZE(1) is a reference to that provision as so applied.

*[Section 205ZD inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 108.]*

## Division 2 — Application of Chapter 3

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZE. Application of Chapter 3

(1) The provisions of Chapter 3 other than the provisions set out in the Table apply, with all appropriate modifications, in respect of foreign landholder duty in the same way as they apply in respect of landholder duty.

**Table**

| | |
|---|---|
| s. 148(2) | s. 149A(1) and (3) |
| Part 2 | s. 155 |
| s. 157 | Part 5 Division 2 Subdivision 2 |
| s. 167 | s. 168 |
| s. 171 | Part 5 Division 2 Subdivision 4 |
| s. 175 | Part 6 Division 4 |
| s. 193 | Part 6 Division 6A |
| Part 6 Division 7 | Part 7 Divisions 1 and 2 |
| s. 204G | |

(2) Without limiting subsection (1), the provisions applied by that subsection apply as if —

(a) a reference to duty or landholder duty were a reference to foreign landholder duty; and

(b) a reference to an acquirer (other than in section 179) were a reference to a foreign acquirer; and

(c) a reference to a landholder were a reference to a residential landholder; and

(d) a reference to a relevant acquisition were a reference to a foreign landholder acquisition; and

(e) a reference to land assets, land assets in Western Australia or dutiable property were a reference to residential property; and

(f) a reference to a chattel were a reference to a chattel, the use of which is directly linked to, or is incidental to, the use of residential property for residential purposes; and

(g) the definition of ***land asset*** in section 148(1) were deleted;

(h) the provisions of Division 8 Subdivisions 1 and 2 of this Chapter were provisions of Chapter 3 Part 5 Division 2 Subdivision 3; and

(i) the reference in the definition of ***call option***, ***put option*** and ***simultaneous put and call option*** in section 177(1) to section 44 were a reference to section 44 as applied by section 205S(1); and

(j) the reference in section 179(2)(a) to the acquirer were a reference to a foreign acquirer, other than a person whose interest in the residential landholder is, for the purpose of calculating the duty, an excluded interest under section 189; and

(ja) the reference in section 179(2)(d) or 185(b) to a related person in respect of the acquirer were a reference to a foreign person that is a related person in respect of a

foreign acquirer (as defined in paragraph (a) of the definition of ***foreign acquirer*** in section 205ZD(1)); and

(jb) a reference in section 189(2)(a) or (6) —

(i) to the person were a reference to the foreign acquirer; and

(ii) to a related person were a reference to a foreign person that is a related person in respect of a foreign acquirer (as defined in paragraph (a) of the definition of ***foreign acquirer*** in section 205ZD(1));

and

(k) a reference in section 188(1) or 189(1) to applying the appropriate rate of duty under section 184(1) to the value were a reference to working out 7% of the value; and

(l) the reference in section 189(6) to 1 July 2008 were a reference to 1 January 2019; and

(m) a reference to a provision specified in Column 1 of the Table were a reference to the provision specified opposite it in Column 2 of the Table.

**Table**

| **Column 1** | **Column 2** |
|---|---|
| s. 67 | s. 205W |
| s. 151 | s. 205ZF |
| s. 155 | s. 205ZG |
| s. 163 | s. 205ZH |
| s. 167 | s. 205ZM |
| s. 200 | s. 205ZS |

| Column 1 | Column 2 |
|---|---|
| s. 204G | s. 205ZKA |

*[Section 205ZE inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 109.]*

## Division 3 — Imposition of foreign landholder duty

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZF. Foreign landholder duty imposed

Foreign landholder duty is imposed in respect of any foreign landholder acquisition of an interest in a residential landholder.

*[Section 205ZF inserted: No. 24 of 2018 s. 8.]*

## Division 4 — Residential landholders to which this Part applies

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZG. Which entities are residential landholders

(1) This section applies where it is necessary to determine in relation to an acquisition of an interest in an entity whether the entity is a residential landholder for the purposes section 205ZH.

(2) An entity is a residential landholder if —

(a) immediately before the acquisition, it is entitled to residential property or an entity linked to the entity is so entitled; and

(b) it is a landholder in relation to the acquisition.

*[(3), (4) deleted]*

*[Section 205ZG inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 110.]*

## Division 5 — Acquisitions to which this Part applies

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZH. Foreign landholder acquisitions

(1) An acquisition by a person (the ***acquirer***) of an interest in an entity that is a residential landholder in relation to the acquisition is a ***foreign landholder acquisition*** if —

(a) either —

(i) the acquirer is a foreign person; or

(ii) the acquirer is not a foreign person but, immediately after the acquisition, there is at least 1 related person in respect of the acquirer that is a foreign person and has an interest in the residential landholder;

and

(b) subsection (2) applies to the acquisition.

(2) This subsection applies to an acquisition in any of the following circumstances —

(a) if —

(i) immediately before the acquisition, the acquirer does not have a significant interest in the residential landholder; and

(ii) immediately after the acquisition, the acquirer has a significant interest in the residential landholder;

(b) if —

(i) immediately before the acquisition, the aggregated group interest in the residential landholder does not amount to a significant interest; and

(ii) immediately after the acquisition, the aggregated group interest in the residential landholder amounts to a significant interest;

(c) if —

(i) immediately before the acquisition, the acquirer has a significant interest in the residential landholder; and

(ii) as a result of the acquisition, the acquirer's interest in the residential landholder increases;

(d) if —

(i) immediately before the acquisition, the aggregated group interest in the residential landholder amounts to a significant interest; and

(ii) as a result of the acquisition, the aggregated group interest in the residential landholder increases.

(3) In subsection (2) —

***aggregated group interest*** means the aggregate of —

(a) the interest (if any) that the acquirer has in the residential landholder; and

(b) if 1 or more related persons have an interest in the residential landholder — all of those interests.

*[Section 205ZH inserted: No. 12 of 2019 s. 111.]*

*[**205ZI.** Deleted: No. 12 of 2019 s. 111.]*

## Division 6 — Collection of foreign landholder duty

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZJ. Rate of foreign landholder duty

Foreign landholder duty is chargeable —

(a) by reference to the value referred to in section 188(1) or 189(1), as the case requires; and

(b) at the rate of 7% of that value.

*[Section 205ZJ inserted: No. 24 of 2018 s. 8.]*

### 205ZK. Calculation of foreign landholder duty where landholder duty calculated under s. 193

(1) This section applies to the calculation of foreign landholder duty in respect of a foreign landholder acquisition if the Commissioner calculates landholder duty in respect of the acquisition under section 193(3).

(2) If this section applies —

(a) the Commissioner may calculate the foreign landholder duty in respect of the acquisition as if the acquisition occurred at the end of the relevant period (as defined in section 193(1)); and

(b) if the single relevant acquisition referred to in section 193(3) (the ***single acquisition***) includes more than 1 foreign landholder acquisition —

(i) the Commissioner is not required to make a separate calculation of foreign landholder duty in respect of the acquisition; and

(ii) the Commissioner may calculate foreign landholder duty in respect of all foreign landholder acquisitions forming part of the single acquisition as if all of the acquisitions had been made by a single foreign landholder acquisition.

*[Section 205ZK inserted: No. 24 of 2018 s. 8.]*

### 205ZKA. Modified application of s. 176 if entity becomes residential landholder because of acquisitions forming one arrangement

(1) This section modifies the application of section 176 in relation to an acquisition (the ***main acquisition***) of an interest in an entity (the ***main entity***) if —

(a) at the time the agreement for the main acquisition is made, the main entity is not a residential landholder in relation to the main acquisition; and

(b) after the agreement is made and either before or after it is completed, 1 or more other acquisitions of interests in entities occur; and

(c) as a result of the occurrence of the acquisition or acquisitions referred to in paragraph (b) —

(i) the main entity becomes a landholder in relation to the main acquisition because section 155(3) or 156A(3) becomes applicable; and

(ii) the main entity becomes a residential landholder in relation to the main acquisition because section 205ZG(2)(b) becomes applicable.

(2) From the time at which section 205ZG(2)(b) becomes applicable, the application of section 176 in relation to the main acquisition is modified as follows —

(a) section 176(2) applies in relation to the main acquisition subject to subsection (3) of this section;

(b) section 176(3) does not apply in relation to the main acquisition.

(3) For the purposes of sections 180(1) and 183, the main acquisition is taken to occur at the time at which section 205ZG(2)(b) becomes applicable.

*[Section 205ZKA inserted: No. 12 of 2019 s. 112.]*

## Division 7 — Interim assessment of foreign landholder duty

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZL. Interim assessment of foreign landholder duty

(1) The Commissioner may make an assessment (an ***interim assessment***) of a portion of the foreign landholder duty payable in respect of a foreign landholder acquisition if, under section 195A(1), the Commissioner makes an assessment of a portion of the landholder duty payable in respect of the acquisition.

(2) For the purposes of making an interim assessment, the foreign landholder duty payable is to be determined as if the portion of the value of the residential landholder were the full value of the residential landholder.

(3) The Commissioner can make a determination of a portion of the value of a residential landholder for the purposes of making an interim assessment even though the Commissioner has ascertained —

(a) the value of only some of the residential property or chattels to which section 186(1) applies; or

(b) only a portion of the value of particular residential property or chattels to which section 186(1) applies.

*[Section 205ZL inserted: No. 24 of 2018 s. 8.]*

## Division 8 — Exemptions and reassessment

*[Heading inserted: No. 24 of 2018 s. 8.]*

### Subdivision 1 — Exempt acquisitions

*[Heading inserted: No. 24 of 2018 s. 8.]*

#### 205ZM. Exemption or reduction of foreign landholder duty if foreign transfer duty would not be chargeable

(1) In this section —

***acquiring person***, in relation to an acquisition, means the person making the acquisition;

***notional transfer***, in relation to an acquisition, means a notional transaction consisting of the transfer, at the time of the acquisition, by the relinquishing person to the acquiring person of the relevant residential property, as if the relevant residential property were property of the relinquishing person;

***relevant residential property***, in relation to an acquisition of an interest in a residential landholder, means the residential property in Western Australia to which the landholder, and each linked entity in respect of the landholder, is entitled;

***relinquishing person***, in relation to an acquisition, means the person from whom the interest in the residential landholder was acquired.

(2) This section applies to an acquisition of an interest in a residential landholder if no foreign transfer duty would be chargeable, or foreign transfer duty would be chargeable only to a particular extent, on the notional transfer in relation to the acquisition.

(2A) If no foreign transfer duty would be chargeable on the notional transfer, the acquisition is exempt.

(2B) If foreign transfer duty would be chargeable on the notional transfer only to a particular extent, then despite Chapter 3 Part 6 Division 5, the amount of foreign landholder duty chargeable in respect of the acquisition is the amount of foreign landholder duty calculated under that Division in respect of the acquisition reduced by the same proportion as the proportion of the notional transfer on which no foreign transfer duty would be chargeable.

(3) For the purposes of this section, the acquiring person in respect of an acquisition to which section 205ZH(1)(a)(ii) applies is to be treated as if they were a foreign person.

(4) If the acquiring person did not acquire the interest in the residential landholder from another person, the reference to the relinquishing person in the definition of ***notional transfer*** in subsection (1) is to be read (according to what is relevant) as a reference to the or a person —

(a) whose interest in the landholder is decreased because of the acquisition; or

(b) whose interest in the landholder decreased resulting in the acquisition.

Note for this subsection:

An acquiring person may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

(5) This section does not apply if —

(a) no foreign transfer duty would be chargeable, or foreign transfer duty would be chargeable only to a particular extent, on the notional transfer because of an exemption or reduction under Chapter 6; or

(b) section 194 applies to the acquisition.

*[Section 205ZM inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 113.]*

### 205ZN. Exemption for certain acquisitions treated as made under agreement referred to in s. 176(2)

An acquisition is exempt if —

(a) for the purposes of an assessment, the acquisition was treated as having been made under an agreement of the kind referred to in section 176(2); and

(b) when the agreement is completed the acquirer is not a foreign person; and

(c) had the acquisition not been treated as mentioned in paragraph (a) the liability for foreign landholder duty in respect of the acquisition would not have arisen.

*[Section 205ZN inserted: No. 24 of 2018 s. 8.]*

## Subdivision 2 — Exemptions relating to construction, refurbishment and subdivision

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZO. Exemption relating to construction or refurbishment of 10 or more dwellings

(1A) In this section —

***substantial refurbishment*** does not include minor works to a building or part of a building.

(1) An acquisition is exempt if —

(a) when the acquisition occurs the residential landholder or a linked entity in respect of the landholder is entitled to a parcel of land and the landholder, linked entity or an associate of the landholder intends to —

(i) construct or complete the construction of 10 or more dwellings on the parcel of land; or

(ii) provide 10 or more dwellings on the parcel of land by carrying out, or completing the carrying out of, substantial refurbishment of a building, or

part of a building, that is not capable of being used solely or dominantly as a place of residence;

and

*[(b) deleted]*

(c) within the period of 5 years beginning on the day on which the acquisition occurs, the landholder, linked entity or associate complies with subsection (2) in relation to 10 or more dwellings; and

(d) the interest the subject of the acquisition has not been disposed of by the acquirer at the time the landholder, linked entity or associate complies with subsection (2) in relation to 10 or more dwellings; and

(e) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.

(2) A residential landholder, linked entity or associate of a residential landholder complies with this subsection in relation to —

(a) a dwelling the landholder, linked entity or associate intends to construct — if the landholder, linked entity or associate begins construction of that dwelling or another dwelling on the parcel of land; or

(b) a dwelling the landholder, linked entity or associate intends to provide by carrying out substantial refurbishment of a building, or part of a building — if all licences, approvals, registrations, exemptions and other kinds of authorisation necessary to carry out the refurbishment for that dwelling or another dwelling on the parcel of land are issued, granted or obtained; or

(c) a dwelling the landholder, linked entity or associate intends to complete the construction of — if that dwelling or another dwelling on the parcel of land, construction of which is completed by the landholder,

linked entity or associate, is ready for occupation as a place of residence; or

(d) a dwelling the landholder, linked entity or associate intends to provide by completing the carrying out of substantial refurbishment of a building, or part of a building — if that dwelling, or another dwelling on the parcel of land for which substantial refurbishment is completed by the landholder, linked entity or associate, is ready for occupation as a place of residence.

(3) For the purposes of subsection (2)(a), construction of a dwelling begins on —

(a) the day on which laying the foundations for the dwelling begins; or

(b) another day the Commissioner considers appropriate in the circumstances of the case.

(4) An application for reassessment under section 205ZR because of this section must be made on or before the later of the following —

(a) the last day of the period of 1 year beginning on the day on which the residential landholder, linked entity or associate complies with subsection (2) in relation to 10 or more dwellings;

(b) the last day of the period of 5 years beginning on the day on which the acquisition occurs.

*[Section 205ZO inserted: No. 24 of 2018 s. 8; amended: No. 29 of 2023 s. 6.]*

### 205ZP. Exemption relating to subdivision for purpose of constructing 10 or more dwellings

(1) An acquisition is exempt if —

(a) when the acquisition occurs, the residential landholder or a linked entity in respect of the landholder is entitled to a parcel of land and the landholder, linked entity or an

associate of the landholder intends to subdivide or complete subdividing the parcel of land for the purpose of a person constructing 10 or more dwellings on the land; and

*[(b) deleted]*

(c) within the period of 5 years beginning on the day on which the acquisition occurs, the landholder, linked entity or associate —

(i) begins subdividing the parcel of land; or

(ii) if subdividing the parcel of land has begun when the acquisition occurs, completes subdividing the parcel of land;

and

(d) the interest the subject of the acquisition has not been disposed of by the acquirer when the landholder, linked entity or associate —

(i) begins subdividing the parcel of land; or

(ii) if subdividing the parcel of land has begun when the acquisition occurs, completes subdividing the parcel of land;

and

(e) the parcel of land is, in the Commissioner's opinion, suitable for 10 or more dwellings.

(2) An application for reassessment under section 205ZR because of this section must be made on or before the later of the following —

(a) the last day of the period of 1 year beginning on the day on which the landholder, linked entity or associate —

(i) begins subdividing the parcel of land; or

(ii) if subdividing the parcel of land has begun when the acquisition occurs, completes subdividing the parcel of land;

(b) the last day of the period of 5 years beginning on the day on which the acquisition occurs.

(3) For the purposes of subsections (1)(c) and (d) and (2)(a) —

(a) a person begins subdividing land on the day on which the land is subdivided under the *Land Tax Assessment Act 2002* Glossary clause 3; and

(b) a person completes subdividing land on the day on which the new certificate of title is created and registered for the subdivided land.

*[Section 205ZP inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 114; No. 29 of 2023 s. 7.]*

### 205ZQ. Calculation of duty where some land of landholder not part of parcel of land

(1) This section applies to an acquisition referred to in section 205ZO or 205ZP if immediately before the acquisition the residential landholder, or a linked entity in respect of the landholder, is entitled to —

(a) a parcel of land referred to in section 205ZO or 205ZP; and

(b) other residential property in Western Australia.

(2) Section 166 is not applicable to or in relation to the acquisition.

(3) For the purposes of calculating foreign landholder duty in respect of the acquisition the residential property referred to in subsection (1)(a) is to be disregarded when determining the value of the landholder.

*[Section 205ZQ inserted: No. 24 of 2018 s. 8.]*

## Subdivision 3 — Reassessment

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZR. Reassessment

(1) The Commissioner, on the application of a person that has paid or is liable to pay foreign landholder duty, must reassess the liability to foreign landholder duty on an acquisition if the liability is affected by section 205ZN, 205ZO or 205ZP.

(2) An application for reassessment under this section must be made in the approved form.

(3) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment because of section 205ZO or 205ZP.

*[Section 205ZR inserted: No. 24 of 2018 s. 8.]*

## Division 9 — Lodgment of declaration

*[Heading inserted: No. 24 of 2018 s. 8.]*

### 205ZS. Foreign landholder duty declaration to be lodged

(1) A foreign landholder duty declaration must be lodged in respect of a foreign landholder acquisition.

(2) The foreign landholder duty declaration must be lodged on or before the day on which an acquisition statement or agreement is required to be lodged under section 200, 201(6) or 202(2) in respect of the acquisition.

*[Section 205ZS inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 115.]*

### 205ZT. Failure to lodge foreign landholder duty declaration

If a foreign landholder duty declaration is not lodged in accordance with section 205ZS(2), the following persons commit an offence —

(a) in every case, the foreign acquirer, other than a person whose interest in the residential landholder is, for the purposes of calculating the duty, an excluded interest under section 189;

(b) if the residential concerned is a corporation, the corporation;

(c) if the residential concerned is a unit trust scheme, the trustee of the scheme;

(d) a foreign person that is a related person in respect of a foreign acquirer (as defined in paragraph (a) of the definition of ***foreign acquirer*** in section 205ZD(1)) and has an interest in the residential landholder immediately after the foreign landholder acquisition, other than a person whose interest in the landholder is, for the purpose of calculating the foreign landholder duty, an excluded interest under section 189.

Penalty: a fine of $5 000.

*[Section 205ZT inserted: No. 24 of 2018 s. 8; amended: No. 12 of 2019 s. 116.]*

# Chapter 4 — Insurance duty

## Part 1 — Preliminary

### 206. Terms used

In this Chapter, unless the contrary intention appears —

***accident insurance*** means insurance for any payment agreed to be made —

(a) on the death of any person only from accident or violence or otherwise than from a natural cause; or

(b) as compensation for personal injury;

***contract of insurance*** has the meaning given in section 208;

***duty*** means duty under this Chapter;

***financial services licensee*** has the meaning given in the Corporations Act section 761A;

***general insurance*** has the meaning given in section 209;

***general insurer*** has the meaning given in section 214;

***insurer*** means a person that writes general insurance otherwise than as an intermediary of an insurer;

***intermediary***, of an insurer, means —

(a) a representative of the insurer; or

(b) a financial services licensee, that is not otherwise a representative of the insurer, that arranges or effects insurance for or with the insurer;

***interstate duty*** means duty chargeable in another State or a Territory that is of a similar nature to duty under this Chapter;

***life insurance*** means insurance provided under or in accordance with a policy of insurance or assurance on any life or lives or on any event or contingency relating to or depending on any life or lives, other than a policy of accident insurance;

***offshore risk insurance*** means any kind of insurance that is applicable to —

(a) property outside Australia; or

(b) a risk, contingency or event concerning an act or omission that, in the normal course of events, occurs outside Australia;

***premium*** has the meaning given in section 211;

***registered insurer*** means a general insurer that is registered under section 218;

***representative*** has the meaning given in the Corporations Act section 910A.

## Part 2 — Imposition of insurance duty

### 207. Insurance duty imposed

Duty is imposed on the premium paid in relation to a contract of insurance.

### 208. Contract of insurance

A ***contract of insurance*** is a contract that effects general insurance (whether or not it also effects other kinds of insurance).

### 209. General insurance

(1) ***General insurance*** is any kind of insurance that is applicable to —

(a) property in Western Australia; or

(b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, Western Australia,

or both.

(2) ***General insurance*** does not include any of the following —

(a) life insurance;

(b) insurance against an employer's liability to pay compensation under the ~~*Workers'*~~*Workers Compensation and Injury Management Act* ~~*1981*~~*2023*;

(c) reinsurance (that is, the indemnification of one party by another against liability or payment arising under a contract or contracts of insurance or reinsurance);

(d) insurance in respect of goods in the course of being transported, whether by rail, road, air or sea, and whether within Western Australia or elsewhere;

(e) insurance in respect of a marine hull used primarily for commercial purposes;

(f) insurance effected by an exempt body;

(g) insurance issued by a private health insurer (as defined in the *Private Health Insurance Act 2007* (Commonwealth) Schedule 1) in the course of its health insurance business (as defined in section 121-1 of that Act);

(h) insurance under the Defence Service Homes Insurance Scheme (as defined in the *Defence Service Homes Act 1918* (Commonwealth) section 38);

(i) offshore risk insurance;

(j) insurance of a prescribed class.

*[Section 209 amended: No. 21 of 2023 s. 709(2).]*

**210. Additional insurance in life insurance policy is general insurance**

(1) This section does not apply to a policy of life insurance unless the insured person's place of residence is in Western Australia.

(2) If —

(a) a policy of life insurance, in addition to providing life insurance, also provides for the payment of a benefit on the happening of a contingency or event that does not relate to or depend on a life or lives (the ***additional insurance***); and

(b) an identifiable part of the premium payable in respect of the policy is attributable to the additional insurance,

the additional insurance provided under or in accordance with the policy is taken to be general insurance and not life insurance for the purposes of this Chapter.

(3) Subsection (2) applies —

(a) whether or not the life insurance and the additional insurance are distinct matters; and

(b) whether or not payment of a benefit under the additional insurance component of the policy —

(i) will or may reduce the benefit payable under the life insurance component of the policy; or

(ii) will or may terminate the policy.

**211. Premium**

A ***premium*** is the total consideration paid to an insurer by or on behalf of an insured person to effect insurance, without deductions for any amounts paid or payable, or allowed or allowable, by way of commission or discount to an intermediary of the insurer, other than —

(a) an amount paid to an intermediary of the insurer by the insured person as a fee if the amount can be identified as a fee; or

(b) an amount paid to take account of duty or interstate duty.

### 212. When premium paid

For the purposes of this Chapter, a premium or an instalment of a premium is paid when the first of the following events occurs —

(a) the premium or the instalment is received by or on behalf of the insurer;

(b) an account of the insurer is credited with the amount of the premium or the instalment.

## Part 3 — Collection of insurance duty

### Division 1 — Liability

### 213. Who is liable to pay duty

Duty chargeable on the premium paid in relation to a contract of insurance is payable by —

(a) the insurer — if the insurer is a general insurer; or

(b) the insured person — if the insurer is not a general insurer.

### 214. General insurer

Any of the following insurers is a ***general insurer*** —

(a) an insurer that is either —

(i) authorised under the *Insurance Act 1973* (Commonwealth); or

(ii) registered under the *Life Insurance Act 1995* (Commonwealth);

(b) the Insurance Commission of Western Australia and any similar body of another State or a Territory that is prescribed for the purposes of this definition.

## Division 2 — Amount of insurance duty

### 215. Amount of duty payable

The amount of duty payable on a premium, or an instalment of a premium, is 10% of the amount of the premium, or instalment, that is attributable to general insurance.

### 216. Policies effecting general insurance and other insurance, duty on

(1) This section applies to a contract of insurance that effects both general insurance and one or more other kinds of insurance.

(2) The proportion of the premium that is attributable to general insurance is to be determined in accordance with the Apportionment Schedule or Schedules published by the Commissioner from time to time.

(3) The Commissioner must give notice in the *Gazette* of the publication of an Apportionment Schedule and include details of how a copy of the Schedule may be obtained.

(4) The Apportionment Schedule or Schedules are to provide the means for apportioning premiums having regard to —

(a) the principle that duty is chargeable on a premium paid in relation to a contract of insurance to the extent to which the contract of insurance is for general insurance; and

(b) avoiding payment of multiple duty as between Australian jurisdictions; and

(c) giving Australian jurisdictions their appropriate share of duty by means of the apportionment.

(5) A method of apportionment in an Apportionment Schedule may, for a particular class of contract of insurance, have the effect that the proportion of the premium that is attributable to general insurance is zero.

(6) If a premium has not been, or cannot be, appropriately apportioned under subsection (2), the Commissioner may —

(a) determine the appropriate proportions; and

(b) if necessary — reassess the amount of duty payable in relation to the contract of insurance.

(7) The extent to which an instalment of a premium is attributable to general insurance is the same as the extent to which the premium is attributable to general insurance.

## Division 3 — Insurers

### 217. General insurers to apply to be registered

(1) On becoming a general insurer, the insurer must apply to be registered under section 218.

(2) An application for registration must be made in the approved form on or before the 21st day after the end of the month in which the insurer became a general insurer.

Penalty: a fine of $20 000.

### 218. Registration of general insurers

(1) The Commissioner must register a general insurer that applies for registration.

(2) The Commissioner must register a general insurer that has not applied for registration if satisfied that the insurer ought to be registered for the purposes of this Chapter.

(3) The Commissioner must give notice to a general insurer of its registration.

### 219. Return period of registered insurer

The return period of a registered insurer is —

(a) if a special tax return arrangement is not in force — one month; or

(b) the return period provided in a special tax return arrangement in force under the Taxation Administration Act section 49.

### 220. Registered insurers to lodge returns

(1) A registered insurer must lodge a return in the approved form for each return period of the insurer on or before the 21st day after the end of the return period.

(2) On becoming a general insurer, the insurer must —

(a) for the month in which the insurer became a general insurer; and

(b) for each subsequent month until the month in which the insurer becomes a registered insurer or ceases to be a general insurer,

lodge a return in the approved form for the month on or before the 21st day after the end of the month.

(3) The month referred to in subsection (2) is to be treated as a return period for the purposes of this Chapter.

(4) A registered insurer that does not lodge a statement in accordance with subsection (1) commits an offence.

Penalty: a fine of $5 000.

(5) A general insurer that does not lodge a statement in accordance with subsection (2) commits an offence.

Penalty: a fine of $5 000.

(6) The requirement to lodge a return applies even if no duty is chargeable in the return period.

### 221. Time for payment of duty by insurers

The duty on a premium, or instalment of a premium, paid to a general insurer in a return period is due for payment on the last day for lodging the return under section 220(1) or (2) for that return period.

### 222. Cancelling registration of general insurers

(1) The Commissioner may cancel the registration of a general insurer on his or her own initiative or at the request of the insurer.

(2) The Commissioner is not to cancel a general insurer's registration unless registration of the insurer is no longer necessary for the purposes of this Chapter.

(3) A cancellation has effect on and from the day specified in the notice of cancellation of registration, which may be a day that is earlier than the day on which the notice is issued.

## Division 4 — Insured persons

### 223. Some insured persons to lodge statements

(1) A person liable to pay duty on a premium under section 213(b) (an ***insured person***) must lodge a statement in the approved form on or before the 21st day after the end of the month, or each month, in which the person paid the premium, or an instalment of the premium.

(2) A person that does not lodge a statement in accordance with subsection (1) commits an offence.

Penalty: a fine of $5 000.

(3) If a document contains all the information required in a statement referred to in subsection (1), the document may be lodged instead of the statement and, if it is, the person does not commit an offence under subsection (2).

### 224. Time for payment of duty by insured persons

The duty on a premium, or instalment of a premium, paid by an insured person in a month is due for payment on the last day for lodging the statement under section 223(1) for that month.

# Part 4 — General provisions as to insurance duty

## 225. Insurer and intermediary to notify Commissioner of contracts of insurance

(1) An insurer that is not a general insurer must, for each month in which the insurer is paid a premium or an instalment of a premium in respect of a contract of insurance entered into by or on behalf of the insurer, notify the Commissioner in the approved form of —

(a) each such contract of insurance for which the insurer has been paid a premium or an instalment of a premium in that month; and

(b) the amounts of those premiums or instalments,

on or before the 21st day after the end of the month.

Penalty: a fine of $5 000.

(2) An intermediary of an insurer that is not a general insurer must, for each month in which the intermediary receives a premium or an instalment of a premium in respect of a contract of insurance on behalf of the insurer, notify the Commissioner in the approved form of —

(a) each such contract of insurance for which the intermediary has received a premium or an instalment of a premium on behalf of the insurer; and

(b) the amounts of those premiums or instalments,

on or before the 21st day after the end of the month.

Penalty: a fine of $5 000.

(3) The Commissioner may make a special tax return arrangement under the Taxation Administration Act section 49 with a person referred to in subsection (1) or (2) that modifies the requirements in subsection (1) or (2) and the arrangement has effect accordingly.

(4) If a person complies with a requirement (including a modified requirement) in subsection (1) or (2) in respect of a contract of insurance then the requirement in the other subsection is taken to have been complied with in respect of that contract.

### 226. Refunds of duty if premium refunded

(1) If —

(a) a general insurer has paid duty in respect of a contract of insurance; and

(b) the insurer has refunded some or all of the premium for the contract,

the insurer is entitled to a refund of the duty paid to the extent to which the premium was refunded.

(2) If —

(a) a person has paid duty in respect of a contract of insurance; and

(b) the insurer has refunded some or all of the premium for the contract,

the person is entitled to a refund of the duty paid to the extent to which the premium was refunded.

(3) For the purposes of this section, an insurer refunds an amount of a premium if the insurer or an intermediary of the insurer —

(a) repays the amount to the insured person; or

(b) otherwise provides a benefit to the insured person to the value of the amount refunded.

### 227. Records to be kept

(1) A person that is liable to pay duty must keep —

(a) the records that are prescribed for the purposes of this section (if any); and

(b) any other records necessary to enable the Commissioner to determine the person's liability to pay duty.

Penalty: a fine of $20 000.

(2) A person referred to in section 225(1) or (2) must keep the records necessary to enable the Commissioner to verify the information in any notice.

Penalty: a fine of $20 000.

# Chapter 5 — Vehicle licence duty

## Part 1 — Preliminary

### 228. Terms used

In this Chapter, unless the contrary intention appears —

***caravan*** means a trailer (including a camper trailer) permanently fitted for human habitation in the course of a journey;

***CEO*** has the meaning given in the *Road Traffic (Administration) Act 2008* section 4;

***charitable organisation*** means a charitable institution or public benevolent institution endorsed by the Commissioner of Taxation of the Commonwealth under the *Income Tax Assessment Act 1997* (Commonwealth) as a deductible gift recipient or as exempt from income tax;

***corresponding State law*** means a law of another State or a Territory that corresponds to the Vehicles Act;

***dealer*** means any of the following —

(a) a person that carries on the business of selling new vehicles;

(b) a person that is the holder of a dealer's licence under the *Motor Vehicle Dealers Act 1973*;

(c) a person that carries on the business of acquiring new or used vehicles for resale or disposal under hire purchase or leasing agreements;

(d) a person that, in the course of the person's business, takes possession of and resells vehicles that are the subject of mortgages, charges or hire purchase or leasing agreements;

***duty*** means duty under this Chapter;

***grant***, in respect of a licence for a vehicle, does not include renew;

***heavy vehicle*** has the meaning given in the Vehicles Act;

***licence*** has the meaning given in section 230(2) and (3);

***motor vehicle*** has the meaning given in the *Road Traffic (Administration) Act 2008* section 4, but does not include a trailer, semi-trailer or caravan;

***new vehicle*** means —

(a) a vehicle that has not been used; or

(b) a vehicle that has only been used for a purpose referred to in section 246(1)(a) or (3)(a) or 247(1)(a), other than a vehicle that has been used for a purpose referred to in section 246(1)(a)(ii) or (3)(a) or 247(1)(a) for a period of more than 2 months;

***trailer*** means a vehicle designed to be drawn by another vehicle;

***vehicle*** has the meaning given in section 230(1);

***Vehicles Act*** means the *Road Traffic (Vehicles) Act 2012*.

*[Section 228 amended: No. 8 of 2012 s. 90 and 95; No. 16 of 2022 s. 7.]*

## Part 2 — Imposition of vehicle licence duty

### 229. Vehicle licence duty imposed

Duty is imposed on the grant or transfer of a licence for a vehicle.

### 230. Vehicle and licence

(1) A ***vehicle*** is a vehicle that is required to be licensed under the Vehicles Act, other than a caravan.

(2) A ***licence***, in respect of a vehicle, is a licence for the vehicle granted under the Vehicles Act.

(3) A duplicate licence or a certified copy of the licence granted under the Vehicles Act is not a ***licence***.

*[Section 230 amended: No. 8 of 2012 s. 91 and 95.]*

# Part 3 — Collection of vehicle licence duty

## Division 1 — Preliminary

### 231. Terms used

In this Part —

***dutiable value***, of a vehicle, means the dutiable value worked out in respect of the vehicle under Division 5;

***optional feature***, of a vehicle, means a feature of any of the following types that is not a standard feature of a vehicle of that make and model —

(a) any particular kind of transmission in a vehicle;

(b) any particular kind of engine in a vehicle;

(c) any other prescribed feature in or of a vehicle;

***purchase price***, in respect of a vehicle, includes any of the following —

(a) an amount allowed by the seller on a trade-in or an exchange of any article;

(b) an amount paid to the seller for anything included with or incorporated into the vehicle;

(c) an amount paid to the seller for the preparation of the vehicle for delivery to the purchaser;

***specialised equipment*** means any of the following —

(a) a crane;

(b) an excavator, road roller, road grader, bulldozer, mechanical shovel, plough, rotary hoe or similar plant;

(c) hoisting equipment for lifting, partially lifting or towing other vehicles;

(d) bitumen spraying equipment;

(e) a cement agitator;

(f) garbage collection equipment;

(g) road sweeping equipment;

(h) a refrigeration unit;

(i) a stock crate;

(j) a tank for transporting liquids;

(k) equipment to make the vehicle habitable by a person in the course of a journey;

(l) any similar plant or equipment;

***specialised vehicle*** means a motor vehicle that —

(a) is constructed or designed, or has been modified, to include or have specialised equipment permanently attached to it; and

(b) is designed to be driven or controlled by a person carried in or on the vehicle.

## Division 2 — Liability

### 232. Who is liable to pay duty

(1) Duty chargeable on the grant or transfer of a licence for a vehicle is payable by the person in whose name the licence for the vehicle is granted, or the transferee.

(2) A person that ceases to be the owner of a vehicle, or a dealer that sells a new vehicle, is also liable to pay the duty chargeable on the grant or transfer of the licence for the vehicle in the circumstances and to the extent set out in section 252.

## Division 3 — Assessment and payment of vehicle licence duty

### 233. Assessment of duty

(1) When an application is made for the grant or transfer of a licence for a vehicle the CEO must assess the liability to duty of the grant or transfer.

(2) The assessment is to be based on the dutiable value of the vehicle at the time of the grant or transfer of the licence unless a provision of this Chapter otherwise provides.

(3) An assessment made under subsection (1), or a reassessment made under section 244B(2) by the CEO, is taken to be an official assessment for the purposes of the Taxation Administration Act.

*[Section 233 amended: No. 8 of 2012 s. 96; No. 16 of 2022 s. 8.]*

### 234. Applicant for licence to state dutiable value of vehicle etc.

(1) A person that applies for the grant or transfer of a licence for a vehicle must include in the application a statement signed by the applicant setting out —

(a) the applicant's estimate of the dutiable value of the vehicle at the time of the application; and

(b) if the applicant is a purchaser of the vehicle — the purchase price of the vehicle.

Penalty: a fine of $20 000.

(2) For the purpose of determining the dutiable value of the vehicle the CEO may, by notice given to the applicant, require the applicant to give the CEO evidence of the dutiable value of the vehicle.

(3) The applicant must comply with the requirement in subsection (2) within the period stated in the notice.

Penalty: a fine of $20 000.

(4) This section does not apply to, or in respect of, a person if —

(a) under Part 4 Division 1 or 2 — duty is not chargeable on the grant or transfer of a licence for the vehicle; or

(b) under Part 4 Division 3 — nominal duty is chargeable on the grant or transfer of a licence for the vehicle.

*[Section 234 amended: No. 8 of 2012 s. 96.]*

### 235. Payment of duty

Duty chargeable on the grant or transfer of a licence for a vehicle and any penalty tax is payable —

(a) to the CEO in accordance with the Vehicles Act; or

(b) if an assessment is made by the Commissioner — in accordance with the Taxation Administration Act.

*[Section 235 amended: No. 8 of 2012 s. 95 and 96.]*

## Division 4 — Amount of vehicle licence duty

### 236. Amount of duty payable

(1) The amount of duty payable on the grant or transfer of a licence for a vehicle is worked out under this section (rounded down to the nearest 5 cents) unless section 250 applies to the grant or transfer of the licence.

(2) For the grant or transfer of a licence for a vehicle that is not a heavy vehicle, the amount of duty is —

(a) if the dutiable value of the vehicle does not exceed $25 000 — 2.75% of the dutiable value; or

(b) if the dutiable value of the vehicle exceeds $25 000 but does not exceed $50 000 — R% of the dutiable value,

where R is determined in accordance with the following formula —

$$R = \left[ 2.75 + \left( \frac{DV - 25000}{6666.66} \right) \right]$$

(rounded to 2 decimal places);

where —

DV is the dutiable value;

or

(c) if the dutiable value of the vehicle exceeds $50 000 — 6.5% of the dutiable value.

(3) For the grant or transfer of a licence for a heavy vehicle, the amount of duty is the lesser of —

(a) 3% of the dutiable value; and

(b) $12 000.

*[Section 236 amended: No. 12 of 2008 s. 24.]*

## Division 5 — Dutiable value of a vehicle

### 237. Certain new vehicles, dutiable value of

(1) The dutiable value of a vehicle —

(a) that is a new vehicle; and

(b) that is of a class prescribed for the purposes of this section; and

(c) for which a price has been fixed by the manufacturer, importer or principal distributor as the retail selling price in Western Australia of a vehicle of that make and model,

is the sum of —

(d) the price fixed as described in paragraph (c); and

(e) for each optional feature in or of the vehicle — the additional amount fixed by the manufacturer, importer or principal distributor for the retail sale in Western Australia of the optional feature.

(2) This section has effect subject to section 239.

### 238. Certain other vehicles, dutiable value of

(1) The dutiable value of a vehicle that is not a vehicle to which section 237 applies is the amount for which the vehicle might reasonably be sold, free of encumbrances, in the open market.

(2) This section has effect subject to section 239.

### 239. Specialised vehicles, dutiable value of

(1) Section 237 or 238 (whichever is relevant) applies in respect of a vehicle that is a specialised vehicle (***vehicle B***), as if the specialised equipment attached to it at the time of the application for the grant or transfer of the licence for the vehicle were not attached to it, if —

(a) the applicant holds, or previously held, the licence for another specialised vehicle (***vehicle A***); and

(b) the applicant is the last person to hold a licence for vehicle A; and

(c) the duty paid by the applicant on the grant or transfer of the licence for vehicle A was assessed on the dutiable value of vehicle A including the value of the specialised equipment that was then attached to it; and

(d) the specialised equipment referred to in paragraph (c) has been removed from vehicle A and attached to vehicle B; and

(e) the application for the grant or transfer of the licence for vehicle B is accompanied by, or includes, a declaration in the approved form to the effect that, in the applicant's opinion, the circumstances in paragraphs (a) to (d) apply

and that the applicant understands the effect of subsections (2) and (3).

(2) If —

(a) duty on the grant or transfer of a licence for a specialised vehicle to a person was assessed on a dutiable value worked out under subsection (1); and

(b) while that person holds the licence for that vehicle it is used with specialised equipment other than the equipment that was attached to it at the time the application for the grant or transfer of the licence was made (the ***original equipment***),

the person must not attach the original equipment to any other vehicle for which the licensee intends to become the licence holder.

Penalty: a fine of $20 000.

(3) If a person contravenes subsection (2) —

(a) subsection (1) is taken not to have applied in respect of the vehicle at the time of the grant or transfer of the licence for the vehicle; and

(b) penalty tax is imposed on the grant or transfer of the licence of an amount equal to the difference between —

(i) the amount of duty that was originally payable on the grant or transfer; and

(ii) the amount of duty payable because of paragraph (a);

and

(c) the penalty tax and the unpaid amount of the duty payable because of paragraph (a) is due for payment within one month after the date of an assessment notice issued in relation to an assessment of the duty and penalty tax.

# Part 4 — Exemptions and nominal duty

## Division 1 — Exemptions — general

### 240. If no vehicle licence fee payable under Vehicles Act

(1) Duty is not chargeable on the grant of a licence for a vehicle if no fee is payable under the Vehicles Act section 7(3).

(2) Duty is not chargeable on the transfer of a licence for a vehicle if no fee would have been payable under the Vehicles Act section 7(3) for the grant of a licence to the transferee for the vehicle on the day of the transfer.

*[Section 240 amended: No. 8 of 2012 s. 92.]*

### 241. If transfer is a reconstruction transaction

Duty is not chargeable on the transfer of a licence for a vehicle if an exemption certificate issued under section 263(3)(a) in respect of the transfer is given to the CEO.

*[Section 241 amended: No. 8 of 2012 s. 96.]*

### 242. If vehicle previously licensed to licence holder

(1) Duty is not chargeable on the grant of a licence for a vehicle to a person if the vehicle was, before the grant of that licence, last licensed or registered in that person's name under —

(a) the Vehicles Act; or

(b) a corresponding State law; or

(c) a law of a country other than Australia that corresponds to the Vehicles Act.

(2) Subsection (1) does not apply to the grant of a licence to a person for a heavy vehicle that was, before the grant of that licence, last licensed or registered in the person's name under a corresponding State law if the vehicle was registered in that person's name under the *Interstate Road Transport Act 1985* (Commonwealth) on or after 16 January 1997.

(3) Subsection (1) does not apply to the grant of a licence for a vehicle, or is taken not to have applied to the grant of a licence for a vehicle at the time of the grant, if the Commissioner is satisfied, or becomes satisfied after the grant of the licence, that the vehicle was licensed or registered outside of Western Australia as part of a course of action or conduct having the sole or dominant purpose of avoiding or reducing duty.

(4) The duty chargeable because of subsection (3) is due for payment within one month after the date of an assessment notice issued in relation to an assessment of that duty.

(5) In this section, a reference to a vehicle includes a reference to a vehicle that was modified or that was part of a vehicle that was modified, whether or not the vehicle that resulted from the modification needed to meet a standard or requirement before it could be licensed that was different to the one that the original vehicle had to meet.

*[Section 242 amended: No. 8 of 2012 s. 95.]*

### 243. If licence is for certain heavy vehicle

Duty is not chargeable on the grant of a licence for a heavy vehicle to a person if —

(a) the vehicle was, immediately before 16 January 1997, registered in that person's name under the *Interstate Road Transport Act 1985* (Commonwealth); and

(b) since 16 January 1997, no licence or registration has been granted under the *Road Traffic Act 1974* or the Vehicles Act or a corresponding State law for the vehicle in any other person's name.

*[Section 243 amended: No. 8 of 2012 s. 93.]*

### 244A. If transfer is between spouses or de facto partners

(1) In this section —

***car or bus*** means a motor vehicle, other than a motor cycle, or a motorised wheelchair, built mainly to carry people and includes the type of vehicle known as a utility;

***de facto partners of 2 years*** has the meaning given in section 9;

***goods vehicle*** means a motor vehicle built or modified to be used primarily to carry goods or materials used in any trade, business or industry;

***motor cycle*** means a motor vehicle, other than a motorised wheelchair or a goods vehicle, that is not equipped with a permanent cab and cab roof and that —

(a) is designed to travel on 2 wheels or, with a sidecar attached, 3 wheels; or

(b) has 3 wheels arranged so that the axis of rotation of 2 wheels lies on the same straight line and each of those 2 wheels is equidistant from the third;

***motorised wheelchair*** means a chair-type vehicle that —

(a) is fitted with 3 or more wheels; and

(b) is fitted and designed only for the use of persons with a physical disability.

(2) Duty is not chargeable on the transfer of a licence for a vehicle if subsections (3), (4), (5) and (6) apply.

(3) This subsection applies if the person from whom, and the person to whom, the licence is transferred are married to each other or are de facto partners of 2 years.

(4) This subsection applies if neither the person from whom, nor the person to whom, the licence is transferred holds the vehicle as trustee of a trust.

(5) This subsection applies if the vehicle is a car or bus or a goods vehicle —

(a) with an unloaded mass that does not exceed 3 000 kg; and

(b) that is not a heavy vehicle; and

(c) that is to be used exclusively for social, domestic or pleasure purposes and is not to be used in any trade, business or industry or for the carrying of passengers, or goods, for hire or reward.

(6) This subsection applies if the application for the transfer of the licence is accompanied by, or includes, a declaration in the approved form to the effect that the circumstances described in subsections (3), (4) and (5) apply.

*[Section 244A inserted: No. 27 of 2011 s. 4; amended: No. 8 of 2012 s. 94; No. 12 of 2019 s. 117.]*

### 244B. If agreement for purchase of vehicle is terminated or vehicle is returned

(1) Duty is not chargeable on the grant or transfer of a licence for a vehicle if —

(a) the application for the grant or transfer of the licence is the result of an agreement for a person (the ***purchaser***) to purchase the vehicle from another person (the ***seller***); and

(b) either —

(i) the agreement is rescinded, annulled or otherwise terminated before the purchaser takes possession of the vehicle; or

(ii) after the purchaser takes possession of the vehicle, the purchaser returns the vehicle for a refund or a replacement vehicle and the return is accepted;

and

(c) any money that is refundable on the occurrence of the relevant event referred to in paragraph (b) is refunded to the purchaser.

(2) The appropriate reassessment officer must, on application in the approved form, make any reassessment necessary as a result of the operation of subsection (1).

(3) In subsection (2) —

***appropriate reassessment officer*** means —

(a) the CEO if —

(i) the seller is a dealer; and

(ii) the application for the grant or transfer of the licence to the purchaser is made by the seller; and

(iii) the agreement is rescinded, annulled or otherwise terminated before the purchaser takes possession of the vehicle as referred to in subsection (1)(b)(i);

or

(b) otherwise — the Commissioner.

(4) The time limits in the Taxation Administration Act section 17 apply to a reassessment under subsection (2), whether made by the CEO or the Commissioner.

(5) If, as the result of a reassessment made by the CEO under subsection (2), it appears that an overpayment of tax has been made, the CEO must refund the tax.

(6) Despite the Taxation Administration Act section 16(1)(c), the Commissioner is not required to make a reassessment under that section if tax is refundable by the CEO under subsection (5).

(7) If duty is not chargeable on the grant or transfer of a licence for a vehicle under subsection (1), duty is also not chargeable on a subsequent transfer of the licence for the vehicle from the

purchaser to the seller if the application for the subsequent transfer is made as a result of the occurrence of the relevant event referred to in subsection (1)(b).

*[Section 244B inserted: No. 16 of 2022 s. 9.]*

### 244. If licence is for prescribed class of person or vehicle etc.

Duty is not chargeable on the grant of a licence for a vehicle to a person if —

(a) the vehicle is in a prescribed class of vehicle; and

(b) the person is in a prescribed class of person; and

(c) the vehicle is used, or to be used, for a prescribed purpose.

## Division 2 — Exemptions — motor vehicle dealers

### 245. Use of vehicle includes for minor incidental purposes

A reference in this Division to the use of a vehicle for a purpose referred to in section 246(1)(a), (2)(a) or (3)(a) or 247(1)(a) includes a reference to its use for that purpose and for minor incidental purposes.

*[Section 245 amended: No. 16 of 2022 s. 10.]*

### 246. If licence is for vehicle in dealer's trading stock, demonstrator vehicle or service demonstrator vehicle

(1) Duty is not chargeable on the grant of a licence for a vehicle to a dealer if —

(a) the dealer acquired the vehicle solely for the purpose of —

(i) selling it to another person in the ordinary course of the dealer's business; or

(ii) demonstrating it to prospective purchasers;

and

(b) the application for the grant of the licence is accompanied by, or includes, a declaration in the approved form to the effect that —

(i) while the dealer holds the licence the vehicle will not be used for any purpose other than a purpose referred to in paragraph (a), subsection (3)(a) or section 247(1)(a); and

(ii) the dealer understands the effect of sections 248 and 249.

(2) Duty is not chargeable on the transfer of a licence for a vehicle to a dealer, if —

(a) the dealer has acquired the vehicle solely for the purpose of reselling it to another person in the ordinary course of the dealer's business; and

(b) the application for the transfer of the licence is accompanied by, or includes, a declaration in the approved form to the effect that —

(i) while the dealer holds the licence the vehicle will not be used for any purpose other than a purpose referred to in paragraph (a) or section 247(1)(a); and

(ii) the dealer understands the effect of sections 248 and 249.

(3) Duty is not chargeable on the grant of a licence for a vehicle to a dealer if —

(a) the dealer acquired the vehicle solely for the purpose of using it as a service demonstrator vehicle; and

(b) at the time of acquisition, the vehicle has not been used; and

(c) the application for the grant of the licence is accompanied by, or includes, a declaration in the approved form to the effect that —

(i) while the dealer holds the licence the vehicle will not be used for any purpose other than a purpose referred to in paragraph (a), subsection (1)(a) or section 247(1)(a); and

(ii) the dealer understands the effect of sections 248 and 249.

(4) For the purposes of subsection (3)(a), a vehicle is used as a service demonstrator vehicle if —

(a) a dealer uses the vehicle to loan to customers while their vehicles are being serviced or repaired, or otherwise undergoing mechanical work undertaken, by or on behalf of the dealer; and

(b) each loan to a customer referred to in paragraph (a) is made —

(i) without charge or for a nominal charge only; and

(ii) for the purpose of demonstrating the vehicle to encourage the customer to purchase a new vehicle of the same make, model and model year from the dealer;

and

(c) the vehicle is of a make of vehicles that the dealer is authorised to supply under an agreement or arrangement with the manufacturer or principal distributor; and

(d) the model year of the vehicle is the latest model year released by the manufacturer in Australia for that model of vehicle.

*[Section 246 amended: No. 16 of 2022 s. 11.]*

### 247. If licence is for vehicle used for charitable etc. purposes

(1) Duty is not chargeable on the grant or transfer of a licence for a vehicle to a dealer if —

(a) the vehicle is to be loaned by the dealer —

(i) to a charitable organisation to be used solely for providing assistance to underprivileged or disadvantaged persons; or

(ii) to a charitable organisation to be used solely for providing emergency assistance; or

(iii) to a school (within the meaning given in the *School Education Act 1999*) to be used solely for student driver training; or

(iv) to an individual solely for a philanthropic purpose approved by the Commissioner; or

(v) solely for a prescribed purpose;

and

(b) the application for the grant or transfer of the licence is accompanied by, or includes, a declaration in the approved form to the effect that —

(i) while the dealer holds the licence the vehicle will not be used for any purpose other than a purpose referred to in paragraph (a) or section 246(1)(a), (2)(a) or (3)(a); and

(ii) the dealer understands the effect of sections 248 and 249.

(2) The Commissioner may approve a philanthropic purpose for the purposes of subsection (1)(a)(iv) for a particular dealer or class of dealer, and the approval may take effect from a day that is earlier than the day on which the Commissioner grants the approval.

(3) Subject to the Taxation Administration Act section 17, the Commissioner must make any reassessment necessary to give effect to subsection (2).

*[Section 247 amended: No. 16 of 2022 s. 12.]*

### 248. Change of permitted use of exempt vehicle, Commissioner to be notified

If, under section 246(1), (2) or (3) or 247(1), no duty was chargeable on the grant or transfer of a licence for a vehicle to a dealer and the dealer uses, or allows another person to use, the vehicle for a different purpose referred to in section 246(1)(a), (2)(a) or (3)(a) or 247(1)(a), the dealer must notify the Commissioner, in the approved form, of the change in use within one month after the day on which the use of the vehicle changed.

Penalty: a fine of $5 000.

*[Section 248 amended: No. 16 of 2022 s. 13.]*

### 249. Change of use of exempt vehicle to non-permitted use, consequences of

(1) If, under section 246(1), (2) or (3) or 247(1), no duty was chargeable on the grant or transfer of a licence for a vehicle to a person that is or was a dealer, then while the person remains the licensee of the vehicle the person must not use, or allow any other person to use, the vehicle for a purpose other than a purpose referred to in section 246(1)(a), (2)(a) or (3)(a) or 247(1)(a) unless the person notifies the Commissioner, in the approved form, of the change in use within one month after the day on which the use of the vehicle changed.

Penalty for this subsection: a fine of $20 000.

(2) If a person notifies the Commissioner as required under subsection (1) —

(a) section 246 or 247 (whichever is relevant) is taken not to have applied to the grant or transfer of the licence at the time of the grant or transfer of the licence; and

(b) the duty chargeable on the grant or transfer of the licence because of paragraph (a) is due for payment within one month after the date of an assessment notice issued in relation to an assessment of that duty.

(3) If duty is chargeable on the grant or transfer of the licence because of subsection (2)(a), then, for the purposes of working out the amount of duty payable, the dutiable value of the vehicle is to be determined as at the time of the change in use.

(4) If a person contravenes subsection (1) —

(a) section 246 or 247 (whichever is relevant) is taken not to have applied to the grant or transfer of the licence at the time of the grant or transfer of the licence; and

(b) penalty tax is imposed on the grant or transfer of the licence of an amount equal to the amount of duty payable on the grant or transfer of the licence because of paragraph (a); and

(c) the duty and penalty tax is due for payment within one month after the date of an assessment notice issued in relation to an assessment of the duty and penalty tax.

*[Section 249 amended: No. 16 of 2022 s. 14.]*

## Division 3 — Nominal duty

### 250. Transactions chargeable with nominal duty

(1) This section applies to the transfer of a licence for a vehicle that is the result of a transfer of the vehicle within the meaning of Chapter 2.

(2) If, on application, the Commissioner is satisfied that —

(a) if the transfer of the vehicle were to be treated as a dutiable transaction — section 29, 114, 115, 116, 117 or 119 would apply to the transfer; and

(b) nominal duty would be chargeable under that section as so applying,

nominal duty is chargeable on the transfer of the licence and the Commissioner may issue a certificate under this section to that effect.

(3A) For the purposes of subsection (2), section 116 has effect as if the requirement in section 116(2)(a) that the declaration of trust be duty endorsed or an exempt transaction were instead a requirement that duty under this Chapter was paid on the transfer of the licence for the vehicle to the trustee or was not chargeable on that transfer.

(3) If, on application, the Commissioner is satisfied that —

(a) the transfer of the vehicle is of a class prescribed for the purposes of this subsection; and

(b) the transfer does not pass, or is not part of a scheme or arrangement that passes, a beneficial interest in the vehicle,

nominal duty is chargeable on the transfer of the licence and the Commissioner may issue a certificate under this section to that effect.

(4) An application for a certificate must be in the approved form.

(5) If the transfer of the vehicle were to be treated as a dutiable transaction and nominal duty would be chargeable on the transfer under section 131 or 139, nominal duty is payable on the transfer of the licence.

(6) If —

(a) the transfer of the licence was chargeable with duty other than nominal duty; and

(b) the transfer of the vehicle is in accordance with —

(i) a matrimonial instrument or de facto relationship instrument that came into existence; or

(ii) an instrument that became a matrimonial instrument or de facto relationship instrument,

within the period of 12 months after the day on which liability to duty arose,

the Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the transfer of the licence under subsection (5) as if the transfer of the vehicle were treated as a dutiable transaction.

(7) For the purposes of subsection (6), the Taxation Administration Act section 17 applies as if references in subsections (1) and (4) of that section to when the original assessment was made were references to —

(a) the day on which the matrimonial instrument or de facto relationship instrument came into existence; or

(b) the day on which the instrument became a matrimonial instrument or de facto relationship instrument,

as the case may be.

(8) If this section uses a term that is used in Chapter 2, the term has the same meaning in this section as it has in Chapter 2 unless the contrary intention appears in this section.

*[Section 250 amended: No. 32 of 2012 s. 24; No. 16 of 2022 s. 15.]*

# Part 5 — General provisions as to vehicle licence duty

## 251. Failure to apply for transfer of licence

(1) If a person fails to apply for the transfer of a licence for a vehicle when required to do so by the Vehicles Act then, for the purposes of assessing duty —

(a) the transfer of the licence is taken to have occurred on the day chosen by the Commissioner; and

(b) the failure is taken to be a contravention of a taxation Act for the purposes of the Taxation Administration Act section 26.

(2) In choosing a day under subsection (1)(a), the Commissioner is to choose a day on which, in the ordinary course of events, the transfer would have been likely to have occurred if the person had complied with the person's obligations under the Vehicles Act and this Act.

*[Section 251 amended: No. 8 of 2012 s. 95.]*

## 252. Seller to state dutiable value of vehicle etc.

(1) A person that ceases to be the owner of a vehicle and is required under the Vehicles Act to notify the CEO of the new owner must include in that notice a statement signed by the person setting out —

(a) the purchase price (if any) of the vehicle; and

(b) the person's estimate of the dutiable value of the vehicle at the time the person ceased to be the owner of it.

Penalty: a fine of $20 000.

(2) Subsection (1) does not apply to a person if —

(a) under Part 4 Division 1 or 2 — duty is not chargeable on the grant or transfer of a licence for the vehicle; or

(b) under Part 4 Division 3 — nominal duty is chargeable on the grant or transfer of a licence for the vehicle.

(3) A dealer that sells a new vehicle must, within 7 days after the day of the sale, give to the CEO a statement signed by the dealer setting out —

(a) the purchase price of the vehicle; and

(b) the dealer's estimate of the dutiable value of the vehicle at the time the vehicle was sold.

Penalty: a fine of $20 000.

(4) If —

(a) a person understates, in a statement under this section, the purchase price or estimated dutiable value of a vehicle; and

(b) duty payable on the grant or transfer of the licence for that vehicle is initially assessed on a value of the vehicle that is less than the proper dutiable value,

the person is jointly and severally liable with the purchaser to pay the difference between the amount of duty as initially assessed and the amount of duty assessed on the vehicle's proper dutiable value.

*[Section 252 amended: No. 8 of 2012 s. 95 and 96.]*

## 253. Functions of CEO and Commissioner

(1) For the purposes of this Chapter the CEO has the functions of the Commissioner under the Taxation Administration Act sections 26 and 29, which are modified to the extent necessary to give effect to this subsection.

(2) For the purposes of the Taxation Administration Act anything done by the CEO in the exercise of a function conferred by subsection (1) is taken to have been done by the Commissioner.

(3) The Commissioner has all of the functions of the CEO under this Chapter, which is modified to the extent necessary to give effect to this subsection.

*[Section 253 amended: No. 8 of 2012 s. 96.]*

### 254. Form of certain declarations

A declaration for the purposes of section 239(1)(e), 246(1)(b), (2)(b) or (3)(c) or 247(1)(b) must be signed by the person making the application for the grant or transfer of the licence.

*[Section 254 amended: No. 16 of 2022 s. 16.]*

### 255. CEO's duties

The CEO must, in accordance with any agreement between the CEO and the Commissioner —

(a) give to the Commissioner details of licences granted or transferred and the duty and any penalty tax paid in respect of them; and

(b) credit the amount of duty and penalty tax paid to the CEO, other than any amount refunded under section 244B(5), to the Commissioner.

*[Section 255 amended: No. 8 of 2012 s. 96; No. 16 of 2022 s. 17.]*

### 256. Records to be kept by dealers

A dealer must keep —

(a) the records that are prescribed for the purposes of this Chapter (if any); and

(b) any other records necessary to enable the Commissioner to determine the dealer's liability to pay duty.

Penalty: a fine of $20 000.

# Chapter 6 — Certain exemptions for connected entities

## 257. Terms used

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

***entity*** means —

(a) a corporation; or

(b) a unit trust scheme;

***exemption*** means an exemption granted under section 263(1);

***family*** has the meaning given in section 258;

***notifiable event*** has the meaning given by section 264(2) and (3);

***parent entity*** has the meaning given in subsection (2);

***public float*** means —

(a) the securities of an entity being offered for sale or issue to the public for the purpose of listing the entity on a prescribed financial market; or

(b) the securities of an entity being listed on a prescribed financial market within 12 months after being offered to the public as referred to in paragraph (a);

***relevant consolidation transaction*** has the meaning given in section 259;

***relevant reconstruction transaction*** has the meaning given in section 260;

***relevant transaction*** means —

(a) a relevant consolidation transaction; or

(b) a relevant reconstruction transaction;

***security*** —

(a) in relation to an entity that is a corporation —

(i) means an issued share of the corporation; and

(ii) if the corporation is a hybrid company — includes an interest that the Commissioner considers is analogous to an issued share of the corporation;

or

(b) in relation to an entity that is a unit trust scheme — means a unit issued under the scheme;

***subsidiary*** has the meaning given in subsection (2);

***transaction group*** for a relevant consolidation transaction means the head entity and the affected entity;

***transaction group*** for a relevant reconstruction transaction means —

(a) those members of the family that are parties to the transaction; and

(b) any other member of the family whose holdings of securities and control of votes mean, under subsection (2) —

(i) that the relationship between the parties to the transaction is that of a parent entity and a subsidiary; or

(ii) if the parties are not so related, that the parties are subsidiaries of the same parent entity.

(2) If a corporation, or the trustee of a unit trust scheme as trustee, (***A***) directly or indirectly —

(a) holds at least 90% of the securities of another entity (***B***); and

(b) controls (either by being able to cast or to control the casting of) at least 90% of the maximum number of votes that may be cast at a general meeting of B,

then, for the purposes of this Chapter, A is the parent entity of B and B is a subsidiary of A.

(3) A reference in section 260 or 264A to residential property includes a reference to a chattel in Western Australia to which section 205E(2) applies.

*[Section 257 amended: No. 12 of 2019 s. 118.]*

### 258. Members of family

(1) A parent entity and its subsidiaries are members of a family.

(2) If all of the securities of an entity are stapled to the securities of one or more other entities, all of the entities and their subsidiaries are members of a family.

### 259. Relevant consolidation transaction

(1) In this section —

***corporate consolidation*** means the formation of a family by the interposition of an entity (the ***head entity***) between another entity (the ***affected entity***) and the holders of the affected entity's securities.

(2) Subject to this section, a ***relevant consolidation transaction*** is any acquisition on which landholder duty or foreign landholder duty is chargeable that is made solely for the purposes of a corporate consolidation and that is —

(a) an acquisition of securities of the affected entity by the head entity for which the only consideration given by the head entity is the issue or transfer of its securities to the person from whom the affected entity's securities were acquired; or

(b) an acquisition of securities of the head entity by a holder of securities of the affected entity.

(3) An acquisition is not a ***relevant consolidation transaction*** if, immediately before the acquisition, the head entity held dutiable property or a vehicle or an interest in an entity.

(4) An acquisition is not a ***relevant consolidation transaction*** unless, immediately after the issue or transfer of the head entity's securities —

(a) each person that holds those securities (a ***security holder***) is a person that held securities of the affected entity immediately before the securities of the affected entity were acquired by the head entity; and

(b) the proportion of those securities that each security holder holds is the same proportion as that security holder held of the securities of the affected entity.

(5) An acquisition is not a ***relevant consolidation transaction*** if any part of the consideration for the acquisition, or an associated acquisition, has been or is to be provided by a person that is not a member of the family formed by the corporate consolidation referred to in subsection (2).

(6) For the purposes of subsection (5) —

(a) if the acquisition concerned is an acquisition of securities of the affected entity by the head entity as referred to in subsection (2)(a) — an acquisition of securities of the head entity by a holder of securities of the affected entity that is made for the purposes of the same corporate consolidation is an ***associated acquisition***; or

(b) if the acquisition concerned is an acquisition of securities of the head entity by a holder of securities of the affected entity as referred to in subsection (2)(b) — an acquisition of securities of the affected entity by the head entity that is made for the purposes of the same corporate consolidation is an associated acquisition.

(7) Subsection (5) does not apply in relation to consideration provided for an acquisition or an associated acquisition if —

(a) the acquisition or associated acquisition is of a kind referred to in subsection (2)(b); and

(b) the consideration is the transfer of securities of the affected entity by the holder of those securities to the head entity.

*[Section 259 amended: No. 24 of 2018 s. 9; No. 12 of 2019 s. 119.]*

### 260. Relevant reconstruction transaction

(1) Subject to this section, any of the following is a ***relevant reconstruction transaction*** —

(a) any of the following dutiable transactions, if transfer duty is chargeable —

(i) an agreement, whether conditional or not, for the transfer of dutiable property from one member of a family to another member of the family;

(ii) a transfer of dutiable property from one member of a family to another member of the family;

(iii) a declaration of trust over dutiable property under which one member of a family holds the property on trust for another member of the family;

(iv) a vesting of dutiable property held by one member of a family in another member of the family;

(v) a surrender of special dutiable property, within the meaning of section 18, if the special dutiable property is surrendered by one member of a family to another member of the family;

(aa) any of the following foreign dutiable transactions, if foreign transfer duty is chargeable —

(i) an agreement, whether conditional or not, for the transfer of residential property from one member of a family to another member of the family;

(ii) a transfer of residential property from one member of a family to another member of the family;

(iii) a declaration of trust over residential property under which one member of a family holds the property on trust for another member of the family;

(iv) a vesting of residential property held by one member of a family in another member of the family;

(v) a surrender of special residential property, as defined in section 205F(1), if the special residential property is surrendered by one member of a family to another member of the family;

(b) a transfer of a licence for a vehicle from one member of a family to another member of the family, if vehicle licence duty is chargeable;

*[(c) deleted]*

(d) an acquisition by one member of a family from another member of the family of an interest in an entity, if landholder duty or foreign landholder duty is chargeable.

(1A) For the purposes of subsection (1)(a)(v), a surrender of a mining tenement, in whole or in part, by one member of a family is taken to be a surrender to another member of the family if the surrender is made in contemplation of, or as part of an agreement that, the tenement, or the part of the tenement, be granted to or acquired by the other member of the family.

(1B) For the purposes of subsection (1)(d), an acquisition of an interest in an entity by one member of a family is taken to be an acquisition from another member of the family if —

(a) the interest of the other member of the family in the entity is decreased because of the acquisition; or

(b) the interest of the other member of the family in the entity decreased resulting in the acquisition.

(2) A transaction referred to in subsection (1)(a) is not a ***relevant reconstruction transaction*** if, immediately before the transaction, the dutiable property is held, or the transaction results in the property being held, subject to a discretionary trust.

(2A) A transaction referred to in subsection (1)(aa) is not a ***relevant reconstruction transaction*** if, immediately before the transaction, the residential property is held, or the transaction results in the property being held, subject to a discretionary trust.

(3) A transfer referred to in subsection (1)(b) is not a ***relevant reconstruction transaction*** if, immediately before or immediately after the transfer, the vehicle is held subject to a discretionary trust.

(4) An acquisition referred to in subsection (1)(d) is not a ***relevant reconstruction transaction*** if, immediately before the acquisition, the interest is held, or the acquisition results in the interest being held, subject to a discretionary trust.

(5) A transaction, transfer or acquisition referred to in subsection (1) is not a ***relevant reconstruction transaction*** if any part of the consideration for the transaction, transfer or acquisition has been or is to be provided by a person that is not a member of the family referred to in that subsection.

*[Section 260 amended: No. 9 of 2010 s. 5; No. 24 of 2018 s. 10; No. 12 of 2019 s. 120.]*

### 260A. Consideration provided as loan

For the purposes of sections 259(5) and 260(5), consideration provided by a person other than a member of the family is taken

to have been provided by a member of the family if the Commissioner is satisfied that the consideration was provided as a loan and has been or will be repaid by a member of the family.

*[Section 260A inserted: No. 12 of 2019 s. 121.]*

### 261. Predetermining certain questions

(1) In this section —

***pre-transaction decision request*** means a request made under subsection (2) or (4).

(2) A person proposing to enter into a relevant transaction may ask the Commissioner to decide whether, if the transaction were entered into, it would be exempted.

*[(3) deleted]*

(4) A person proposing to enter into a transaction may ask the Commissioner to decide whether, if the transaction were entered into, the Commissioner, under section 265, would revoke the exemption granted for a relevant transaction.

(5) A pre-transaction decision request must be made in the approved form.

(6) The Commissioner may, as often as the Commissioner thinks fit, ask a person that has made a pre-transaction decision request for any information the Commissioner needs to make the decision requested.

(7) The Commissioner may refuse a pre-transaction decision request if —

*[(a) deleted]*

(b) the request does not differ materially from another pre-transaction decision request that was made previously; or

(c) a request made by the Commissioner under subsection (6) is not satisfied.

(7A) The Commissioner must refuse a pre-transaction decision request if the transaction to which the request relates has been entered into.

(8) If the Commissioner is given the information needed to make the decision requested in a pre-transaction decision request, the Commissioner must make the decision and give written notice of it to the person that made the request.

(9) In making a decision requested in a pre-transaction decision request, the Commissioner may have regard to —

(a) information provided by the person that made the request; and

(b) any other matter the Commissioner considers relevant.

(10) If the Commissioner makes a decision on a pre-transaction decision request in relation to a transaction, and the transaction is subsequently entered into, the Commissioner is bound by the decision in respect of the transaction unless —

(a) the transaction, or any circumstance relating to it, differs materially from the transaction or circumstances to which the request related; or

(b) any information relevant to the transaction, or to any circumstance relating to it, differs materially from the information given to the Commissioner in relation to the request; or

(c) the Commissioner considers that there was not a full and true disclosure to the Commissioner of information in relation to the request.

*[Section 261 amended: No. 12 of 2019 s. 122.]*

### 262. Application for exemption

(1) In this section —

***exemption application*** means an application for an exemption.

(2) An exemption application for a relevant transaction cannot be made by applying under the Taxation Administration Act for a reassessment for the transaction.

(3) An exemption application for a relevant transaction must be made —

(a) not later than 12 months after the date of the transaction; and

(b) by lodging an application in the approved form.

*[Section 262 amended: No. 17 of 2010 s. 16.]*

### 263. Grant of exemption

(1) If, on an exemption application made in accordance with section 262, it is shown to the satisfaction of the Commissioner that —

(a) there has been a relevant transaction; or

(b) a relevant reconstruction transaction referred to in section 260(1)(b) will occur,

the Commissioner must exempt the transaction from the duty that would otherwise be chargeable unless subsection (4) applies.

(2) If an assessment for a relevant transaction was made before it is exempted, the Commissioner must reassess the transaction.

(3) If an assessment for a relevant transaction was not made before it is exempted, the Commissioner must —

(a) if the transaction is one referred to in section 260(1)(b) — issue a certificate of the exemption to the applicant; or

(b) otherwise — make an official assessment of the transaction determining that it is exempt from duty.

(4) An exemption cannot be granted in relation to a relevant transaction if —

(a) the Commissioner is satisfied that the transaction is part of a scheme or arrangement that has been, or is to be, entered into or carried out by a person —

(i) for a purpose of avoiding or reducing any liability of a person for duty; or

(ii) for the sole or dominant purpose of avoiding or reducing any liability of a person for tax other than duty;

or

(b) the Commissioner is satisfied that the exemption would be revoked under section 264A because of the occurrence of a notifiable event referred to in that section; or

(c) any member of the family has an outstanding tax liability.

*[Section 263 amended: No. 12 of 2019 s. 123.]*

## 264. Commissioner to be notified of certain events after exempt relevant transaction

(1) In this section —

***controlling entity***, in relation to a relevant consolidation transaction, means the head entity;

***controlling entity***, in relation to a relevant reconstruction transaction, means the member of the transaction group for the transaction that is a parent entity of the group immediately before or immediately after the transaction;

***major holder*** of an entity, means a person that, directly or indirectly, holds at least 90% of the securities of the entity;

***responsible person*** means —

(a) for a notifiable event that occurs in relation to a relevant transaction as described in subsection (2)(a) —

(i) if the controlling entity is a corporation — each person who is a director of the entity when the winding up begins; or

(ii) if the controlling entity is a unit trust scheme — the trustee of the entity when the winding up begins; or

(iii) if the controlling entity is a unit trust scheme and the trustee of the entity, being a corporation, is wound up — each person who is a director of the trustee when the winding up begins;

or

(b) for a notifiable event that occurs in relation to a relevant transaction as described in subsection (2)(b) —

(i) the controlling entity or, if the controlling entity is wound up, the major holder (if any) of the controlling entity when the winding up begins; and

(ii) the member of the transaction group referred to in subsection (2)(b);

or

(c) for a notifiable event that occurs in relation to a relevant transaction as described in subsection (2)(c) — the entities whose securities cease to be stapled.

(2) Subject to subsection (3), a ***notifiable event*** occurs in relation to a relevant transaction if —

(a) the controlling entity is wound up and does not have a major holder when the winding up begins; or

(b) the controlling entity or, if the controlling entity is wound up and has a major holder when the winding up

begins, the major holder, ceases to directly or indirectly —

(i) hold more than 50% of the securities of a member of the transaction group; or

(ii) control (either by being able to cast or to control the casting of) more than 50% of the maximum number of votes that may be cast at a general meeting of a member of the transaction group;

or

(c) in a case where entities are members of a family because of section 258(2) — securities of the first entity mentioned in section 258(2) cease to be stapled to the securities of another of the entities.

(3) A cessation referred to in subsection (2)(b) is not a ***notifiable event*** if it results from —

(a) the winding up of a member of the transaction group, other than the controlling entity; or

(b) a relevant transaction that is the subject of an application made under section 262 for an exemption; or

(c) an acquisition by one member of a family from another member of the family of an interest in an entity, if landholder duty is not chargeable on the acquisition; or

(d) a prescribed event.

(4) If a notifiable event occurs in relation to an exempt relevant transaction within 3 years after the date of the transaction, the responsible person for the event must lodge a notice of the event in the approved form within 2 months after the date of the event.

Penalty: a fine of $20 000.

(5) It is a defence to a charge of an offence under subsection (4) to prove that a notice of the event in the approved form was lodged before the alleged date of the offence.

*[Section 264 amended: No. 12 of 2019 s. 124.]*

## 264A. Automatic revocation of exemption

(1) The exemption for an exempt relevant reconstruction transaction is revoked by this subsection if —

(a) a notifiable event to which section 264(2)(b) applies occurs in relation to the relevant reconstruction transaction within 3 years after the date of the transaction; and

(b) the member of the transaction group referred to in whichever of section 264(2)(b)(i) or (ii) applies (the ***relevant entity***) is —

(i) for a relevant reconstruction transaction referred to in section 260(1)(a)(iii) or (aa)(iii) — the entity for which the dutiable property or residential property is held on trust; or

(ii) for a relevant reconstruction transaction referred to in section 260(1)(d) — the acquirer of the interest referred to in that section; or

(iii) otherwise — the entity who would, but for the exemption, be liable to pay the transfer duty, foreign transfer duty or vehicle licence duty chargeable on the transaction;

and

(c) when the notifiable event occurs, the property referred to in subsection (2), or a part of that property, is held by, or on trust for, the relevant entity.

(2) For the purposes of subsection (1)(c), the property is —

(a) for a relevant reconstruction transaction referred to in section 260(1)(a) — the dutiable property to which the transaction relates; or

(b) for a relevant reconstruction transaction referred to in section 260(1)(aa) — the residential property to which the transaction relates; or

(c) for a relevant reconstruction transaction referred to in section 260(1)(b) — the licence for a vehicle to which the transaction relates; or

(d) for a relevant reconstruction transaction referred to in section 260(1)(d) — the interest in an entity to which the transaction relates.

(3) This section does not apply —

(a) to a notifiable event that results from a public float; or

(b) in prescribed circumstances.

(4) This section applies whether or not there has been a change in the legal description of the property referred to in subsection (2) between the relevant reconstruction transaction and the notifiable event.

Note for this subsection:

For example, a change in the legal description of property when a new certificate of title is registered following a subdivision of land.

*[Section 264A inserted: No. 12 of 2019 s. 125.]*

## 265. Revocation of exemption by Commissioner

If the Commissioner determines that an exempt relevant transaction is part of a scheme or arrangement entered into, or carried out, by a person —

(a) for a purpose of avoiding or reducing any liability of a person for duty; or

(b) for the sole or dominant purpose of avoiding or reducing any liability of a person for tax other than duty,

the Commissioner may revoke the exemption for the transaction.

*[Section 265 amended: No. 12 of 2019 s. 126.]*

## 266. Liability for duty and tax if exemption revoked

(1) If the exemption for a relevant transaction is revoked under section 264A or 265, the Commissioner must make an official assessment for the transaction.

(1A) If the exemption is revoked under section 264A, the official assessment —

(a) must determine the amount of duty payable on the relevant transaction as at the date of the transaction (subject to any reduction that applies under section 266A or 266B); and

(b) may include penalty tax equal to the amount of that duty.

(2) If the exemption is revoked under section 265, the official assessment must —

(a) determine the amount of duty payable on the relevant transaction as at the date of the transaction; and

(b) include penalty tax equal to the amount of that duty.

(3) The following persons are jointly and severally liable to pay the duty chargeable on a relevant transaction and the penalty tax —

(a) each member of the transaction group;

(b) each person liable under subsection (4) or (5).

(4) If a corporation liable under subsection (3) is voluntarily wound up before the duty and penalty tax are paid, each person who was a director of the corporation immediately before it was wound up is liable to pay the amount unless —

(a) the winding up was a creditors' voluntary winding up as defined in the Corporations Act section 9; and

(b) no creditor was an associate, as defined in the Corporations Act section 9, of the corporation.

(5) If a unit trust scheme liable under subsection (3) is wound up before the duty and penalty tax are paid, the following persons are liable to pay the amount —

(a) the trustee of the scheme;

(b) if the trustee of the scheme, being a corporation, is wound up — each person who was a director of the trustee immediately before it was wound up.

(6) Despite the Taxation Administration Act section 17, if an exemption for a relevant transaction is revoked under section 264A on the occurrence of a notifiable event, the Commissioner may make a reassessment in relation to the transaction at any time before the later of —

(a) the day that is 5 years after the day on which the Commissioner made a reassessment under section 263(2), or issued a certificate or made an assessment under section 263(3), in relation to the transaction (whichever is relevant); or

(b) the day that is 12 months after the day on which notice of the notifiable event was lodged under section 264(4).

*[Section 266 amended: No. 12 of 2019 s. 127.]*

### 266A. Reduction of duty following automatic revocation or refusal of exemption

(1) The duty to be assessed on a relevant reconstruction transaction is to be reduced in accordance with subsection (2) if —

(a) either of the following occurs —

(i) an exemption is granted for a relevant reconstruction transaction but the exemption is revoked under section 264A on the occurrence of a notifiable event;

(ii) an exemption application is made in accordance with section 262 for a relevant reconstruction transaction and the exemption would have been

granted but for the application of section 263(4)(b) because of the occurrence of a notifiable event;

and

(b) at the time of the notifiable event, only part of the property referred to in section 264A(2) to which the relevant reconstruction transaction relates is held by, or on trust for, the member of the transaction group referred to in whichever of section 264(2)(b)(i) or (ii) applies (the ***relevant entity***).

(2) Duty is chargeable on the relevant reconstruction transaction only to the extent that the transaction relates to the part of the property referred to in section 264A(2) that is held by, or on trust for, the relevant entity at the time of the notifiable event.

(3) This section applies whether or not there has been a change in the legal description of the property referred to in section 264A(2) between the relevant reconstruction transaction and the notifiable event.

Note for this subsection:

For example, a change in the legal description of property when a new certificate of title is registered following a subdivision of land.

*[Section 266A inserted: No. 12 of 2019 s. 128.]*

## 266B. Reduction of duty following automatic revocation or refusal of exemption resulting from relevant acquisition

(1) In this section —

***property*** means land assets (as defined in section 148(1)), or chattels, or both;

***relevant acquisition*** has the meaning given in section 148(1).

(2) The duty assessed on a relevant reconstruction transaction is to be reduced in accordance with subsection (3) if —

(a) either of the following occurs —

(i) an exemption is granted for the relevant reconstruction transaction but the exemption is revoked under section 264A on the occurrence of a notifiable event;

(ii) an exemption application is made in accordance with section 262 for the relevant reconstruction transaction and the exemption would have been granted but for the application of section 263(4)(b) because of the occurrence of a notifiable event;

and

(b) the notifiable event results from a relevant acquisition (the ***triggering acquisition***) on which landholder duty is chargeable; and

(c) transfer duty or landholder duty is chargeable on the relevant reconstruction transaction in relation to particular property (the ***relevant reconstruction transaction property***); and

(d) landholder duty is chargeable on the triggering acquisition in relation to particular property (the ***triggering acquisition property***); and

(e) the triggering acquisition property is or includes the relevant reconstruction transaction property or part of the relevant reconstruction transaction property.

Note for this subsection:

Section 266C provides for the property in relation to which landholder duty is taken to be chargeable for the purposes of this section.

(3) The duty assessed in respect of the relevant reconstruction transaction is to be reduced by the lesser of —

(a) the amount of transfer duty or landholder duty that is chargeable on the relevant reconstruction transaction, to the extent that the duty is chargeable in relation to relevant property; or

(b) the amount of landholder duty that is chargeable on the triggering acquisition, to the extent that the duty is chargeable in relation to relevant property.

(4) For the purposes of subsection (3), relevant property is property that is both triggering acquisition property and relevant reconstruction transaction property, whether or not there has been a change in the legal description of the property between the relevant reconstruction transaction and the triggering acquisition.

Note for this subsection:

For example, a change in the legal description of property when a new certificate of title is registered following a subdivision of land.

(5) If the relevant reconstruction transaction property is or includes an interest in particular property, and the triggering acquisition property is or includes a different interest in the same property, property is relevant property for the purposes of subsection (3) only to the extent of the lesser of the 2 interests.

*[Section 266B inserted: No. 12 of 2019 s. 128.]*

### 266C. Property in relation to which landholder duty taken to be chargeable for s. 266B

(1) In this section —

***property*** means land assets (as defined in section 148(1)), or chattels, or both;

***relevant acquisition*** has the meaning given in section 148(1).

(2) For the purposes of section 266B, landholder duty that is chargeable on a relevant acquisition of an interest in an entity is taken to be chargeable in relation to —

(a) for property of which 100% of the value is taken into account for the purposes of calculating that landholder duty — that property; and

(b) for property of which a lower percentage of the value is taken into account for the purposes of calculating that

landholder duty — a percentage interest in that property that is equal to the percentage taken into account for the purposes of calculating that landholder duty.

(3) For the purposes of subsection (2), the percentage of the value of property that is taken into account for the purposes of calculating landholder duty is to be determined in accordance with the following formula —

$$P \times (I - E)$$

where —

P is the percentage (expressed as a decimal) of the unencumbered value of that property taken into account under section 186 in determining the value of the landholder;

I is the percentage (expressed as a decimal) of the interest of the acquirer in the landholder after the relevant acquisition referred to in section 188(3);

E is the aggregate percentage (expressed as a decimal) of each excluded interest in relation to the relevant acquisition referred to in section 189.

*[Section 266C inserted: No. 12 of 2019 s. 128.]*

### 266D. Application of s. 266B and 266C to foreign transfer duty and foreign landholder duty

If foreign transfer duty or foreign landholder duty is chargeable on a relevant reconstruction transaction, sections 266B and 266C apply in relation to the foreign transfer duty or foreign landholder duty chargeable on the relevant reconstruction transaction as if —

(a) a reference to transfer duty were a reference to foreign transfer duty; and

(b) a reference to landholder duty were a reference to foreign landholder duty; and

(c) a reference to a landholder were a reference to a residential landholder (as defined in section 205ZD(1)); and

(d) a reference to a relevant acquisition were a reference to a foreign landholder acquisition (as defined in section 205ZD(1)); and

(e) a reference to land assets (as defined in section 148(1)) were a reference to residential property; and

(f) a reference to an acquirer were a reference to a foreign acquirer (as defined in section 205ZD(1)); and

(g) a reference to a provision of Chapter 3 were a reference to that provision as applied by section 205ZE(1).

*[Section 266D inserted: No. 12 of 2019 s. 128.]*

# Chapter 6A — Off-the-plan concession for transfer duty and foreign transfer duty

*[Heading inserted: No. 29 of 2023 s. 8.]*

## 266E. Terms used

In this Chapter —

***cancelled transaction*** has the meaning given in section 107(1);

***community titles (building) scheme*** has the meaning given in the *Community Titles Act 2018* section 11(7);

***concessional off-the-plan agreement*** means —

(a) a concessional pre-construction agreement; or

(b) a concessional under construction agreement;

***concessional pre-construction agreement*** has the meaning given in section 266F;

***concessional under construction agreement*** has the meaning given in section 266FA;

***concession amount***, for a concessional off-the-plan agreement, means the concession amount for the agreement determined under sections 266L to 266N;

***concession day***, in relation to a concessional off-the-plan agreement, has the meaning given in section 266H;

***dutiable value*** has the meaning given in section 9;

***lot*** —

(a) in relation to a strata scheme — means a lot in a strata scheme as defined in the *Strata Titles Act 1985* section 3(1); or

(b) in relation to a community titles (building) scheme — has the meaning given in the *Community Titles Act 2018* section 3(1);

***multi-tiered scheme*** means a strata scheme or a community titles (building) scheme, other than a strata scheme or

community titles (building scheme) in which no part of a floor of a lot or part of a lot in a building forms or joins the ceiling of another lot or part of a lot in a building;

***new residential unit or apartment*** has the meaning given in section 266G(1) and (2);

***Off-the-Plan Duty Rebate Scheme*** means the administrative scheme for the payment of rebates on duty known as the Off-the-Plan Duty Rebate Scheme;

***replacement transaction***, in relation to a cancelled transaction, has the meaning given in section 107(1);

***strata scheme*** has the meaning given in the *Strata Titles Act 1985* section 9;

***subsale transaction***, in relation to a cancelled transaction, has the meaning given in section 107(1);

***unadjusted duty amount***, in relation to a concessional off-the-plan agreement, has the meaning given in section 266I.

*[Section 266E inserted: No. 29 of 2023 s. 8.]*

### 266F. Concessional pre-construction agreement

(1) An agreement for the transfer of dutiable property is a ***concessional pre-construction agreement*** if the agreement is —

(a) an agreement for the purchase, from the owner of land to be subdivided by the registration of a multi-tiered scheme or an amendment of a multi-tiered scheme, of a lot in the scheme on which there will be a new residential unit or apartment; and

(b) entered into before development for the subdivision commences; and

(c) entered into in the period beginning on 23 October 2019 and ending on 30 June 2025.

(2) An agreement (the ***new agreement***) for the transfer of dutiable property is also a ***concessional pre-construction agreement*** if the new agreement is —

(a) an agreement for the purchase, from the owner of land to be subdivided by the registration of a multi-tiered scheme or an amendment of a multi-tiered scheme, of a lot in the scheme on which there will be a new residential unit or apartment; and

(b) substantially similar in effect to an earlier cancelled transaction that —

(i) was a concessional pre-construction agreement under subsection (1); and

(ii) was between all of the same parties as the parties to the new agreement, except that the seller was different;

and

(c) entered into after development for the subdivision commences, but before development for the subdivision is completed.

(3) Despite subsections (1) and (2), an agreement (the ***relevant agreement***) to which either of those subsections applies is not a ***concessional pre-construction agreement*** —

(a) if a rebate has been paid in relation to the relevant agreement under the Off-the-Plan Duty Rebate Scheme; or

(b) if —

(i) development for the subdivision of the land by the registration of the multi-tiered scheme, or the amendment of the multi-tiered scheme, is completed before 31 August 2023; and

(ii) the eligibility criteria for payment of a rebate under the Off-the-Plan Duty Rebate Scheme are

not satisfied in relation to the relevant agreement;

or

(c) if the relevant agreement is a replacement transaction in relation to a cancelled transaction; or

(d) if the relevant agreement is a subsale transaction in relation to a cancelled transaction that was a concessional pre-construction agreement; or

(e) if —

(i) the relevant agreement is between all of the same parties as the parties to, and is substantially similar in effect to, an earlier cancelled transaction; and

(ii) in the opinion of the Commissioner, the sole or dominant purpose of any party in entering into the relevant agreement is to obtain a rebate, or a higher amount of rebate, under the Off-the-Plan Duty Rebate Scheme;

or

(f) if the relevant agreement is substantially similar in effect to an earlier cancelled transaction that —

(i) was between all of the same parties as the parties to the relevant agreement, except that the seller was different; and

(ii) was entered into before 23 October 2019.

(4) For the purposes of subsection (3)(b)(ii), the eligibility criteria for payment of a rebate under the Off-the-Plan Duty Rebate Scheme are taken to be the criteria set out in the application form entitled "Form FDA49 — Off-the-Plan Rebate: Pre-construction Contract" as published on the Commissioner's website on 31 August 2023.

(5) The Commissioner must ensure that the form referred to in subsection (4) remains published on the Commissioner's website.

*[Section 266F inserted: No. 29 of 2023 s. 8.]*

### 266FA. Concessional under construction agreement

(1) An agreement for the transfer of dutiable property is a ***concessional under construction agreement*** if the agreement is —

(a) an agreement for the purchase, from the owner of land to be subdivided by the registration of a multi-tiered scheme or an amendment of a multi-tiered scheme, of a lot in the scheme on which there will be a new residential unit or apartment; and

(b) entered into after development for the subdivision commences, but before development for the subdivision is completed; and

(c) entered into in the period beginning on 31 August 2023 and ending on 30 June 2025.

(2) An agreement (the ***new agreement***) for the transfer of dutiable property is also a ***concessional under construction agreement*** if —

(a) subsection (1)(a) and (b) apply to the new agreement; and

(b) the new agreement is substantially similar in effect to an earlier cancelled transaction that —

(i) was a concessional under construction agreement under subsection (1); and

(ii) was between all of the same parties as the parties to the new agreement, except that the seller was different.

(3) Despite subsections (1) and (2), an agreement (the ***relevant agreement***) to which either of those subsections applies is not a

***concessional under construction agreement*** if the relevant agreement is —

(a) a concessional pre-construction agreement to which section 266F(2) applies; or

(b) a replacement transaction in relation to a cancelled transaction; or

(c) a subsale transaction in relation to a cancelled transaction that was a concessional off-the-plan agreement; or

(d) substantially similar in effect to an earlier cancelled transaction that —

(i) was between all of the same parties as the parties to the relevant agreement, except that the seller was different; and

(ii) was entered into before 31 August 2023.

*[Section 266FA inserted: No. 29 of 2023 s. 8.]*

### 266G. New residential unit or apartment

(1) For the purposes of sections 266F(1)(a) and (2)(a) and 266FA(1)(a), a ***new residential unit or apartment*** is a building, or part of a building, that —

(a) may lawfully be used as a place of residence; and

(b) in the Commissioner's opinion, is suitable to be used as a place of residence; and

(c) is intended to be used solely or dominantly as a place of residence; and

(d) is not an existing building or part of an existing building.

(2) Despite subsection (1), a building or part of a building is not a ***new residential unit or apartment*** if it is —

(a) intended to be used as a hotel, motel, hostel, lodging house, boarding house or serviced apartment; or

(b) of a prescribed class.

(3) For the purposes of subsection (1)(d), an ***existing building*** is a building that has already been constructed when development for the subdivision referred to in section 266F(1)(a) or (2)(a) or 266FA(1)(a) (as the case requires) commences, whether or not refurbishment of the building is undertaken as part of that development.

*[Section 266G inserted: No. 29 of 2023 s. 8.]*

### 266H. Concession day for agreement

(1) The ***concession day*** for a concessional off-the-plan agreement is —

(a) if subsection (2) does not apply — the day on which the agreement is entered into; or

(b) if subsection (2) applies — the day on which the cancelled transaction referred to in subsection (2) is entered into.

(2) This subsection applies to a concessional off-the-plan agreement (the ***new agreement***) if the new agreement is substantially similar in effect to an earlier cancelled transaction that —

(a) was —

(i) if the new agreement is a concessional pre-construction agreement — a concessional pre-construction agreement under section 266F(1); or

(ii) if the new agreement is a concessional under construction agreement — a concessional under construction agreement under section 266FA(1);

and

(b) was between all of the same parties as the parties to the new agreement, except that the seller was different.

(3) If there is more than 1 cancelled transaction of the kind referred to in subsection (2) in relation to a concessional off-the-plan agreement, the reference in subsection (1)(b) to the cancelled transaction is a reference to the earliest of those cancelled transactions.

*[Section 266H inserted: No. 29 of 2023 s. 8.]*

### 266I. Unadjusted duty amount for agreement

The ***unadjusted duty amount*** for a concessional off-the-plan agreement is —

(a) if foreign transfer duty is not payable on the agreement — the amount of transfer duty that would be payable on the agreement if it were not a concessional off-the-plan agreement; or

(b) if foreign transfer duty is payable on the agreement — the total amount of transfer duty and foreign transfer duty that would be payable on the agreement if it were not a concessional off-the-plan agreement.

*[Section 266I inserted: No. 29 of 2023 s. 8.]*

### 266J. Determining when development for subdivision of land commences and is completed

(1) This section applies in determining for the purposes of this Chapter when development for the subdivision of land by the registration of a multi-tiered scheme, or an amendment of a multi-tiered scheme, commences and is completed.

(2) Development commences when relevant construction works commence on the land.

(3) In subsection (2) —

***relevant construction works*** —

(a) means excavation or works associated with the construction of a building or structure that is necessary for the subdivision; but

(b) does not include excavation or works consisting of —

(i) demolishing an existing building or structure; or

(ii) clearing a site for development; or

(iii) installing temporary fencing or structures, transportable buildings or advertising materials.

(4) Development is completed when the land is subdivided by registration of the multi-tiered scheme, or the amendment of the multi-tiered scheme, under the *Strata Titles Act 1985* section 11 or the *Community Titles Act 2018* section 14 (as the case requires).

*[Section 266J inserted: No. 29 of 2023 s. 8.]*

### 266K. Reduction of duty on concessional off-the-plan agreement

(1) The amount of transfer duty and (if applicable) foreign transfer duty payable on a concessional off-the-plan agreement is to be reduced by the concession amount for the agreement in accordance with this section.

(2) If foreign transfer duty is not payable on the agreement, the amount of transfer duty payable on the agreement is to be reduced by the concession amount.

(3) If foreign transfer duty is payable on the agreement, the duty payable is to be reduced as follows —

(a) first, the amount of transfer duty payable on the agreement is to be reduced by the concession amount, or by so much of the concession amount as is necessary to reduce the amount of transfer duty payable to zero;

(b) second, if there is a remainder of the concession amount after the amount of transfer duty payable is reduced to zero — the foreign transfer duty payable on the agreement is to be reduced by the remainder.

*[Section 266K inserted: No. 29 of 2023 s. 8.]*

## 266L. Concession amount

(1) Subject to sections 266M(2) and 266N(2)(b), the concession amount for a concessional pre-construction agreement is the lesser of the following —

(a) $50 000;

(b) an amount calculated by —

(i) determining the applicable concession percentage under the Table according to the concession day of the agreement and the dutiable value of the agreement; and

(ii) multiplying that percentage by the unadjusted duty amount for the agreement.

**Table**

| Item | Concession day | Dutiable value | Concession percentage (%) |
|---|---|---|---|
| 1. | 23 October 2019 to 23 October 2021 | Any dutiable value | 75 |
| 2. | 24 October 2021 to 31 May 2022 | Any dutiable value | 50 |
| 3. | 1 June 2022 to 10 May 2023 | $500 000 or less | 100 |
| 4. | 1 June 2022 to 10 May 2023 | More than $500 000 but less than $600 000 | X calculated under subsection (2) |
| 5. | 1 June 2022 to 10 May 2023 | $600 000 or more | 50 |

| Item | Concession day | Dutiable value | Concession percentage (%) |
|---|---|---|---|
| 6. | 11 May 2023 to 30 June 2025 | $650 000 or less | 100 |
| 7. | 11 May 2023 to 30 June 2025 | More than $650 000 but less than $750 000 | Y calculated under subsection (3) |
| 8. | 11 May 2023 to 30 June 2025 | $750 000 or more | 50 |

(2) The calculation for the purposes of item 4 in the Table to subsection (1) is as follows —

$$X = 100 - \left(\frac{V - 500\,000}{100} \times 0.05\right)$$

where —

V is the dutiable value of the concessional pre-construction agreement.

(3) The calculation for the purposes of item 7 in the Table to subsection (1) is as follows —

$$Y = 100 - \left(\frac{V - 650\,000}{100} \times 0.05\right)$$

where —

V is the dutiable value of the concessional pre-construction agreement.

(4) Subject to sections 266M(2) and 266N(2)(b), the concession amount for a concessional under construction agreement is the lesser of the following —

(a) $50 000;

(b) an amount calculated by —

(i) determining the applicable concession percentage under the Table according to the dutiable value of the agreement; and

(ii) multiplying that percentage by the unadjusted duty amount for the agreement.

**Table**

| Item | Dutiable value | Concession percentage (%) |
|---|---|---|
| 1. | $650 000 or less | 75 |
| 2. | More than $650 000 but less than $750 000 | Z calculated under subsection (5) |
| 3. | $750 000 or more | 37.5 |

(5) The calculation for the purposes of item 2 in the Table to subsection (4) is as follows —

$$Z = 75 - \left(\frac{V - 650\,000}{100} \times 0.0375\right)$$

where —

V is the dutiable value of the concessional under construction agreement.

*[Section 266L inserted: No. 29 of 2023 s. 8.]*

### 266M. Concession amount for concessional off-the-plan agreement relating to 2 or more properties

(1) This section applies to a concessional off-the-plan agreement that is an agreement for the purchase of 2 or more lots (the

***relevant properties***) in a multi-tiered scheme, on each of which there will be a new residential unit or apartment.

(2) The concession amount for the concessional off-the-plan agreement is the total of the concession amounts for each of the relevant properties determined under subsection (3).

(3) The concession amounts for the relevant properties are determined as follows —

(a) first, apportion the dutiable value of the concessional off-the-plan agreement between each of the relevant properties as decided by the Commissioner;

(b) second, apportion the unadjusted duty amount for the agreement between each of the relevant properties according to the proportion that the dutiable value apportioned to that relevant property under paragraph (a) bears to the dutiable value of the agreement;

(c) third, determine a concession amount for each of the relevant properties under section 266L as if —

(i) that relevant property were the subject of a separate concessional pre-construction agreement or concessional under construction agreement (whichever is relevant); and

(ii) the dutiable value of that agreement were the amount apportioned to that relevant property under paragraph (a); and

(iii) the unadjusted duty amount for that agreement were the amount apportioned to that relevant property under paragraph (b).

*[Section 266M inserted: No. 29 of 2023 s. 8.]*

## 266N. Aggregation of transactions

(1) Subsection (2) applies if under section 37 —

(a) 2 or more concessional off-the-plan agreements are aggregated and treated as a single dutiable transaction; or

(b) 1 or more concessional off-the-plan agreements and 1 or more other dutiable transactions are aggregated and treated as a single dutiable transaction.

(2) In determining the duty payable on the aggregated transactions —

(a) first, under section 37, determine and apportion between the aggregated transactions the amount of transfer duty that would be payable on the aggregated transactions if none of the transactions were a concessional off-the-plan agreement;

(b) second, determine a concession amount under section 266L (or, if applicable, sections 266L and 266M) for each of the concessional off-the-plan agreements, treated as a separate transaction, as if the unadjusted duty amount for the agreement were —

(i) if foreign transfer duty is not payable on the agreement — the amount (the ***apportioned transfer duty amount***) of transfer duty apportioned to the agreement as referred to in paragraph (a); or

(ii) if foreign transfer duty is payable on the agreement — the total of the apportioned transfer duty amount and the amount of foreign transfer duty that would be payable on the agreement if it were not a concessional off-the-plan agreement;

(c) third, for each of the concessional off-the-plan agreements, reduce in accordance with section 266K the amount of transfer duty and (if applicable) foreign

transfer duty payable by the concession amount for that agreement determined under paragraph (b), as if the amount of transfer duty payable on the agreement were the apportioned transfer duty amount.

(3) A concessional off-the-plan agreement is not an exempt transaction for the purposes of section 37(3)(c) solely because the transfer duty payable on the agreement is reduced to zero under this Chapter.

*[Section 266N inserted: No. 29 of 2023 s. 8.]*

### 266O. Application for off-the-plan concession

(1) An application for assessment or reassessment of the liability to duty of a concessional off-the-plan agreement under this Chapter must be made in the approved form no later than 12 months after the day on which the agreement is completed.

(2) For the purposes of this Chapter, the Taxation Administration Act section 17 applies as if —

(a) despite subsection (1) of that section, a taxpayer is not entitled to apply for a reassessment of the liability to duty of a concessional off-the-plan agreement under this Chapter more than 12 months after the day on which the agreement is completed; and

(b) despite subsection (4) of that section, the Commissioner can make a reassessment of the liability to duty of a concessional off-the-plan agreement under this Chapter on an application by a taxpayer only if the application was made within that time.

*[Section 266O inserted: No. 29 of 2023 s. 8.]*

# Chapter 7 — General anti-avoidance provisions

## 267. Term used: scheme

(1) In this Chapter —

***scheme*** includes the whole or any part of —

(a) a trust, contract, agreement, arrangement, understanding, promise or undertaking (including all steps and transactions by which it is carried into effect) —

(i) whether made or entered into orally or in writing; and

(ii) whether express or implied; and

(iii) whether or not it is, or is intended to be, enforceable;

and

(b) a plan, proposal, action, course of action or course of conduct.

(2) This Chapter applies in relation to a scheme even if it is a unilateral scheme.

## 268. ~~1M, 1MC~~ Tax avoidance scheme 1M, 1MC

(1) In this section —

***foreign tax*** means a tax, duty or impost imposed under a law of the Commonwealth, another State, a Territory or a country other than Australia.

(2) For the purposes of this Chapter a ***tax avoidance scheme*** is a scheme that a person enters into or carries out —

(a) for the sole or dominant purpose of enabling —

(i) an elimination or reduction in the liability of a person for duty; or

(ii) a postponement in the liability of a person for duty;

or

(b) when any purpose relating to the elimination, reduction or postponement in the liability of a person for foreign tax is disregarded, for the sole or dominant purpose of enabling —

(i) an elimination or reduction in the liability of a person for duty; or

(ii) a postponement in the liability of a person for duty.

(3) It does not matter —

(a) whether the scheme is entered into or carried out in or outside Western Australia or partly in Western Australia and partly outside Western Australia; or

(b) whether a person that enters into or carries out the scheme is a person that is liable to pay duty.

*[Modification, to section 268, to have effect under the Commonwealth Places (Mirror Taxes Administration) Act 1999 s. 7, see Commonwealth Places (Mirror Taxes Administration) Regulations 2007 r. 9 and endnote 1M.]*

*[Modification, to section 268, to have effect under the Commonwealth Places (Mirror Taxes) Act 1998 (Commonwealth) s. 8, see Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 cl. 10 and endnote 1MC.]*

## 269. Deciding whether proposed scheme would be disregarded under s. 270

(1) In this section —

***pre-section 270 decision request*** means a request made under subsection (2);

***section 270 decision*** means a decision of the Commissioner under section 270 that —

(a) a person has entered into or carried out a tax avoidance scheme that is of a blatant, artificial or contrived nature; and

(b) the scheme is to be disregarded.

(2) A person proposing to enter into or carry out a scheme which will relate to a transaction or acquisition or a series of transactions or acquisitions may ask the Commissioner to decide whether the Commissioner would make a section 270 decision in relation to the scheme if it were entered into or carried out by that person.

(3) A pre-section 270 decision request must be made in the approved form and must specify each transaction and acquisition to which the scheme in respect of which the request is made will relate.

(4) The Commissioner may, as often as the Commissioner thinks fit, ask a person that has made a pre-section 270 decision request for —

(a) any information the Commissioner needs to be fully informed in relation to each transaction and acquisition to which the scheme in respect of which the request is made will relate; or

(b) any other information the Commissioner needs to make the decision requested.

(5) The Commissioner may refuse a pre-section 270 decision request if —

(a) the scheme to which the request relates has been entered into or carried out; or

(b) the Commissioner has already made a decision on a pre-section 270 decision request, or a section 270 decision, in relation to the same or a similar scheme or a

scheme relating to the same or similar transactions or acquisitions; or

(c) the Commissioner has already refused a pre-section 270 decision request under this section made by the same person in relation to the same or a similar scheme or a scheme relating to the same or similar transactions or acquisitions; or

(d) a request made by the Commissioner under subsection (4) is not satisfied.

(6) If the Commissioner is given the information needed to make the decision requested in a pre-section 270 decision request, the Commissioner must make the decision and give written notice of it to the person that made the request.

(7) In making a determination requested in a pre-section 270 decision request the Commissioner may have regard to —

(a) information provided by the person that made the request; and

(b) any other matter the Commissioner considers relevant.

(8) If the Commissioner decides on a pre-section 270 decision request that the Commissioner would not make a section 270 decision in relation to the scheme set out in the request, and the scheme is subsequently entered into or carried out, the Commissioner must not make a section 270 decision in relation to the scheme unless —

(a) the scheme that is entered into or carried out, or any circumstance relating to it, differs materially from the scheme or circumstances to which the request related; or

(b) any information relevant to the scheme that is entered into or carried out, or to any circumstance relating to it, differs materially from the information given to the Commissioner in relation to the request; or

(c) the Commissioner considers that there was not a full and true disclosure to the Commissioner of information in relation to the request.

### 270. Certain tax avoidance schemes, Commissioner may disregard

(1) If the Commissioner decides that a person has entered into or carried out a tax avoidance scheme that is of a blatant, artificial or contrived nature, the Commissioner may disregard the scheme.

(2) If a tax avoidance scheme is disregarded under subsection (1), the Commissioner must —

(a) determine the duty which would have been payable, or could reasonably have been expected to be payable, by any person that entered into or carried out the scheme, or any other person, but for the scheme; and

(b) give effect to that determination by making —

(i) an official assessment under the Taxation Administration Act section 15; and

(ii) any reassessment the Commissioner considers necessary.

(3) The Commissioner must have regard to the following matters when making a decision under subsection (1) —

(a) the way in which the scheme was entered into or carried out;

(b) the form and substance of the scheme, including —

(i) the legal rights and obligations involved in the scheme; and

(ii) the economic and commercial substance of the scheme;

(c) when the scheme was entered into and the length of the period during which the scheme was, or is to be, carried out;

(d) any change to a person's financial position, or any other consequence, that has resulted, will result or may reasonably be expected to result from the scheme having been entered into or carried out;

(e) the nature of the connection, whether of a business, family or other nature, between the person that has entered into or carried out the scheme and any person mentioned in paragraph (d);

(f) the circumstances surrounding the scheme.

(4) The Commissioner cannot exercise the powers under this section in the course of making an interim assessment but can exercise those powers in the course of making an assessment following an interim assessment.

*[Section 270 amended: No. 10 of 2013 s. 7.]*

### 271. Statement in relation to determination

The assessment notice issued under the Taxation Administration Act section 23 in respect of a determination made under section 270(2)(a) must contain or be accompanied by a statement of —

(a) the Commissioner's reasons for the relevant decision under section 270(1); and

(b) the grounds on which the determination under section 270(2)(a) is made.

# Chapter 8 — Other general provisions

## Part 1 — Duty endorsement

### 272. Duty endorsed

(1) A dutiable transaction is ***duty endorsed*** if a transaction record for it is duty endorsed.

(2) A transaction record for a dutiable transaction is ***duty endorsed*** if it is —

(a) endorsed by the Commissioner —

(i) under section 273(2), (3) or (4) or 274(2); and

(ii) if the transaction is a foreign dutiable transaction — under section 273(2A);

or

(b) endorsed or certified under a special tax return arrangement to indicate that an amount of duty has been paid or is payable or that duty is not chargeable.

(3) A duplicate of a transaction record for a dutiable transaction is ***duty endorsed*** if it is endorsed under section 273(5).

(4) If the Commissioner has established procedures for the electronic lodgment and recording of data on dutiable transactions, a reference in this Act to a transaction record being duty endorsed includes a reference to it being certified by the Commissioner in accordance with those procedures to indicate that an amount of duty is paid or payable or that duty is not chargeable.

*[Section 272 amended: No. 24 of 2018 s. 11.]*

### 273A. Duty endorsement: electronic conveyancing instruments

(1) In this section —

***digitally sign*** has the meaning given in the *Electronic Conveyancing Act 2014* section 3(1);

***electronic conveyancing instrument*** means an instrument in electronic form that, on being digitally signed, has, under the *Electronic Conveyancing Act 2014* section 9(2), the same effect as if a paper document having the equivalent effect had been executed as provided in section 9(2)(a) or (b) of that Act.

(2) If the Commissioner has established procedures for the duty endorsement of transaction records that are in the form of electronic conveyancing instruments, a reference in this Act to a transaction record being duty endorsed includes a reference to a transaction record in that form being verified or certified by the Commissioner in accordance with those procedures to the effect that an amount of duty has been paid or is payable or that duty is not chargeable.

(3) The procedures referred to in subsection (2) may include procedures for verifying or certifying electronic conveyancing instruments before they are digitally signed, and in that case —

(a) the verification or certification of an electronic conveyancing instrument must be undertaken in accordance with those procedures as if the transaction to be effected by the instrument were a dutiable transaction, even though the instrument is not digitally signed; but

(b) the verification or certification of the electronic conveyancing instrument in accordance with those procedures becomes a duty endorsement under subsection (2) only when the instrument is digitally signed.

*[Section 273A inserted: No. 2 of 2014 s. 54.]*

### 273. Endorsing transaction records as to duty paid etc.

(1) In this section —

***required duty*** means —

(a) the transfer duty and foreign transfer duty (if any) chargeable; and

(b) anything relating to the duty that constitutes tax under the Taxation Administration Act section 62; and

(c) any penalty tax relating to the dutiable transaction or the duty.

(2) If a transaction record for a dutiable transaction is lodged for duty endorsement and any required duty is paid in full, the Commissioner must —

(a) if transfer duty is chargeable on the dutiable transaction — endorse the transaction record to indicate the amount of transfer duty paid; or

(b) if transfer duty is not chargeable on the dutiable transaction because of an exemption under this Act or another written law — endorse the transaction record to indicate that transfer duty is not chargeable because of the exemption; or

(c) if transfer duty is not chargeable on the dutiable transaction other than because of an exemption under this Act or another written law — endorse the transaction record to indicate that transfer duty is not chargeable.

(2A) If a transaction record for a foreign dutiable transaction is lodged for duty endorsement and any required duty is paid in full, the Commissioner must —

(a) if foreign transfer duty is chargeable on the foreign dutiable transaction — endorse the transaction record to indicate the amount of foreign transfer duty paid; or

(b) if foreign transfer duty is not chargeable on the foreign dutiable transaction because of an exemption under this Act or another written law — endorse the transaction record to indicate that foreign transfer duty is not chargeable because of the exemption; or

(c) if foreign transfer duty is not chargeable on the foreign dutiable transaction other than because of an exemption under this Act or another written law — endorse the transaction record to indicate that foreign transfer duty is not chargeable.

(3A) Despite subsections (2) and (2A), the Commissioner is not required to (but may) endorse a transaction record to indicate the duty paid as a consequence of an interim assessment.

(3) If a transaction record for a dutiable transaction is duty endorsed and another transaction record for the dutiable transaction (the ***new record***) is lodged for duty endorsement, the Commissioner may endorse the new record to indicate the amount of duty paid or that duty was not chargeable.

(4) If under a duties Act a transaction record for a dutiable transaction is in the Commissioner's possession otherwise than because of lodgment, the Commissioner may endorse the transaction record as if it had been lodged for duty endorsement.

(5) A duplicate of a duty endorsed transaction record for a dutiable transaction may be —

(a) endorsed by the Commissioner; or

(b) endorsed or certified under a special tax return arrangement,

to indicate the amount of duty paid or payable or that duty was not chargeable.

*[Section 273 amended: No. 10 of 2013 s. 8; No. 24 of 2018 s. 12.]*

### 274. Endorsement of duty that depends on duty paid on another transaction

(1) This section applies if the amount of duty payable, or whether duty is chargeable, on a dutiable transaction (the ***dependent transaction***) depends in any way on the payment of duty chargeable on another dutiable transaction (the ***related transaction***).

(2) The transaction record for the dependent transaction may be —

(a) endorsed by the Commissioner; or

(b) endorsed or certified under a special tax return arrangement,

to indicate the amount of duty paid or payable on the related transaction.

Note for this section:

For example, duty of $20 700 is paid on an agreement for the transfer of dutiable property (the ***related transaction***). A transfer of the dutiable property (the ***dependent transaction***) is lodged and is in conformity with the agreement for transfer for the purposes of section 42(1). The transfer will be endorsed to indicate:

(a) that no duty is chargeable on the transfer; and

(b) the duty of $20 700 paid on the agreement for transfer.

### 275. Duty endorsement is evidence of certain matters

If a transaction record, or a duplicate of a transaction record, for a dutiable transaction is duty endorsed —

(a) the duty endorsement is evidence of —

(i) the making of an assessment in relation to the dutiable transaction; and

(ii) the amount of transfer duty (if any) and foreign transfer duty (if any) paid; and

(iii) any other matter indicated in the duty endorsement;

and

(b) except in proceedings under the Taxation Administration Act Part 4, the duty endorsement is conclusive evidence that the assessment is correct.

*[Section 275 amended: No. 24 of 2018 s. 13.]*

## Part 2 — Enforcement

### 276. Dutiable transactions etc. not to be registered etc. unless duty endorsed

(1) A registrar must not register or record —

(a) a dutiable transaction; or

(b) a transaction record for a dutiable transaction,

in a register of legal or beneficial interests in dutiable property unless the transaction is duty endorsed.

Penalty: a fine of $20 000.

(2) In subsection (1) —

***registrar*** means a person who has the function of maintaining a register.

(3) If a disposition of a share in a corporate trustee is a dutiable transaction because of section 67, a person must not register or record —

(a) the dutiable transaction; or

(b) a transaction record for the dutiable transaction,

in the books or records of the corporation unless the dutiable transaction is duty endorsed.

Penalty: a fine of $20 000.

(4) A contravention of subsection (3) does not invalidate any right or obligation arising out of the disposition.

(5) It is a defence to a charge of an offence under subsection (1) or (3) to prove that the accused person did not know and could not reasonably have been expected to have known that —

(a) the transaction was a dutiable transaction; or

(b) the transaction was not duty endorsed.

### 277. Business licences not to be registered etc. unless duty endorsed or instrument lodged

(1) In this section —

***relevant licence*** means —

(a) a business licence (as defined in section 79) that is issued, granted or given under a law of Western Australia; or

(b) a fixed infrastructure statutory licence that is issued, granted or given under a law of Western Australia.

(2) If a relevant licence is the subject of a dutiable transaction, a person must not —

(a) give effect to, receive, accept, approve or recognise the dutiable transaction under a written law; or

(b) register or record —

(i) the dutiable transaction; or

(ii) a transaction record for the dutiable transaction,

in any register of relevant licences,

unless the dutiable transaction is duty endorsed or an instrument that effects the dutiable transaction has been lodged for duty endorsement in accordance with section 23.

Penalty: a fine of $20 000.

(3) It is a defence to a charge of an offence under subsection (2) to prove that the accused person did not know and could not reasonably have been expected to have known that —

(a) the relevant licence was the subject of a dutiable transaction; or

(b) the transaction was not duty endorsed; or

(c) an instrument that effects the transaction had not been lodged for duty endorsement.

*[Section 277 amended: No. 12 of 2019 s. 129.]*

### 278. Caveat as to dutiable transaction not to be registered unless transaction is duty endorsed or lodged

(1) In this section —

***caveat*** means a caveat lodged under the *Mining Act 1978*;

***registrar*** means a mining registrar as defined in the *Mining Act 1978* section 8(1).

(2) If a caveat relates to a dutiable transaction, the registrar must reject the caveat unless the registrar is satisfied, on evidence provided by the person lodging the caveat —

(a) that the transaction has been duty endorsed; or

(b) that a transaction record for the transaction has been lodged for duty endorsement in accordance with section 23.

Penalty: a fine of $20 000.

(3) It is a defence to a charge of an offence under subsection (2) to prove that the accused person did not know and could not reasonably have been expected to have known that the caveat related to a dutiable transaction.

(4) If a caveat relates to a transaction that is not a dutiable transaction, the registrar may reject the caveat unless when it is lodged it is accompanied by a statutory declaration —

(a) stating that the transaction is not a dutiable transaction; and

(b) setting out why the transaction is not a dutiable transaction (including reference to any relevant provisions of a duties Act).

*[Section 278 amended: No. 2 of 2014 s. 55.]*

### 279. Use of transaction records in civil proceedings

(1) Unless a transaction record for a dutiable transaction is duty endorsed, then, other than in respect of criminal proceedings, the transaction record is not available for use in any proceedings before a court or tribunal.

(2) Subsection (1) does not apply to a transaction record —

(a) where the person that produces the transaction record is the person liable to pay the duty —

(i) if the transaction record has been transmitted to the Commissioner; or

(ii) if the court or tribunal is satisfied that the transaction record will be transmitted to the Commissioner in accordance with arrangements approved by the court or tribunal;

or

(b) where the person that produces the transaction record is not the person liable to pay the duty —

(i) if the name and address of the person so liable and the transaction record have been transmitted to the Commissioner; or

(ii) if the court or tribunal is satisfied that the name and address of the person so liable and the transaction record will be transmitted to the Commissioner in accordance with arrangements approved by the court or tribunal.

(3) Subsection (1) does not apply to —

(a) a duty endorsed duplicate of a transaction record for a dutiable transaction; or

(b) an unexecuted copy of an instrument that effects a dutiable transaction or an instrument that evidences a dutiable transaction if a court or tribunal is satisfied that a transaction record for the dutiable transaction is duty endorsed.

*[Section 279 inserted: No. 29 of 2012 s. 8.]*

### 280. Unlodged instruments, duty of non-party to lodge

(1) This section applies to an instrument that —

(a) effects a dutiable transaction; and

(b) is not duty endorsed.

(2) If, after the expiry of the time provided under section 23 within which an instrument referred to in subsection (1) is to be lodged for duty endorsement, a person who is not a party to the dutiable transaction effected by the instrument —

(a) has possession or control of the instrument; or

(b) acts under the instrument,

that person must, as soon as practicable, lodge the instrument or give notice of the instrument to the Commissioner.

Penalty: a fine of $20 000.

(3) It is a defence to a charge of an offence under subsection (2) to prove that the accused person did not know and could not reasonably have been expected to have known that —

(a) duty is chargeable on the transaction effected by the instrument; or

(b) the instrument was not duty endorsed.

# Part 3 — Miscellaneous

## 281. Transaction records etc., Commissioner's power to destroy

(1) If a transaction record is in the Commissioner's possession or control, the Commissioner may destroy the record if —

(a) 6 years have elapsed since the original assessment of the amount of duty payable on the dutiable transaction was made; and

(b) any amount that remains unpaid under a duties Act on the dutiable transaction has been written off under the Taxation Administration Act.

(2) Subsection (1) also applies to relevant material relating to the dutiable transaction.

## 282. Correction of errors

The Commissioner may, in a case in which the Commissioner considers that the circumstances so require, permit a clerical error in an instrument that effects or evidences a dutiable transaction to be corrected before the transaction is duty endorsed.

Note for this section:

The following are examples of clerical errors in an instrument that effects or evidences a dutiable transaction —

(a) an accidental misdescription of property;

(b) an accidental misdescription of a party to the transaction.

## 283. Amounts expressed in foreign currency

If an amount by reference to which duty has to be calculated is expressed in a currency other than the currency of Australia, the amount is the amount expressed in Australian currency according to the buy rate of exchange reported by the Reserve Bank of Australia and applicable in Australia on —

(a) the day on which liability for duty arose; or

(b) if the rate is not obtainable for Australia on that day — the last earlier day on which the rate was obtainable for Australia.

### 284. Application of Corporations Act s. 1070A(1)(a) limited

The following matter is declared to be an excluded matter for the purposes of the Corporations Act section 5F in relation to the Corporations Act section 1070A(1)(a) — interests in registered schemes.

### 285. Regulations

(1) The Governor may make regulations prescribing all matters that a duties Act requires or permits to be prescribed or are necessary or convenient to be prescribed to give effect to a duties Act.

(2) Without limiting subsection (1), regulations may be made in relation to the records to be kept for the purposes of a duties Act.

(3) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding $5 000.

(4) Regulations may be expressed to apply to an instrument that was executed before the day on which the regulations come into operation, or to a transaction that took place before that day, if the application of the regulations to the instrument or transaction would not adversely affect a person that is or may become liable to pay duty on the instrument or in relation to the transaction, or adversely affect a party to the transaction.

### 286. Transitional provisions (Sch. 3)

Schedule 3 sets out transitional provisions.

# Schedule 1 — When liability for transfer duty on a dutiable transaction arises and the person liable to pay it

[s. 19 and 20]

| Column 1<br>Provision of section 11 | Column 2<br>Dutiable transaction | Column 3<br>When liability for transfer duty arises | Column 4<br>Person liable to pay transfer duty |
|---|---|---|---|
| s. 11(1)(a) | Transfer | When the property is transferred | Transferee |
| s. 11(1)(b) | Agreement for transfer | When the agreement is made | Purchaser or transferee |
| s. 11(1)(c) | Declaration of trust | When the declaration is made | Person making the declaration |
| s. 11(1)(d)(i) | Vesting by statute law | When the vesting takes place | Person in whom the property is vested |
| s. 11(1)(d)(ii) | Vesting by court order | When the order is made | Person in whom the property is vested |
| s. 11(1)(e) | Foreclosure of mortgage | When the foreclosure order is made | Mortgagee |
| s. 11(1)(f) | Acquisition of new dutiable property | The earlier of the following —<br>(a) when the property is acquired; or | Person that acquires the property |

| Column 1<br>**Provision of section 11** | Column 2<br>**Dutiable transaction** | Column 3<br>**When liability for transfer duty arises** | Column 4<br>**Person liable to pay transfer duty** |
|---|---|---|---|
| | | (b) if an instrument evidences the acquisition, when the instrument is executed | |
| s. 11(1)(g) | Surrender of special dutiable property | When the surrender takes place | Person to whom the interest is surrendered; or<br>in the case of a surrender referred to in section 18(caa), the person to whom the new lease is, or is to be, granted in accordance with the agreement, arrangement or understanding; or |

| Column 1<br>Provision of section 11 | Column 2<br>Dutiable transaction | Column 3<br>When liability for transfer duty arises | Column 4<br>Person liable to pay transfer duty |
|---|---|---|---|
| | | | in the case of a surrender referred to in section 18(f), the person to whom the mining tenement is granted in accordance with the agreement; or<br>in the case of a surrender referred to in section 18(g), (ga), (gb) or (gc), the person that paid the consideration for the surrender |
| s. 11(1)(h) | A trust acquisition or trust surrender | When the interest in the trust is acquired or surrendered | Person that is the trustee of the discretionary trust |

| Column 1<br>**Provision of section 11** | Column 2<br>**Dutiable transaction** | Column 3<br>**When liability for transfer duty arises** | Column 4<br>**Person liable to pay transfer duty** |
|---|---|---|---|
| s. 11(1)(i) | A partnership acquisition | The earlier of the following —<br>(a) when the partnership interest is acquired; or<br>(b) if the acquisition is evidenced by an instrument, when the instrument is executed | Person that acquires the partnership interest |
| s. 11(1)(j) | A concessional farm-in transaction | When the concessional farm-in transaction is made | The farmee |

*[Schedule 1 amended: No. 12 of 2019 s. 130; No. 37 of 2022 s. 13; No. 4 of 2023 s. 119.]*

# Schedule 2 — Rates of transfer duty

[s. 3, 9, 26 and 184]

*[Heading amended: No. 16 of 2022 s. 24(1).]*

## Division 1 — General rate

*[Heading inserted: No. 16 of 2022 s. 24(2).]*

| **Dutiable value** *(rounded down to nearest whole dollar)* | **General rate of duty** |
|---|---|
| $0 — $120 000 | $1.90 per $100 or part of $100 |
| $120 001 — $150 000 | $2 280 + $2.85 per $100 or part of $100 above $120 000 |
| $150 001 — $360 000 | $3 135 + $3.80 per $100 or part of $100 above $150 000 |
| $360 001 — $725 000 | $11 115 + $4.75 per $100 or part of $100 above $360 000 |
| $725 001 and upwards | $28 453 + $5.15 per $100 or part of $100 above $725 000 |

*[Division 1 inserted: No. 16 of 2022 s. 24(2).]*

## Division 2 — Concessional rates

*[Heading inserted: No. 16 of 2022 s. 24(2).]*

| **Concessional transaction** | **Dutiable value** *(rounded down to nearest whole dollar)* | **Concessional rate of duty** |
|---|---|---|
| s. 143<br>First home owners | | |
| If the property includes a home | $0 — $430 000 | Nil |
| | $430 001 — $530 000 | $19.19 per $100 or part of $100 above $430 000 |

| **Concessional transaction** | **Dutiable value** *(rounded down to nearest whole dollar)* | **Concessional rate of duty** |
|---|---|---|
| If the property does not include a home | $0 — $300 000 | Nil |
| | $300 001 — $400 000 | $13.01 per $100 or part of $100 above $300 000 |
| s. 147 Residential or business property | $0 — $120 000 | $1.50 per $100 or part of $100 |
| | $120 001 — $200 000 | $1 800 + $4.04 per $100 or part of $100 above $120 000 |

*[Division 2 inserted: No. 16 of 2022 s. 24(2).]*

## Division 3 — Nominal duty

The amount of nominal duty is $20.00.

# Schedule 3 — Transitional provisions

[s. 286]

## Division 1 — Provisions for *Duties Act 2008*

### Subdivision 1 — Preliminary

**1. Terms used**

(1) In this Division —

***relevant acquisition*** has the meaning given in section 148.

(2) A reference in this Division to the time when a transaction takes or took place is a reference to the time that —

(a) is applicable under section 19(1); or

(b) would have been applicable under section 19(1) if the transaction had been chargeable with transfer duty.

*[Clause 1 amended: No. 12 of 2019 s. 131.]*

### Subdivision 2 — Provisions for Chapter 2

**2. When Ch. 2 starts to apply**

Subject to this Subdivision, Chapter 2 applies in relation to the imposition of transfer duty on a transaction only if that transaction takes place on or after 1 July 2008.

**3. No double duty**

Without limiting Chapter 2 Part 4 Division 6, transfer duty is not chargeable on a dutiable transaction for which there is a transaction record chargeable with duty under the *Stamp Act 1921*.

**4. Alteration of consideration (s. 31)**

Section 31(1) and (3) do not apply if the liability to duty is under the *Stamp Act 1921*.

**5. Aggregation (s. 37)**

(1) Two or more transactions are to be aggregated and treated as a single dutiable transaction under section 37 as long as the last of the transactions takes place on or after 1 July 2008.

(2) For the purposes of section 37(6)(a), the dutiable value of a transaction that took place before 1 July 2008 is —

(a) the unencumbered value under the *Stamp Act 1921* of the property the subject of the transaction; or

(b) the consideration for the transaction,

whichever is greater.

(3) If —

(a) a previous dutiable transaction referred to in section 37(7) took place before 1 July 2008; and

(b) duty under the *Stamp Act 1921* (***stamp duty***) was paid on an instrument effecting or evidencing the transaction,

a reference in section 37(7) to duty paid on the transaction is a reference to that stamp duty.

**6. Exchanges (s. 40)**

Without limiting clause 2, if any of the dutiable transactions referred to in section 40 took place before 1 July 2008, transfer duty is not chargeable on that transaction.

**7. Exempt bodies (s. 92)**

Any body declared to be an exempt body under the *Stamp Act 1921* section 119 is taken to have been declared to be an exempt body under section 92(1).

**8. Family farm transactions (s. 104 and 105)**

(1) Without limiting clause 25(1)(d), a reference to an exempt family farm transaction in section 104(a) or 105(1) or (4) includes a reference to a farming exemption as defined in the *Stamp Act 1921* section 75HA(1).

(2) The reference in section 105(1)(d) to an event already duty endorsed under section 105 includes a reference to a taxable event referred to in the *Stamp Act 1921* section 75HA(2) if —

(a) a statement has been lodged under the *Stamp Act 1921* section 75HA(3) in respect of that event; and

(b) duty under the *Stamp Act 1921* has been paid in respect of that statement.

**9. Matrimonial and de facto relationship instruments (s. 129, 130)**

(1) Despite clause 25(1)(b), section 132 does not apply to an instrument in respect of which duty under the *Stamp Act 1921* has been paid unless the liability to duty arose on or after 28 November 2007.

(2) In a case mentioned in subclause (1), section 132 applies even if the day on which the instrument became —

(a) a matrimonial instrument as defined in section 129; or

(b) a de facto relationship instrument as defined in section 130,

was before 1 July 2008.

**10. First home owners (Part 6 Div. 3)**

(1) In determining the meaning of the term further concessional transaction for the purposes of Chapter 2 Part 6 Division 3, the transaction referred to in section 142(2) as the first concessional transaction can be a transaction evidenced by an instrument (the ***earlier instrument***) that was —

(a) executed before 1 July 2008 (but not before 1 July 2004); and

(b) chargeable with duty under the *Stamp Act 1921* section 75AG.

(2) If the first concessional transaction is a transaction referred to in subclause (1), the rate and thresholds referred to in section 143(2) are those that applied in relation to the earlier instrument under the *Stamp Act 1921* section 75AG.

*[Clause 10 amended: No. 27 of 2015 s. 15.]*

*[**11A.** Deleted: No. 16 of 2022 s. 25.]*

### Subdivision 3 — Provisions for Chapter 3

**11. When Ch. 3 starts to apply**

Chapter 3 applies in relation to the imposition of landholder duty in respect of a relevant acquisition only if that acquisition occurs on or after 1 July 2008.

**12. Acquisitions under an agreement made before 1 July 2008**

(1) This clause applies to an acquisition of an interest in an entity —

(a) that occurs on or after 1 July 2008; but

(b) is made under an agreement, whether conditional or not, that was entered into before 1 July 2008.

(2) Despite section 176, the acquisition is taken to have occurred when the agreement is completed.

*[**13.** Deleted: No. 32 of 2012 s. 25.]*

### Subdivision 4 — Provisions for Chapter 4

**14. Terms used**

When this Subdivision uses a term that is used in Chapter 4, the term has the same meaning in this Subdivision as it has in Chapter 4 unless the contrary intention appears in this Subdivision.

**15. When Ch. 4 starts to apply**

Chapter 4 applies to and in relation to —

(a) premiums, or instalments of premiums, paid on or after 1 July 2008; and

(b) return periods commencing on or after 1 July 2008.

**16. Registration**

(1) A person that was, immediately before 1 July 2008, a registered insurer under the *Stamp Act 1921* Part IIIF is taken to have been registered under section 218 on 1 July 2008.

(2) If, immediately before 1 July 2008, a notice of cancellation of registration issued under the *Stamp Act 1921* section 93B had not come into effect, the notice is taken to have been issued under section 222.

### Subdivision 5 — Provisions for Chapter 5

**17. Terms used**

When this Subdivision uses a term that is used in Chapter 5, the term has the same meaning in this Subdivision as it has in Chapter 5 unless the contrary intention appears in this Subdivision.

**18. When Ch. 5 starts to apply**

(1) Chapter 5 applies to and in relation to the grant or transfer of a licence the application for which was made on or after 1 July 2008.

(2) Despite subclause (1), section 242(3) does not apply in respect of the grant of a licence if the vehicle was licensed or registered outside of Western Australia before 1 July 2008.

**19. New vehicles (s. 228)**

In section 228, in the definition of ***new vehicle*** —

(a) the reference to section 246(1) includes a reference to the *Stamp Act 1921* section 76D(5)(a) as in force immediately before 1 July 2008; and

(b) the reference to section 246(1)(a)(ii) includes a reference to the *Stamp Act 1921* section 76D(5)(a)(ii) as in force immediately before 1 July 2008; and

(c) a reference to section 247(1) includes a reference to the *Stamp Act 1921* section 76D(5a)(a) as in force immediately before 1 July 2008.

**20. Specialised vehicles (s. 239)**

(1) In section 239(1)(a), the reference to a specialised vehicle includes a reference to an eligible vehicle within the meaning of the *Stamp Act 1921* section 76B as in force immediately before section 239 comes into operation.

(2) In section 239(1)(c), the reference to dutiable value includes a reference to market value within the meaning of the *Stamp Act 1921* section 76B as in force immediately before 1 July 2008.

**21. Approval of philanthropic purposes (s. 247)**

In section 247(1)(a)(iv), the reference to a philanthropic purpose approved by the Commissioner includes a reference to a philanthropic purpose approved by the Commissioner under the *Stamp Act 1921* section 76D(5b).

**22. Transfer of vehicles, nominal duty on (s. 250)**

(1) If —

(a) the Commissioner has, before 1 July 2008, granted an authorisation under the *Stamp Act 1921* section 76C or 112UE in respect of the transfer of a licence; and

(b) the transfer of the licence occurs within the 12 month period beginning on 1 July 2008,

then —

(c) nominal duty is chargeable under section 250 on the transfer of the licence; and

(d) either —

(i) any document evidencing the authorisation may be treated as a certificate issued by the Commissioner under section 250(2); or

(ii) the Commissioner may issue a certificate under section 250(2) as if satisfied of the matters in section 250(2).

(2) If —

(a) the transfer of a vehicle (within the meaning of that term in Chapter 2) occurred before 1 July 2008; and

(b) no application for the transfer of a licence for the vehicle was made before 1 July 2008; and

(c) under the *Stamp Act 1921* section 76C or 112UE no authorisation was applied for, or, if applied for, the application was not dealt with, before 1 July 2008,

section 250 applies in respect of the transfer of the vehicle despite the transfer having occurred before 1 July 2008.

(3) Section 250(6) does not apply to the transfer of the licence for a vehicle that occurred before 28 November 2007.

(4) If the transfer of the licence for a vehicle occurs on or after 28 November 2007, section 250(6) applies to the transfer of the licence even if the day on which the instrument referred to in section 250(6)(b) —

(a) came into existence; or

(b) became a matrimonial instrument or a de facto relationship instrument,

was before 1 July 2008.

**23. Statements made under *Stamp Act 1921* s. 76H (s. 252)**

A statement under or for the purposes of the *Stamp Act 1921* section 76H(1) or (2) has effect as if given under section 252(1) or (3) (whichever is relevant) to the extent to which it relates to the grant or transfer of a licence the application for which was made after 1 July 2008.

### Subdivision 6 — Provisions for Chapter 7

**24. When Ch. 7 starts to apply**

Chapter 7 applies in relation to a scheme as defined in section 267(1) only if the scheme, or at least one of the steps or transactions by which it is carried into effect, occurs on or after 1 July 2008.

### Subdivision 7 — General

**25. Some references to duty include stamp duty**

(1) In this Act, where appropriate in the context —

(a) a reference to a transaction record that has been duty endorsed includes a reference to an instrument that —

(i) has been, or is taken to have been, endorsed in accordance with the *Stamp Act 1921* section 17C(1); or

(ii) has been stamped or endorsed under a special tax return arrangement to indicate the amount of duty under the *Stamp Act 1921* paid or payable under the arrangement or that duty under that Act was not payable in respect of the instrument;

and

(b) a reference to a transaction that has been duty endorsed includes a reference to a transaction to which an instrument referred to in paragraph (a) relates; and

(c) a reference to duty paid or payable, or that has become chargeable, includes a reference to duty paid or payable, or that has become chargeable, under the *Stamp Act 1921*; and

(d) a reference to a transaction being or having been an exempt transaction, or not chargeable with duty, includes a reference to a transaction the subject of an instrument exempt from, or not chargeable with, duty under the *Stamp Act 1921*.

(2) Subclause (1)(a) and (b) do not apply to a reference to duty endorsed in section 31(5), 32(1), 33(2), 34(1) or 280.

(3) Without limiting subclause (1)(c), if this Act requires another amount of duty to be taken into account in making an assessment or reassessment of duty, the reference to that other amount includes, where appropriate in the context, a reference to duty paid or payable under the *Stamp Act 1921*.

**26. Application of some Ch. 8 provisions**

(1) Sections 272 and 273 and 275 to 282 apply in relation to a dutiable transaction only if that transaction takes place on or after 1 July 2008.

(2) Section 274 applies in relation to a dependent transaction only if that transaction takes place on or after 1 July 2008.

### 27. Regulations

(1) Regulations may be made for any of the following —

(a) to resolve any doubts as to which of this Act or the *Stamp Act 1921* is applicable to an instrument, transaction or matter;

(b) to clarify, vary or add to the provisions of this Division;

(c) to make further amendments of a transitional nature to the *Stamp Act 1921* in addition to those made by the *Duties Legislation Amendment Act 2008* Part 2 Division 1;

(d) to facilitate or clarify the continued operation of the *Stamp Act 1921* in relation to instruments, transactions or matters to which it applies;

(e) generally to ensure that duty on an instrument, transaction or matter is imposed correctly and appropriately under this Act or the *Stamp Act 1921*, but not under both Acts.

(2) Regulations referred to in subclause (1) have effect despite any inconsistency with a taxation Act.

(3) For the purposes of the *Interpretation Act 1984* section 41(1)(b) the day specified in regulations referred to in subclause (1) may be 1 July 2008 or any later day.

### 28. *Stamp Act 1921*, references to

(1) In this clause —

***Stamp Act reference*** means a reference to the *Stamp Act 1921* in —

(a) a written law other than this Act, the *Stamp Act 1921* or the Taxation Administration Act; or

(b) an agreement, contract, determination, order or other document.

(2) A Stamp Act reference is to be read as being or including a reference to this Act if it would be appropriate in the context to do so.

*[Division 2 (cl. 29) deleted: No. 30 of 2008 s. 4.]*

*[Division 3 (cl. 30) deleted: No. 5 of 2013 s. 7.]*

## Division 4 — Provisions for *Revenue Laws Amendment Act 2010* section 5

*[Heading inserted: No. 9 of 2010 s. 6.]*

### 31. Terms used

When this Division uses a term that is used in Chapter 6, the term has the same meaning in this Division as it has in Chapter 6.

*[Clause 31 inserted: No. 9 of 2010 s. 6.]*

### 32. Certain relevant reconstruction transactions

(1) An exemption cannot be granted in respect of an acquisition if —

(a) the acquisition took place on or after the day on which the *Revenue Laws Amendment Act 2010* section 5 is deemed to have come into operation; and

(b) as a result of the amendment effected by that section, the acquisition is no longer a relevant reconstruction transaction.

(2) Subclause (1) applies even if —

(a) before the day on which the *Revenue Laws Amendment Act 2010* receives the Royal Assent, an application for an exemption in respect of the acquisition was —

(i) made; or

(ii) made and dealt with;

or

(b) a decision to the contrary in relation to the acquisition was made by the Commissioner on a pre-transaction decision request under section 261.

(3) The Commissioner —

(a) is not bound by a decision referred to in subclause (2)(b); and

(b) must make any reassessment the Commissioner considers necessary to give effect to the amendment effected by the *Revenue Laws Amendment Act 2010* section 5 and this clause.

*[Clause 32 inserted: No. 9 of 2010 s. 6.]*

## Division 5 — Provisions for *Duties Amendment Act (No. 2) 2011*

*[Heading inserted: No. 33 of 2011 s. 6.]*

### 33. Term used: relevant period

In this Division —

***relevant period*** means the period beginning on 24 December 2010 and ending on the day before the day on which the *Duties Amendment Act (No. 2) 2011* Part 3 comes into operation.

*[Clause 33 inserted: No. 33 of 2011 s. 6.]*

### 34. When transfer duty deemed to arise in certain cases

(1) When this clause uses a term that is used in Chapter 2, the term has the same meaning in this clause as it has in that Chapter.

(2) This clause applies to any transaction —

(a) that became a dutiable transaction during the relevant period; and

(b) that would not have become a dutiable transaction during that period if the *Duties Amendment Act (No. 2) 2011* Part 2 had not been enacted.

(3) If this clause applies to a transaction, liability (if any) for transfer duty chargeable on the transaction is to be treated for all purposes of this Act as arising on the later of —

(a) the day on which the *Duties Amendment Act (No. 2) 2011* Part 3 comes into operation; or

(b) the day on which the liability would ordinarily arise by the operation of this Act.

*[Clause 34 inserted: No. 33 of 2011 s. 6.]*

### 35. When landholder duty deemed to arise in certain cases

(1) When this clause uses a term that is used in Chapter 3, the term has the same meaning in this clause as it has in that Chapter.

(2) This clause applies to any acquisition of an interest in an entity —

(a) that became a relevant acquisition during the relevant period; and

(b) that would not have become a relevant acquisition during that period if the *Duties Amendment Act (No. 2) 2011* Part 2 had not been enacted.

(3) If this clause applies to an acquisition of an interest in an entity, liability (if any) for landholder duty chargeable in respect of the acquisition is to be treated for all purposes of this Act as arising on the later of —

(a) the day on which the *Duties Amendment Act (No. 2) 2011* Part 3 comes into operation; or

(b) the day on which the liability would ordinarily arise by the operation of this Act.

*[Clause 35 inserted: No. 33 of 2011 s. 6.]*

## Division 6 — Provisions for *Revenue Laws Amendment Act 2013* Part 2

*[Heading inserted: No. 10 of 2013 s. 9.]*

### 36. Interim assessments

The Commissioner may make an interim assessment of duty payable under Chapter 2 on a dutiable transaction, or under Chapter 3 in respect of a relevant acquisition, that occurred before the day on which the *Revenue Laws Amendment Act 2013* Part 2 came into operation.

*[Clause 36 inserted: No. 10 of 2013 s. 9.]*

## Division 7 — Provisions for *Taxation Legislation Amendment Act 2015*

*[Heading inserted: No. 1 of 2015 s. 28.]*

### 37. Terms used

In this Division —

***amended provisions*** means sections 156(8)(b) and 195(2)(a) as in force immediately after commencement;

***commencement*** means the day on which the *Taxation Legislation Amendment Act 2015* Part 4 comes into operation;

***relevant acquisition*** means a relevant acquisition that occurred on or after 1 July 2008 but before commencement.

*[Clause 37 inserted: No. 1 of 2015 s. 28.]*

### 38. Duty on certain relevant acquisitions

(1) The amended provisions apply, and are to be taken to have always applied, for the purposes of —

(a) assessing duty in respect of a relevant acquisition; and

(b) reassessing duty in respect of a relevant acquisition on an application made under section 195(3)(b) before whichever is the later of the following —

(i) 5 years after the original assessment was made;

(ii) 12 months after commencement.

(2) Subclause (1)(b) applies despite the *Taxation Administration Act 2003* section 17(4).

*[Clause 38 inserted: No. 1 of 2015 s. 28.]*

## Division 8 — Provisions for *Duties Amendment (Additional Duty for Foreign Persons) Act 2018*

*[Heading inserted: No. 24 of 2018 s. 15.]*

### 39. Terms used

When this Division uses a term that is used in Chapter 3A, the term has the same meaning in this Division as it has in Chapter 3A.

*[Clause 39 inserted: No. 24 of 2018 s. 15.]*

### 40. When Ch. 3A Pt. 2 starts to apply

Chapter 3A Part 2 applies in relation to the imposition of foreign transfer duty on a foreign dutiable transaction only if that transaction takes place on or after 1 January 2019.

*[Clause 40 inserted: No. 24 of 2018 s. 15.]*

### 41. Agreements entered into before 1 January 2019

(1) Foreign transfer duty is not chargeable on a transfer of residential property to a transferee in conformity with an agreement for the transfer of residential property if the agreement is entered into before 1 January 2019.

(2) If an agreement for the transfer of residential property is entered into before 1 January 2019, foreign transfer duty is not chargeable on the subsequent transfer of the property if, when liability for transfer duty on the agreement arose, the person named in the instrument effecting, or evidencing, the agreement as the purchaser was acting as the agent of the transferee of the subsequent transfer.

*[Clause 41 inserted: No. 24 of 2018 s. 15.]*

### 42. Declaration of trusts made before 1 January 2019

(1) Foreign transfer duty is not chargeable on a transfer to a trustee of residential property subject to a declaration of trust in respect of the same residential property if the declaration of trust was made before 1 January 2019.

(2) Foreign transfer duty is not chargeable on a declaration of trust that declares the same trusts as those upon and subject to which the same residential property was transferred, or agreed to be transferred, to the person declaring the trust if the transfer, or agreement, was made before 1 January 2019.

(3) Foreign transfer duty is not chargeable on a declaration of trust if —

(a) the declaration of trust supersedes another declaration of trust which was made before 1 January 2019 and declares the same trusts as were declared under the superseded declaration of trust; and

(b) the beneficiary under the declaration of trust is the same as under the superseded declaration of trust; and

(c) the residential property subject to the declaration of trust —

(i) is wholly or substantially the same as the property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust; or

(ii) represents the proceeds of re-investment of property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust; or

(iii) is property to which both subparagraphs (i) and (ii) apply.

*[Clause 42 inserted: No. 24 of 2018 s. 15.]*

### 43. Other transactions before 1 January 2019

(1) Foreign transfer duty is not chargeable on a transfer of residential property resulting from a foreign dutiable transaction referred to in section 205H(1)(d) if the vesting of the residential property was made before 1 January 2019.

(2) Foreign transfer duty is not chargeable on a transfer of residential property in accordance with a foreclosure order if the foreclosure order was made before 1 January 2019.

(3) Foreign transfer duty is not chargeable on a transfer of residential property in accordance with a residential partnership acquisition if the residential partnership acquisition was made before 1 January 2019.

(4) Foreign transfer duty is not chargeable on a foreign dutiable transaction if —

(a) section 97 applies to the transaction and the person from whom the property is transferred or agreed to be transferred acquired the property before 1 January 2019; or

(b) section 114, 115 or 116 applies to the transaction and the trustee acquired the property before 1 January 2019; or

(c) section 117(1)(a) or (b) applies to the transaction and the apparent purchaser acquired the property before 1 January 2019.

*[Clause 43 inserted: No. 24 of 2018 s. 15.]*

### 44. When Ch. 3A Pt. 3 starts to apply

(1) Chapter 3A Part 3 applies in relation to the imposition of foreign landholder duty on a foreign landholder acquisition only if that acquisition occurs on or after 1 January 2019.

(2) For the purposes of subsection (1), when an acquisition of an interest in a residential landholder occurs is to be determined under section 176 as applied by section 205ZE(1).

*[Clause 44 inserted: No. 24 of 2018 s. 15.]*

### 45. Application of some Ch. 8 provisions

(1) Sections 272(2) and 273 as in force before the commencement of the *Duties Amendment (Additional Duty for Foreign Persons) Act 2018* section 15 apply in relation to a dutiable transaction that takes place before 1 January 2019.

(2) Section 273(2A) applies in relation to a foreign dutiable transaction only if that transaction takes place on or after 1 January 2019.

*[Clause 45 inserted: No. 24 of 2018 s. 15.]*

## Division 9 — Provisions for *Revenue Laws Amendment Act 2019*

*[Heading inserted: No. 12 of 2019 s. 132.]*

### 46. Terms used

(1) In this Division —

***commencement day*** means the day on which the *Revenue Laws Amendment Act 2019* Part 2 comes into operation;

***transaction*** means any transaction, transfer, acquisition or other matter of a kind on which duty is or may be chargeable under this Act and includes the following —

(a) a transaction of a kind referred to in section 11 (including a transaction that would be a dutiable transaction if it related to dutiable property, new dutiable property or special dutiable property);

(b) an acquisition of an interest in an entity for the purposes of Chapter 3 or Chapter 3A Part 3;

(c) a transaction of a kind referred to in section 205H (including a transaction that would be a foreign dutiable transaction if it related to residential property, special residential property or new residential property);

(d) the grant or transfer of a licence for a vehicle for the purposes of Chapter 5.

(2) In this Division a reference to doing anything includes omitting to do anything.

(3) For the purposes of this Division —

(a) when an acquisition of an interest in an entity for the purposes of Chapter 3 occurs is to be determined under section 176; and

(b) when an acquisition of an interest in an entity for the purposes of Chapter 3A Part 3 occurs is to be determined under section 176 as applied by section 205ZE(1).

*[Clause 46 inserted: No. 12 of 2019 s. 132.]*

**47. Application of amendments made by *Revenue Laws Amendment Act 2019***

(1) The amendments made by the *Revenue Laws Amendment Act 2019* apply in relation to the imposition of duty on transactions that occur on or after commencement day.

(2) Sections 155(4), 156A, 204D(2)(d) and 204F (including sections 156A and 204F as applied by section 205ZE(1)) do not apply in relation to acquisitions that together form, evidence, give effect to or arise from what is, substantially one arrangement unless each of those acquisitions occurs on or after commencement day.

(3) Section 91C(3) does not apply in relation to transactions that together form, evidence, give effect to, or arise from what is, substantially one arrangement unless each of those transactions occurs on or after commencement day.

(4) Sections 14(3) and 91C(4) do not apply in relation to a transaction and an acquisition or agreement that together form, evidence, give effect to, or arise from what is, substantially one arrangement unless each of the transaction and the acquisition or agreement occurs on or after commencement day.

(5) This clause has effect subject to the other provisions of this Division.

*[Clause 47 inserted: No. 12 of 2019 s. 132.]*

### 48. Definition of *land* taken always to have included pastoral leases

(1) In this clause —

***pre-commencement period*** means the period beginning on 1 July 2008 and ending immediately before commencement day.

(2) This Act is taken, for all purposes, to have applied during the pre-commencement period as if the definition of ***land*** in force for the purposes of this Act had, at all times during the pre-commencement period, included an express statement that ***land*** includes a pastoral lease and an interest of a pastoral lessee under a pastoral lease.

(3) Without limiting subclause (2), an assessment of duty chargeable under this Act made, or purported to be made, in the pre-commencement period is, and is taken to have always been, as valid and effective as it would have been if, when the liability for duty arose, the definition of ***land*** in force for the purposes of this Act had included the statement referred to in subclause (2).

(4) Without limiting subclause (2), if a transaction occurred during the pre-commencement period, but an assessment of duty in relation to the transaction was not made before commencement day, an assessment of duty made on or after commencement day in relation to the transaction is to be made as if, when the transaction occurred, the definition of ***land*** in force for the purposes of this Act had included the statement referred to in subclause (2).

*[Clause 48 inserted: No. 12 of 2019 s. 132.]*

### 49. Validation of administration agreements entered into before commencement day

(1) In this clause —

***previous administration agreement*** means an administration agreement entered into under the *First Home Owner Grant Act 2000* section 37 on or after 3 October 2015 and before commencement day.

(2) A previous administration agreement entered into, or purported to be entered into, is, and is taken to have always been, as valid and effective as it would have been if the amendment made by the

*Revenue Laws Amendment Act 2019* section 52 had been in force when the agreement was entered into.

*[Clause 49 inserted: No. 12 of 2019 s. 132.]*

### 50. Transfers of vehicle licences between spouses between 1 July 2014 and commencement day

(1) In this clause —

***amended section 244A*** means section 244A as in force immediately after the coming into operation of the *Revenue Laws Amendment Act 2019* section 117;

***relevant vehicle licence transfer*** means the transfer of a licence for a vehicle if —

(a) the transfer occurred during the period beginning on 1 July 2014 and ending immediately before commencement day; and

(b) the person from whom, and the person to whom, the licence was transferred were married to each other or de facto partners of 2 years when the transfer occurred.

(2) When this clause uses a term that is used in Chapter 5, the term has the same meaning in this clause as it has in that Chapter.

(3) An assessment made, or purported to be made, before commencement day that no duty was chargeable on a relevant vehicle licence transfer is, and is taken to have always been, as valid and effective as it would have been if amended section 244A had been in force when the transfer occurred.

(4) If no assessment of vehicle licence duty on a relevant vehicle licence transfer was made before commencement day, an assessment of vehicle licence duty on the transfer made after commencement day must be made as if amended section 244A had been in force when the transfer occurred.

(5) If an assessment that vehicle licence duty was chargeable on a relevant vehicle licence transfer was made before commencement day, and vehicle licence duty would not have been chargeable on the transfer if amended section 244A had been in force when the transfer occurred, the Commissioner must, on application by the transferee, make a reassessment of the liability for vehicle licence duty as if amended section 244A had been in force at that time.

(6) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subclause (5), but an application for reassessment under that subclause must be made on or before the later of —

(a) the day that is 5 years after the day on which the original assessment was made; or

(b) the day that is 12 months after commencement day.

*[Clause 50 inserted: No. 12 of 2019 s. 132.]*

**51. Provisions relating to exemptions for connected entities**

(1) The amendments to Chapter 6 made by the *Revenue Laws Amendment Act 2019* sections 118 to 128 apply in relation to an exemption if the application for the exemption is made on or after commencement day, whether the transaction occurred before or after commencement day.

(2) Despite subclause (1), section 263(4)(a) and (b) (as in force on commencement day), section 264A and sections 266A to 266D do not apply in relation to a relevant transaction that occurred before commencement day.

(3) Subclause (4) applies if —

(a) before commencement day, the Commissioner makes a decision under section 261 on a pre-transaction decision request made under section 261(2) or (3) (as in force immediately before commencement day) in relation to a proposed relevant transaction; and

(b) the decision is —

(i) in relation to a request made under section 261(2) — that if the transaction were entered into it would be exempted; or

(ii) in relation to a request made under section 261(3) — that if the transaction were entered into and exempted, the exemption would not be revoked under section 265;

and

(c) the transaction is not entered into before commencement day.

(4) Despite section 261(10), the Commissioner is not bound by the pre-transaction decision request if the Commissioner would have made a different decision on the request if the amendments made by the *Revenue Laws Amendment Act 2019* sections 123 to 126 had been in force when the decision was made.

(5) Section 261(7)(b) does not apply to a pre-transaction decision request if the pre-transaction decision request that was made previously referred to in that section was made before commencement day.

*[Clause 51 inserted: No. 12 of 2019 s. 132.]*

**52. Provisions about validated assessments**

(1) In this clause —

***previous assessment*** means an assessment to which clause 48(3) or 50(3) applies.

(2) The rights, obligations and liabilities of all persons are taken to be, and to have always been, the same as if a previous assessment had been validly made.

(3) Anything done, or purportedly done, before commencement day is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if a previous assessment had been validly made.

*[Clause 52 inserted: No. 12 of 2019 s. 132.]*

**53. Application of s. 195B and 195 to acquisitions before commencement day**

Section 195B applies in relation to a main acquisition referred to in section 195B(1) or (3) that occurred before commencement day, and section 195 applies in relation to a relevant acquisition referred to in

section 195(1) or (3) that occurred before commencement day, as if —

(a) a reference to section 154B(a) included a reference to section 156(8)(a) as in force immediately before commencement day; and

(b) a reference to section 154B(b) included a reference to section 156(8)(b) as in force immediately before commencement day.

*[Clause 53 inserted: No. 12 of 2019 s. 132.]*

**54. Provisions about derivative mining rights**

(1) The exemption from duty in section 91F(3) applies despite the acquisition of the previous right not being duty endorsed if that acquisition —

(a) occurred before commencement day; and

(b) was not a dutiable transaction.

(2) Section 91G(2) or (3) applies for the purpose of determining the dutiable value of a transfer or agreement referred to in section 91G(1)(c) despite the acquisition of the previous right not being duty endorsed as required by section 91G(1)(b) if that acquisition —

(a) occurred before commencement day; and

(b) was not a dutiable transaction.

(3) The exemption from duty in section 91H(1) applies despite the acquisition of the derivative mining right in relation to the prospecting licence or exploration licence not being duty endorsed as required by section 91H(1)(d) (as in force on commencement day) if that acquisition —

(a) occurred before commencement day; and

(b) was not a dutiable transaction.

(4) Section 204E(2) applies for the purpose of determining the unencumbered value of a mining tenement despite the acquisition of

the derivative mining right not being duty endorsed as required by that section (as in force on commencement day) if that acquisition —

(a) occurred before commencement day; and

(b) was not a dutiable transaction.

*[Clause 54 inserted: No. 16 of 2022 s. 27 [7].]*

## Division 10 — Provisions relating to *Duties Amendment Act 2022*

*[Heading inserted: No. 16 of 2022 s. 18.]*

### 55. Terms used

(1) In this Division —

***commencement day*** means the day on which the *Duties Amendment Act 2022* Part 2 comes into operation.

(2) A term used in clause 56(1)(b) or (2) or 57 has the same meaning as it has in Chapter 5.

*[Clause 55 inserted: No. 16 of 2022 s. 18.]*

### 56. Application of amendments made by *Duties Amendment Act 2022* Part 2

(1) The amendments made by the *Duties Amendment Act 2022* Part 2 apply in relation to the imposition of duty on —

(a) transactions that occur on or after commencement day; and

(b) grants or transfers of licences for vehicles that occur on or after commencement day.

(2) Despite subclause (1), section 244B applies in relation to the imposition of duty on the grant or transfer of a licence for a vehicle that occurs before commencement day if the relevant event referred to in section 244B(1)(b)(i) or (ii), whichever is applicable, occurs on or after commencement day.

*[Clause 56 inserted: No. 16 of 2022 s. 18.]*

### 57. Validation of certain reassessments and refunds of vehicle licence duty by CEO before commencement day

(1) This clause applies if —

(a) in the period beginning on 1 July 2008 and ending immediately before commencement day, the CEO made a reassessment determining that no duty was payable on the grant or transfer of a licence for a vehicle; and

(b) the application for the grant or transfer was the result of an agreement to purchase the vehicle from a dealer and was made by the dealer on behalf of the purchaser; and

(c) the agreement was rescinded, annulled or otherwise terminated before the purchaser took possession of the vehicle.

(2) The reassessment is, and is taken to have always been, validly made.

(3) If, as a result of the reassessment, the CEO refunded an amount of duty paid on the grant or transfer of the licence for the vehicle, the refund is, and is taken to have always been, validly made.

(4) The rights, obligations and liabilities of all persons are taken to be, and to have always been, the same as if the reassessment had been validly made.

(5) Anything done, or purportedly done, before commencement day is as valid and effective, and is taken to have always been as valid and effective, as it would have been if the reassessment had been validly made.

*[Clause 57 inserted: No. 16 of 2022 s. 18.]*

### 58. Application of amendments made by *Duties Amendment Act 2022* Part 3

(1) The amendments made by the *Duties Amendment Act 2022* Part 3 apply in relation to the imposition of duty on transactions or acquisitions that occur on or after 1 July 2022.

(2) Without limiting subclause (1) —

(a) section 91DA(2) applies in relation to the imposition of duty on a transaction referred to in section 91DA(1) that occurs on

or after 1 July 2022, whether the other transaction referred to in section 91DA(2) occurs before, on or after that day; and

(b) section 91DA(3) applies in relation to the imposition of duty on a transaction referred to in section 91DA(1) that occurs on or after 1 July 2022, whether the acquisition or agreement referred to in section 91DA(3) occurs before, on or after 1 July 2022.

*[Clause 58 inserted: No. 16 of 2022 s. 26.]*

**59. Provisions relating to residential concession**

(1) In this clause —

***former Chapter 2 Part 6 Division 4A*** means Chapter 2 Part 6 Division 4A as in force before its repeal by the *Duties Amendment Act 2022* section 21.

(2) Despite the repeal of former Chapter 2 Part 6 Division 4A by the *Duties Amendment Act 2022* section 21 —

(a) sections 147F and 147G, as in force immediately before 1 July 2022, continue to apply on and after 1 July 2022 to a dutiable transaction that —

(i) occurred before 1 July 2022; and

(ii) was an eligible transaction for the purposes of former Chapter 2 Part 6 Division 4A;

and

(b) any reassessment made under section 147F, as it applies under paragraph (a), must be made at the applicable concessional rate of duty that applied when the transaction occurred.

(3) If, immediately before 1 July 2022, a transaction that occurred before that day was both a concessional transaction for the purposes of section 147 and a concessional transaction for the purposes of former Chapter 2 Part 6 Division 4A, then on and after that day —

(a) the taxpayer may elect for the transaction to be assessed or reassessed under Chapter 2 Part 6 Division 4 or former Chapter 2 Part 6 Division 4A; and

(b) the Commissioner may, with the consent or at the request of the taxpayer, treat an application for assessment or reassessment under one of those Divisions as an application for assessment or reassessment under the other Division.

(4) Subclauses (2) and (3) do not limit the effect of clause 58(1) or the *Interpretation Act 1984* section 37.

*[Clause 59 inserted: No. 16 of 2022 s. 26.]*

## Division 11 — Provisions for *Duties Amendment (Farm in Agreements) Act 2022*

*[Heading inserted: No. 37 of 2022 s. 14.]*

### Subdivision 1 — Preliminary

*[Heading inserted: No. 37 of 2022 s. 14.]*

**60. Terms used**

(1) In this Division —

***actual section 13 farm-in agreement*** means an agreement made during the first pre-amendment period that is, apart from clause 64(2), a farm-in agreement under section 13;

***amending Act*** means the *Duties Amendment (Farm-in Agreements) Act 2022*;

***amendment day*** means the day on which section 14 of the amending Act comes into operation;

***deemed section 13 farm-in agreement***, subject to clause 65(7) and (8), means an agreement —

(a) that is taken under clause 64(2) to be a farm-in agreement under section 13; or

(b) that is a deemed section 13 farm-in agreement under clause 65(2)(b);

***first pre-amendment period*** means the period beginning on 1 July 2008 and ending on the day before amendment day;

***second pre-amendment period*** means the period beginning on 28 November 2018 and ending on the day before amendment day;

***section 13*** means section 13 as in force from time to time before amendment day and as modified under Subdivision 5;

***section 13 exploration amount*** —

(a) in relation to an actual section 13 farm-in agreement, means the exploration amount for the agreement as defined in subsection (2) of section 13; and

(b) in relation to a deemed section 13 farm-in agreement, means the exploration amount for the agreement as defined in section 91N(5), subject to section 91N(6);

***section 13 exploration requirement*** —

(a) in relation to an actual section 13 farm-in agreement, means the requirement to expend the section 13 exploration amount; and

(b) in relation to a deemed section 13 farm-in agreement, means the exploration requirement for the agreement as defined in section 91N(1) to (4), subject to section 91N(6);

***section 13 farm-in agreement*** means an actual section 13 farm-in agreement or a deemed section 13 farm-in agreement;

***section 42(15)*** means section 42(15) as in force from time to time before amendment day.

(2) If a term used in this Division is given a meaning in section 91K, it has the same meaning in this Division (unless otherwise indicated).

(3) If a provision of this Division listed in subclause (4) refers to a provision of Chapter 2 Part 5 Division 9, the provision of Chapter 2 Part 5 Division 9 applies, for the purposes of the provision of this Division, in relation to a deemed section 13 farm-in agreement —

(a) as it applies in relation to a farm-in transaction; and

(b) with any necessary modifications.

(4) The provisions of this Division are as follows —

(a) paragraph (b) of the definition of ***section 13 exploration amount*** in subclause (1);

(b) paragraph (b) of the definition of ***section 13 exploration requirement*** in subclause (1);

(c) clause 62(a);

(d) clause 69;

(e) clause 71(4)(b);

(f) paragraph (b) of the definition of ***replacement mining tenement*** in clause 73(1);

(g) paragraph (b) of the definition of ***replacement derivative mining right*** in clause 74(1).

*[Clause 60 inserted: No. 37 of 2022 s. 14.]*

**61. Assessments**

(1) In this clause —

***made***, in relation to an assessment, includes purportedly made;

***relevant provision*** means clause 64(2), 67(1), 68(1), 69, 70(2), 71(2), 72(1), 73(2) or (5) or 74(3).

(2) Subclause (3) applies to an assessment of duty chargeable under this Act that —

(a) is made before amendment day; and

(b) accords with a relevant provision.

(3) Without limiting the relevant provision, the assessment is, and is taken always to have been, valid and effective so far as it accords with the relevant provision.

(4) Subclause (5) applies in relation to an assessment of duty chargeable under this Act that —

(a) is made before amendment day; and

(b) does not accord with a relevant provision.

(5) In order to give effect to the relevant provision, the Commissioner may make a reassessment of the duty chargeable —

(a) on the Commissioner's own initiative; or

(b) on the application of the taxpayer.

(6) For the purposes of a reassessment under subclause (5), the Taxation Administration Act section 17 applies as if —

(a) in subsection (1) of that section, the reference to 5 years after the original assessment was made were to the later of the following —

(i) 5 years after the day on which the original assessment was made;

(ii) 12 months after amendment day;

and

(b) in subsection (4) of that section, references to 5 years after the date of the original assessment were to the later of the following —

(i) 5 years after the day on which the original assessment was made;

(ii) 12 months after amendment day.

*[Clause 61 inserted: No. 37 of 2022 s. 14.]*

### Subdivision 2 — Provisions relating to Chapter 2 Part 5 Division 9

*[Heading inserted: No. 37 of 2022 s. 14.]*

### 62. Application of section 91K(2)

For the purposes of paragraph (b)(iv) of the definition of ***primary farmor*** in section 91K(1), section 91K(2) also applies to a transfer if the transfer is made to the transferee —

(a) under an actual section 13 farm-in agreement as contemplated in subsection (1)(c) and (d) of section 13 or under a deemed section 13 farm-in agreement as contemplated in section 91M(1)(c)(i); and

(b) without limiting paragraph (a), after the transferee has fulfilled the section 13 exploration requirement.

*[Clause 62 inserted: No. 37 of 2022 s. 14.]*

### 63. Application of Chapter 2 Part 5 Division 9

An agreement can be a farm-in agreement or farm-in transaction under Chapter 2 Part 5 Division 9 only if the agreement is made on or after amendment day.

*[Clause 63 inserted: No. 37 of 2022 s. 14.]*

### Subdivision 3 — Deemed section 13 farm-in agreements

*[Heading inserted: No. 37 of 2022 s. 14.]*

#### 64. Certain agreements taken to be farm-in agreements under section 13

(1) Subclause (2) applies to an agreement made during the first pre-amendment period if —

(a) the agreement is not an actual section 13 farm-in agreement; and

(b) if Chapter 2 Part 5 Division 9 applied to agreements made during the first pre-amendment period — the agreement would, under that Division, be a concessional farm-in transaction.

(2) For the purposes of this Act, the agreement is taken to be, and to have always been, a farm-in agreement under section 13.

(3) For the purposes of the application of this Division to agreements made during the first pre-amendment period, Chapter 2 Part 5 Division 9 is taken to be modified in accordance with subclauses (4) to (8).

(4) In relation to an agreement made before 13 June 2019, references to a derivative mining right are to a right to exploit a mining tenement.

(5) In relation to an agreement made before 28 November 2018, the definition of ***exploration*** in section 91K(1) is replaced with:

***exploration*** includes development;

(6) In section 91N(2) —

(a) in paragraph (a)(ii) and (iii), references to exploration of each relevant derivative mining right are to exploration of each mining tenement to which a relevant derivative mining right relates; and

(b) paragraph (b) is deleted.

(7) Subdivision 4 is deleted.

(8) Section 91U is deleted.

(9) This clause is subject to clause 65.

*[Clause 64 inserted: No. 37 of 2022 s. 14.]*

### 65. Variations and other events affecting section 13 farm-in agreements

(1) Subclauses (2) to (6) apply if, on or after amendment day, an agreement (the ***additional agreement***) is added to an agreement (the ***existing agreement***) that contains 1 or more section 13 farm-in agreements.

(2) The additional agreement —

(a) cannot be a concessional farm-in transaction; but

(b) is a deemed section 13 farm-in agreement if, apart from paragraph (a), the additional agreement would be a concessional farm-in transaction —

(i) under section 91S(3) or (4) and, if both section 91M(1)(a)(i) and (ii) apply, under both section 91S(3) and (4); or

(ii) under any regulations made for the purposes of section 91S(2)(b).

(3) For the purposes of subclause (2)(b), section 91S(3) and (4), and any regulations made for the purposes of section 91S(2)(b), apply, with any necessary modifications, as if —

(a) the existing agreement were a farm-in agreement; and

(b) any section 13 farm-in agreement contained in the existing agreement were a concessional farm-in transaction.

(4) If the additional agreement is a deemed section 13 farm-in agreement under subclause (2)(b), the Commissioner may, for the purpose of applying clause 70(5), (6) or (7), reassess the duty chargeable on any other section 13 farm-in agreement contained in the existing agreement —

(a) on the Commissioner's own initiative; or

(b) on the application of the taxpayer.

(5) For the purposes of a reassessment under subclause (4) of the duty chargeable on a section 13 farm-in agreement, the section 13 farm-in agreement is to be taken to have been made when the additional agreement is added to the existing agreement.

(6) For the purposes of a reassessment under subclause (4), the Taxation Administration Act section 17 applies as if —

(a) in subsection (1) of that section, the reference to 5 years after the original assessment was made were to the later of the following —

(i) 5 years after the day on which the original assessment was made;

(ii) 12 months after the day on which the additional agreement is added to the existing agreement;

and

(b) in subsection (4) of that section, references to 5 years after the date of the original assessment were to the later of the following —

(i) 5 years after the day on which the original assessment was made;

(ii) 12 months after the day on which the additional agreement is added to the existing agreement.

(7) If, on or after amendment day, an agreement that is a deemed section 13 farm-in agreement ceases to meet the requirements for a farm-in transaction set out in section 91M(1) to (5), the agreement ceases to be a deemed section 13 farm-in agreement accordingly.

(8) If, on or after amendment day in a case in which subclause (7) does not apply, an agreement that is a deemed section 13 farm-in agreement is varied, section 91T(2) to (4), and any regulations made for the purposes of section 91T(2)(c), (3)(c) or (5), apply for the purpose of determining whether, as a result of the variation —

(a) the agreement ceases to be a deemed section 13 farm-in agreement; or

(b) the agreement is taken not to be a deemed section 13 farm-in agreement to an extent.

(9) For the purposes of subclause (8), section 91T(2) to (4), and any regulations made for the purposes of section 91T(2)(c), (3)(c) or (5), apply, with any necessary modifications, as if the agreement were a concessional farm-in transaction.

(10) If an agreement ceases to be, or is taken not to be to an extent, a deemed section 13 farm-in agreement under subclause (7) or (8), section 91T(7) to (10) apply, with any necessary modifications, in relation to the agreement as they apply in relation to an agreement referred to in section 91T(6).

*[Clause 65 inserted: No. 37 of 2022 s. 14.]*

### Subdivision 4 — Ongoing application of Act in relation to section 13 farm-in agreements

*[Heading inserted: No. 37 of 2022 s. 14.]*

### 66. Act to apply in relation to section 13 farm-in agreements as if sections 4 to 13 of amending Act not enacted

On and after amendment day, this Act applies to section 13 farm-in agreements, and dutiable transactions under section 13 farm-in agreements, as if sections 4 to 13 of the amending Act had not been enacted (subject to the other provisions of this Division where relevant).

*[Clause 66 inserted: No. 37 of 2022 s. 14.]*

### Subdivision 5 — Modifications of section 13

*[Heading inserted: No. 37 of 2022 s. 14.]*

### 67. Restriction on activities regarded as exploration or development for purposes of section 13(2)

(1) For the purposes of this Act, subsection (2) of section 13 is taken to have applied during the second pre-amendment period, and applies on and after amendment day under clause 66, subject to subclause (2).

(2) In subsection (2) of section 13, in relation to an agreement made during the second pre-amendment period, the reference to exploration or development only includes development to the extent that it is carried out solely —

(a) for the purpose of facilitating exploration; or

(b) otherwise incidentally to exploration.

*[Clause 67 inserted: No. 37 of 2022 s. 14.]*

**68. Commissioner may allow expenditure on administrative costs to be regarded as expenditure on exploration or development for purposes of section 13(2)**

(1) For the purposes of this Act, subsection (2) of section 13 is taken to have applied during the first pre-amendment period, and applies on and after amendment day under clause 66, subject to subclause (2).

(2) The Commissioner may, in relation to an agreement made during the first pre-amendment period, allow expenditure on administrative costs that would not otherwise be regarded as expenditure on exploration or development for the purposes of subsection (2) of section 13 to be so regarded, subject to any limits or other conditions imposed by the Commissioner.

*[Clause 68 inserted: No. 37 of 2022 s. 14.]*

**Subdivision 6 — Duty chargeable in relation to section 13 farm-in agreements**

*[Heading inserted: No. 37 of 2022 s. 14.]*

**69. Application of Schedule 1 to deemed section 13 farm-in agreements**

For the purposes of this Act, in relation to a deemed section 13 farm-in agreement, Schedule 1 is taken to have applied during the first pre-amendment period, and applies on and after amendment day under clause 66, as if, in the item for section 11(1)(j) column 4, the reference to the person referred to in section 13(1)(b) were to the farmee as defined in section 91L(1)(b).

*[Clause 69 inserted: No. 37 of 2022 s. 14.]*

### 70. Section 13 farm-in agreements: modified rules relating to charging of duty

(1) In this clause —

***section 135*** means section 135 as in force from time to time before amendment day.

(2) For the purposes of this Act, in relation to section 13 farm-in agreements, section 135 is taken to have applied during the first pre-amendment period, and applies on and after amendment day under clause 66, subject to subclauses (3) to (9).

(3) For the purposes of subsection (3) of section 135, the exploration amount is the section 13 exploration amount.

(4) Subclause (5) applies if —

(a) an agreement contains 2 or more section 13 farm-in agreements that are dutiable transactions; and

(b) apart from subclause (5), nominal duty would be chargeable on all of the section 13 farm-in agreements contained in the agreement that are dutiable transactions.

(5) Nominal duty is chargeable on all of the section 13 farm-in agreements taken together as if they were a single dutiable transaction.

(6) Duty is not chargeable on a section 13 farm-in agreement if —

(a) apart from this subclause, the section 13 farm-in agreement would be chargeable with nominal duty; and

(b) the section 13 farm-in agreement is contained in an agreement that also contains 1 or more other section 13 farm-in agreements on which duty is chargeable at the general rate of duty.

(7) If an agreement contains 2 or more section 13 farm-in agreements on which duty is chargeable at the general rate of duty, the amount of duty chargeable on each of those section 13 farm-in agreements must be determined as follows —

(a) first, aggregate the dutiable values of the section 13 farm-in agreements;

(b) second, apply the general rate of duty to the aggregate dutiable value;

(c) third, apportion the resulting amount of duty between the section 13 farm-in agreements in the way determined by the Commissioner.

(8) If an agreement contains 2 or more section 13 farm-in agreements and the Commissioner is, at any time, reassessing the duty chargeable on any of the section 13 farm-in agreements, the Commissioner must also reassess the duty chargeable on any of the other section 13 farm-in agreements as necessary for the purpose of applying subclause (5), (6) or (7).

(9) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subclause (8).

*[Clause 70 inserted: No. 37 of 2022 s. 14.]*

**71. Changes to consideration**

(1) In this clause —

***consideration*** does not include the section 13 exploration amount;

***derivative mining right***, in relation to a section 13 farm-in agreement made before 13 June 2019, means a right to exploit a mining tenement.

(2) In relation to section 13 farm-in agreements that are made during the second pre-amendment period or that are deemed section 13 farm-in agreements under clause 65(2)(b), this Act is taken to have applied during the second pre-amendment period, and applies on and after amendment day under clause 66, subject to subclauses (3) to (11).

(3) Subclause (5) applies to a section 13 farm-in agreement if, before the section 13 farm-in agreement is completed, the consideration for the section 13 farm-in agreement is increased or reduced.

(4) For the purposes of subclause (3), a section 13 farm-in agreement is ***completed*** when —

(a) in the case of an actual section 13 farm-in agreement, after the section 13 exploration requirement is fulfilled, the mining

tenement, or the derivative mining right, becomes held as referred to in subsection (1)(d) of section 13; or

(b) in the case of a deemed section 13 farm-in agreement, the agreement is completed in accordance with section 91Q(2).

(5) The Commissioner must assess or reassess the duty chargeable on the section 13 farm-in agreement on the basis of the increased or reduced consideration.

(6) However, if it is reduced consideration, the Commissioner does not have to reassess the duty unless the taxpayer makes an application for the reassessment.

(7) If there is increased consideration after the section 13 farm-in agreement is duty endorsed, section 31(5) applies —

(a) as if the reference to 2 months after the day on which consideration under the transaction is increased were, if later, to 2 months after amendment day; and

(b) with any other necessary modifications.

(8) Duty is chargeable on a reassessment under subclause (5) in relation to a section 13 farm-in agreement at the same rate and using the same thresholds that applied when liability for duty on the section 13 farm-in agreement initially arose.

(9) Subclause (5) does not apply in a case where a taxpayer may apply for a reassessment because of subclause (10).

(10) If any part of the consideration for a section 13 farm-in agreement is dependent on the happening of a future event, or on a future event not happening, section 32(1) and (3) apply, with any necessary modifications, as if references to an agreement for the transfer of dutiable property were to the section 13 farm-in agreement.

(11) For the purposes of subclause (10), the Taxation Administration Act section 17 applies as if —

(a) despite subsection (1) of that section, a person is not entitled to apply for a reassessment after the latest of the following —

(i) 5 years after the day on which the section 13 farm-in agreement was made;

(ii) 12 months after the day on which the requirements of section 32(1)(b) and (c) (as applied under subclause (10)) were fulfilled;

(iii) 12 months after amendment day;

and

(b) despite subsection (4) of that section, the Commissioner may only make a reassessment on an application if the application was made within that time.

*[Clause 71 inserted: No. 37 of 2022 s. 14.]*

**72. No double duty: exploration amount**

(1) This Act is taken to have applied during the first pre-amendment period, and applies on and after amendment day under clause 66, subject to subclause (2).

(2) In paragraph (b) of section 42(15), in relation to a section 13 farm-in agreement, the reference to the exploration amount under the agreement having been expended is a reference to the section 13 exploration requirement for the agreement having been fulfilled.

*[Clause 72 inserted: No. 37 of 2022 s. 14.]*

**73. No double duty: mining tenements**

(1) In this clause —

***replacement mining tenement*** —

(a) in relation to an actual section 13 farm-in agreement, means a mining tenement —

(i) that is granted, after the making of the actual section 13 farm-in agreement, to replace (wholly or partly) the mining tenement referred to in subsection (1)(a) of section 13 or an earlier replacement mining tenement; and

(ii) that relates only to the land, or to a part of the land, the subject of the mining tenement that is replaced; and

(iii) of which the owner referred to in subsection (1)(a) of section 13 is the holder or 1 of the holders;

and

(b) in relation to a deemed section 13 farm-in agreement, has the meaning given in section 91M(6).

(2) This Act is taken to have applied during the first pre-amendment period, and applies on and after amendment day under clause 66, subject to subclauses (3) and (4).

(3) Duty is not chargeable on a transfer of, or an agreement for the transfer of, an interest in a mining tenement (the ***affected mining tenement***) if —

(a) the affected mining tenement is a replacement mining tenement in relation to a section 13 farm-in agreement; and

(b) the transfer or agreement —

(i) is in lieu of a transfer of, or an agreement for the transfer of, an interest in a mining tenement that, had it occurred, would have been under the section 13 farm-in agreement; and

(ii) would be a transfer or agreement under the section 13 farm-in agreement except only that the affected mining tenement is a replacement mining tenement or is a replacement mining tenement that was not anticipated in the section 13 farm-in agreement;

and

(c) the section 13 farm-in agreement is duty endorsed; and

(d) the section 13 exploration requirement for the section 13 farm-in agreement has been fulfilled.

(4) The requirement of paragraph (a) of section 42(15), or of subclause (3)(c), does not have to be met if the section 13 farm-in agreement concerned is not duty endorsed because of the application of section 91DA to the section 13 farm-in agreement.

(5) This Act is taken to have applied during the second pre-amendment period, and applies on and after amendment day under clause 66, subject to subclauses (6) to (8).

(6) Duty is chargeable on a transfer of, or an agreement for the transfer of, an interest in a mining tenement to which section 42(15) or subclause (3) would otherwise apply if —

(a) there is, or will be, consideration for the transfer or agreement; and

(b) the section 13 farm-in agreement concerned is made during the second pre-amendment period or is a deemed section 13 farm-in agreement under clause 65(2)(b).

(7) For the purposes of subclause (6), the dutiable value of the transfer or agreement is —

(a) if the section 13 farm-in agreement concerned is not duty endorsed as referred to in subclause (4) — the consideration for the transfer or agreement; or

(b) otherwise — that consideration to the extent that the consideration was not taken into account when the section 13 farm-in agreement concerned was duty endorsed.

(8) For the purposes of subclauses (6) and (7), the section 13 exploration amount for the section 13 farm-in agreement concerned is taken not to be consideration for the transfer or agreement.

*[Clause 73 inserted: No. 37 of 2022 s. 14.]*

**74. No double duty: derivative mining rights**

(1) In this clause —

***derivative mining right***, in relation to a section 13 farm-in agreement made before 13 June 2019, means a right to exploit a mining tenement;

***replacement derivative mining right*** —

(a) in relation to an actual section 13 farm-in agreement, means a derivative mining right —

(i) that is granted, after the making of the section 13 farm-in agreement, to replace (wholly or partly) the derivative mining right referred to in subsection (1)(a) of section 13 or an earlier replacement derivative mining right; and

(ii) that relates only to the land, or to a part of the land, the subject of the derivative mining right that is replaced; and

(iii) subject to subclause (2), that does not authorise any mining beyond the mining authorised by the derivative mining right that is replaced; and

(iv) of which the person referred to in subsection (1)(a) of section 13 is the holder or 1 of the holders;

and

(b) in relation to a deemed section 13 farm-in agreement, has the meaning given in section 91M(7) and (8);

***replacement mining tenement*** has the meaning given in clause 73(1).

(2) The requirement in paragraph (a)(iii) of the definition of ***replacement derivative mining right*** in subclause (1) does not have to be met if —

(a) the derivative mining right is granted in relation to a mining tenement (the ***new mining tenement***) that was granted to replace (wholly or partly) another mining tenement (the ***previous mining tenement***); and

(b) the new mining tenement authorises mining beyond the mining authorised by the previous mining tenement; and

(c) the derivative mining right only authorises mining for minerals for which mining is authorised by the derivative mining right that is replaced.

(3) This Act is taken to have applied during the period beginning on 13 June 2019 and ending on the day before amendment day, and applies on and after amendment day under clause 66, subject to subclauses (4) to (11).

(4) Duty is not chargeable on a dutiable transaction under a section 13 farm-in agreement if —

(a) the dutiable transaction involves a derivative mining right; and

(b) the section 13 farm-in agreement is duty endorsed; and

(c) the section 13 exploration requirement for the section 13 farm-in agreement has been fulfilled.

(5) Duty is not chargeable on a dutiable transaction involving a derivative mining right if —

(a) the derivative mining right relates to a mining tenement (the ***affected mining tenement***) that is a replacement mining tenement in relation to a section 13 farm-in agreement; and

(b) the dutiable transaction —

(i) is in lieu of a dutiable transaction involving a derivative mining right that, had it occurred, would have been under the section 13 farm-in agreement; and

(ii) would be a dutiable transaction under the section 13 farm-in agreement except only that the affected mining tenement is a replacement mining tenement or is a replacement mining tenement that was not anticipated in the section 13 farm-in agreement;

and

(c) the section 13 farm-in agreement is duty endorsed; and

(d) the section 13 exploration requirement for the section 13 farm-in agreement has been fulfilled.

(6) Duty is not chargeable on a dutiable transaction involving a derivative mining right (the ***affected derivative mining right***) if —

(a) the affected derivative mining right is a replacement derivative mining right in relation to a section 13 farm-in agreement; and

(b) the dutiable transaction —

(i) is in lieu of a dutiable transaction involving a derivative mining right that, had it occurred, would have been under the section 13 farm-in agreement; and

(ii) would be a dutiable transaction under the section 13 farm-in agreement except only that the affected derivative mining right is a replacement derivative mining right or a replacement derivative mining right that was not anticipated in the section 13 farm-in agreement;

and

(c) the section 13 farm-in agreement is duty endorsed; and

(d) the section 13 exploration requirement for the section 13 farm-in agreement has been fulfilled.

(7) In subclauses (5)(b)(i) and (6)(b)(i), references to a dutiable transaction include a transaction that would be a dutiable transaction but for the application of section 91DA to the transaction.

(8) The requirement of subclause (4)(b), (5)(c) or (6)(c) does not have to be met if the section 13 farm-in agreement is not duty endorsed because of the application of section 91DA to the section 13 farm-in agreement.

(9) Duty is chargeable on a dutiable transaction to which subclause (4), (5) or (6) would otherwise apply if —

(a) there is, or will be, consideration for the dutiable transaction; and

(b) the section 13 farm-in agreement concerned is made during the second pre-amendment period or is a deemed section 13 farm-in agreement under clause 65(2)(b).

(10) For the purposes of subclause (9), the dutiable value of the dutiable transaction is —

(a) if the section 13 farm-in agreement concerned is not duty endorsed as referred to in subclause (8) — the consideration for the dutiable transaction; or

(b) otherwise — that consideration to the extent that the consideration was not taken into account when the section 13 farm-in agreement concerned was duty endorsed.

(11) For the purposes of subclauses (9) and (10), the section 13 exploration amount for the section 13 farm-in agreement concerned is taken not to be consideration for the dutiable transaction.

*[Clause 74 inserted: No. 37 of 2022 s. 14.]*

## Division 12 — Provisions for *Duties Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Act 2023*

*[Heading inserted: No. 29 of 2023 s. 9.]*

### 75. Terms used

In this Division —

***commencement day*** means the day on which the *Duties Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Act 2023* section 3 comes into operation.

*[Clause 75 inserted: No. 29 of 2023 s. 9.]*

### 76. Provisions relating to amendments to Chapter 3A

(1) In this clause —

***amended exemption provisions*** means sections 205ZA, 205ZB, 205ZO and 205ZP, as amended by the *Duties Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Act 2023* sections 4 to 7;

***relevant exempt transaction or acquisition*** means a foreign dutiable transaction or an acquisition that meets the requirements for an exemption under an amended exemption provision if the transaction or acquisition occurs —

(a) on or after 1 January 2023; or

(b) before 1 January 2023 if —

(i) in the case of a transaction to which section 205ZA applies — the requirement in section 205ZA(2)(c) becomes satisfied on or after that day; or

(ii) in the case of a transaction to which section 205ZB applies — the requirement in section 205ZB(2)(c) becomes satisfied on or after that day; or

(iii) in the case of an acquisition to which section 205ZO applies — the requirement in section 205ZO(1)(c) becomes satisfied on or after that day; or

(iv) in the case of an acquisition to which section 205ZP applies — the requirement in section 205ZP(1)(c) becomes satisfied on or after that day.

(2) The amended exemption provisions apply to the imposition of duty on a relevant exempt transaction or acquisition, even if the transaction or acquisition occurred before commencement day.

(3) If an assessment of duty payable on a relevant transaction or acquisition was made before commencement day, the Commissioner may, on application or on the Commissioner's own initiative, reassess the duty payable on the transaction or acquisition in accordance with the amended exemption provisions.

(4) Despite whichever of sections 205ZA(5), 205ZB(3), 205ZO(4) and 205ZP(2) is applicable, an application for reassessment referred to in subclause (3) may be made in the approved form on or before the later of the following —

(a) the day on or before which the application would, but for this subclause, be required to be made under section 205ZA(5), 205ZB(3), 205ZO(4) or 205ZP(2) (whichever is applicable);

(b) the last day of the period of 12 months beginning on commencement day.

(5) Subclauses (3) and (4) apply despite the Taxation Administration Act section 17.

(6) For the purposes of this clause, when an acquisition occurs is to be determined under section 176 as applied by section 205ZE(1).

*[Clause 76 inserted: No. 29 of 2023 s. 9.]*

### 77. Provisions relating to Chapter 6A

(1) If a term used in this clause is given a meaning in section 266E, it has the same meaning in this clause.

(2) Chapter 6A applies to the imposition of duty on a concessional pre-construction agreement even if the agreement was entered into in the period beginning on 23 October 2019 and ending immediately before commencement day.

Notes for this subclause:

1. An agreement entered into before 23 October 2019 is not a concessional pre-construction agreement under section 266F.

2. Under section 266F(3), certain agreements are excluded from being concessional pre-construction agreements, including —

   (a) agreements in relation to which a rebate has been paid under the Off-the-Plan Duty Rebate Scheme (see section 266F(3)(a)); and

   (b) agreements that were not eligible for a rebate under the Off-the-Plan Duty Rebate Scheme where development for the relevant subdivision of land is completed before 31 August 2023 (see section 266F(3)(b)).

(3) Chapter 6A applies to the imposition of duty on a concessional under construction agreement even if the agreement was entered into in the period beginning on 31 August 2023 and ending immediately before commencement day.

Note for this subclause:

An agreement entered into before 31 August 2023 is not a concessional under construction agreement under section 266FA.

(4) If an assessment of duty payable on a concessional off-the-plan agreement was made before commencement day, the Commissioner may, on application or on the Commissioner's own initiative, reassess the duty payable on the agreement in accordance with Chapter 6A.

(5) Despite section 266O, an application for reassessment referred to in subclause (4) may be made in the approved form on or before the later of the following —

   (a) the last day of the period that applies under section 266O(1);

   (b) the last day of the period of 12 months beginning on commencement day.

(6) Subclauses (4) and (5) apply despite the Taxation Administration Act section 17.

*[Clause 77 inserted: No. 29 of 2023 s. 9.]*

# Notes

This is a compilation of the *Duties Act 2008* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

## Compilation table

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Duties Act 2008* [4] | 11 of 2008 | 14 Apr 2008 | s. 1 and 2: 14 Apr 2008 (see s. 2(a)); Act other than s. 1 and 2 and Sch. 3 Div. 2: 1 Jul 2008 (see s. 2(b)) |
| *Duties Legislation Amendment Act 2008* Pt. 2 Div. 2 Subdiv. 1 and 2 [5] | 12 of 2008 (as amended by No. 30 of 2008 s. 3) | 14 Apr 2008 | 1 Jul 2008 (see s. 2(b) and (d)) |
| *Revenue Laws Amendment Act 2008* s. 4 and Pt. 7 | 30 of 2008 | 27 Jun 2008 | s. 4: 27 Jun 2008 (see s. 2(2)(a)); Pt. 7: 1 Jul 2008 (see s. 2(1)(c)(i)) |
| *Revenue Laws Amendment Act (No. 2) 2008* s. 32 | 31 of 2008 | 27 Jun 2008 | 28 Jun 2008 (see s. 2(b)) |
| *Revenue Laws Amendment Act 2010* Pt. 2 and Pt. 3 Div. 2 [5] | 9 of 2010 | 10 Jun 2010 | s. 5 and 6: 10 Mar 2010 (see s. 2(d)); s. 3: 10 Jun 2010 (see s. 2(a)); Pt. 3 Div. 2: 10 Jun 2010 (see s. 2(b)(i)); s. 4: 11 Jun 2010 (see s. 2(c)) |
| *Revenue Laws Amendment and Repeal Act 2010* Pt. 2 | 17 of 2010 | 25 Jun 2010 | s. 12: 1 Jul 2008 (see s. 2(c)); s. 3, 13 and 16: 25 Jun 2010 (see s. 2(a)); s. 4-11, 14 and 15: 1 Mar 2011 (see s. 2(d) and *Gazette* 15 Feb 2011 p. 535) |
| *Duties Amendment Act 2011* | 27 of 2011 | 11 Jul 2011 | s. 1 and 2: 11 Jul 2011 (see s. 2(a)); Act other than s. 1 and 2: 1 Jul 2011 (see s. 2(b)(ii)) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| **Reprint 1: The *Duties Act 2008* as at 12 Jul 2011** (includes amendments listed above) | | | |
| *Duties Amendment Act (No. 2) 2011* | 33 of 2011 | 12 Sep 2011 | Pt. 2: 24 Dec 2010 (see s. 2(b)); Pt. 1: 12 Sep 2011 (see s. 2(a)); Pt. 3: 13 Sep 2011 (see s. 2(c)) |
| *Inheritance (Family and Dependants Provision) Amendment Act 2011* s. 15 | 48 of 2011 | 25 Oct 2011 | 16 Jan 2013 (see s. 2(b) and *Gazette* 15 Jan 2013 p. 79) |
| *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 18 | 8 of 2012 | 21 May 2012 | 27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371) |
| *Revenue Laws Amendment Act 2012* Pt. 2 | 29 of 2012 | 3 Sep 2012 | Heading to Pt. 2, Pt. 2 Div. 1 and 2: 1 Dec 2011 (see s. 2(b)); Pt. 2 Div. 3: 4 Sep 2012 (see s. 2(e)) |
| *Revenue Laws Amendment Act (No. 2) 2012* Pt. 2 | 32 of 2012 | 8 Oct 2012 | Pt. 2 (other than s. 5-7, 12, 15, 18, 22 and 25: 1 Jul 2008 (see s. 2(b)); s. 5-7, 12, 15, 18, 22 and 25: 9 Oct 2012 (see s. 2(e)) |
| *Duties Legislation Amendment Act 2013* Pt. 2 Div. 2 [6] | 5 of 2013 | 29 Jun 2013 | 29 Jun 2013 (see s. 2(1)(b)) |
| **Reprint 2: The *Duties Act 2008* as at 9 Aug 2013** (includes amendments listed above except those in the *Road Traffic Legislation Amendment Act 2012*) | | | |
| *Revenue Laws Amendment Act 2013* Pt. 2 Div. 1 | 10 of 2013 | 24 Sep 2013 | 25 Sep 2013 (see s. 2(b)) |
| *Electronic Conveyancing Act 2014* Pt. 6 | 2 of 2014 | 24 Mar 2014 | 3 Jun 2014 (see s. 2(c) and *Gazette* 30 May 2014 p. 1679) |
| *Revenue Laws Amendment Act 2014* Pt. 2 | 15 of 2014 | 2 Jul 2014 | 3 Jul 2014 (see s. 2(c)(i)) |
| *Taxation Legislation Amendment Act 2015* Pt. 2 Div. 2 and Pt. 4 | 1 of 2015 | 25 Feb 2015 | 26 Feb 2015 (see s. 2(d)) |
| *Taxation Legislation Amendment Act (No. 2) 2015* Pt. 2 | 8 of 2015 | 9 Mar 2015 | 10 Mar 2015 (see s. 2(b)) |
| *Taxation Legislation Amendment Act (No. 3) 2015* Pt. 2 | 15 of 2015 | 26 May 2015 | 27 May 2015 (see s. 2(c)) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Revenue Laws Amendment Act 2015* Pt. 2 Div. 2 | 27 of 2015 | 2 Oct 2015 | 3 Oct 2015 (see s. 2(b)) |
| **Reprint 3: The *Duties Act 2008* as at 13 Nov 2015** (includes amendments listed above) | | | |
| *Local Government Legislation Amendment Act 2016* Pt. 3 Div. 12 | 26 of 2016 | 21 Sep 2016 | 21 Jan 2017 (see s. 2(b) and *Gazette* 20 Jan 2017 p. 648) |
| *Duties Amendment (Additional Duty for Foreign Persons) Act 2018* | 24 of 2018 | 17 Oct 2018 | s. 1 and 2: 17 Oct 2018 (see s. 2(a));<br>Act other than s. 1 and 2: 1 Jan 2019 (see s. 2(b)) |
| *Revenue Law Amendment Act 2019* Pt. 2 | 12 of 2019 | 12 Jun 2019 | 13 Jun 2019 (see s. 2(b)(i)) |
| *Strata Titles Amendment Act 2018* Pt. 3 Div. 5 | 30 of 2018 | 19 Nov 2018 | 1 May 2020 (see s. 2(b) and SL 2020/39 cl. 2) |
| *Community Titles Act 2018* Pt. 14 Div. 6 | 32 of 2018 | 19 Nov 2018 | 30 Jun 2021 (see s. 2(b) and SL 2021/69 cl. 2) |
| *Duties Amendment Act 2022* | 16 of 2022 | 27 May 2022 | Pt. 4: deemed to have come into operation on 13 Jun 2019 (see s. 2(c));<br>Pt. 1: 27 May 2022 (see s. 2(a));<br>Act other than Pt. 1, 3 and 4: 28 May 2022 (see s. 2(d));<br>Pt. 3: 1 Jul 2022 (see s. 2(b)) |
| *Family Court Amendment Act 2022* Pt. 4 | 28 of 2022 | 31 Aug 2022 | Pt. 4 (other than Div. 3): 1 Sep 2022 (see s. 2(b));<br>Pt. 4 Div. 3: 28 Sep 2022 (see s. 2(c) and SL 2022/159 cl. 2) |
| *Duties Amendment (Farm-in Agreements) Act 2022* | 37 of 2022 | 1 Nov 2022 | s. 1 and 2: 1 Nov 2022 (see 2(a));<br>Act other than s. 1 and 2: 2 Nov 2022 (see s. 2(b)) |
| *Land and Public Works Legislation Amendment Act 2023* Pt. 4 Div. 3 | 4 of 2023 | 24 Mar 2023 | 10 Aug 2023 (see s. 2(b) and SL 2023/132 cl. 2) |
| *Duties Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Act 2023* | 29 of 2023 | 28 Nov 2023 | s. 1 and 2: 28 Nov 2023 (see 2(a));<br>Act other than s. 1 and 2: 29 Nov 2023 (see s. 2(b)) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Workers Compensation and Injury Management Act 2023* s. 709 | 21 of 2023 | 24 Oct 2023 | 1 Jul 2024 (see s. 2(d) and SL 2024/34 cl. 2) |

## Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Aquatic Resources Management Act 2016* s. 377 | 53 of 2016 | 29 Nov 2016 | To be proclaimed (see s. 2(b)) |
| ~~*Workers Compensation and Injury Management Act 2023* s. 709~~ | ~~21 of 2023~~ | ~~24 Oct 2023~~ | ~~1 Jul 2024 (see s. 2(d) and SL 2024/34 cl. 2)~~ |

## Other notes

1M Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7, modifications to State taxing laws may be prescribed. Modifications are prescribed in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007* Pt. 2 Div. 1.

If a modification is to:

- replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number;
- amend a numbered provision, the amended provision is identified by the superscript 1M appearing after the provision number.

1MC Under the *Commonwealth Places (Mirror Taxes) Act 1998* (Commonwealth) s. 8, modifications to State taxing laws, in their application as Commonwealth laws in Commonwealth places in Western Australia, may be prescribed. Modifications are prescribed in the *Commonwealth Places (Mirror Taxes) (Modifications of Applied Laws (WA)) Notice 2007* (Commonwealth) Pt. 2 Div. 1.

If a modification is to:

- replace or insert a numbered provision, the new provision is identified by the superscript 1MC appearing after the provision number;
- amend a numbered provision, the amended provision is identified by the superscript 1MC appearing after the provision number.

[1] The *Mining Act 1904* was repealed by the *Mining Act 1978*.

[2] This section is deemed to have come into operation on 1 Dec 2011 (see the *Revenue Laws Amendment Act 2012* s. 2(b) and Pt. 2 Div. 1 and 2).

[3] The *Acts Amendment (Land Administration) Act 1997* commenced 30 Mar 1998 (see *Gazette* 27 Mar 1998 p. 1765).

[4] The *Duties Act 2008* Sch. 3 Div. 2 was repealed by the *Revenue Laws Amendment Act 2008* s. 4.

[5] The *Duties Legislation Amendment Act 2008* Pt. 2 Div. 2 Subdiv. 3 was deleted by the *Duties Legislation Amendment Act 2013* s. 5. The amendments made by the *Revenue Laws Amendment Act 2010* Pt. 3 Div. 1 have no effect for the same reason.

[6] The *Duties Legislation Amendment Act 2013* Pt. 3 will not come into operation (see s. 2(1)(c) and (2)).

[7] This clause is deemed to have come into operation on 13 Jun 2019 (see the *Duties Amendment Act 2022* s. 2(c) and Pt. 4).

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