



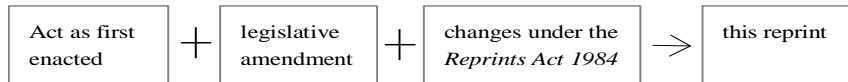
Western Australia

# **Stamp Act 1921**

**Reprinted as at 3 August 2001**

## Guide for using this reprint

### *What the reprint includes*



### ***Endnotes, Compilation table, and Table of provisions that have not come into operation***

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### ***Notes amongst text (italicised and within square brackets)***

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Western Australia

## Stamp Act 1921

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Western Australia

Reprinted under the  
*Reprints Act 1984* as  
at 3 August 2001

## **Stamp Act 1921**

**An Act to amend and consolidate the law relating to stamp duties upon instruments and to impose certain stamp duties, and for other relative purposes.**

## **Part I — Preliminary**

### **1. Short title and commencement**

This Act may be cited as the *Stamp Act 1921*, and shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

[2. *Repealed by No. 37 of 1979 s. 3.*]

### **2A. Act to be construed subject to legislative powers of the State**

- (1) This Act shall be read and construed subject to the limits of the legislative powers of the State and so as not to exceed those powers, to the intent that, where any provision thereof, but for this section, would be construed as being in excess of those powers, it shall nevertheless be a valid enactment to the extent to which it is not in excess of those powers.
- (2) This section shall be deemed to have come into operation on the date this Act came into operation<sup>1</sup>.

[Section 2A inserted by No. 54 of 1958 s. 3.]

[3. *Omitted under the Reprints Act 1984 s. 7(4)(f).*]

### **4. Interpretation**

- (1) In this Act, except so far as the context otherwise requires —
  - “**adhesive coupon**” means an adhesive coupon in the prescribed form made out and affixed by the Commissioner or any prescribed person to denote the payment of any duty, fine or fee;
  - “**adhesive stamp**” means an adhesive stamp in the prescribed form, but does not include an adhesive coupon;
  - “**Commissioner**” means the person holding the office of Commissioner of State Taxation<sup>2</sup> under the *Public Sector Management Act 1994*<sup>3</sup>;

**“corporation”** has the same definition as in section 9 of the Corporations Act;

**“Corporations Act”** means the *Corporations Act 2001* of the Commonwealth;

**“die”** means any plate, type, machine, tool or implement whatever used for expressing or denoting any duty or the fact that any duty, fine or fee has been paid or that an instrument is duly stamped or is not chargeable with any duty and includes any part of any such plate, type, machine, tool or implement;

**“director”** has the same definition as in section 9 of the Corporations Act;

**“duty”** means the stamp duty for the time being chargeable by law;

**“dwellinghouse”** includes flat, apartment or other residential unit;

**“executed”** and **“execution”**, with reference to instruments not under seal, mean “signed” and “signature”;

**“financial institution”** means —

- (a) an institution that is a “financial institution” for the purposes of the *Cheques Act 1986* of the Commonwealth; or
- (b) any other person who is, or who is in a class of persons that is, prescribed for the purposes of this definition;

**“foreign company”** has the same definition as in section 9 of the Corporations Act;

**“instrument”** includes every document in writing or duplicate or counterpart thereof and every matter or thing enumerated or set forth in the Second Schedule;

**“local government”** means a local government or one of the associations constituted under section 9.58 of the *Local Government Act 1995*;

**“marketable security”** means —

- (a) any stock or share of any corporation or local government or company or society;
- (b) any debenture, debenture stock, bond, note or other security of a Government or of any corporation or local government or company or society, whether or not constituting a charge on the assets of the Government, local government, corporation, company or society;
- (c) any right or interest, whether described as a unit or subunit or otherwise, of a beneficiary under a unit trust scheme —
  - (i) any of the units of which is quoted on a stock exchange prescribed by the Minister by notice published in the *Government Gazette*; or
  - (ii) that is not a private unit trust scheme within the meaning in section 63(2);

**“money”** includes a bill of exchange, a promissory note and all sums expressed in the currency of Australia or in any other currency;

**“overseas transfer”** means the transfer of a share of a WA company, or a right in respect of shares of a WA company, where —

- (a) the share or right is quoted on a stock exchange situated outside Australia that is not a recognized stock exchange;
- (b) the share or right is registered on a branch register of the WA company outside Australia; and
- (c) duty has not been paid in respect of the transfer;

**“paper”** includes any sort of material on which words or figures can be expressed;

**“payment”** includes payment in money or by bill of exchange or promissory note;



**“person”** includes body corporate and body unincorporate;

**“recognized stock exchange”** means a stock exchange prescribed as a recognized stock exchange for the purposes of this Act;

**“record”** means any thing or process —

(a) upon or by which information is recorded or stored;  
or

(b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

**“related corporation”** means a related body corporate (as defined in section 9 of the Corporations Act);

**“right in respect of shares”** means a security, however described, that is or represents a right, whether actual, prospective or contingent, to be allotted or issued with an unissued marketable security, whether or not any money or other consideration is to be payable for the issue;

**“several”** means 2 or more than 2;

**“stamp”** means —

(a) an adhesive stamp;

(b) a stamp impressed by means of a die; or

(c) an adhesive coupon,

for denoting any duty, fine or fee;

**“stamped”**, in relation to an instrument or paper, applies to an instrument or paper —

(a) to which an adhesive stamp is affixed;

(b) on which a stamp is impressed by means of a die; or

(c) to which an adhesive coupon is affixed;

**s. 4A**

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**“the Crown”** means the Crown in right of the State;

**“unencumbered value”** has a meaning affected by section 75A(4a) and (4b);

**“WA company”** means a company within the meaning of the Corporations Act that is taken to be registered in Western Australia.

- (2) Whenever a word or expression is defined in any Part, so that the word or expression bears the defined meaning when used in that Part, the word or expression shall, when used in the Second Schedule or the Third Schedule, be given the same meaning as it bears in that Part unless the context in which it is used in that Schedule otherwise requires.
- (3) The Minister may by notice published in the *Government Gazette* amend or revoke a notice referred to in paragraph (c)(i) of the definition of “marketable security”.

*[Section 4 inserted by No. 37 of 1979 s. 4; amended by No. 10 of 1982 s. 28; No. 81 of 1984 s. 3; No. 84 of 1985 s. 3; No. 33 of 1987 s. 5; No. 3 of 1989 s. 4; No. 41 of 1989 s. 4; No. 52 of 1991 s. 7; No. 39 of 1994 s. 15 and 21; No. 14 of 1996 s. 4; No. 48 of 1996 s. 31(1); No. 57 of 1996 s. 4; No. 13 of 1997 s. 21 and 35; No. 22 of 1998 s. 50; No. 53 of 1999 s. 17; No. 10 of 2001 s. 166.]*

**4A. Treatment of amounts payable for GST**

- (1) In ascertaining, for the purposes of this Act, 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.
- (2) A reference in Part IIIC to purchase price means the purchase price without any discount for the amount of GST (if any) payable on the supply of the vehicle.
- (3) If a lessee is obliged to pay for GST on a leasing an amount that is not included in the rent, a reference in Part IIID or in the

Second Schedule item 12 to the rent under the lease refers to the sum of the rent and the amount that the lessee is obliged to pay for GST.

(4) In this section —

“**GST**” has the same meaning as it has in the Commonwealth *A New Tax System (Goods and Services Tax) Act 1999* 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;

“**lease**” includes an agreement for a lease;

“**leasing**” means the supply to which the rent under a lease relates;

“**supply**” has the same meaning as it has in the Commonwealth *A New Tax System (Goods and Services Tax) Act 1999*.

*[Section 4A inserted by No. 53 of 1999 s. 33.]*

## **Part II — Administration**

### **5. Act administered by Commissioner**

The Commissioner shall have the general administration of this Act.

*[Section 5 inserted by No. 37 of 1979 s. 5.]*

### **6. Power of Commissioner to delegate**

- (1) The Commissioner may, by instrument in writing under his hand, delegate to the person holding the office of Assistant Commissioner or other officer of the staff assisting the Commissioner in the administration of this Act such powers, duties and functions as are conferred or imposed upon the Commissioner by or under this Act and which are specified in the instrument.
- (2) A delegation under this section does not prevent the exercise of a power or the performance of a duty or function by the Commissioner.

*[Section 6 inserted by No. 21 of 1970 s. 30; amended by No. 37 of 1979 s. 6.]*

### **7. Powers of Commissioner in relation to entry and instruments and records**

- (1) For the purposes of an inquiry under subsection (1a), the Commissioner —
  - (a) shall at all reasonable times have full and free access to all buildings and places and to all records;
  - (b) may take copies of or extracts from records referred to in paragraph (a); and
  - (c) may require any person to produce to him for inspection within a reasonable time after demand has been made all instruments liable to duty and all records in the possession, custody or power of the person.

- (1a) The Commissioner may make enquiries —
- (a) into any matter arising in connection with the administration of this Act;
  - (b) for the purposes of ascertaining the amount of duty chargeable in respect of an instrument or the amount (including any fine) otherwise payable in accordance with this Act, or both;
  - (c) for the purposes of ascertaining facts in order to determine whether there is, in respect of any transaction or suspected transaction, any liability —
    - (i) to pay duty or another amount (including a fine) under this Act, or both; or
    - (ii) to deliver to or lodge with the Commissioner any statement, return or other document;
  - (d) for the purposes of ascertaining whether a person whom he reasonably suspects may be required to comply with this Act in any respect has complied with this Act.
- (2) A person who has in his possession, custody or power any instruments or records referred to in subsection (1)(c) and who, when so required by the Commissioner, refuses or neglects to produce to the Commissioner those instruments or records commits an offence against this Act.
- (3) Whenever any instrument which is produced to or otherwise comes into the hands of the Commissioner appears to him to be chargeable with duty and to be unstamped or insufficiently stamped, he may impound that instrument until the duty and any fine payable under this Act have been paid.
- (4) When an instrument has been impounded under subsection (3), the Commissioner may assess the duty with which the instrument is in his opinion chargeable.

*[Section 7 inserted by No. 37 of 1979 s. 7; amended by No. 81 of 1984 s. 4; No. 41 of 1989 s. 5; No. 39 of 1994 s. 16.]*

**s. 7A**

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**7A. Power of Commissioner to obtain information and evidence**

- (1) For the purpose of ascertaining whether any duty is chargeable or for the purpose of determining the amount of duty, the Commissioner may by notice in writing require any person —
  - (a) to furnish him, within such reasonable period as shall be specified in that notice, with such information specified therein as that person may be able to give; or
  - (b) to attend and give evidence before him on a date specified in that notice in any case in which it may be necessary to ascertain any facts, and to bring with him such instruments and records as may be specified in that notice.
- (2) The Commissioner by notice in writing may require the information or evidence referred to in subsection (1) to be given —
  - (a) on oath and either orally or in writing; or
  - (b) by statutory declaration,and may for that purpose administer an oath.
- (3) A person who fails to comply with a requirement made under subsection (1) or (2) commits an offence against this Act.

*[Section 7A inserted by No. 37 of 1979 s. 7; amended by No. 81 of 1984 s. 5; No. 39 of 1994 s. 17.]*

**8. Power of Commissioner to use information**

The Commissioner may use for the purposes of this Act any information concerning the affairs of any other person acquired by him by reason of his office under or for the purposes of any other Act administered by him.

*[Section 8 inserted by No. 21 of 1970 s. 31; amended by No. 37 of 1979 s. 8.]*

**9. Exchange of information and obligation of secrecy**

*[(1) repealed]*

- (1a) The Commissioner or any person authorised in writing by him may communicate to the Gaming Commission established under section 4 of the *Gaming Commission Act 1987* any information respecting the affairs of any person disclosed or obtained under Part IVAA as it was prior to its repeal by the *Acts Amendment (Continuing Lotteries) Act 2000*.
- (1b) The Commissioner, or any person authorised in writing by him, may communicate to a licensing authority referred to in section 76C(1) any information respecting the affairs of any person disclosed or obtained under Part IIIC.
- (2) The Commissioner or any other person who is or has been employed in the administration of this Act, shall not while he is, or after he ceases to be, so employed —
- (a) either directly or indirectly, except in the performance of a function or duty in relation to this Act and in particular in accordance with subsection (1a), (1b) or (1c) or in relation to the *Taxation (Reciprocal Powers) Act 1989*, make a record of, or divulge or communicate to any person, any information acquired by him in the course of his being so employed, respecting the affairs of any other person;
  - (b) be required to produce in a court a document that is, in the course of his being so employed, in his custody or to divulge or communicate to a court any matter or thing that comes under his notice in the course of his being so employed, except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

**s. 10**

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- (3) A person who contravenes subsection (2) commits an offence against this Act.

*[Section 9 inserted by No. 113 of 1969 s. 5; amended by No. 37 of 1979 s. 9; No. 19 of 1985 s. 16; No. 18 of 1989 s. 16; No. 41 of 1989 s. 6; No. 39 of 1994 s. 4; No. 53 of 1999 s. 31; No. 6 of 2000 s. 4.]*

**10. Governor to prescribe stamps, dies, etc.**

The Governor may from time to time by regulation prescribe the form, size, and material of the stamps and dies to be used and the mode and place of impressing, affixing or denoting thereupon the value of the same under the provisions of this Act.

**11. Commissioner to issue stamps**

The Commissioner shall be the only person authorised in the first instance to issue stamps on behalf of the Crown to any person on payment of the duty denoted by the same.

*[Section 11 amended by No. 37 of 1979 s. 10.]*

**12. Commissioner may license vendors of adhesive stamps**

- (1) The Commissioner may in writing —
- (a) grant to any person a licence to sell adhesive stamps; and
  - (b) at any time revoke a licence referred to in paragraph (a).
- (2) A person to whom a licence has been granted under subsection (1) shall be allowed such commission on the value of adhesive stamps purchased by him for sale as is prescribed.

*[Section 12 inserted by No. 37 of 1979 s. 11.]*

*[13, 14. Repealed by No. 37 of 1979 s. 12.]*



**15. Spoiled stamps**

(1) In this section —

**“unnecessary”**, in relation to a stamp which has been affixed to or impressed on an instrument, means unnecessary because —

- (a) an accident or error has occurred in the instrument and rendered it of no avail;
- (b) the party whose signature is necessary to effect the transaction intended by the instrument has died or refused to sign the instrument, which remains incomplete and of no avail;
- (c) failure of consideration has prevented the transaction intended by the instrument from being effected;
- (d) the transaction intended by the instrument has been effected by some other instrument which has been duly stamped;
- (e) in the case of an instrument which is a bill of exchange, the bill of exchange has not been brought into use or presented for acceptance; or
- (f) in the case of an instrument which is delivered as an escrow, the condition on which that instrument is delivered is not and cannot be fulfilled.

(2) Subject to this section, the Commissioner may, if —

- (a) any stamp (in this section called **“the spoiled stamp”**), having been issued in accordance with this Act, becomes damaged, spoiled, unfit for use or unnecessary;
- (b) application for relief in connection with the spoiled stamp is made to him; and
- (c) the instrument bearing the spoiled stamp is delivered to him,

after payment of the prescribed spoil fee, give to the applicant stamps of the same amount or value in money or, if the applicant so requests, refund that amount or value to the applicant in cash.

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- (3) In deciding whether or not to exercise the power conferred on him by subsection (2), the Commissioner shall have regard to, among other considerations, whether or not a period of more than 12 months has elapsed since the spoiled stamp became damaged, spoiled, unfit for use or unnecessary.
- (4) In exercising the power conferred on him by subsection (2), the Commissioner may waive wholly or in part the prescribed spoil fee.
- (5) Notwithstanding anything in this section, the Commissioner may refuse to exercise the power conferred on him by subsection (2) unless all stamped duplicates or counterparts of the instrument to which the spoiled stamp has been affixed are delivered to him for cancellation and any other instruments on which the payment of the duty concerned has been denoted are delivered to him for amendment of that denotation.

*[Section 15 inserted by No. 37 of 1979 s. 13.]*

**15A. Refund of duty on cancelled instruments**

- (1) Subject to this section, the Commissioner shall refund all of the *ad valorem* duty paid on an instrument where the Commissioner is satisfied that —
  - (a) the instrument is rescinded, annulled, discharged or cancelled or that each matter contained in the instrument or to which the instrument relates and in respect of which *ad valorem* duty has been paid has not been, and will not be, carried into effect; and
  - (b) no amount of money, right, property or service in respect of the instrument or in consequence of the rescission, annulment, discharge or cancellation or from the matter or matters not being carried into effect has been or will be paid to or obtained by —
    - (i) a person liable to pay *ad valorem* duty on the instrument; or

- (ii) any other person (being a person who was not a party to the instrument at the date of its execution) with the consent, or at the direction, of a person liable to pay *ad valorem* duty on the instrument.
- (2) Subject to this section, where the Commissioner is satisfied that —
- (a) an instrument on which *ad valorem* duty has been paid is rescinded, annulled, discharged or cancelled or each of the matters contained in the instrument or to which the instrument relates and in respect of which *ad valorem* duty has been paid has not been, and will not be, carried into effect;
  - (b) an amount of money, right, property or service in respect of the instrument or in consequence of the rescission, annulment, discharge or cancellation or from the matter or matters not being carried into effect has or will be paid to or obtained by —
    - (i) a person liable to pay *ad valorem* duty on the instrument; or
    - (ii) any other person (being a person who was not a party to the instrument at the date of its execution) with the consent, or at the direction, of a person liable to pay *ad valorem* duty on the instrument;
- and
- (c) the total of the amount of money and the value of any right, property and service referred to in paragraph (b) is or will be less than the amount of the *ad valorem* duty paid,
- the Commissioner shall refund the difference between the amount of the *ad valorem* duty paid and the total referred to in paragraph (c) as determined by the Commissioner.
- (3) Subject to this section, where an instrument has been charged with *ad valorem* duty under section 19 in respect of each of

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several distinct matters contained in the instrument or to which the instrument relates and the Commissioner is satisfied that —

- (a) at least one, but not all, of the matters in respect of which the *ad valorem* duty has been paid has not been, and will not be, carried into effect; and
- (b) no amount of money, right, property or service in respect of that matter or those matters, or in consequence of that matter or those matters not being carried into effect, has been or will be paid to or obtained by —
  - (i) the person liable to pay the *ad valorem* duty in respect of that matter or those matters; or
  - (ii) any other person (being a person who was not a party to the instrument at the date of its execution) with the consent, or at the direction, of the person liable to pay the *ad valorem* duty in respect of that matter or those matters,

the Commissioner shall refund all of the *ad valorem* duty paid in respect of that matter, or those matters, as the case requires.

- (4) Subject to this section, where an instrument has been charged with *ad valorem* duty under section 19 in respect of each of several distinct matters contained in the instrument or to which the instrument relates and the Commissioner is satisfied that —
  - (a) at least one, but not all, of the matters in respect of which the *ad valorem* duty has been paid has not been, and will not be, carried into effect;
  - (b) an amount of money, right, property or service in respect of that matter or those matters, or in consequence of that matter or those matters not being carried into effect, has been or will be paid to or obtained by —
    - (i) the person liable to pay the *ad valorem* duty in respect of that matter or those matters; or

- (ii) any other person (being a person who was not a party to the instrument at the date of its execution) with the consent, or at the direction, of the person liable to pay the *ad valorem* duty in respect of that matter or those matters;

and

- (c) the total of the amount of money and the value of any right, property or service referred to in paragraph (b) is or will be less than the amount of the *ad valorem* duty paid in respect of that matter or those matters,

the Commissioner shall refund the difference between the amount of the *ad valorem* duty paid in respect of that matter or those matters and the total referred to in paragraph (c) as determined by the Commissioner.

- (5) For the purpose of determining the value of a right, property or service under subsection (2) or (4) the Commissioner may require such information and evidence as is necessary, and for that purpose section 7A shall apply as if the Commissioner were determining an amount of duty.
- (6) For the purposes of this section, a person liable to pay the *ad valorem* duty on an instrument or in respect of any matter or matters chargeable as a conveyance or transfer of property is deemed to have obtained an amount equal to the duty paid if —
  - (a) the instrument provides for or contemplates the conveyance or transfer of the property to another person, unless the Commissioner is satisfied that the conveyance or transfer has not occurred and will not occur; or
  - (b) there exists an agreement, arrangement or understanding between the person liable to pay that *ad valorem* duty and another person that the property is or will be conveyed or transferred to that other person or another person, whether by the person liable to pay that *ad valorem* duty or by any other person.

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(7) Where —

- (a) a refund of less than the full amount of *ad valorem* duty paid on an instrument is made under subsection (2), (3) or (4); or
- (b) the full amount of the *ad valorem* duty that would be chargeable on an instrument if this section did not apply has not been paid, and the Commissioner has determined that a refund would have been payable in respect of that duty under this section if the duty were paid,

the amount of duty with which the instrument is chargeable for the purposes of this Act is the difference between the full amount of *ad valorem* duty and the amount of the refund paid or payable in respect of that duty.

(8) Where all of the *ad valorem* duty paid on an instrument is refunded under subsection (1), or no duty is payable on an instrument by virtue of the operation of subsection (7), that instrument shall, from the date of the refund or the determination of the Commissioner under subsection (7), be deemed not to be chargeable with duty under this Act.

(9) Where the amount of duty with which an instrument is chargeable under this section has been paid, or an instrument is not chargeable with duty under this section, the Commissioner may, at the request of any party to the instrument, endorse the instrument accordingly and that endorsement shall be *prima facie* evidence that the instrument has been duly stamped or is not chargeable with duty under this Act, as the case may be.

*[Section 15A inserted by No. 20 of 1990 s. 3<sup>4</sup>.]*

**15B. Commissioner may destroy instruments**

(1) The Commissioner may destroy any instrument in the Commissioner's possession if —

- (a) 6 years have elapsed since the instrument was first assessed by the Commissioner; and

- (b) any amount that remains unpaid under this Act in respect of the instrument has been written off under the *Financial Administration and Audit Act 1985*.
- (2) Neither the Commissioner, nor any person acting under the Commissioner's authority, shall be liable in tort for any act done under subsection (1).

*[Section 15B inserted by No. 20 of 1996 s. 16.]*

## **Part III — General provisions**

### **16. Charge of duties on instruments**

- (1) From and after the commencement of this Act <sup>1</sup> and subject to subsection (2), the duties to be charged for the use of the Crown on or in respect of the instruments specified in the Second Schedule shall, subject to this Act, be the duties specified opposite to those instruments in that Schedule, which duties shall be in substitution for the duties chargeable under the enactments repealed by this Act.
- (2) The duties specified in the Second Schedule shall be subject to the exemptions specified in the Third Schedule or otherwise by or under this Act and in any other Act for the time being in force.
- (3) Where an instrument which relates to property situate in, or deemed to be situate in, Western Australia or to any matter or thing done or to be done in Western Australia —
  - (a) is executed in Western Australia and held in some place outside Western Australia; or
  - (b) is executed in some place outside Western Australia and held in that place or another place outside Western Australia,

the provisions of this Act shall extend and apply to the instrument, notwithstanding that the instrument is not in Western Australia, in all respects as if the instrument were executed and held in Western Australia.

*[Section 16 amended by No. 21 of 1961 s. 2; No. 3 of 1971 s. 2; No. 37 of 1979 s. 14; No. 112 of 1982 s. 3; No. 98 of 1986 s. 4; No. 33 of 1987 s. 6; No. 41 of 1989 s. 7.]*

### **17. Duties to be paid in accordance with Act and regulations**

- (1) All duties chargeable upon any instruments are to be paid and denoted according to the provisions in this Act contained, and



subject to any express provision of this Act or any regulation may be denoted by stamps.

- (2) Subject to this Act the Governor may by regulation prescribe the use of impressed stamps, or adhesive coupons or adhesive stamps only, or any 2 of those modes of denoting duty only, on any class of instruments or under any specified circumstances either generally throughout the State or in any part thereof.
- (3)
  - (a) Where the Commissioner thinks it expedient so to do he may, instead of denoting the duty chargeable upon any instrument by stamps, require the amount of that duty to be paid to him in money and on receipt of the money the Commissioner shall issue a receipt therefor, showing that such duty has been paid in respect of those instruments.
  - (b) Any instrument to which a receipt issued under paragraph (a) relates shall, on production of that receipt, be deemed to have been duly stamped.

*[Section 17 amended by No. 72 of 1965 s. 4; No. 9 of 1974 s. 10; No. 37 of 1979 s. 15.]*

**18. How instruments to be written and stamped**

- (1) Every instrument shall be written in such a manner as to leave a blank space at least 40 millimetres deep at the top of the first page or face of that instrument as a place for stamping thereon the amount of duty paid in respect of that instrument.
- (2) Every instrument written on stamped paper is to be written in such a manner, and every instrument partly or wholly written before being stamped is to be so stamped, that the stamp concerned appears on the first page or face of that instrument and cannot be used for or applied to any other instrument written on the same piece of paper.

*[Section 18 inserted by No. 37 of 1979 s. 16.]*

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**19. Instruments to be separately charged with duty in certain cases**

Except where express provision to the contrary is made by this or any other Act —

- (a) an instrument containing or relating to several distinct matters is to be separately and distinctly charged, as if it were a separate instrument with duty in respect of each of the matters;
- (b) an instrument made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration, is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect to each of the considerations.

**20. Stamping instruments after execution**

- (1) Except when other express provision is made by this Act, any unstamped or insufficiently stamped instrument may be stamped without fine after the execution thereof if it is presented for stamping within a period of 3 months after the date of first execution thereof but —
  - (a) an instrument which is a statement prepared under section 31B(1) may be stamped without fine after that preparation if it is lodged under that section within a period of 3 months after the transaction to which it relates was entered into;
  - (b) an instrument which is a statement prepared under section 76AG or 76AN may be stamped without fine after that preparation if it is lodged within the time allowed under that section;
  - (c) an instrument which is a statement prepared under section 75HA may be stamped without fine after that preparation if it is lodged within the time allowed under that section;

- (d) an instrument which is a statement prepared under section 112HA may be stamped without fine after that preparation if it is lodged within the time allowed under that section; and
  - (e) an instrument which is a statement prepared under section 112HB may be stamped without fine after that preparation if it is lodged within the time allowed under that section.
- (2) If an instrument is not presented for stamping within the appropriate period referred to in subsection (1), the instrument shall, in addition to being charged with the appropriate duty, be charged with a fine equal to that duty.
  - (3) Except in the case of an assessment issued in respect of duty or a fine chargeable under section 75JE or 75JF, if the full amount of the duty chargeable on an instrument is not paid within a period of 3 months after the date of issue of an assessment of duty made by the Commissioner in accordance with this Act in respect of the instrument, or within any period allowed under section 34C(2), the instrument shall, in addition to being charged with the appropriate duty, be charged with a fine equal to 20% of that duty or a fine of \$2, whichever is the greater amount.
  - (4) Any fine chargeable under subsection (3) shall be in addition to, and not in substitution for, any fine chargeable under subsection (2).
  - (5) Any fine charged under subsection (2) or (3) shall be denoted on the instrument concerned by a stamp.
- (5a) In subsection (5b) —
- “return”** means a note, memorandum, report, statement (not being a statement under section 31B, 75HA, 76AG, 76AN, 112HA(4) or 112HB(2)) or return as the case may be that is required to be made pursuant to this Act.

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(5b) If —

- (a) a return that is required to be made pursuant to this Act is not made within the time specified in relation to the return in question; or
- (b) the duty payable in respect of or with a return is not paid within the time specified in relation to the return in respect of which the duty is payable,

there shall be payable by the person liable to make the return in addition to any other penalty provided by this Act a fine equal to 20% of the amount of the duty payable on or with the return.

(6) The Commissioner may remit wholly or in part any fine chargeable under this section.

*[Section 20 inserted by No. 37 of 1979 s. 17; amended by No. 93 of 1982 s. 3; No. 81 of 1984 s. 7; No. 84 of 1985 s. 4; No. 98 of 1986 s. 5; No. 33 of 1987 s. 7; No. 39 of 1994 s. 5; No. 20 of 1996 s. 17; No. 48 of 1996 s. 39; No. 57 of 1996 s. 5; No. 13 of 1997 s. 31; No. 53 of 1999 s. 18.]*

**21. Cancellation of adhesive stamps**

- (1) Except when otherwise specifically provided by this Act, adhesive stamps affixed to any instrument shall be cancelled by the Commissioner or by any person or class of person prescribed for the purposes of this section before the expiry of the period within which the instrument may in accordance with section 20 be stamped without fine or, subject to the payment of any fine chargeable under subsection (2) of that section, after the expiry of that period.
- (2) Every person who is required or authorised by law to cancel adhesive stamps shall —
  - (a) before proceeding to cancel the adhesive stamp concerned, ensure that it is properly affixed to the instrument concerned and sufficient to comply with the requirements of this Act; and

- (b) cancel the adhesive stamp concerned by writing, stamping or legibly marking thereon —
  - (i) his name or initials; or
  - (ii) if he is so required or authorised by virtue of his office, the name of that office.
- (3) Every person who —
  - (a) being required by law to cancel adhesive stamps, wilfully neglects or refuses duly and effectually to do so in the manner required by subsection (2); or
  - (b) not being required or authorised by law to cancel adhesive stamps, cancels any adhesive stamp,

commits an offence against this Act.

*[Section 21 inserted by No. 37 of 1979 s. 18.]*

*[22. Repealed by No. 37 of 1979 s. 18.]*

**23. Commissioner or authorised person to determine amount of duty and fine**

It is the duty of the Commissioner or any person required or authorised under this Act to impress stamps, make out and affix adhesive coupons or cancel adhesive stamps, to determine whether any instrument produced for stamping or to have the stamp cancelled may be stamped, and the amount of the duty payable, and of the fine (if any), and, in case of doubt on the part of any person, other than the Commissioner, the question shall be referred by such person to the Commissioner.

*[Section 23 amended by No. 9 of 1974 s. 10; No. 37 of 1979 s. 19.]*

*[24, 25. Repealed by No. 37 of 1979 s. 20.]*

**26. Facts and circumstances affecting duty to be set forth in instrument**

- (1) All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any

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instrument is chargeable, are to be fully and truly set forth in the instrument; and every person who, with intent to defraud the Crown —

- (a) executes any instrument in which all the said facts and circumstances are not fully and truly set forth; or
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances,

commits an offence against this Act.

- (1a) For the purposes of subsection (1) the suppression from an instrument of any fact or circumstance referred to in subsection (1) or the inclusion therein of any matter that is known to be false in a material particular is *prima facie* evidence of intent to defraud the Crown.
- (2) The Commissioner may, in a case in which he considers that the circumstances so require, permit any error in an instrument to be corrected before the instrument is duly stamped.
- (3) A person who, after an instrument has been duly stamped, alters the instrument in any manner which may increase its liability to duty shall produce the altered instrument, within one calendar month after the making of the alteration, to enable the Commissioner to express his opinion on the amount of further duty with which the instrument is chargeable; and if he fails to do so he commits an offence against this Act.
- (4) For the purposes of this section facts and circumstances referred to in subsection (1) that are set forth in a document accompanying an instrument when it is presented for stamping are to be regarded as being set forth in that instrument.

*[Section 26 amended by No. 113 of 1965 s. 4(1); No. 37 of 1979 s. 21; No. 81 of 1984 s. 8; No. 33 of 1987 s. 8; No. 20 of 1996 s. 18.]*

**27. Instruments not duly stamped inadmissible except in criminal proceedings**

- (1) Except as otherwise provided by this Act no instrument chargeable with duty and executed in Western Australia, or relating, wheresoever executed, to any property situate or deemed to be situate or to any matter or thing done or to be done in Western Australia, shall, except in criminal proceedings, be pleaded or given in evidence or admitted to be good, useful, or available in law or equity, unless it is duly stamped in accordance with the law in force at the time when it was first executed.
- (2) Any document executed in Western Australia, or relating, wheresoever executed, to any property situate or to any matter or thing done or to be done in Western Australia, which —
- (a) affords any evidence of a transaction to which section 31B(1)(a), (aa), (ca), (cb), (d) or (e) applies or contains —
    - (i) an offer;
    - (ii) an acceptance of an offer;
    - (iii) an application; or
    - (iv) an approval of an application, referred to in section 31B(1)(b) or (c); and
  - (b) is a document —
    - (i) relating to a transaction for which a statement is required to be prepared and lodged under section 31B; but
    - (ii) which is not itself chargeable with duty,

shall not, except in criminal proceedings, be pleaded or given in evidence or admitted to be good, useful, or available in law or equity, unless a statement has been prepared and lodged under section 31B(1) in respect of the transaction to which that

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document relates and the duty with which the statement is chargeable has been paid.

(3) Sections 29 and 30 and this section do not apply to an instrument or a document relating to a transaction for which a statement is required to be prepared and lodged under section 31B pleaded in a pleading filed in any court, or tendered as evidence in any court, on behalf of a party (not being a person who is liable to pay the duty in respect of the instrument or statement, as the case requires) —

(a) in the case where the instrument or document is pleaded, if before the pleading is filed in the court, the person —

(i) has informed the Commissioner of the name of the person liable to pay the duty in respect of the instrument or statement; and

(ii) has lodged —

(I) the instrument or a copy of the instrument; or

(II) the document or a copy of the document,

as the case requires, with the Commissioner;

and

(b) in the case where the instrument or document is tendered, if the court is satisfied that the person —

(i) has informed, or will in accordance with arrangements approved by the court, inform the Commissioner of the name of the person liable to pay the duty in respect of the instrument or statement; and

(ii) has lodged, or will in accordance with arrangements approved by the court, lodge —

(I) the instrument or a copy of the instrument; or



- (II) the document or a copy of the document,

as the case requires, with the Commissioner.

*[Section 27 amended by No. 67 of 1966 s. 3; No. 102 of 1970 s. 4; No. 98 of 1986 s. 6; No. 33 of 1987 s. 9; No. 41 of 1989 s. 8; No. 39 of 1994 s. 18; No. 41 of 1995<sup>5</sup> s. 4(1); No. 20 of 1996 s. 19; No. 13 of 1997 s. 36(1)<sup>6</sup>; No. 22 of 1998 s. 31.]*

**28. No instrument to be registered, etc. unless stamped**

- (1) A person whose duty it is to receive, register, enrol, enter or record —
- (a) any original instrument or duplicate or counterpart instrument or any copy of an instrument shall not, if the original instrument is chargeable with duty or is exempt from duty or would, if it were in Western Australia, be so chargeable or exempt, receive, register, enrol, enter or record the original instrument, duplicate or counterpart instrument or copy unless he is satisfied that the original instrument has been duly stamped or is exempt from duty or that the duplicate or counterpart instrument or copy has been duly stamped under subsection (3), as the case requires; or
  - (b) any document referred to in section 27(2) shall not receive, register, enrol, enter or record that document unless he is satisfied that a statement has been prepared and lodged under section 31B(1) in respect of the transaction to which that document relates and that the duty with which the statement is chargeable has been paid.
- (2) A person referred to in subsection (1) may refer any question concerning the liability to duty of an original instrument, duplicate or counterpart instrument or copy of an instrument to the Commissioner for determination.
- (3) When an original instrument has not been duly stamped and the Commissioner is satisfied that it is not reasonably practicable to

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present the original instrument for stamping, he may, at the request of any person and on payment of the duty which is chargeable on the original instrument, stamp the duplicate or counterpart or copy thereof as if it were the original instrument.

- (4) When it is intended to lodge a caveat —
- (a) under Part V of the *Transfer of Land Act 1893*, in respect of an instrument which is liable to duty or of a document referred to in section 27(2), the Registrar of Titles; or
  - (b) under the *Mining Act 1978*, in respect of any instrument which is liable to duty or of any document referred to in section 27(2), a mining registrar within the meaning of that Act,

shall refuse to receive the caveat unless that instrument has been duly stamped, or has been lodged with the Commissioner for assessment of duty, or the statement has been prepared and lodged under section 31B(1), as the case requires.

- (5) A person who contravenes or fails to comply with any of the provisions of this section commits an offence against this Act.

*[Section 28 inserted by No. 37 of 1979 s. 22; amended by No. 93 of 1982 s. 4; No. 81 of 1984 s. 9; No. 98 of 1986 s. 7; No. 33 of 1987 s. 10; No. 41 of 1989 s. 9.]*

**29. Omission or insufficiency of stamp, etc.**

- (1) Upon production of an instrument chargeable with any duty or a document referred to in section 27(2) as evidence in any court of civil judicature, or before any arbitrator or referee, notice shall be taken by the court, arbitrator or referee of any omission or insufficiency of the stamp thereon or of any failure to comply with section 31B(1) in respect of the transaction to which that document relates, or to pay the duty with which the statement prepared and lodged under section 31B(1) in respect of that transaction is chargeable, as the case requires.

- (2) If an instrument referred to in subsection (1) is one which may legally be stamped at the time of production, it may, on payment to an officer of the relevant court or to the arbitrator or referee concerned of the amount of unpaid duty and of any fine payable on the stamping of that instrument, be received in evidence, saving all just exceptions on other grounds.
- (2a) If a document referred to in subsection (1) relates to a transaction in respect of which a statement is required to be, but has not been, lodged under section 31B(1), the document may, on production to an officer of the relevant court or to the arbitrator or referee concerned of the statement and payment to him of the amount of duty and of any fine with which the statement is chargeable, be received in evidence, saving all just exceptions on other grounds.
- (3) On receiving payment under subsection (2) or (2a) the officer of the court, arbitrator or referee concerned shall forthwith transmit to the Commissioner the instrument or statement concerned, together with the duty and any fine paid thereon.
- (4) On receiving an instrument transmitted to him under subsection (3), the Commissioner shall denote the payment of the duty and any fine concerned on the instrument in accordance with the provisions of this Act and return the instrument to the officer of the court, arbitrator or referee who transmitted it to him.

*[Section 29 amended by No. 9 of 1974 s. 10; No. 37 of 1979 s. 23; No. 98 of 1986 s. 8; No. 33 of 1987 s. 11; No. 57 of 1997 s. 113(1).]*

### **30. Secondary evidence**

In proceedings in any court of civil judicature or before any arbitrator or referee, secondary evidence of —

- (a) an instrument may, if the instrument is one which may then legally be stamped, be admitted, saving all just exceptions on other grounds, notwithstanding that the

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instrument is chargeable with duty and has not been duly stamped, if the duty and any fine with which the instrument is chargeable are paid to an officer of that court or to the arbitrator or referee, as the case requires; or

- (b) a document referred to in section 27(2) may be admitted, saving all just exceptions on other grounds, on production to an officer of that court or to the arbitrator or referee of a statement under section 31B(1) and payment to him of the amount of duty and of any fine with which the statement is chargeable.

*[Section 30 inserted by No. 98 of 1986 s. 9; amended by No. 33 of 1987 s. 12.]*

**31. Assessment of duty by Commissioner**

- (1) Subject to subsection (6), the Commissioner shall, if required by any other person, or may, of his own volition, express his opinion with reference to any executed instrument —
  - (a) on whether or not that instrument is chargeable with any duty; and
  - (b) if he is of the opinion that that instrument is chargeable with any duty, on the amount of duty with which that instrument is chargeable.
- (2) Having expressed his opinion under subsection (1), the Commissioner shall —
  - (a) if he is of the opinion that the instrument concerned is chargeable with duty, issue an assessment of duty in respect thereof; and
  - (b) endorse on the instrument concerned his opinion —
    - (i) on the amount of duty with which that instrument is chargeable; or
    - (ii) that that instrument is not chargeable with duty, as the case requires.

- (3) Every instrument —
- (a) on which the opinion of the Commissioner that that instrument is not chargeable with duty is denoted; or
  - (b) which has been stamped in accordance with an assessment of duty issued under subsection (2) in respect of that instrument,
- shall be admissible in evidence and available for all purposes.
- (4) Subject to section 31AA, an instrument on which the duty has been assessed by the Commissioner shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment of duty issued under subsection (2) in respect of that instrument.
- (5) The Commissioner may require the person submitting the instrument concerned to furnish him with an abstract thereof and with such information or evidence as the Commissioner deems necessary to satisfy him that all the facts and circumstances affecting the liability of that instrument to duty or to any particular amount of duty are fully and truly set forth therein.
- (6) When the Commissioner has made a requirement under subsection (5), he may, until that requirement has been complied with, refuse to express his opinion with reference to the instrument concerned.
- (7) When the duty chargeable on an instrument amounts to \$5 or less than \$5, the Commissioner may waive that duty and the instrument shall be marked accordingly and shall thereupon be deemed to be duly stamped.

*[Section 31 inserted by No. 37 of 1979 s. 25; amended by No. 18 of 1998 s. 8; No. 29 of 2000 s. 11.]*

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**31AA. Reassessment of duty**

(1) If, on or after the day on which the *Revenue Laws Amendment (Assessment) Act 2000* receives the Royal Assent, the Commissioner has expressed an opinion under section 31(1) in relation to an instrument, the Commissioner —

- (a) must if directed to do so by a court determining an appeal under section 33 or giving an opinion under section 34; and
- (b) subject to subsection (2), may of the Commissioner's own volition,

reconsider whether or not the instrument is chargeable with duty and, if so, the amount of duty with which it is chargeable.

(2) However if the Commissioner's previous opinion in relation to the instrument was based on —

- (a) an interpretation of the applicable law; or
- (b) the Commissioner's practice,

that was generally applied to instruments of that kind when that opinion was expressed, then the Commissioner cannot reconsider the instrument under subsection (1)(b) on the ground that the interpretation or practice is or was erroneous.

(3) The Commissioner —

- (a) must reconsider an instrument under subsection (1)(a); and
- (b) may reconsider an instrument under subsection (1)(b),

even if it has already been reconsidered under subsection (1).

(4) If the Commissioner reconsiders an instrument under subsection (1) and is of the opinion —

- (a) if the Commissioner was previously of the opinion that the instrument was not chargeable with duty, that the instrument is chargeable with duty; or

- (b) that the amount of duty with which the instrument is chargeable is more than the amount that was previously assessed as being chargeable,  
the Commissioner is to —
  - (c) issue a reassessment of duty in respect of the instrument;  
and
  - (d) endorse on the instrument the amount of duty with which it is chargeable.
- (5) Subject to subsection (6), the Commissioner may only issue a reassessment within 5 years of the date of the original assessment issued in relation to the instrument.
- (6) Even if more than 5 years have elapsed since the original assessment was issued the Commissioner —
  - (a) must issue a reassessment if directed to do so by a court;  
and
  - (b) may issue a reassessment if the Commissioner is of the opinion that —
    - (i) there has been an evasion of tax; or
    - (ii) any previous assessment was issued on the basis of false or misleading information.
- (7) An instrument on which the duty has been reassessed by the Commissioner under this section shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the reassessment of duty issued under this section in respect of that instrument.

*[Section 31AA inserted by No. 29 of 2000 s. 12.]*

**31AB. Effect of reassessment**

- (1) A reassessment supersedes the previous assessment issued in relation to the instrument.

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- (2) A reassessment does not invalidate proceedings for the recovery of duty but an appropriate adjustment may be made to the amount to be recovered in the proceedings to accord with the reassessment.
- (3) If an objection to an assessment is lodged and, before determination of the proceedings on the objection, a reassessment is issued, the proceedings may be continued against the reassessment to the extent that it is liable to the same objection or to an objection that is the same or similar in substance.

*[Section 31AB inserted by No. 29 of 2000 s. 12.]*

**31AC. Payment of reassessed duty**

- (1) In this section —  
    **“payment period”** means the period, or the extended period, referred to in section 20(3).
- (2) If a reassessment is issued after the full amount of the duty chargeable under the original assessment has been paid in relation to the instrument, then the difference between that amount and the reassessed amount of duty must be paid within —
  - (a) the payment period; or
  - (b) the period of one month after the day on which the reassessment is issued,whichever ends later.
- (3) If the full amount required to be paid under subsection (2) is not paid within the period required under that subsection, or within any period allowed under section 34C(2), the instrument shall, in addition to being charged with that amount, be charged with a fine equal to 20% of that amount or a fine of \$2, whichever is greater.
- (4) Any fine chargeable under subsection (3) shall be in addition to, and not in substitution for, any fine chargeable under section 20.



- (5) Any fine charged under subsection (3) shall be denoted on the instrument concerned by a stamp.
- (6) The Commissioner may remit wholly or in part any fine chargeable under subsection (3).
- (7) If —
  - (a) no duty, or less than the full amount of duty, has been paid in relation to the instrument; and
  - (b) the reassessment is issued not less than one month before the expiry of the payment period,

then the references in section 20(3) to the amount of duty payable are to be read as references to the reassessed amount of duty less any amount of duty already paid.

- (8) If —
  - (a) no duty, or less than the full amount of duty, has been paid in relation to the instrument; and
  - (b) the reassessment is issued after, or within one month before, the expiry of the payment period —

then, in section 20(3) —

- (c) the references to the amount of duty payable are to be read as references to the reassessed amount of duty less any amount of duty already paid; and
- (d) the reference to the payment period is to be read as a reference to the period ending one month after the day on which the reassessment is issued.

*[Section 31AC inserted by No. 29 of 2000 s. 12.]*

**31A. Default assessments**

- (1) Where —
  - (a) any person fails or neglects to furnish to or lodge with the Commissioner any statement, return or other

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document as and when he is required to do so by or under this Act;

- (b) the Commissioner is not satisfied with any statement, return or other document furnished to or lodged with the Commissioner; or
- (c) the Commissioner has reason to believe or suspect that any person is liable to pay any duty under this Act,

the Commissioner may create a memorandum of the statement, return or other document and cause an assessment to be made of the amount which, in his judgement, ought to be levied and that person shall be liable to pay that amount.

- (1a) Where the Commissioner creates a memorandum under subsection (1) of any statement, return or other document and makes an assessment of an amount to be paid by any person, he shall include in the assessment a fine equal to the amount of the duty assessed.
- (1b) The Commissioner may remit wholly or in part any fine levied under subsection (1a).
- (2) As soon as conveniently may be after an assessment is made under this section, the Commissioner shall cause notice in writing of the assessment and of the amount to be paid to be served on the person liable to pay it.
- (3) The amount specified in the assessment shall be payable on or before the date specified in the notice (being a date not less than one month after the date of service of the notice) and, if it is not so paid, the person liable to pay the amount —
  - (a) commits an offence; and
  - (b) is, in addition to the amount assessed, liable to pay a fine calculated as provided in section 20(3).
- (4) The memorandum created under subsection (1) shall be deemed to be an instrument for the purposes of this Act.

- (5) In subsections (2) and (3) “**amount**” includes the amount of a fine levied under subsection (1a) except so far as it is remitted under subsection (1b).

*[Section 31A inserted by No. 112 of 1982 s. 4; amended by No. 81 of 1984 s. 10; No. 84 of 1985 s. 5.]*

**31B. Payment of duty on statements in absence of dutiable instruments**

- (1) Subject to this section, a person who becomes a party to a transaction —
- (a) which causes a change in the beneficial ownership of an estate or interest in —
    - (i) freehold land, whether or not registered under the *Transfer of Land Act 1893*;
    - (ii) a Crown lease registered under the *Transfer of Land Act 1893*; or
    - (iii) a mining tenement registered under the *Mining Act 1978*,or any buildings on, or fixtures annexed to, or to buildings on, any such land, Crown lease or mining tenement, which freehold land, Crown lease or mining tenement is situated in the State;
  - (aa) which causes a change in the beneficial ownership of a marketable security or a right in respect of shares;
  - (b) by which land situated in the State, or buildings thereon, or fixtures annexed thereto or to buildings thereon, is leased or agreed to be leased, and in respect of which there exists a written offer to lease, or a written acceptance of an offer to lease, that land or those buildings or fixtures;
  - (c) by which moneys —
    - (i) are lent, or agreed to be lent, in, or for the purpose of being used in, the State;

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- (ii) having been lent, are to be repaid in the State; or
- (iii) are lent to a person resident in the State,  
and in respect of which there exists a written offer, or a written acceptance of an offer, to lend moneys, a written offer to borrow, or a written acceptance of an offer to borrow, moneys, a written application for, or a written approval of an application for, moneys to be lent, or a written application, or a written approval of an application, to lend moneys;
- (ca) by which the beneficial ownership of chattels (as defined in section 70) and land (as defined in section 70) is changed or agreed to be changed;
- (cb) by which the beneficial ownership of chattels (as defined in section 70) is changed or agreed to be changed, and which is part of a series of transactions relating to chattels and to land (as defined in section 70) at least one of which changes, or is or includes an agreement to change, the beneficial ownership of the land;
- (d) by which goodwill is acquired; or
- (e) to which section 73F applies and which relates to a business licence of a prescribed kind,

but which transaction is not effected or evidenced by any instrument chargeable with *ad valorem* duty, shall, if he would have been liable to pay duty in respect of that transaction had such an instrument been executed, within a period of 3 months after entering into that transaction, prepare and lodge with the Commissioner a statement in a form approved by the Commissioner in respect of that transaction.

- (1a) Subsection (1) does not apply to a transaction relating to chattels and land as referred to in subsection (1)(ca) unless subsection (1) would have applied to the transaction if it had only related to the land.

- (2) Each party to a transaction referred to in subsection (1) (other than the person required by that subsection to prepare and lodge a statement in respect of that transaction) shall within a period of 3 months after entering into that transaction notify the Commissioner in a form approved by the Commissioner that that transaction has been entered into.
- (2a) The requirement to lodge a statement under subsection (1) or give notification under subsection (2) ceases to apply if an instrument that evidences the transaction and is chargeable with *ad valorem* duty is executed at any time after the transaction was entered into, but nothing in this subsection affects the liability of a person for an offence against subsection (7) committed before the instrument was executed.
- (2b) Where subsection (2a) has effect, the instrument referred to in that subsection is to be regarded, for the purposes of section 20(1), as having been first executed on the day on which the transaction was entered into.
- (3) The Governor may make regulations under section 120(1) exempting from the operation of subsections (1) and (2) any transactions —
- (a) referred to in subsection (1)(b) or (c); and
  - (b) belonging to a class specified in those regulations.
- (4) A statement prepared under subsection (1) shall, subject to section 31A, be deemed to be an instrument effecting or evidencing the transaction to which it relates and is chargeable with duty accordingly, which duty is payable by the party to that transaction who is the person in that behalf specified in the Second Schedule in respect of that instrument.
- (5) If stamp duty has been or, in the opinion of the Commissioner, will be paid under the law of another State or of a Territory in respect of a transaction to which subsection (1)(c) applies, the amount of duty payable in respect of the statement referred to in

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subsection (1) is reduced by the amount of stamp duty that has been, or in the opinion of the Commissioner will be, so paid.

- (6) Nothing in this section prevents the joint making of a notification under subsection (2) in respect of a transaction by any 2 or more parties to the transaction who are required to make the notification.
- (7) A person who —
- (a) contravenes subsection (1) or (2); or
  - (b) lodges or makes under subsection (1) or (2) a statement or notification, as the case requires, which is false in a material particular,
- commits an offence against this Act.
- (8) In subsection (1)(c), a reference, however expressed, to the lending of moneys includes a reference to —
- (a) the advancing of moneys;
  - (b) the paying of moneys for or on account of or on behalf of or at the request of a person;
  - (c) the forbearing to require payment of moneys owing on any account whatsoever; and
  - (d) the effecting of a transaction (whatever its terms or form) which in substance effects a loan of moneys.
- (9) In subsection (1) —
- “business licence”** has the same meaning as in section 73F;
- “instrument chargeable with *ad valorem* duty”** means —
- (a) in the case of a transaction which causes the change referred to in subsection (1)(a) an instrument chargeable with such duty at the rate which would be applicable to an instrument of conveyance of the beneficial ownership of an estate or interest in the property to which the change relates;

- (b) in the case of a transaction which causes the change referred to in subsection (1)(aa) an instrument chargeable with such duty at the rate which would be applicable to an instrument of transfer of the beneficial ownership of a marketable security or right in respect of shares; or
- (c) in the case of any other transaction, an instrument chargeable with such duty at the rate applicable to an instrument effecting or evidencing that transaction.

*[Section 31B inserted by No. 98 of 1986 s. 10; amended by No. 41 of 1989 s. 10; No. 39 of 1994 s. 6 and 19; No. 41 of 1995 s. 5; No. 20 of 1996 s. 20; No. 22 of 1998 s. 32 and 55; No. 53 of 1999 s. 31.]*

### **32. Objection to assessment**

- (1) A person who is dissatisfied with an assessment made by the Commissioner for the purposes of this Act, may, within a period of 42 days after the date of issue of that assessment, object to the assessment by forwarding to the Commissioner a statement in writing of the grounds of his objection to the assessment.
- (2) A person entitled to make an objection may, whether before or after the expiry of the time for making the objection, apply for an extension of time, and the Commissioner may, for reasonable cause shown by that person, extend the time for making the objection for such period as the Commissioner considers reasonable in the circumstances.
- (3) The Commissioner shall consider any objection and may allow or disallow the objection wholly or in part and may modify or confirm the assessment to which the objection relates.
- (4) The Commissioner shall inform the person by whom the objection was made, in writing, of his decision on the objection and the grounds for that decision.
- (5) If an assessment of duty is modified under subsection (3), the amount of duty payable shall be such amount as is fixed by the

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Commissioner; and the Commissioner shall refund the amount of any excess of duty which may have been paid in accordance with the assessment and the amount of any excess of any fine charged under section 20 or 31AC.

- (6) For the purposes of this section and sections 33 and 34A the term “**assessment**” shall include a reassessment issued under section 31AA or 76AW and any determination or decision made or purported to be made, or direction given or purported to be given, by the Commissioner under the provisions of this Act other than under this section, section 33, section 75JA(3) or section 75JB(7).

*[Section 32 inserted by No. 81 of 1984 s. 11; amended by No. 39 of 1994 s. 7; No. 48 of 1996 s. 40; No. 29 of 2000 s. 13; No. 60 of 2000 s. 20(1).]*

**33. Appeal from assessment**

- (1) A person who is dissatisfied with the decision of the Commissioner on an objection by the person may, within 42 days after service of notice of the decision of the Commissioner, appeal to the Supreme Court against that decision.
- (2) A person entitled to appeal against a decision of the Commissioner on an objection by that person may, whether before or after the expiry of the time for appealing, apply for an extension of time, and the Commissioner may, for reasonable cause shown by that person, extend the time for appealing for such period as the Commissioner considers reasonable in the circumstances.
- (3) The Supreme Court shall hear and determine an appeal under subsection (1).
- (4) Where the Supreme Court determines that the assessment of duty to which the appeal relates is in error, it shall assess the



duty chargeable under this Act, recalculate any fine charged under section 20 or 31AC, and order the Commissioner —

- (a) if the Court determines that the instrument has been charged with excess duty, to refund the amount of any of that excess of duty which may have been paid and the amount of any excess of any fine charged under section 20 or 31AC; or
- (b) if the Court determines that the instrument has been charged with insufficient duty, to reassess the instrument under section 31AA.

*[Section 33 inserted by No. 81 of 1984 s. 11; amended by No. 84 of 1985 s. 6; No. 29 of 2000 s. 14.]*

**33A. Interest on amounts refunded by the Commissioner**

Where the Commissioner is required to refund any amount under section 32(5) or pursuant to an order under section 33(4), the Commissioner shall pay interest on the amount refunded at the prescribed rate from the date of payment of the duty or fine to which the refund relates.

*[Section 33A inserted by No. 84 of 1985 s. 7<sup>7</sup>.]*

**34. Commissioner may state case**

- (1) The Commissioner may, if he thinks fit, state a case on any question of law arising with regard to the assessment of duty on any instrument and forward that case to the Supreme Court for its opinion thereon.
- (2) The Supreme Court shall give its opinion on any case forwarded to it under subsection (1) and cause the Commissioner to be notified of that opinion.

*[Section 34 inserted by No. 37 of 1979 s. 26.]*

**34A. Appeal against refusal to extend time for objection or appeal**

- (1) A person who is dissatisfied with a decision of the Commissioner to refuse to extend the time for making an

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objection against an assessment, or for appealing against the decision of the Commissioner on an objection, may appeal to the Supreme Court against that decision.

- (2) On the hearing of an appeal under subsection (1), the Supreme Court may make such order as it considers appropriate.

*[Section 34A inserted by No. 81 of 1984 s. 12.]*

**34B. Costs of appeals**

The Supreme Court may make such order as to the costs of an appeal under section 33 or 34A and of a case stated under section 34 as it considers appropriate.

*[Section 34B inserted by No. 81 of 1984 s. 12.]*

**34C. Liability to pay duty subject to objection, appeal or case stated**

- (1) Subject to subsection (2), the fact that an objection, appeal or case stated under this Act is pending with respect to an assessment shall not affect the liability of any person to pay any duty pending determination of the objection, appeal or case stated.
- (2) The Commissioner may if —
- (a) he is requested by a person liable to pay any duty which is the subject of an objection, appeal (including an appeal under section 34A) or case stated; and
  - (b) the request is made before the time for payment of the duty,

extend the time for payment of the duty for such time as the Commissioner thinks fit.

*[Section 34C inserted by No. 81 of 1984 s. 12.]*

**35. Duplicates and counterparts**

- (1) The duplicate or counterpart of an instrument chargeable with duty (including the counterpart of a lease whether executed by the lessor or not) may be impressed or affixed with a stamp indicating to what amount the instrument of which it is the duplicate or counterpart has been stamped, and it may then be stamped as a duplicate or counterpart, but otherwise it shall be chargeable with duty as an original.
- (2) No duplicate or counterpart shall be deemed to be duly stamped unless the original is sufficiently stamped.

**36. Mode of calculating *ad valorem* duty in certain cases**

Where an instrument is chargeable with *ad valorem* duty in respect of —

- (a) any money in any currency other than the currency of Australia; or
- (b) any marketable security or right in respect of shares,

the duty shall be calculated on the value of the money in the currency of Australia according to the current rate of exchange in this State on the date of the instrument, or of the marketable security or right in respect of shares according to the average price thereof on that date.

*[Section 36 amended by No. 93 of 1966 s. 5; No. 37 of 1979 s. 27.]*

**37. Contingent duties**

Where the duty with which an instrument may be chargeable under this Act shall depend in any manner upon the duty paid upon another instrument, the payment of such last-mentioned duty may, on production of both the instruments, be denoted in such manner as the Commissioner shall think fit upon the first-mentioned instrument.

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**38. Instruments held in escrow**

An escrow shall for the purposes of this Act be deemed an instrument duly executed and delivered and shall be subject to duty in accordance with the provisions of this Act.

*[Section 38 amended by No. 37 of 1979 s. 28.]*

**39. Liability for omission to stamp instruments**

(1) The person in that behalf specified in the Second Schedule in respect of any instrument, or in subsection (4), is liable to pay the amount of duty charged on that instrument.

(1a) If —

- (a) an instrument which is chargeable with duty is not presented for stamping within the period referred to in section 20(1); or
- (b) the full amount of duty chargeable on an instrument is not paid within the period, or the extended period, referred to in section 20(3) or the full amount required to be paid under section 31AC(2) is not paid within the period required under section 31AC(2), or the extended period referred to in section 31AC(3),

the person in that behalf specified in the Second Schedule in respect of the relevant instrument, or in subsection (4) —

- (c) commits an offence; and
- (d) is liable, in addition to —
  - (i) any penalty imposed in respect of the offence referred to in paragraph (c); and
  - (ii) the duty payable in respect of that instrument, to pay the amount of the fine or fines charged under one or more of section 20(2), section 20(3) and section 31AC(3), as the case requires.

*[(1b) repealed]*

- (1c) Where, under a provision of this Act other than this section, a person is liable to pay duty in respect of an instrument, the person shall be deemed, for the purposes of this section, to have been specified in that behalf in the Second Schedule in respect of the instrument.
- (2) The duty and fine or fines referred to in subsections (1) and (1a) and section 31A(3), together with any penalty with which conviction of an offence referred to in subsection (1a)(c) and section 31A(3) is punishable, are recoverable on a complaint laid in the name of the Commissioner in any court of summary jurisdiction.
- (3) The averment in a complaint under subsection (2) —
- (a) that the complainant is acting with the authority of the Commissioner; or
  - (b) that the defendant is a party to the instrument concerned and is liable in respect thereof,
- shall be deemed to be proved in the absence of proof to the contrary.
- (4) Except where otherwise provided by this Act, the person liable under this section in respect of the instrument concerned is the party to that instrument by whom or on whose behalf it is held.
- (5) When 2 or more persons are liable under this section in respect of an instrument, any order made or judgement recovered against one of those persons is, to the extent to which it remains unsatisfied, without prejudice to the liability of the remaining person or persons so liable.
- [(6) *repealed*]
- (7) Nothing in this section shall be deemed —
- (a) to exonerate any other person from any liability imposed on him by or under this Act; or

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- (b) to exempt any instrument or matter from any duty or disability to which it is liable under this Act.

*[Section 39 inserted by No. 37 of 1979 s. 29; amended by No. 81 of 1984 s. 13; No. 84 of 1985 s. 8; No. 98 of 1986 s. 11; No. 33 of 1987 s. 13; No. 39 of 1994 s. 8; No. 20 of 1996 s. 21; No. 53 of 1999 s. 19; No. 29 of 2000 s. 15.]*

**39A. Recovery of duty and fines**

- (1) Subject to subsection (5), any unpaid duty or fine may be recovered, as a debt due to the Crown, at the expiration of the period allowed by or under this Act for payment.
- (2) Any debt referred to in subsection (1) may be recovered by the Commissioner in a court of competent jurisdiction.
- (3) Proceedings under this section may be taken in the name of the Commissioner by any officer of the State Taxation Department<sup>8</sup> employed in the administration of this Act and authorised to take proceedings on behalf of the Commissioner, and any proceedings taken in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been taken by his authority.
- (4) An officer referred to in subsection (3) may appear on behalf of the Commissioner in any proceedings under this section.
- (5) The Commissioner may elect to recover any duty or fine in the manner provided for by this section or section 39(2), but proceedings under both sections shall not be in progress at the same time.

*[Section 39A inserted by No. 33 of 1987 s. 14.]*

*[40-44. Repealed by No. 37 of 1979 s. 30.]*

*[Headings before section 45 deleted by No. 37 of 1979 s. 31.]*

*[45. Repealed by No. 37 of 1979 s. 32.]*

*[46-48. Repealed by No. 72 of 1965 s. 6(b)-(d).]*

## Part IIIA — Bills of exchange and promissory notes

*[Heading inserted by No. 37 of 1979 s. 33.]*

### 49. Interpretation in Part IIIA

In this Part, except so far as the context otherwise requires —

**“bill of exchange”** includes any draft, order, cheque or letter of credit or any document or writing entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw on any other person for, any sum of money, and includes any bill of exchange payable on demand;

**“bill of exchange payable on demand”** includes any order for —

- (a) the payment of any sum of money by a bill of exchange or promissory note;
- (b) the delivery of any bill of exchange or promissory note in satisfaction of any sum of money;
- (c) the payment of any sum of money out of any particular fund which may or may not be available or on any condition or contingency which may or may not be performed or happen;
- (d) the payment of any sum of money weekly, monthly or at any other stated periods; or
- (e) the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf;

**“promissory note”** includes —

- (a) any negotiable document or writing containing a promise to pay any sum of money; or

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- (b) any note promising the payment of any sum of money out of any particular fund which may or may not be available, or on any condition or contingency which may or may not be performed or happen.

*[Section 49 inserted by No. 37 of 1979 s. 34.]*

**49A. Exempt cheques**

- (1) Duty shall not be charged on —
  - (a) cheques or orders for the withdrawal of moneys deposited in any financial institution, drawn or issued by a body in respect of which the Commissioner has granted a certificate in writing stating that the Commissioner is satisfied that that body is for the purposes of this section a charitable body or a body established for similar public purposes, as the case may be; or
  - (b) cheques drawn by persons specified in item 1(4) of the Third Schedule in the circumstances set out in that subitem.
- (2) Notwithstanding the repeal and substitution of section 49A by section 35 of the *Stamp Act Amendment Act 1979*<sup>1</sup>, duty shall not be charged on cheques or orders for the withdrawal of moneys deposited in any financial institution, drawn or issued by a body granted a certificate under section 49A before that repeal and substitution, which certificate was in force immediately before that repeal and substitution.

*[Section 49A inserted by No. 37 of 1979 s. 35; amended by No. 22 of 1998 s. 51.]*

**50. Stamping of bills**

- (1) Every person who draws, makes, issues, accepts, endorses, transfers, negotiates, presents for payment or pays any bill of exchange or promissory note which is liable to duty and is not duly stamped commits an offence against this Act.



- (2) A person who takes or receives from any other person, whether in payment, as a security, by purchase or otherwise, a bill of exchange or promissory note referred to in subsection (1) is not entitled to recover thereon or to make the same available for any purpose whatever until it is duly stamped.
- (3) Notwithstanding anything in subsections (1) and (2), if a bill of exchange which is not duly stamped is presented for payment the person to whom it is so presented may affix thereto stamps denoting the proper duty and cancel the same as if he had been the drawer of the bill and may thereon pay the sum mentioned in that bill of exchange and charge that duty in account against the person by whom that bill was drawn or deduct that duty from that sum, and the bill is, so far as respects that duty, deemed to be valid and available.
- (4) Nothing in subsection (3) relieves any person from any penalty incurred by him in respect of the bill of exchange concerned.

*[Section 50 inserted by No. 37 of 1979 s. 36.]*

**50A. Cancellation of adhesive stamps on bills**

Every person who draws, makes or issues a bill of exchange or promissory note shall, before he delivers the bill of exchange or promissory note out of his hands, custody or power, cancel the adhesive stamp when used for denoting the duty on the bill of exchange or promissory note in accordance with the provisions of section 21.

*[Section 50A inserted by No. 37 of 1979 s. 36.]*

**50B. One bill in set only to be stamped**

- (1) When a bill of exchange is drawn in a set and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty.
- (2) On proof of the loss or destruction of a duly stamped bill of exchange forming one of a set, any other bill of the set, which

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bill has not been issued or in any manner negotiated apart from the lost or destroyed bill, may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

*[Section 50B inserted by No. 37 of 1979 s. 36.]*

**50C. Duties on foreign bills**

The duties in respect of bills of exchange or promissory notes drawn out of Western Australia shall be payable on all such bills of exchange or promissory notes if and when accepted, paid, endorsed, transferred or otherwise negotiated within Western Australia wheresoever payable.

*[Section 50C inserted by No. 37 of 1979 s. 36.]*

**50D. Provision for stamping foreign bills**

- (1) Every person into whose hands any bill of exchange or promissory note drawn or made out of Western Australia comes within Western Australia before it is duly stamped shall, before he presents for payment or acceptance, or endorses, transfers or in any manner negotiates or pays that bill of exchange or promissory note, cause the same to be duly stamped.
- (2) Notwithstanding anything in subsection (1), if at the time when any bill of exchange or promissory note referred to in that subsection comes into the hands of a *bona fide* holder there is affixed to that bill of exchange or promissory note an adhesive stamp —
  - (a) effectually cancelled, that adhesive stamp shall, so far as it relates to that holder, be deemed to be duly cancelled, although it may not appear to have been affixed or cancelled by the proper person; or
  - (b) not duly cancelled, it shall be competent for that holder to cancel that adhesive stamp as if he were the person by whom it was affixed and, when he does so, that bill of exchange or promissory note shall be deemed to be duly stamped and as valid and available as if that adhesive

stamp had been cancelled by the person by whom it was affixed.

- (3) Nothing in subsection (1) or (2) relieves any person from any penalty incurred by him for not cancelling an adhesive stamp.
- (4) When a bank receives a draft from outside Western Australia for acceptance and payment within Western Australia, it shall be lawful for the bank to affix thereto adhesive stamps for denoting the duty chargeable thereon.

*[Section 50D inserted by No. 37 of 1979 s. 36.]*

*[50E. Repealed by No. 42 of 1993 s. 4.]*

*[51. Repealed by No. 37 of 1979 s. 37.]*

**52. Printing of “Stamp Duty Paid” on cheques**

- (1) Notwithstanding anything in this Act, a financial institution may apply in writing to the Commissioner for authority in writing to cause to be printed on cheques drawn on the financial institution the words “Stamp Duty Paid” and, subject to regulations made under this Act, to pay duty on those cheques on the issue thereof by monthly returns in such form and manner as the Commissioner requires in writing.
- (2) On receiving an application under subsection (1), the Commissioner may by instrument in writing grant the authority applied for and may in like manner revoke any authority so granted.

*[Section 52 inserted by No. 37 of 1979 s. 38; amended by No. 22 of 1998 s. 52.]*

*[53-60. Repealed by No. 37 of 1979 s. 39.]*

*[61 and heading. Repealed by No. 96 of 1976 s. 4.]*

*[62 and heading. Repealed by No. 96 of 1976 s. 5.]*

## Part IIIB — Conveyances and transfers

[Heading inserted by No. 37 of 1979 s. 40.]

### Conveyances on Sale

#### 63. Interpretation in Part IIIB

(1) In this Part —

**“conveyance on sale”** includes —

- (a) every instrument and decree or order of any court or of the Commissioner of Titles, whereby any property or any estate or interest in any property on the sale thereof is transferred to or vested in the purchaser or any other person on his behalf or by his direction;
- (b) every transfer or assignment of a lease of any lands; and
- (c) every decree or order of any court or of the Commissioner of Titles for, or having the effect of an order for, foreclosure;

**“discretionary trustee”** means a trustee of any property over which any person has a power of appointment which was not created by will;

**“trustee”** means a trustee who is not a discretionary trustee or a unit trustee;

**“unit trustee”** means a trustee of a unit trust scheme; and

**“unit trust scheme”** means a private unit trust scheme within the meaning in subsection (2).

(2) A unit trust scheme is a private unit trust scheme if at the time of any conveyance, transfer or disposition of a unit or sub-unit —

- (a) the unit trust scheme is not —
  - (i) one to which Division 11 (sections 1451 to 1465) of Part 11.2 of the Corporations Law applied by reason of section 1452 of that Law; or

- (ii) a managed investment scheme registered under section 601EB of the Corporations Act, or is a scheme referred to in subparagraph (i) or (ii) but no units have been issued to the public or an insufficient number of persons is beneficially entitled to units under the scheme; and
  - (b) the unit trust scheme —
    - (i) is not an approved deposit fund or a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
    - (ii) is an approved deposit fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth but no units have been issued to the public or an insufficient number of persons is beneficially entitled to units under the scheme.
  - (3) An insufficient number of persons is beneficially entitled to units under a unit trust scheme if —
    - (a) fewer than 50 persons are so entitled; or
    - (b) 20 or fewer persons are so entitled to 75% or more of the total issued units under the scheme.
  - (4) For the purposes of subsection (2)(a)(ii) and (b)(ii) one person shall be treated as being beneficially entitled to all units held by a person and any related person namely —
    - (a) where the first-mentioned person is a corporation —
      - (i) another corporation that is a related body corporate (as defined in section 9 of the Corporations Act);
      - (ii) a person who is beneficially entitled to more than one-half of the issued share capital of the corporation;
- or

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- (b) a trustee of any trust (including a unit trust scheme) if —
  - (i) in the case of a discretionary trust as defined in section 76, the first-mentioned person may benefit from that trust; or
  - (ii) the share or interest of the first-mentioned person in the trust, whether vested or contingent, constitutes more than one-half of the trust property or of the issued units in the unit trust scheme,and subparagraph (i) shall be construed in accordance with section 76(6).

*[Section 63 inserted by No. 37 of 1979 s. 41; amended by No. 112 of 1982 s. 5; No. 33 of 1987 s. 15; No. 39 of 1994 s. 21; No. 48 of 1996 s. 44; No. 24 of 1999 s. 4; No. 3 of 2001 s. 18; No. 10 of 2001 s. 167.]*

**63A. Duty on certain decrees and orders**

- (1) *Ad valorem* duty on a decree or order referred to in the definition of “conveyance on sale” in section 63 shall not exceed the duty on a sum equal to the value of the property to which that decree or order relates and, when that decree or order states that value, that statement shall be conclusive for the purpose of determining the amount of duty.
- (2) When *ad valorem* duty has been paid on a decree or order referred to in subsection (1), any conveyance or transfer following on that decree or order shall not be liable to duty and the Commissioner, on being requested to do so, shall denote on that conveyance or transfer the payment of *ad valorem* duty on that decree or order on production to him of that decree or order, duly stamped, and that conveyance or transfer shall thereupon be deemed to be duly stamped.

*[Section 63A inserted by No. 37 of 1979 s. 41.]*

**64.      How *ad valorem* duty to be calculated in respect of stock and securities**

- (1) Where the consideration or any part of the consideration for a conveyance on sale consists of any marketable security or right in respect of shares, such conveyance is to be charged with *ad valorem* duty in respect of the value of such security or right.
- (2) Where the consideration or any part of the consideration for a conveyance on sale consists of any security not being a marketable security or right in respect of shares, such conveyance is to be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon such security.

*[Section 64 amended by No. 93 of 1966 s. 6; No. 48 of 1996 s. 32.]*

**65.      How *ad valorem* duty to be calculated in respect of securities and periodical payments**

- (1) When the consideration or any part of the consideration for a conveyance on sale consists of money payable periodically —
  - (a) for a definite period so that the total amount to be paid can be ascertained prior to the commencement of that period;
  - (b) in perpetuity or for any indefinite period not terminable with life; or
  - (c) during any life or lives,

the conveyance on sale is to be charged with *ad valorem* duty in accordance with the provisions of this Act on the value of the ascertainable consideration or on the value of the property concerned, whichever is the greater.

- (2) Notwithstanding anything in subsection (1), a conveyance on sale chargeable with *ad valorem* duty in respect of, and containing provision for securing, any periodical payments is

not to be charged with any duty whatsoever in respect of that provision.

*[Section 65 inserted by No. 37 of 1979 s. 42.]*

**66. How conveyances in consideration of a debt or subject to future payment, etc., to be charged**

Where any property is conveyed, whether by way of sale or otherwise, to any person in consideration, wholly or in part, of any debt due to him or subject either certainly or contingently to the payment or transfer of any money, marketable security or right in respect of shares, whether being or constituting a charge or encumbrance upon the property or not, such debt, money, marketable security or right in respect of shares is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty and such conveyance shall be deemed to be a conveyance on sale of the property and to be chargeable with *ad valorem* duty in accordance with this Act.

*[Section 66 amended by No. 93 of 1966 s. 7; No. 112 of 1982 s. 6; No. 33 of 1987 s. 16; No. 48 of 1996 s. 33.]*

**67. Duty where conveyance is partly in consideration of improvements made or to be made on property**

- (1) A conveyance on sale made for any consideration in respect whereof it is chargeable with *ad valorem* duty and in further consideration of a covenant by the purchaser to make, or of his having previously made, any substantial improvement of or addition to the property conveyed or transferred to him or of any covenant relating to the subject matter of the conveyance, is not chargeable, and shall be deemed not to have been chargeable, with any duty in respect of such further consideration.

*[(2) repealed]*

*[Section 67 amended by No. 37 of 1979 s. 43; No. 81 of 1984 s. 14.]*



[68. *Repealed by No. 37 of 1979 s. 44.*]

**69. Conveyance duty in cases where conveyance made at request or by direction of intermediary**

- (1) Subject to sections 73 and 74, where —
- (a) property is conveyed or transferred by one person (in this section called “**the transferor**”) to another person (in this section called “**the transferee**”) or is agreed to be so conveyed or transferred; and
  - (b) another person (in this section called “**the intermediary**”) obtained the beneficial ownership of the property after the transferor acquired the beneficial ownership thereof but before he conveyed or transferred, or agreed to convey or transfer, the property to the transferee,

the instrument of conveyance or the agreement shall be subject to duty, as if it were both a conveyance of the property by the transferor to the intermediary, and also a conveyance of the property by the intermediary to the transferee; and if there are several intermediaries, as if it were a conveyance of the property from the transferor to the first intermediary and a conveyance from each intermediary to the other in succession, and from the last intermediary to the transferee.

- (2) Subsection (1) does not apply to the extent that duty under item 4 or 4A(1) of the Second Schedule has been paid on a conveyance or transfer to any intermediary.

*[Section 69 inserted by No. 33 of 1987 s. 17; amended by No. 39 of 1994 s. 14.]*

**70. Certain transfers of chattels dutiable**

- (1) In this section, unless the contrary intention appears —  
“**arrangement**” means an instrument or an unwritten arrangement;

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**“chargeable with duty”** means chargeable with duty under —

- (a) item 4, 10, 14A, 15, 17 or 19 of the Second Schedule;  
or
- (b) item 12(1) or (3) if —
  - (i) the term of the lease, including any period for which the lease may be renewed, exceeds, or is to exceed, 20 years; and
  - (ii) any option to renew the lease is, or is to be, exercisable by the lessor;

**“chattels”** means goods, wares or merchandise, other than exempt chattels, and includes an estate or interest in them;

**“estate or interest in land”** includes a mining tenement (as defined in section 76);

**“exempt chattels”** means —

- (a) chattels referred to in item 2(7), (7a) or (7b) of the Third Schedule;
- (b) a motor vehicle the transfer of the licence of which is chargeable with duty under Part IIIC and item 14 or 6 of the Second Schedule or is exempt under item 9 of the Third Schedule;

**“farming land”** has the same definition as in section 75D(1);

**“land”** means land, other than farming land, and includes an estate or interest in land;

**“transfer”** includes convey, exchange, partition, settle, give, vest, grant, release and renounce.

(2) If an instrument —

- (a) transfers, or is or includes an agreement to transfer, or evidences the transfer of, a chattel and land; and
- (b) is chargeable with duty in respect of the land,

the instrument is chargeable with duty in respect of the unencumbered value of the land plus the unencumbered value of the chattel.

## (3) If —

## (a) an instrument —

- (i) transfers, or is or includes an agreement to transfer, or evidences the transfer of, a chattel; and
- (ii) is one of several arrangements that together form, or arise from, substantially one transaction, or one series of transactions, relating to chattels and to land;

and

- (b) at least one of the other arrangements mentioned in paragraph (a)(ii) transfers, or is or includes an agreement to transfer, or evidences the transfer of, land and is chargeable with duty,

the instrument mentioned in paragraph (a) is chargeable with duty in respect of the unencumbered value of the land plus the unencumbered value of the chattel.

## (4) The duty payable on an instrument referred to in subsection (3)(a) is to be reduced by any duty paid in respect of the arrangement referred to in subsection (3)(b).

## (5) For the purposes of subsection (3)(a)(ii), if a person enters into arrangements —

- (a) within, or apparently within, 12 months of each other; and
- (b) with the same person (whether that person enters the arrangements alone or with the same person or different persons),

it shall be presumed, unless the Commissioner is satisfied to the contrary, that the arrangements arose out of one transaction or one series of transactions.

*[Section 70 inserted by No. 22 of 1998 s. 33; amended by No. 28 of 2000 s. 4.]*

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**71. Where several instruments, the principal instrument only is to be charged with *ad valorem* duty**

Where there are several instruments of conveyance for completing the purchaser's title to the property sold, the principal instrument of conveyance only is to be charged with *ad valorem* duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but such last-mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument.

*[Section 71 amended by No. 37 of 1979 s. 46.]*

**Transfer of mortgages**

*[Heading inserted by No. 20 of 1996 s. 23.]*

**72. Transfer or assignment of mortgages for value**

(1) In this section —

“**sale**”, in relation to a mortgage, means sale for a consideration in money or money's worth for not less than market value;

“**transfer or assignment**”, in relation to a mortgage, means the transfer or assignment of the mortgage by way of sale.

(2) Where, on the transfer or assignment of any mortgage, there are several instruments to complete the transferee's title to the mortgage, the principal instrument only is to be charged with duty under item 13(3)(a) of the Second Schedule.

(3) A contract or agreement for the sale of any mortgage shall be charged with the same duty under item 13(3)(a) of the Second Schedule to be paid by the purchaser as if it were an instrument actually setting out the transfer or assignment of the mortgage contracted or agreed to be sold.

(4) When, in relation to any mortgage, duty has been paid on a principal instrument or a contract or agreement in accordance with subsection (2) or (3), any other instrument setting out the transfer or assignment of the mortgage to the transferee is not

chargeable with duty and the Commissioner, on being requested to do so, shall denote the payment of the duty concerned on that transfer or assignment instrument on production to the Commissioner of the principal instrument or contract or agreement, duly stamped, and that transfer or assignment instrument shall then be deemed to be duly stamped.

- (5) Where an instrument, contract or agreement applies to 2 or more mortgages, duty is chargeable under item 13(3) of the Second Schedule in respect of each mortgage.

*[Section 72 inserted by No. 20 of 1996 s. 23.]*

### **Documents Treated as Conveyances**

#### **73. As to conveyances on any occasion except sale or mortgage**

- (1) Except as in this Act otherwise provided, every instrument, and every decree or order of any court or of the Commissioner of Titles, whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person and every instrument which is or is intended to be a record or acknowledgement of any verbal promise or agreement previously made (whether voluntary or upon any good or valuable consideration other than a *bona fide* pecuniary consideration) to give or settle any property in any manner whatsoever is chargeable with duty as a conveyance or transfer of property.

*[(2), (3) and (4) repealed]*

*[Section 73 amended by No. 35 of 1941 s. 2; No. 113 of 1965 s. 8(1); No. 63 of 1977 s. 2; No. 37 of 1979 s. 47; No. 112 of 1982 s. 7; No. 81 of 1984 s. 15.]*

#### **73A. Conveyance subject to an option**

- (1) Where any property or estate or interest therein (in this section referred to as “**the property**”) is agreed to be conveyed or transferred, or is conveyed or transferred, to any person subject

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to the exercise of an option to purchase the property, whether the option is exercisable in writing or otherwise, the agreement or the conveyance or transfer, as the case may be, is chargeable with duty in accordance with the provisions of this Act as a conveyance or transfer of the property and the consideration for such conveyance or transfer shall be deemed to be an amount equal to the sum of the amount paid by way of consideration for the granting of the option and the amount payable in the event of the option being exercised.

- (2) Each of the parties to an agreement, conveyance or transfer referred to in subsection (1) is liable to pay the duty with which it is chargeable.
- (3) Section 73AA does not apply to a conveyance or transfer referred to in subsection (1).
- (4) Where *ad valorem* duty has been duly paid in conformity with subsection (1) on an agreement the conveyance or transfer made in conformity with the agreement shall be chargeable with duty under item 6 of the Second Schedule.
- (5) Where, after *ad valorem* duty has been paid in conformity with subsection (1), the Commissioner is satisfied —
  - (a) that the option referred to in that subsection has not been exercised and that the time within which that option may be exercised has expired; and
  - (b) where the property was conveyed or transferred to the person to whom the option was granted —
    - (i) that the property has been reconveyed or retransferred to the person from whom it was conveyed or transferred or to a person to whom his rights have been transmitted on death or bankruptcy; and
    - (ii) that the person to whom the option was granted did not, prior to the reconveyance or retransfer of the property, exercise or receive any right or benefit in respect of the property being a right or

benefit of a kind normally exercisable or receivable only by the beneficial owner of property,

the Commissioner shall refund the *ad valorem* duty less an amount equal to the duty which would have been payable but for this section, and any reconveyance or retransfer referred to in paragraph (b) shall be chargeable with duty under item 6 of the Second Schedule.

- (6) Where *ad valorem* duty has been duly paid in conformity with subsection (1) any agreement made in pursuance of and by the exercise of the option referred to in that subsection shall not be chargeable with any further duty.

*[Section 73A inserted by No. 63 of 1977 s. 3; amended by No. 37 of 1979 s. 48; No. 81 of 1984 s. 16.]*

**73AA. Duty on conveyance not passing a beneficial interest**

- (1) A conveyance or transfer —
- (a) made for effectuating the appointment of a new trustee, or the retirement of a trustee, whether the trust is expressed or implied;
  - (b) made to a beneficiary by a trustee or by another person in a fiduciary capacity, except a discretionary trustee or a unit trustee, under any trust whether express or implied;
  - (c) made to a beneficiary by a discretionary trustee under any trust whether express or implied otherwise than in exercise of any power of appointment;
  - (d) made by a discretionary trustee, in exercise of a power of appointment over the property conveyed or transferred, to a beneficiary who is a natural person for his own use and benefit, if —
    - (i) at the time when the discretionary trustee acquired the property conveyed or transferred the beneficiary was named or described in the

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instrument which created the power of appointment as a beneficiary or as a member of a class of beneficiaries in whose favour the discretionary trustee was empowered by that instrument to appoint the property; and

- (ii) evidence of the acquisition by the discretionary trustee, as such trustee, of the property conveyed or transferred is produced to the Commissioner with that conveyance or transfer;
- (e) made to the holder of a unit in a unit trust scheme by a unit trustee if —
- (i) evidence of the acquisition by the unit trustee, as trustee of that unit trust scheme, of the property conveyed or transferred is produced to the Commissioner with that conveyance or transfer; and
  - (ii) the Commissioner is satisfied that —
    - (I) the conveyance or transfer has the effect of reducing the rights of the holder of the unit in respect of the property held by the unit trustee to the extent of the property, or the value of the property, conveyed or transferred; and
    - (II) the conveyance or transfer does not have the effect of varying, abrogating or altering the rights of the holder or holders of other units under the unit trust scheme in respect of the remaining property held by the unit trustee;
- or
- (f) not otherwise coming within this section, if the Commissioner is satisfied that the conveyance or transfer —
- (i) does not pass a beneficial interest in the property conveyed or transferred;



- (ii) is not made in contemplation of the passing of a beneficial interest therein; and
- (iii) is not part of, or made pursuant to, a scheme whereby any beneficial interest in the property conveyed or transferred, whether vested or contingent, has passed or will or may pass,

shall be charged with duty in accordance with item 6 of the Second Schedule.

- (2) A conveyance or transfer that is —
  - (a) made by any trustee or other person in a fiduciary capacity to a beneficiary; or
  - (b) made by a unit trustee to the holder of a unit in a unit trust scheme,

and that does not conform to subsection (1)(b), (c), (d) or (e), and a conveyance or transfer in respect of which the Commissioner is not satisfied as mentioned in subsection (1)(f), shall be deemed to operate as a voluntary disposition and is chargeable with duty under section 75(1).

*[Section 73AA inserted by No. 81 of 1984 s. 17; amended by No. 33 of 1987 s. 18; No. 20 of 1996 s. 24.]*

**73B. Conveyance agreement subject to unilateral determination**

- (1) When any property or estate or interest therein (in this section referred to as “**the property**”) is agreed to be conveyed or transferred to any person —
  - (a) wholly or partly in consideration of the making by that person of 2 or more payments at intervals specified in that agreement; and
  - (b) subject to the right of that person to determine that agreement at any time on making such of the payments referred to in paragraph (a) as may have become due and

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payable under that agreement at the time of that determination,

that agreement is chargeable with duty in accordance with the provisions of this Act as a conveyance or transfer of the property and the consideration for that agreement shall be deemed to be an amount equal to the sum of both or all, as the case may be, of the payments referred to in paragraph (a).

- (2) The person to whom property is to be conveyed or transferred under an agreement referred to in subsection (1) is liable to pay the duty with which the agreement is chargeable.
- (3) When, after *ad valorem* duty has been duly paid in conformity with subsection (1), the Commissioner is satisfied that the person referred to in that subsection (in this subsection referred to as “**the determiner**”) determined the agreement concerned before the final payment had become due and payable under that agreement, the Commissioner shall refund the *ad valorem* duty so paid less an amount equal to the duty which would have been payable had the consideration referred to in subsection (1) been an amount equal to the amount of the payment or payments paid or due and payable by the determiner at the time of determination.

*[Section 73B inserted by No. 37 of 1979 s. 49; amended by No. 81 of 1984 s. 18.]*

**73C. Option to purchase with right to renew**

- (1) Where an instrument confers on any person the right of an option to purchase any property or an estate or interest in property and provides for the renewal of that right on such occasion or occasions as is or are specified therein the instrument is chargeable with *ad valorem* duty on 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.

- (2) The person on whom the right of the option is conferred by an instrument referred to in subsection (1) is liable to pay the duty with which it is chargeable.
- (3) When, after *ad valorem* duty has been duly paid in conformity with subsection (1), the Commissioner is satisfied that the person on whom the right of the option was conferred by the instrument —
- (a) exercised the option; or
  - (b) failed to renew the right of option,

before the occurrence of the final occasion referred to in the instrument the Commissioner shall refund the *ad valorem* duty paid in respect of the instrument less an amount equal to the duty payable in respect of any occasion or occasions referred to in the instrument that has or have occurred.

*[Section 73C inserted by No. 93 of 1982 s. 5; amended by No. 81 of 1984 s. 19.]*

**73D. Disposition of units in unit trust schemes**

- (1) In this section —
- “**chattels**” has the same definition as in section 76;
- “**disposition**”, in relation to a unit, includes —
- (a) a transfer or other disposition of the unit;
  - (b) the allotment or issue of the unit;
  - (c) the redemption, surrender or cancellation of the unit;
  - (d) the variation, abrogation or alteration of a right pertaining to the unit with respect to capital of the unit trust scheme; and
  - (e) any means by which a unit is disposed of or the rights of its holder are diminished;
- “**land**” has the same definition as in section 76;

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**“transfer”** means a conveyance, transfer, or instrument chargeable as a conveyance; and

**“unit”** means any right or interest, whether described as a unit or subunit or otherwise, of a beneficiary under a unit trust scheme and includes an interest in a unit.

- (2) A person shall not make, accept, give effect to, recognize, or register, record, or enter in the books or records of a unit trust scheme a disposition in relation to a unit unless —
- (a) a transfer or an instrument effecting or evidencing the disposition is executed and delivered to him; and
  - (b) the transfer or the instrument, as the case may be, is duly stamped under this Act.
- (3) A person who contravenes or fails to comply with a provision of subsection (2) commits an offence and is liable to a penalty equal to double the amount of duty that would have been payable if an appropriate transfer or instrument had been executed and duly stamped under this Act.
- (4) Subject to subsections (4a), (4b), (5), (5a), and (6), a transfer of a unit and an instrument effecting or evidencing a disposition in relation to a unit shall each be chargeable with duty as if it were separately —
- (a) a conveyance or transfer free of encumbrances of an undivided share, equivalent to the proportion of the total issued units under the unit trust scheme represented by the unit, in land and chattels situated in the State or any interest, including any beneficial interest, in any such land and chattels held by the unit trustee as trustee of the unit trust scheme; and
  - (b) a conveyance of the unit.
- (4a) The value of the unit, for the purpose of assessing duty under subsection (4)(b), shall be the value of the unit reduced by the value of the land and chattels or interest in land and chattels (if any) determined for the purpose of assessing duty under paragraph (a) of that subsection.

- (4b) Subject to subsections (5) and (5a), the duty chargeable on a transfer of a unit or an instrument effecting or evidencing a disposition in relation to a unit shall not in any event be less than the amount of duty determined under item 4(1) of the Second Schedule on the amount or value of the consideration for the transfer or the disposition.
- (5) Where a disposition does not significantly affect any right or rights pertaining to any unit, having regard to the rights pertaining to the other issued units under the unit trust scheme, the instrument effecting or evidencing the disposition shall be chargeable with duty under item 6 of the Second Schedule.
- (5a) Where a disposition, or a series of dispositions —
- (a) has effect in relation to the number of units held by all holders of units in proportion to the number of units respectively held by them immediately prior to the disposition or dispositions taking effect; and
  - (b) does not have the effect of varying, abrogating or altering the rights of any holder of units as against the rights of any other holder of units with respect to the capital of the unit trust scheme,
- the instrument effecting or evidencing the disposition, and each instrument effecting or evidencing a disposition in a series of dispositions, shall be chargeable with duty under item 6 of the Second Schedule.
- (6) The Commissioner shall, where it is necessary to determine, for the purposes of subsection (4), the proportion of the total issued units under a unit trust scheme represented by a unit, take into account, in such manner as he considers appropriate, the respective rights and obligations pertaining to the unit and the other units under the unit trust scheme.
- (6a) Subject to subsection (6c), in addition to the duty chargeable on a transfer or an instrument under subsection (4), the transfer or instrument shall each be chargeable with duty at the rate

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provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of any ascribed chattels, but duty shall not be charged in respect of —

- (a) any of the chattels in respect of which duty has been paid under section 31B or 70 by a person liable under subsection (7) to pay the duty with which the transfer or instrument is chargeable under subsection (4);
  - (b) any of the chattels in respect of which *ad valorem* duty has been paid by such a person in another jurisdiction; or
  - (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in the State.
- (6b) Chattels are ascribed chattels for the purpose of subsection (6a) if, within the 12 months preceding the date of the disposition evidenced by the transfer or instrument —
- (a) the unit trustee, as trustee of the unit trust scheme, held them or any interest (including any beneficial interest) in them; and
  - (b) a person liable under subsection (7) to pay the duty with which the transfer or instrument is chargeable under subsection (4) acquired them, directly or indirectly, from the unit trustee.
- (6c) The transfer or instrument is not chargeable with duty under subsection (6a) if the Commissioner is satisfied that no transaction by means of which the ascribed chattels were transferred from the unit trustee to the person referred to in subsection (6b)(b) was effected for the collateral purpose of reducing the duty that otherwise would be chargeable on the transfer or instrument.
- (7) Each of the holders of a unit under a unit trust scheme is liable to pay the duty with which a transfer of the unit or an instrument effecting or evidencing a disposition in relation to the unit is chargeable.

- (8) A unit trustee shall, where a transfer of a unit or an instrument effecting or evidencing a disposition in relation to a unit has been delivered to him, retain the transfer or instrument, as the case may be, for not less than 2 years after the day on which it is delivered to him.
- (9) A unit trustee who contravenes or fails to comply with subsection (8) commits an offence against this Act.
- (10) A right or obligation arising out of a disposition in relation to a unit shall not be invalidated by reason only that the unit trustee made, accepted, gave effect to, or recognized the disposition or registered, recorded or entered the disposition in the books or records of the unit trust scheme in contravention of subsection (2).

*[Section 73D inserted by No. 112 of 1982 s. 8; amended by No. 81 of 1984 s. 20; No. 109 of 1984 s. 5; No. 33 of 1987 s. 19; No. 22 of 1998 s. 34.]*

**73DA. Shares owned by unit trust deemed to be land in certain cases**

- (1) If a unit trustee of a unit trust scheme has a majority interest in a company, all land and chattels (as those terms are defined in section 76) situated in the State to which the company is beneficially entitled is deemed to be an undivided share in land and chattels held by the unit trustee for the purposes of section 73D(4) to the extent provided for in subsection (2).
- (2) The extent of the undivided share in land and chattels referred to in subsection (1) is the same proportion of the value of the land and chattels situated in the State to which the company is beneficially entitled as the proportion of the property of the company which the trustee would be entitled to claim in a distribution of property, as provided in section 76(5), if the company were to be wound up at the time of the disposition effected or evidenced by the relevant transfer or instrument.

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(3) For the purposes of this section —

- (a) **“company”** means a company to which Division 2 of Part IIIBA applies and a corporation to which Division 3 of that Part applies; and
- (b) a unit trustee has a majority interest in a company if he would be entitled, if the company were to be wound up at the time of the disposition effected or evidenced by the relevant transfer or instrument, to participate (otherwise than as a creditor, or other person to whom the company is liable) in a distribution of the property of the company, as provided in section 76(5), to an extent greater than 50% of the value of the property distributable otherwise than to creditors, or other persons to whom the company is liable.

*[Section 73DA inserted by No. 33 of 1987 s. 20; amended by No. 22 of 1998 s. 35; No. 60 of 2000 s. 20(2).]*

**73E. Disposition of shares in discretionary trustee companies**

(1) In this section —

**“company”** means a corporation which is a discretionary trustee;

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

- (a) a transfer or other disposition of the share;
- (b) the allotment or issue of the share;
- (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 voting, whether at meetings of the company or the directors or otherwise,

but does not include a disposition 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;



**“officer”**, in relation to a corporation, has the same definition as in section 9 of the Corporations Act;

**“share”** means a share or stock of a company that is not listed on a recognized stock exchange and includes an interest in a share.

- (2) A company which is resident or domiciled in Western Australia or which carries on business in Western Australia as discretionary trustee and an officer of such a company shall not make, accept, give effect to, recognize, or register, record or enter in the books or records of the company a disposition in relation to a share unless —
  - (a) a transfer or an instrument effecting or evidencing the disposition is executed and delivered to the company; and
  - (b) the transfer or the instrument, as the case may be, is duly stamped under this Act.
- (3) A company and an officer of the company who contravenes or fails to comply with a provision of subsection (2) commits an offence and is liable to a penalty equal to double the amount of duty that would have been payable if an appropriate transfer or instrument had been executed and duly stamped under this Act.
- (4) Subject to subsections (5) and (6), a transfer of a share and an instrument effecting or evidencing a disposition in relation to a share shall each be chargeable with duty as if it were a conveyance free of encumbrances of an undivided share, equivalent to the proportion of the total issued capital of the company represented by the share, in the property held by the discretionary trustee as trustee of the discretionary trust.
- (5) Subsection (4) shall not apply to a transfer or instrument if the Commissioner is satisfied that it is not made in contemplation of the passing of a beneficial interest in any property held by the company as discretionary trustee and is not part of, or made pursuant to, a scheme whereby any beneficial interest, vested or contingent, in any property held by the company as

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discretionary trustee has passed or will or may pass to any person.

- (6) Where —
- (a) a disposition in relation to a share involves a variation, abrogation or alteration of a right or rights pertaining to the share; and
  - (b) the Commissioner is satisfied, having regard to the rights pertaining to the other issued shares in the capital of the company, that the disposition does not significantly affect the right or rights pertaining to the share,

the instrument effecting or evidencing the disposition shall be chargeable with duty under item 6 of the Second Schedule.

- (7) The Commissioner shall, where it is necessary to determine, for the purposes of subsection (4), the proportion of the total issued capital of a company represented by a share, take into account, in such manner as he considers appropriate, the respective rights and obligations pertaining to the share and the other shares in the capital of the company.
- (8) Each of the holders of a share in a company is liable to pay the duty with which a transfer of the share or an instrument effecting or evidencing a disposition in relation to the share is chargeable.
- (9) A company shall, where a transfer of a share or an instrument effecting or evidencing a disposition in relation to a share has been delivered to it, retain the transfer or instrument, as the case may be, for not less than 2 years after the day on which the transfer or instrument is delivered to it.
- (10) A company that contravenes or fails to comply with subsection (9) commits an offence against this Act.
- (11) A right or obligation arising out of a disposition in relation to a share shall not be invalidated by reason only that the company

or an officer of the company made, accepted, gave effect to or recognized the disposition or registered, recorded or entered the disposition in the books or records of the company in contravention of subsection (2).

*[Section 73E inserted by No. 112 of 1982 s. 8; amended by No. 39 of 1994 s. 21; No. 53 of 1999 s. 20; No. 10 of 2001 s. 168.]*

**73F. Acquisition of a licence to carry on a business activity**

(1) In this section —

“**business licence**” means —

- (a) a licence, permit or authority which is issued, granted or given under 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
  - (b) a licence, permit or authority which is issued, granted or given under 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 the State for gain or reward.
- (2) This section applies to a transaction by which a person (“**the licensee**”) who holds a business licence —
- (a) disposes of the business licence to another person;
  - (b) agrees to the business licence being transferred to another person; or
  - (c) agrees to relinquish the business licence, or agrees not to apply for a renewal of the 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.
- (3) For the purposes of this Act, where this section applies to a transaction the business licence to which the transaction relates is property situated in the State and the transaction is a

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transaction by which that property is transferred by the licensee and becomes the property of the other person referred to in subsection (2).

- (4) Where this section applies to a transaction relating to a business licence issued, granted or given under a law of the Commonwealth, duty can only be charged to the extent of —
- (a) the value of the business licence so far as it authorises the carrying out of an activity in the State; or
  - (b) the portion of the consideration for the transaction that relates to the carrying out of an activity in the State under the authority of the business licence,

whichever is the greater amount.

*[Section 73F inserted by No. 41 of 1995 s. 6<sup>9</sup>.]*

**74. Certain contracts to be chargeable as conveyances on sale**

- (1) Every contract or agreement, howsoever executed, for the sale of any estate or interest in any property shall be charged with the same *ad valorem* duty to be paid by the purchaser as if it were an actual conveyance on sale of the estate, interest or property contracted or agreed to be sold.
- (2) Subject to subsection (3), when the name of the purchaser as set out in a contract or agreement referred to in subsection (1) differs from the name of the transferee as set out in the subsequent conveyance or transfer, that conveyance or transfer shall be deemed to be a separate and distinct transaction and shall be subject to *ad valorem* duty.
- (3) Notwithstanding anything in subsection (2), if —
- (a) the Commissioner is of the opinion that the person named in the contract or agreement concerned as the purchaser was acting as the agent of the person named in the subsequent conveyance or transfer as the transferee at the time when that contract or agreement was executed;

- (b) the Commissioner endorses on the subsequent conveyance or transfer concerned his opinion referred to in paragraph (a); and
- (c) the contract or agreement of sale concerned is duly stamped,

the same duty as is payable under item 6 of the Second Schedule shall be payable on the subsequent conveyance or transfer.

(3a) Notwithstanding subsections (2) and (3), where —

- (a) a person named as purchaser in a contract or agreement to purchase property entered into the contract or agreement with the intention that the property be transferred to a corporation which the person intended to be incorporated;
- (b) at the time the contract or agreement was entered into action was being taken to incorporate the corporation; and
- (c) duty has been paid on the contract or agreement under subsection (1),

a conveyance or transfer of the property by the vendor under the contract to the corporation after it has been incorporated shall be charged with duty under item 6 of the Second Schedule.

- (4) When duty has been paid in accordance with subsection (1), the conveyance or transfer concerned made to the purchaser shall not be liable to duty and the Commissioner, on being requested to do so, shall denote the payment of the *ad valorem* duty concerned on that conveyance or transfer on production to him of the contract or agreement, duly stamped, and that conveyance or transfer shall thereupon be deemed to be duly stamped.

*[Section 74 inserted by No. 37 of 1979 s. 50; amended by No. 81 of 1984 s. 21.]*

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**74A. Duty chargeable on certain conveyances of corporation property**

- (1) A conveyance or transfer of any property —
- (a) by a corporation to any of its shareholders in the course of a distribution of assets on a reduction of its capital, including a conveyance or transfer of property in consideration of or pursuant to a surrender, redemption or cancellation of any shareholding;
  - (b) by the liquidator of a corporation to any of its shareholders pursuant to a right attaching to any of its shares to select or receive any particular property of it; or
  - (c) by the liquidator of a corporation to any of its shareholders in the course of a distribution of its assets as a consequence of its winding up, not being a conveyance or transfer to which paragraph (b) applies,
- shall be chargeable with duty in accordance with item 4 or 4A(1), as the case requires, of the Second Schedule and —
- (d) the unencumbered value of the property shall be taken to be the consideration paid; and
  - (e) the shareholder shall be liable to pay the amount of duty charged.
- (2) If in a case to which subsection (1)(c) applies, the Commissioner is satisfied that the corporation is not being wound up as part of an arrangement or scheme designed with the collateral purpose of reducing the duty otherwise payable on the conveyance or transfer of the property, the Commissioner may deduct from the unencumbered value of the property an amount calculated under subsection (4) but in any event not greater than the unencumbered value of the property.

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- (3) In considering whether or not he or she is satisfied for the purpose of subsection (2), the Commissioner may have regard to —
- (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 —
    - (i) by the shareholder or a related corporation of the shareholder;
    - (ii) by a previous owner of the property;
  - (e) whether there is any commercial efficacy to an arrangement or scheme of transactions involving any one or more of —
    - (i) the corporation;
    - (ii) the shareholder;
    - (iii) a related corporation of the corporation or the shareholder;
    - (iv) a person who has a substantial holding (as defined 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 payable on the conveyance or transfer;
  - (f) any other matters he or she considers relevant.
- (4) The deduction to be made under subsection (2) shall be calculated as follows:

$$\text{Deduction} = \frac{A}{B} \times C$$

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where:

- A is the value of the shareholder's entitlement in the undistributed assets of the corporation as determined under subsection (5);
  - B is the unencumbered value of all the assets that are, or are to be, distributed to the shareholder in the course of the distribution;
  - C is the unencumbered value of the property that is the subject of the conveyance or transfer that is chargeable with duty.
- (5) In subsection (4) the value of the shareholder's entitlement in the undistributed assets of the corporation is the amount (if any) by which the value of the shareholder's entitlement in the undistributed assets of the corporation immediately before the conveyance or transfer exceeds the sum of —
- (a) any amount owed by the corporation to the shareholder as a creditor at the date of the conveyance or transfer;
  - (b) any amount owed by the corporation to the shareholder as a creditor that the shareholder, in the year ending on the date of the conveyance or transfer, has released the corporation from paying; and
  - (c) the amount of any liability of the corporation that the shareholder, in the year ending on the date of the conveyance or transfer, has, or has caused to be, assumed or discharged on behalf of the corporation.

*[Section 74A inserted by No. 13 of 1997 s. 37; amended by No. 10 of 2001 s. 169.]*

**75. Duty chargeable on conveyance for less than full consideration**

- (1) Subject to subsection (2), every conveyance or transfer or instrument chargeable as a conveyance operating as a voluntary disposition *inter vivos* shall be chargeable with duty under



item 19 of the Second Schedule in respect of the unencumbered value of the property disposed of.

- (2) Notwithstanding subsection (1), every conveyance or transfer, or instrument chargeable as a conveyance, that confers a benefit on the person to whom the property is conveyed or transferred because the unencumbered value of the property exceeds the consideration payable in respect of that property, or because of other circumstances, shall be chargeable with duty under item 4 or 4A(1), as the case requires, of the Second Schedule as if that unencumbered value were the consideration paid.
- (3) A conveyance or transfer —
- (a) for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied;
  - (b) made to a beneficiary by a trustee or by another person in a fiduciary capacity, except a discretionary trustee or a unit trustee, under any trust whether express or implied;
  - (c) made to a beneficiary by a discretionary trustee under any trust, whether express or implied, otherwise than in exercise of any power of appointment;
  - (d) made by a discretionary trustee, in exercise of a power of appointment over the property conveyed or transferred, to a beneficiary who is a natural person for his own use and benefit, if —
    - (i) at the time when the discretionary trustee acquired the property conveyed or transferred 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 whose favour the discretionary trustee was empowered by that instrument to appoint the property; and

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- (ii) evidence of the acquisition by the discretionary trustee, as such trustee, of the property conveyed or transferred is produced to the Commissioner with that conveyance or transfer;
- (e) made to the holder of a unit in a unit trust scheme by a unit trustee if —
  - (i) evidence of the acquisition by the unit trustee, as trustee of that unit trust scheme, of the property conveyed or transferred is produced to the Commissioner with that conveyance or transfer; and
  - (ii) the Commissioner is satisfied that —
    - (I) the conveyance or transfer has the effect of reducing the rights of the holder of the unit in respect of the property held by the unit trustee to the extent of the property, or the value of the property, conveyed or transferred; and
    - (II) the conveyance or transfer does not have the effect of varying, abrogating, or altering the rights of the holder or holders of other units under the unit trust scheme in respect of the remaining property held by the unit trustee;
- or
- (f) not otherwise coming within this subsection if the Commissioner is satisfied that the conveyance or transfer —
  - (i) does not pass a beneficial interest in the property conveyed or transferred;
  - (ii) is not made in contemplation of the passing of a beneficial interest therein; and
  - (iii) is not part of, or made pursuant to, a scheme whereby any beneficial interest in the property

conveyed or transferred, whether vested or contingent, has passed or will or may pass,

shall not be charged with duty under this section.

- (4) A conveyance or transfer operating as a voluntary disposition *inter vivos* (other than one that is wholly exempt from duty under section 75C) shall be deemed not to be duly stamped unless the Commissioner has expressed his opinion thereon under section 31.

*[Section 75 inserted by No. 81 of 1984 s. 22; amended by No. 33 of 1987 s. 21; No. 100 of 1987 s. 4; No. 39 of 1994 s. 14 and 21; No. 20 of 1996 s. 25; No. 13 of 1997 s. 42.]*

**75A. Valuation of property for assessment purposes**

- (1) In the case of every conveyance, transfer and instrument chargeable with *ad valorem* duty under this Act, the Commissioner may —
- (a) require the purchaser or other person liable in respect of the instrument relating to that conveyance or transfer or in respect of that instrument, as the case may be, to furnish him with a statement in a form approved by the Commissioner concerning —
    - (i) the unencumbered value of the property; or
    - (ii) the value of the consideration referred to in section 65(1)(b) or (c),to which that instrument relates or with such other evidence of that value as the Commissioner thinks fit; and
  - (b) assess that duty in accordance with the evidence of value referred to in paragraph (a).
- (1a) A person who fails to comply with a requirement made under subsection (1) commits an offence against this Act.
- (2) Whether or not evidence of value has been required or furnished under subsection (1), the Commissioner may cause the property

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or consideration concerned to be valued and may assess the duty in accordance with that valuation.

- (3) In valuing property for the purposes of subsection (2), the existence of any overriding power of revocation or reconveyance shall be disregarded.
- (4) For the purposes of subsection (2) the value of an undivided share in any property, whether held jointly or in common, shall be ascertained by —
  - (a) determining the total value of the property;
  - (b) expressing the share as a fraction; and
  - (c) multiplying the total value referred to in paragraph (a) by the fraction referred to in paragraph (b).
- (4a) In determining the unencumbered value of any property for the purpose of assessing the duty on a conveyance, transfer or instrument in relation to it that is chargeable with *ad valorem* duty under this Act —
  - (a) an encumbrance on the property shall be disregarded; and
  - (b) an interest, agreement or arrangement (not being an encumbrance) granted or made on or after 27 December 1996 in respect of the property that has the effect of reducing the value of the property shall be disregarded.
- (4b) An interest, agreement or arrangement referred to in subsection (4a)(b) shall not be disregarded if the Commissioner is satisfied that the interest, agreement or arrangement —
  - (a) was granted or made for a purpose other than reducing the value of the property; and
  - (b) was not granted to or in favour of or made in favour of —
    - (i) a person liable to pay the duty on the conveyance, transfer or instrument;

- (ii) if the instrument is chargeable under item 19 of the Second Schedule — the person on whom the property is settled or agreed to be settled, or to whom the property is given or agreed to be given, or for whom it is declared to be held in trust;
  - (iii) where the valuation is in respect of a relevant acquisition to which Division 3 of Part IIIBA applies — the person who acquired the majority interest or further interest; or
  - (iv) a person who is associated with (within the meaning of section 76(2)) or related to (within the meaning of section 76(3)), a person referred to in subparagraph (i), (ii) or (iii).
- (5) For the purposes of this section, in applying the ordinary principles of valuation to determine the value of land it shall be assumed that a hypothetical purchaser would, for the purpose of negotiating the price for the land, have knowledge of all existing information relating to the land, and no account is to be taken of any amount that a hypothetical purchaser would have to expend to reproduce, or otherwise acquire a permanent right of access to and use of, existing information relating to the land.
- (6) In subsection (5) “**land**” includes an estate or interest in —
- (a) freehold land, whether or not registered under the *Transfer of Land Act 1893*;
  - (b) a Crown lease registered under the *Transfer of Land Act 1893*; or
  - (c) a mining tenement registered under the *Mining Act 1978*,

or any buildings on, or fixtures annexed to, or to buildings on, any such land, Crown lease or mining tenement.

*[Section 75A inserted by No. 37 of 1979 s. 51; amended by No. 81 of 1984 s. 23; No. 53 of 1991 s. 4; No. 20 of 1996 s. 26; No. 13 of 1997 s. 22.]*

**s. 75AA**

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**75AA. Power of exemption or refund for certain purposes**

When the Commissioner is satisfied that any deed of gift, conveyance, transfer, settlement or other instrument operating as a voluntary disposition of property, or any conveyance on the purchase of property, has been made for the purpose of a university or for charitable or similar public purposes, he may exempt from *ad valorem* duty, or refund *ad valorem* duty paid on, that deed, conveyance, transfer, settlement or other instrument or conveyance on the purchase of property.

*[Section 75AA inserted by No. 37 of 1979 s. 51; amended by No. 81 of 1984 s. 24.]*

**75AB. Power of exemption in respect of certain funds or schemes**

When the Commissioner is satisfied that any instrument is an instrument —

- (a) by which money or property is given or agreed to be given to; or
- (b) which establishes or regulates or relates to the establishment or regulation of,

any fund or scheme established for the principal purpose of making provision by way of superannuation payments, annuities, pensions, gratuities, allowances, lump sum payments, benefits, assistance or the like for the directors, officers, servants or employees of any employer or employers on the termination of their office or service, whether by death or otherwise, or on their withdrawal from membership of that fund or scheme or during their incapacity for work attributable to illness or accident or for the widows or children or dependants or legal personal representatives of any of those directors, officers, servants or employees or for any persons duly selected or nominated for that purpose pursuant to the provisions of that fund or scheme, he may exempt from *ad valorem* duty, or refund any *ad valorem* duty paid on, that instrument.

*[Section 75AB inserted by No. 37 of 1979 s. 51; amended by No. 81 of 1984 s. 25.]*

**75ABA. Power of exemption for transfers by bankruptcy trustee to bankrupt**

- (1) When the Commissioner is satisfied that an instrument is an instrument by which property that vested in a bankruptcy trustee on the bankruptcy of a person is conveyed from the bankruptcy trustee back to that person, the Commissioner may exempt the instrument from duty and the instrument is to be endorsed accordingly.
- (2) In this section —  
“**bankruptcy trustee**” means —
  - (a) the Official Trustee in Bankruptcy; or
  - (b) a registered trustee,  
under the *Bankruptcy Act 1966* of the Commonwealth.

*[Section 75ABA inserted by No. 28 of 2000 s. 5.]*

**75AC. Exchange of property**

Any instrument or instruments effecting an exchange of any property for any other property shall be chargeable with duty as if the exchange involved —

- (a) the conveyance or transfer of the first-mentioned property for consideration equal to the unencumbered value of that property; and
- (b) the conveyance or transfer of the second-mentioned property for consideration equal to the unencumbered value of that property.

*[Section 75AC inserted by No. 20 of 1996 s. 27.]*

**75AD. Duty chargeable on partition of property**

- (1) Any instruments effecting the partition of any property shall be chargeable with duty under item 15 of the Second Schedule and any amount paid or other consideration given to achieve equality is also to be charged with *ad valorem* duty on that

**s. 75AE**

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amount or on the value of that consideration under item 4 or 4A(1), as the case requires, of the Second Schedule.

- (2) Notwithstanding anything in subsection (1), when there is no amount or consideration referred to in that subsection or any amount or consideration referred to in that subsection is insufficient to achieve equality, duty shall be chargeable on the amount of that insufficiency under item 19 of the Second Schedule.

*[Section 75AD inserted by No. 37 of 1979 s. 51; amended by No. 39 of 1994 s. 14.]*

**75AE. Rebate of duty for certain dwellinghouses and businesses**

- (1) In the case of a conveyance or transfer of property chargeable with duty under item 4(1) of the Second Schedule, a purchaser who claims to be an entitled person for the purposes of this section may apply to the Commissioner in the manner provided by this section for the duty on the instrument of conveyance or transfer to be assessed in accordance with item 4(5) of that Schedule.
- (2) A purchaser is an entitled person for the purposes of this section if he is able to satisfy the Commissioner of the following —
- (a) he is the person named in the instrument of conveyance or transfer as the purchaser and he does not hold or intend to hold the property as agent, trustee or otherwise on behalf of or in partnership or association with any other person except as set out in the application form referred to in subsection (3);
  - (b) the value of the property to which the instrument of conveyance or transfer relates, as determined for the purposes of this Act, does not exceed \$135 000;
  - (c) the property to which the instrument of conveyance or transfer relates includes a dwellinghouse or consists of or includes a business undertaking;
  - (d) where the property includes a dwellinghouse, the purchaser is a natural person who has purchased the



property with the intention of occupying the dwellinghouse on the property and intends to occupy that dwellinghouse for an indefinite period as his principal place of residence; and

- (e) where the property consists of or includes a business undertaking, the purchaser (whether or not a natural person) has purchased the property with the intention of carrying on the business undertaking and intends to do so for an indefinite period of time.
- (3) An application under subsection (1) shall be made by the purchaser or, if there are 2 or more, by every purchaser that is not a government body, in writing in a form approved by the Commissioner.
- (4) If on such an application the Commissioner is satisfied that the purchaser, or if there are 2 or more, all purchasers (other than any government body) are entitled persons for the purposes of this section, he shall assess the duty on the instrument under item 4(5) of the Second Schedule and not under item 4(1) of that Schedule.
- (5) A person who in such an application makes a statement that is false in a material particular commits an offence against this Act.
- (6) This section has effect notwithstanding that an entitled person or persons purchase property in association with a government body.
- (7) In this section —  
“**government body**” means an agent or instrumentality of the Crown, or an SES organization (as defined in the *Public Sector Management Act 1994*).

*[Section 75AE inserted by No. 81 of 1981 s. 3; amended by No. 3 of 1989 s. 5; No. 41 of 1989 s. 11<sup>10</sup>; No. 20 of 1996 s. 28; No. 18 of 1998 s. 9; No. 22 of 1998 s. 28.]*

**s. 75AF**

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**75AF. Computation of duty where several instruments**

- (1) Where several instruments to which this section applies together form, or arise from, substantially one transaction, or one series of transactions, those instruments shall be chargeable with *ad valorem* duty calculated upon the sum of the amounts by reference to which *ad valorem* duty on each of those instruments would, but for this subsection, have been calculated, and that duty shall be apportioned to the various instruments as determined by the Commissioner.
- (2) Where, by instruments to which this section applies that have been, or appear to have been, executed within 12 months of each other, a person conveys or transfers, or agrees to convey or transfer, property or properties to the same person (whether that person takes alone or with the same or different persons), it shall be presumed, unless the Commissioner is satisfied to the contrary, that the instruments arose out of one transaction or one series of transactions.
- (3) This section does not operate to reduce the duty payable on any instrument.
- (4) This section applies to conveyances or transfers of property and other instruments chargeable with duty under item 4(1), item 17 or item 19 of the Second Schedule.

*[Section 75AF inserted by No. 81 of 1984 s. 26; amended by No. 41 of 1989 s. 12.]*

**75AG. Rebate or refund of duty for first home owners**

- (1) In this section —  
“**instrument of acquisition**” means a conveyance or transfer of property or other instrument chargeable with duty under item 4(1) or (5) or item 19 of the Second Schedule, as the case requires;

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

- (a) an executor or administrator, guardian, committee of management, receiver or liquidator; and
  - (b) every person having or taking upon himself the administration or control of property effected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control, or management of the property of a person under any legal disability.
- (2) This section applies in respect of property —
- (a) where settlement of the property, being payment to the vendor of the purchase price of that property, has been, or will be, completed on or after 1 March 1989; or
  - (b) acquired without valuable consideration, where the instrument of acquisition of that property has been, or will be, executed on or after 1 March 1989.
- (3) A person who —
- (a) claims to be a first home owner for the purposes of this section; and
  - (b) is liable to pay duty on an instrument of acquisition in relation to property which includes a dwellinghouse and to which the claim referred to in paragraph (a) relates,
- may apply to the Commissioner in the manner provided by subsection (10) for a rebate on that duty.
- (4) A person who —
- (a) claims to be a first home owner for the purposes of this section; and
  - (b) has paid the duty chargeable on the instrument of acquisition in relation to the property to which the claim referred to in paragraph (a) relates,

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may apply to the Commissioner in the manner provided by subsection (10) for a refund of part or all of that duty.

- (5) A person is a first home owner for the purposes of this section if that person is able to satisfy the Commissioner of the following —
- (a) that person is liable to pay, or has paid, duty on an instrument of acquisition;
  - (b) that person has not acquired or does not intend to acquire the property to which the instrument of acquisition relates (in this subsection referred to as the **“dutiable property”**) as agent, trustee or otherwise on behalf of any other person;
  - (c) the value of the dutiable property, as determined for the purposes of this Act, does not exceed —
    - (i) in the case of property which includes a dwellinghouse, \$135 000 or, where that property is situated north of the 26th parallel of south latitude, \$202 500;
    - (ii) in the case of property which does not include a dwellinghouse, \$52 000;
  - (d) that person is a natural person who —
    - (i) has acquired or is acquiring the dutiable property with the intention of occupying the dwellinghouse on the property as the principal place of residence of that person; or
    - (ii) has acquired the dutiable property and, within a period of 48 months after the day on which the instrument of acquisition was stamped, has commenced the erection of a dwellinghouse on that property with the intention of occupying that dwellinghouse as the principal place of residence of that person;

- (e) before the date on which the dutiable property was, or is intended to be, acquired that person had not acquired property which included a dwellinghouse whether inside or outside of Western Australia either alone or together with another person or other persons; and
  - (f) no rebate or refund under this section has been made to that person, either alone or together with another person or other persons.
- (6) For the purposes of this section a person who —
- (a) has acquired property which includes a dwellinghouse;
  - (b) has not occupied that dwellinghouse; and
  - (c) has commenced the erection of another dwellinghouse on the property and intends to occupy that dwellinghouse as the principal place of residence of that person,
- shall be taken to have acquired a property which does not include a dwellinghouse.
- (7) Where property is acquired, or will on settlement of the property as referred to in subsection (2)(a) be acquired, by a trustee other than a discretionary trustee, the beneficial owner of the property shall, for the purpose of determining whether a rebate or refund is payable under this section, be taken to be the person acquiring the property and paying duty on the instrument of acquisition.
- (8) An application to the Commissioner under subsection (4) shall be made —
- (a) in the case of the acquisition of property which includes a dwellinghouse, within a period of 12 months after the day on which the instrument of acquisition was stamped; and
  - (b) in the case of the acquisition of property which does not include a dwellinghouse, within 12 months after the day on which the erection of a dwellinghouse on the property commences.

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- (9) For the purposes of subsection (8)(b) the day on which the erection of the dwellinghouse commences shall be taken to be —
- (a) the day on which a contract for the whole or a substantial part of the erection is entered into; or
  - (b) where no contract for the whole or a substantial part of the erection is entered into, the day on which the erection of the dwellinghouse commences.
- (10) An application to the Commissioner under subsection (3) or (4) for a rebate or refund —
- (a) shall be made by the person acquiring the property or, if there are 2 or more, by every one of them that is not a government body (as defined in section 75AE(7)), in writing in a form approved by the Commissioner; and
  - (b) shall be accompanied by such further information as the Commissioner may require,

and if the Commissioner is satisfied that that person is a first home owner, or that each of those persons is a first home owner, for the purposes of this section the Commissioner shall allow a rebate or refund of \$500, or the amount of duty paid or liable to be paid by the first home owner, whichever is the lesser amount, on the amount of duty chargeable or paid on the instrument of acquisition in relation to the property.

- (10a) Where an application referred to in subsection (10) is made by 2 or more persons not all of whom are first home owners for the purposes of this section but the Commissioner is satisfied that each of those persons is either a first home owner or a person to whom subsection (5)(a), (b) and (d) applies the Commissioner shall allow a proportionate rebate or refund calculated as follows:

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

where:

- A is the combined interest in the property of all the applicants who are first home owners expressed as a percentage;
- B is the combined interest in the property of all applicants expressed as a percentage;
- C is the total amount that would have been rebated or refunded had all the applicants been first home owners; and
- R is the amount of the proportionate rebate or refund.

- (11) A person who, in an application to the Commissioner under subsection (3) or (4), makes a statement which is false in any material particular commits an offence under this Act.
- (12) For the purpose of ascertaining whether a rebate or refund is payable under this section, or for the purpose of determining the amount of the rebate or refund, the Commissioner may by notice in writing require any person to furnish him, within such reasonable time as may be specified in that notice, with such information specified in the notice as that person may be able to give.
- (13) This section has effect notwithstanding that a first home owner acquires property in association with a government body (as defined in section 75AE(7)).

*[Section 75AG inserted by No. 3 of 1989 s. 6; amended by No. 41 of 1989 s. 13<sup>11</sup>; No. 20 of 1996 s. 29; No. 13 of 1997 s. 38<sup>12</sup>; No. 18 of 1998 s. 10.]*

*[75B. Repealed by No. 48 of 1996 s. 41.]*

**75C. Power of exemption for certain conveyances between spouses**

- (1) Upon application made in the manner provided in subsection (3), the Commissioner may exempt from duty any

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instrument chargeable with duty under item 4(1) or 19 of the Second Schedule where —

- (a) the person from whom, and the person to whom, the property is conveyed or transferred, or agreed to be conveyed or transferred, are married to each other or are living with each other as a *de facto* married couple;
  - (aa) in the case of a *de facto* married couple, the parties to the relationship have lived in the relationship for at least 2 years before the time of the execution of the instrument;
  - (b) the property conveyed or transferred, or agreed to be conveyed or transferred, by the instrument includes a dwellinghouse which, at the time of the execution of the instrument was used solely or principally as the ordinary place of residence of the persons referred to in paragraph (a);
  - (c) the lot on which the dwellinghouse referred to in paragraph (b) is erected is used principally or solely for residential purposes associated with that dwellinghouse;
  - (d) the person from whom the property is conveyed or transferred, or agreed to be conveyed or transferred, is the sole owner of the property; and
  - (e) the result of the conveyance or transfer is or will be that the property is owned solely by the persons referred to in paragraph (a) as joint tenants.
- (2) Where an instrument referred to in subsection (1) does not relate only to a dwellinghouse and lot described in that subsection the exemption provided by that subsection extends only to the amount of the aggregate value of all property to which the instrument relates that the Commissioner is satisfied is the amount of the value of the dwellinghouse and lot.
- (3) An application under subsection (1) in respect of an instrument shall be made to the Commissioner by the persons referred to in



subsection (1)(a) in writing in a form approved by the Commissioner.

- (3a) If on such an application the Commissioner is satisfied that the instrument is an instrument of the kind described in subsection (1), he shall exempt it from duty in accordance with this section and it shall be endorsed or stamped, as applicable, accordingly.
- (3b) A person who, in an application under subsection (1), makes a statement that is false in a material particular commits an offence against this Act.
- (4) In this section —
- “**de facto married couple**” means a man and a woman who, although not legally married to each other, are living with each other as husband and wife on a *bona fide* domestic basis;
- “**lot**” means —
- (a) a lot as defined in the *Land Tax Assessment Act 1976*; and
  - (b) 2 or more such lots in the same ownership —
    - (i) on which is constructed a dwellinghouse, 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 section.

*[Section 75C inserted by No. 100 of 1987 s. 5; amended by No. 3 of 1989 s. 7; No. 52 of 1991 s. 15; No. 20 of 1996 s. 30.]*

**Part IIIBAA — Certain transfers of farming property<sup>13</sup>**

*[Heading inserted by No. 79 of 1994 s. 4(1).]*

**75D. Interpretation**

(1) In this Part —

**“discretionary trust”** has the same definition as in section 76;

**“discretionary trustee”** means the trustee of a discretionary trust;

**“family member”**, in relation to a person, means —

- (a) a child or remoter lineal descendant of the person;
- (b) a parent or remoter lineal ancestor of the person;
- (c) a brother or sister of the person or remoter lineal descendant of a brother or sister of the person;
- (d) an aunt or uncle of the person; or
- (e) the spouse or former spouse of that person and the spouse of a person referred to in paragraph (a), (b), (c) or (d),

or more than one of them;

**“farming company”** means a corporation —

- (a) the shares of which are not quoted on a stock exchange; and
- (b) which has assets which include —
  - (i) farming property; or
  - (ii) a share in a corporation —
    - (I) the shares of which are not quoted on the stock exchange; and
    - (II) the assets of which include farming property;

**“farming land”** means land which is used solely or principally for the purpose of primary production;

**“farming partnership”** means a partnership, the assets of which include farming property;

**“farming property”** means —

- (a) farming land; or
- (b) personal property which is used solely or principally in connection with the business of primary production;

**“instrument of conveyance”** means a conveyance or transfer of property or other instrument chargeable with duty —

- (a) under item 4 or item 4A of the Second Schedule; or
- (b) at a rate of duty provided for in item 4 or item 4A of the Second Schedule,

but does not include a statement required to be lodged under Part IIIBAA;

**“land”** includes an estate or interest in —

- (a) freehold land, whether or not registered under the *Transfer of Land Act 1893*; or
- (b) a Crown lease registered under the *Transfer of Land Act 1893*;

**“primary production”** means —

- (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 the purpose of —
  - (i) selling them (or their progeny) for food;
  - (ii) the production or collection of their skins, shells or bodily produce; or
  - (iii) selling parts of them or their skins, shells or bodily produce;
- (c) the breeding or rearing of horses for the purpose of selling them or their progeny;

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**“trustee”** means a trustee who is not a discretionary trustee or the trustee of a unit trust.

- (1a) For the purposes of this Part 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 that 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, or an interest in a share, in that corporation or a related corporation or to act as a director or secretary of that corporation or related corporation.
- (2) For the purposes of this Part —
- (a) an illegitimate person shall be treated as the legitimate child of that person’s mother and reputed father; and
  - (b) a child includes a step-child.

*[Section 75D inserted by No. 79 of 1994 s. 4(1); amended by No. 20 of 1996 s. 31; No. 57 of 1996 s. 6; No. 13 of 1997 s. 42; No. 53 of 1999 s. 21.]*

**75E. Application of this Part**

- (1) Subject to subsections (2), (3), (4), (5) and (6), this Part applies in respect of an instrument of conveyance made by a person (in this section and in section 75HA referred to as **“the transferor”**), or made by a trustee on behalf of, and at the direction of, a person (in this section and in section 75HA the person is referred to as **“the transferor”**) —
- (a) of farming property to a family member of the transferor;

- (b) of an interest in a farming partnership to a family member of the transferor;
  - (c) of a share in a farming company to a family member of the transferor;
  - (d) of —
    - (i) farming property;
    - (ii) an interest in a farming partnership; or
    - (iii) a share in a farming company,  
to a trustee where after the transfer or conveyance the subject of the instrument, the beneficial owner of the trust property will be a family member of the transferor; and
  - (e) of —
    - (i) farming property;
    - (ii) an interest in a farming partnership; or
    - (iii) a share in a farming company,  
to a discretionary trustee of a discretionary trust,  
where —
      - (iv) all the persons who have a share or interest in the trust property, whether vested or contingent, or who may benefit from the discretionary trust are family members of the transferor; and
      - (v) the transferor does not control the discretionary trust.
- (2) This Part —
- (a) applies if the transfer or conveyance the subject of the instrument of conveyance referred to in subsection (1) is made by a transferor to any combination of the persons referred to in that subsection; and
  - (b) does not apply to a transfer or conveyance the subject of the instrument of conveyance referred to in subsection (1) if the transferees include a person who is not one of the persons referred to in that subsection.

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- (3) This Part applies only where the family member, partnership, company, trustee or discretionary trustee, referred to in subsection (1), to whom the farming property is conveyed or in which an interest or share is conveyed, as the case requires, intends to continue to use the farming property in the business of primary production.
- (4) In relation to an instrument of conveyance referred to in subsection (1)(a), (b) or (c), this Part applies only where the relevant family member does not intend to hold the farming property, interest or share, as the case requires, as agent, trustee or otherwise on behalf of any other person.
- (5) Where an exemption or refund has been allowed under this Part in relation to an instrument of conveyance of farming property, an interest in a farming partnership or a share in a farming company, to a person (or to a trustee on behalf of a person) (“**the initial instrument**”), this Part does not apply to a subsequent instrument of conveyance by that person or trustee made within 5 years of the initial instrument if the Commissioner is of the opinion that the subsequent instrument of conveyance relates to the same farming property, interest in partnership or share which was the subject of the exemption or refund.
- (6) Where —
  - (a) an exemption or refund has been allowed under this Part in relation to an instrument of conveyance to a discretionary trustee of a discretionary trust referred to in subsection (1)(e) (“**the initial transfer**”); and
  - (b) part or all of the farming property, interest in the farming partnership or share in the farming company the subject of that instrument is subsequently conveyed or transferred to a beneficiary of that discretionary trust and duty in accordance with item 6 of the Second Schedule is charged on the relevant conveyance or transfer,

this Part does not apply to an instrument of conveyance by that beneficiary made within 5 years of the initial transfer if the Commissioner is of the opinion that the instrument of conveyance relates to the same farming property, interest in a farming partnership or share in a farming company that was the subject of the exemption or refund.

*[Section 75E inserted by No. 79 of 1994 s. 4(1); amended by No. 20 of 1996 s. 32<sup>14</sup>.]*

**75F. Exemption or refund of duty for farming property**

When the Commissioner is satisfied that any instrument of conveyance is an instrument to which this Part applies the Commissioner may, upon application made in the manner provided in section 75H —

- (a) exempt that instrument from duty;
- (b) refund duty paid on that instrument; or
- (c) in accordance with section 75G —
  - (i) partially exempt that instrument from duty; or
  - (ii) partially refund duty paid on that instrument.

*[Section 75F inserted by No. 79 of 1994 s. 4(1).]*

**75G. Partial exemption or partial refund of duty**

- (1) Where the Commissioner is satisfied that an instrument of conveyance is an instrument to which this Part applies but —
  - (a) in relation to an instrument referred to in section 75E(1)(a), (d)(i) or (e)(i), the instrument does not relate only to farming property;
  - (b) in relation to an instrument referred to in section 75E(1)(b), (d)(ii) or (e)(ii), the assets of the farming partnership do not only comprise farming property; or

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- (c) in relation to an instrument referred to in section 75E(1)(c) or, (d)(iii) or (e)(iii), the assets of the farming company do not only comprise farming property,

for the purpose of assessing duty on that instrument, notwithstanding any other provision of this Act —

- (d) the Commissioner shall assess duty on the unencumbered value of the farming property, interest in the partnership or share in the company as determined in accordance with section 75A;
- (e) the farming property shall be deemed to have no value; and
- (f) in making the valuation referred to in paragraph (d) the Commissioner shall only have regard to an apportioned liability.

- (2) When assessing the duty referred to in subsection (1) —

- (a) duty shall be charged on the instrument referred to in that subsection at the rate of duty provided for in item 4 or item 4A of the Second Schedule, as the case requires; and
- (b) the person liable to pay that duty shall be the person who, if not for the operation of this Part, would have been so liable.

- (3) In this section the “**apportioned liability**”, in relation to a partnership or company referred to in subsection (1)(b) or (c), shall be calculated as follows —

$$L = \left( 1 - \frac{A}{B} \right) \times C$$

where —

- A is the value of the farming property (as determined in accordance with section 75A) comprised in the assets of the partnership or company, as the case requires;



- B is the total value of the assets of the partnership or company, as the case requires;
- C is the amount of the total liabilities of the partnership or company, as the case requires; and
- L is the apportioned liability.

*[Section 75G inserted by No. 79 of 1994 s. 4(1); amended by No. 20 of 1996 s. 33.]*

**75H. Application for exemption or refund**

- (1) An application to the Commissioner under section 75F shall be —
- (a) made in writing in a form approved by the Commissioner by the person acquiring the farming property, interest or share (or every such person if there is more than one); and
  - (b) accompanied by such further information as the Commissioner may require.
- (2) An application to the Commissioner under section 75F for a refund or partial refund shall be made within a period of 12 months after the day on which the instrument of conveyance was stamped.
- (3) A person who, in an application to the Commissioner under section 75F or in furnishing information to the Commissioner under subsection (4), makes a statement which is false in any material particular commits an offence under this Act.
- (4) For the purpose of ascertaining whether an exemption or partial exemption is to be allowed or a refund or partial refund is payable under section 75F or section 75I, or for the purpose of determining the amount of the exemption, refund, partial exemption or partial refund, the Commissioner may by notice in writing require any person to furnish him, within such reasonable time as may be specified in that notice, with such information specified in the notice as that person may be able to give.

*[Section 75H inserted by No. 79 of 1994 s. 4(1).]*

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**75HA. Subsequent liability for duty in certain circumstances**

(1) In this section —

**“current exempted property”** means, when a taxable event occurs in relation to a discretionary trust, that part of —

- (a) a farming property;
- (b) an interest in a farming partnership; or
- (c) a share in a farming company,

as the case requires, conveyed by an instrument of conveyance the subject of a farming exemption that is, at the date of the taxable event, vested in the discretionary trustee as trustee of the discretionary trust;

**“entitled share”**, in relation to a farming company, means a share that would entitle the holder of that share, if the property of the farming company were to be distributed after the share was acquired (on the basis of a winding up) to participate (otherwise than as a creditor or other person to whom the farming company is liable) in the distribution of the property of the farming company;

**“farming exemption”** means an exemption or refund or a partial exemption or partial refund allowed by the Commissioner under this Part;

**“relevant proportion”** means the proportion that the shares in a farming company that are current exempted property bear to the total number of entitled shares in the farming company.

(2) For the purposes of this section a taxable event occurs in relation to a discretionary trust when —

- (a) a person who is not a family member of the relevant transferor —
  - (i) becomes entitled to a share or interest in the trust property of the discretionary trust, whether that share or interest is vested or contingent; or

- (ii) otherwise benefits from the discretionary trust;
  - or
  - (b) the relevant transferor gains control of the discretionary trust.
- (3) Where a farming exemption has been allowed in relation to an instrument of conveyance referred to in section 75E(1)(e) and during the life of the transferor a taxable event occurs, the discretionary trustee of the relevant discretionary trust shall, unless subsection (4) applies, within a period of one month after the date of the taxable event, prepare and lodge with the Commissioner a statement in a form approved by the Commissioner.
- (4) A discretionary trustee is not required to lodge a statement under subsection (3) if —
  - (a) a statement under that subsection has previously been lodged in respect of the farming exemption; or
  - (b) there is no current exempted property.
- (5) If a statement under subsection (3) is lodged in respect of a farming exemption for an instrument of conveyance referred to in —
  - (a) section 75E(1)(e)(i); or
  - (b) section 75E(1)(e)(ii),the statement is deemed to be an instrument operating as a voluntary disposition under section 75(1) of the current exempted property executed on the date of the taxable event and, subject in the case of a statement referred to in subsection (8)(b), is chargeable with duty in accordance with that section.
- (6) If —
  - (a) a statement under subsection (3) is lodged in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(iii);

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- (b) a statement to which section 76AG(5) applies was prepared in respect of the acquisition the subject of that instrument; and
- (c) at the date of the taxable event the relevant farming company is beneficially entitled to the farming land to which the statement referred to in paragraph (b) related, or any part of that farming land,

the statement under subsection (3) is deemed to be an instrument operating as a voluntary disposition under section 75(1) of the relevant proportion of that farming land or of that part of the farming land, as the case requires, executed on the date of the taxable event and is chargeable with duty in accordance with that section.

(7) If —

- (a) a statement under subsection (3) is lodged in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(iii); and
- (b) a statement to which section 76AG(5) applies —
  - (i) was not prepared in respect of the acquisition the subject of that instrument; or
  - (ii) was prepared in respect of the acquisition the subject of that instrument, but at the date of the taxable event the relevant farming company is not beneficially entitled to any part of the farming land to which the statement to which section 76AG(5) applies related,

the statement under subsection (3) is deemed to be an instrument operating as a voluntary disposition under section 75(1) of the current exempted property executed on the date of the taxable event and, subject to subsection (8), is chargeable with duty in accordance with that section.

- (8) The amount of duty payable in respect of a statement under subsection (3) referred to in subsection (5)(b) or (7)(a) is

reduced (up to the amount of duty payable in respect of the statement) by the amount of any duty previously paid on the instrument of conveyance referred to in subsection (5)(b) or (7)(a), as the case requires.

- (9) The discretionary trustee lodging a statement under subsection (3) is liable to pay the duty with which it is chargeable.
- (10) A person who —
- (a) contravenes subsection (3); or
  - (b) lodges under subsection (3) a statement which is false in any material particular,

commits an offence under this Act.

*[Section 75HA inserted by No. 20 of 1996 s. 34; amended by No. 60 of 2000 s. 20(3), (4) and (5).]*

#### **75I. Part IIIBA companies**

- (1) Where —
- (a) the Commissioner is satisfied that an instrument of conveyance of a share in a farming company referred to in section 75E(1)(c) or, (d)(iii) or (e)(iii) is an instrument to which this Part applies; and
  - (b) the transaction to which that instrument relates gives rise to a liability to prepare and lodge a statement to which section 76AG(5) applies (“**Part IIIBA statement**”),
- the Commissioner may —
- (c) if the land to which the Part IIIBA statement relates comprises only farming land in the State —
    - (i) exempt that statement from duty; or
    - (ii) refund the duty paid on that statement;
- or

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- (d) if the land to which the Part IIIBA statement relates does not only comprise farming land in the State, in accordance with subsection (2) —
- (i) partially exempt that statement from duty; or
  - (ii) partially refund the duty paid on that statement.
- (2) The amount of a partial exemption or partial refund of duty on the Part IIIBA statement referred to in subsection (1)(d) shall be determined by the Commissioner as follows —

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

where —

- A is the value of the farming land in the State;
  - B is the value of all the land the subject of the Part IIIBA statement;
  - C is the duty which would be chargeable on the Part IIIBA statement if this Part did not apply to it; and
  - R is the amount of the partial exemption or partial refund.
- (3) A refund or partial refund of duty under subsection (1) shall only be paid within a period of 12 months after the day on which the relevant Part IIIBA statement was stamped.

*[Section 75I inserted by No. 79 of 1994 s. 4(1); amended by No. 20 of 1996 s. 35; No. 60 of 2000 s. 20(3).]*

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## Part IIIBAAA — Exemptions for corporate reconstructions

*[Heading inserted by No. 48 of 1996 s. 42.]*

### 75J. Interpretation in this Part

- (1) In this Part, unless the contrary intention appears —
- “**body corporate**” does not include a corporation sole;
  - “**dormant**”, in relation to a body corporate, has the meaning given by section 75JAA;
  - “**foreign person**” means —
    - (a) an individual who does not ordinarily reside in Australia;
    - (b) a corporation or a foreign company —
      - (i) at least 80% of the issued share capital of which is owned by individuals who do not ordinarily reside in Australia or by foreign companies; and
      - (ii) in respect of which individuals who do not ordinarily reside in Australia or foreign companies are in a position to cast or control the casting of at least 80% of the maximum number of votes that might be cast at a general meeting of the corporation or foreign company (excluding any power to vote by any person by virtue of the provisions of any debentures or a trust deed securing the issue of such debentures);
- “**Part IIIBA statement**” means a statement lodged to which section 76AG(5) or 76AN(4) applies;
- “**section 31B statement**” means a statement lodged under section 31B;
- “**shares**” includes stock.

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- (2) In this Part, unless the contrary intention appears —
- (a) 2 bodies corporate are associated if —
    - (i) one of them beneficially owns (directly or indirectly) at least 90% of the issued share capital of, and has voting control over, the other; or
    - (ii) a third body corporate beneficially owns (directly or indirectly) at least 90% of the issued share capital of each body corporate and has voting control over each body corporate;
  - (b) a body corporate (“**A**”) has voting control over another body corporate (“**B**”) if A is in a position to cast or control the casting of at least 90% of the maximum number of votes that might be cast at a general meeting of B (excluding any power to vote by any person by virtue of the provisions of any debentures or a trust deed securing the issue of such debentures);
  - (c) if the claw-back applies —
    - (i) in the case of an instrument, section 75JE applies; or
    - (ii) in the case of a Part IIIBA statement, section 75JF applies.
- (3) In this Part, other than section 75JA, unless the contrary intention appears —
- “issued share capital”** means issued share capital that carries the right to unlimited participation in the distribution of income and capital of a body corporate.
- (4) In this Part, other than section 75JA, a statement lodged and deemed to be an instrument under section 31B is deemed to be an instrument executed on the day on which the transaction to which the statement relates occurred.

*[Section 75J inserted by No. 48 of 1996 s. 42; amended by No. 51 of 1997 s. 5; No. 29 of 2000 s. 5; No. 60 of 2000 s. 20(6); No. 10 of 2001 s. 170.]*



**75JAA. Meaning of dormant body corporate**

A body corporate is dormant throughout a particular period if, and only if, throughout that period the body —

- (a) did not receive or become entitled to any income or incur or become liable for any expenditure;
- (b) did not purchase, sell or supply any goods or other property, or any services, or enter into any agreement or pass any resolution in relation to the purchase, sale or supply of goods or other property, or services;
- (c) did not issue, sell, purchase or make available any securities, or enter into any agreement or pass any resolution in relation to the issue, sale, purchase or making available of securities;
- (d) did not issue a prospectus or statement, or enter into any agreement or pass any resolution in relation to the issue of a prospectus or statement, in connection with the issue, sale, purchase or making available, or the proposed issue, sale, purchase or making available, of any securities;
- (e) did not take part in any research, development or exploration activities, or enter into any agreement or pass any resolution in relation to taking part in research, development or exploration activities;
- (f) was not, and did not become, a party to any lease, franchise, joint venture or partnership arrangement, and did not take part in any lease, franchise, joint venture or partnership arrangement, or enter into any agreement or pass any resolution in relation to becoming a party to, or taking part in, any lease, franchise, joint venture or partnership arrangement;
- (g) did not make, receive or guarantee any loan, or enter into any agreement or pass any resolution in relation to making, receiving or guaranteeing a loan;

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- (h) was not, and did not become, a party to any underwriting agreement and did not enter into any agreement or pass any resolution in relation to becoming a party to any underwriting agreement;
- (i) did not obtain or receive a grant of any licence or other authority, or make any application or pass any resolution in relation to obtaining a licence or other authority; and
- (j) was not, and did not become, a party to any litigation or negotiations with any other person or body.

*[Section 75JAA inserted by No. 10 of 2001 s. 171.]*

**75JA. Corporate reconstructions: exemptions**

- (1) This section applies if in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate —
  - (a) a body corporate (“**the transferee**”) acquires at least 90% of the issued share capital of —
    - (i) a body corporate; or
    - (ii) each of 2 or more bodies corporate that were associated with one another immediately prior to the acquisition,  
**(“the target”)**;
  - (b) the transferee is incorporated in Australia and has been dormant from when it was incorporated until it resolves to make the acquisition;
  - (c) at least 90% of the consideration for the acquisition of the target, or if there are 2 or more targets, each target, consists of the issue of shares in the transferee to the holders of shares in the target or targets in exchange for those shares;
  - (d) each holder of shares in the target or targets whose shares are acquired receives consideration equal in value to the value of those shares; and

- (e) immediately after the acquisition at least 90% of the issued share capital of the transferee consists of shares issued in consideration for the acquisition of shares in the target or, if there are 2 or more targets, for the acquisition of shares in all the targets.
- (1a) This section applies if in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate —
- (a) a foreign company (“**the transferee**”) acquires at least 90% of the issued share capital of —
    - (i) a body corporate; or
    - (ii) each of 2 or more bodies corporate that were associated with one another immediately prior to the acquisition,
  - (b) (“**the target**”);
  - (c) the transferee has been dormant from when it was incorporated until it resolves to make the acquisition;
  - (d) the transferee, within 6 months after the acquisition, will be listed on a recognized stock exchange and is situated in the country where the transferee is incorporated;
  - (e) neither the target nor any of the targets (if there are 2 or more of them) is a WA company to which Division 2 of Part IIIBA applies or a corporation to which Division 3 of Part IIIBA applies;
  - (f) at least 50% of the issued share capital of the target or, if there are 2 or more targets, of each target is owned by a foreign person or foreign persons;
  - (g) at least 90% of the consideration for the acquisition of the target, or if there are 2 or more targets, each target, consists of the issue of shares in the transferee to the holders of shares in the target or targets in exchange for those shares;

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- (g) each holder of shares in the target or targets whose shares are acquired receives consideration equal in value to the value of those shares; and
  - (h) immediately after the acquisition at least 90% of the issued share capital of the transferee consists of shares issued in consideration for the acquisition of shares in the target or, if there are 2 or more targets, for the acquisition of shares in all the targets.
- (2) If on an application under section 75JD, it is shown to the satisfaction of the Commissioner that this section applies because of subsection (1), then —
- (a) the Commissioner shall exempt an instrument executed on or after 1 October 1996 for or in connection with the transfer of the shares acquired by the transferee in the target or targets from duty under item 4A of the Second Schedule; and
  - (b) if the acquisition is a relevant acquisition under Part IIIBA that occurs on or after 1 October 1996 — the Commissioner shall exempt a Part IIIBA statement lodged in respect of the relevant acquisition from duty chargeable under section 76AH or 76AO.
- (2a) If on an application under section 75JD, it is shown to the satisfaction of the Commissioner that this section applies because of subsection (1a), the Commissioner shall exempt an instrument executed after the date on which subsection (1a) was inserted in this Act that is for or in connection with the transfer of the shares acquired by the transferee in the target or targets from duty under item 4A of the Second Schedule.
- (3) If a Part IIIBA statement is exempted under subsection (2)(b) and within 5 years after the date of the occurrence of the relevant acquisition to which the statement relates —
- (a) the transferee issues or cancels any shares or varies the rights of any of its shares; or

- (b) the beneficial interest in any share in the transferee issued in the circumstances described in subsection (1)(c) is transferred from the person to whom the share was issued,

then —

- (c) the transferee shall notify the Commissioner in writing in a form approved by the Commissioner within one month after the relevant event; and
- (d) the claw-back applies unless, in a case where paragraph (b) applies, the Commissioner is satisfied that the transfer is in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate.

(4) If —

- (a) this section applies because of subsection (1a) and an instrument is exempted under subsection (2a); and
- (b) within 6 months after the acquisition the transferee has not become listed as required by subsection (1a) (c),

the claw-back applies.

*[Section 75JA inserted by No. 48 of 1996 s. 42; amended by No. 51 of 1997 s. 6; No. 53 of 1999 s. 22.]*

**75JB. Corporate reorganizations: exemption from duty on conveyances between associated bodies corporate**

- (1) This section applies if —
  - (a) an instrument conveys, transfers or assigns a beneficial interest in property from one body corporate (“**A**”) to another body corporate (“**B**”);
  - (b) the instrument does not convey, transfer or assign any other interest or property which if separately conveyed, transferred or assigned would not be exempt under this Act;

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- (c) A and B are associated bodies corporate;
- (d) at the date of execution of the instrument, A and B have been associated bodies corporate for at least the qualifying period unless —
  - (i) A and B became associated in the circumstances described in section 75JA(1)(a) to (e) or (1a)(a) to (h);
  - (ii) A and B have been associated since A acquired at least 90% of the issued share capital —
    - (A) of B on its incorporation in Australia; or
    - (B) of B as a body corporate incorporated in Australia that had been dormant since it was incorporated,  
and B has been dormant from when A and B became associated until B resolved to acquire the beneficial interest; or
  - (iii) A and B became associated because B acquired at least 90% of the issued share capital of A, a Part IIIBA statement was lodged in respect of that acquisition, and *ad valorem* duty was paid in respect of that statement;
- (e) B does not hold the beneficial interest on trust for another person; and
- (f) the instrument was not made pursuant to or in connection with an arrangement under which —
  - (i) the consideration, or any part of it, for the conveyance, transfer or assignment was to be provided or received, directly or indirectly, by a person other than A or B or a body corporate that at the time the instrument was executed was associated with either A or B; or
  - (ii) A or B or a body corporate associated with either of them is to be enabled to provide any of the

consideration or is to dispose of any of the consideration by or in consequence (wholly or partially) of the carrying out of a transaction involving a payment or other disposition by a person other than A or B or a body corporate associated with either of them at the time the instrument was executed.

- (2) In subsection (1)(d) the qualifying period is the shorter of 3 years or —
- (a) if prior to A acquiring the beneficial interest, the interest was owned by bodies corporate associated with A — the period while the interest was continuously owned by A and those associated bodies corporate;
  - (b) if the beneficial interest came into the ownership of A or of a body corporate associated with A by means of an instrument on which *ad valorem* duty has been paid in this State or elsewhere — the period since that instrument was executed; or
  - (c) in any other case — the period since A acquired the beneficial interest.
- (3) If on an application under section 75JD it is shown to the satisfaction of the Commissioner that this section applies, then —
- (a) the Commissioner shall exempt an instrument executed on or after 1 October 1996 to which this section applies from duty under item 4, 4A, 13(3) or 19 of the Second Schedule; and
  - (b) if the conveyance, transfer or assignment effected by an instrument to which this section applies is a relevant acquisition under Part IIIBA that occurs on or after 1 October 1996 — the Commissioner shall exempt a Part IIIBA statement lodged in respect of the relevant acquisition from duty chargeable under section 76AH or 76AO.

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- (4) If within 5 years after the execution of the instrument or the date of the relevant acquisition —
- (a) A and B cease to be associated;
  - (b) B, being a body corporate that became associated with A in the circumstances described in section 75JA(1)(a) to (e) or (1a)(a) to (h), issues or cancels any shares or varies the rights of any of its shares; or
  - (c) the beneficial interest in any share in B issued in the circumstances described in section 75JA(1)(c) or (1a)(f) is transferred from the person to whom the share was issued; or
  - (d) B's assets are distributed on a liquidation,

A and B, or B, or the person (as the case requires) shall notify the Commissioner in writing in a form approved by the Commissioner within one month after the relevant event.

- (5) If within 5 years after the execution of the instrument or the date of the relevant acquisition A and B cease to be associated then the claw-back applies.
- (5a) The claw-back under subsection (5) does not apply if A and B cease to be associated in circumstances where A has no assets or no assets other than cash or money in an account at call or on deposit with any person or a negotiable instrument.
- (5b) If A is liquidated a reference in subsection (5a) to its assets is a reference to them at the time of the appointment of the liquidator and at all subsequent times until they are distributed to the shareholders.
- (5c) In subsections (5c) to (5j) —
- “controlling body”** means —
- (a) in a case to which subsection (5e)(a) applies, a body corporate which, at the time of the execution of the instrument or the date of the relevant acquisition, owned and controlled the parent body;



- (b) in a case to which subsection (5e)(b) applies, a body corporate which, at the time the association referred to in subsection (5e)(b) arose, owned and controlled the parent body;

**“own and control”** a body corporate means to beneficially own (directly or indirectly) at least 90% of the issued share capital of, and have control (within the meaning of section 75J(2)(b)) over, the body corporate;

**“parent body”** means the other body corporate referred to in subsection (5d) or, if there is more than one of them, whichever of them did not, at the relevant time or date mentioned in the definition of “controlling body”, own and control any of the others;

**“qualifying period”** has the same meaning as it has in subsection (1)(d).

- (5d) An association is a **“prescribed relationship”** for the purposes of subsection (5e) if A and B are associated because another body corporate owns and controls each of them.

- (5e) For the purposes of subsection (5f), the **“relevant circumstances”** have occurred if —

- (a) the association between A and B which satisfied the requirement of subsection (1)(c) was a prescribed relationship for the whole or a part of the qualifying period; or
- (b) the association between A and B which prevents the claw-back under subsection (5) from applying is a prescribed relationship.

- (5f) If the relevant circumstances have occurred and, on or after 25 May 2000 and within 5 years after the execution of the instrument or the date of the relevant acquisition, the parent body —

- (a) ceases to beneficially own (directly or indirectly) at least 90% of the issued share capital of B; or

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- (b) ceases to have control (within the meaning of section 75J(2)(b)) over B,
- then —
- (c) the parent body and B shall notify the Commissioner in writing in a form approved by the Commissioner within one month after the relevant event; and
  - (d) the claw-back applies.
- (5g) Despite subsection (5f)(d), the Commissioner may, on an application under this subsection, waive the claw-back if —
- (a) a body corporate approved by the Commissioner (being a controlling body) continues to own and control B; and
  - (b) the Commissioner is satisfied that waiving the claw-back would not be inconsistent with the objects of this section.
- (5h) The application shall be in writing in a form approved by the Commissioner.
- (5i) The Commissioner may require the person making the application to provide any information and evidence that the Commissioner needs for the purposes of subsection (5g).
- (5j) If the claw-back is waived under subsection (5g) —
- (a) subsection (5f) then applies as if references in it to the parent body were references to the body corporate approved under subsection (5g); and
  - (b) a reference in this Part to subsection (5f)(c) is to be read as a reference to that provision as applied by paragraph (a).
- (6) If within 5 years after the execution of the instrument or the date of the relevant acquisition B's assets are distributed to its shareholders on a liquidation, then the claw-back applies.
- (7) If A and B became associated in the circumstances described in section 75JA(1)(a) to (e) or (1a)(a) to (h) and within 5 years

after the execution of the instrument or the date of the relevant acquisition A and B cease to be associated in circumstances where the claw-back does not apply under subsection (5) and —

- (a) B issues or cancels any shares or varies the rights of any of its shares;
- (b) the beneficial interest in any share in B issued in the circumstances described in section 75JA(1)(c) or (1a)(f) is transferred from the person to whom the share was issued; or
- (c) B's assets are distributed to its shareholders on a liquidation,

then the claw-back applies unless, in a case where paragraph (b) applies, the Commissioner is satisfied that the transfer is in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate.

- (8) If the claw-back applies under subsection (7), A shall not be liable to pay any duty or fine under section 75JE or 75JF.

*[Section 75JB inserted by No. 48 of 1996 s. 42; amended by No. 51 of 1997 s. 7; No. 29 of 2000 s. 6(1)<sup>15, 16</sup>; No. 3 of 2001 s. 19.]*

**75JBA. Operation of claw-back — application for pre-determination in certain cases**

- (1) Terms used in this section have the same meanings as they have in section 75JB.
- (2) If a cessation of ownership or control referred to in section 75JB(5f)(a) or (b) is proposed or contemplated in circumstances where a controlling body will continue to own and control B, a person acting on behalf of B, the parent body or the controlling body, may request the Commissioner to determine whether in those circumstances the Commissioner would, under section 75JB(5g), approve the controlling body and waive the claw-back.

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- (3) The request shall be in writing in a form approved by the Commissioner.
- (4) The Commissioner may require the person making the request to provide any information and evidence that the Commissioner needs to make the determination.
- (5) If the Commissioner is given sufficient information to do so the Commissioner shall make the requested determination.
- (6) If the Commissioner determines that the controlling body would be approved and the claw-back waived then, on an application under section 75JB(5g), the Commissioner shall approve the controlling body and waive the claw-back unless the Commissioner is of the opinion that in relation to the request for a determination there was not a full and true disclosure of relevant information and evidence.

*[Section 75JBA inserted by No. 29 of 2000 s. 7.]*

**75JC. Corporate reorganizations: application for pre-determination**

- (1) A person acting on behalf of a body corporate that proposes to be party to a transaction that would give rise to an instrument, a section 31B statement or a Part IIIBA statement which, if executed or lodged, might be exempt from duty under section 75JA or 75JB, may request the Commissioner to determine whether a draft of that instrument or statement, if executed or lodged, would be so exempt.
- (2) The request shall be in writing in a form approved by the Commissioner.
- (3) The Commissioner may require the person making the request to provide a copy of the draft instrument or statement and any information and evidence that the Commissioner needs to make the determination.
- (4) If the Commissioner is given sufficient information to do so the Commissioner shall make the requested determination.

- (5) If the Commissioner determines that an exemption would be granted then, on an application under section 75JD for an exemption, the Commissioner shall grant the exemption unless —
- (a) the executed instrument or the lodged section 31B statement or Part IIIBA statement, differs in a material particular to the draft provided;
  - (b) circumstances relating to the executed instrument, the section 31B statement or the Part IIIBA statement and relevant for the purposes of sections 75JA and 75JB differ materially from those that related to the draft provided; or
  - (c) the Commissioner is of the opinion that in relation to the request for a determination there was not a full and true disclosure of relevant information and evidence.

*[Section 75JC inserted by No. 48 of 1996 s. 42.]*

**75JD. Corporate reorganizations: application for exemption**

- (1) An application for an exemption under section 75JA or 75JB shall be —
- (a) in a form approved by the Commissioner; and
  - (b) lodged with the Commissioner within 12 months after the execution of the instrument concerned, or in the case of a Part IIIBA statement, after the date of the occurrence of the relevant acquisition.
- (2) The Commissioner may require the person making the application to provide any information and evidence that the Commissioner needs to determine the application.
- (3) If an application is made in respect of —
- (a) an instrument executed on or after 1 October 1996 on which duty under item 4, 4A, 13(3) or 19 of the Second Schedule has been paid; or

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- (b) a Part IIIBA statement lodged in respect of a relevant acquisition that occurred on or after 1 October 1996 on which duty has been paid,

and the application is granted, the Commissioner shall refund any duty paid.

- (4) If any information given to the Commissioner in relation to an exempted instrument or Part IIIBA statement is false in a material particular or any material information is not given to the Commissioner the claw-back applies and the fine is to be calculated to the date an assessment for the duty and fine is issued by the Commissioner.

*[Section 75JD inserted by No. 48 of 1996 s. 42.]*

**75JDA. Exemption may be withheld in certain cases**

- (1) In this section —

**“duty avoidance arrangement”** means an arrangement —

- (a) avoiding or circumventing the operation of the provisions of this Part so far as they make the availability and continued effect of an exemption under section 75JB dependent on bodies corporate having been associated for a particular period or remaining associated for a particular period; or
  - (b) having as its purpose, or one of its purposes, the reduction of duty that might otherwise become payable.
- (2) Without limiting section 75JC, the Commissioner may determine under that section that an exemption under section 75JB would not be granted in respect of an instrument or a Part IIIBA statement if the Commissioner considers that the instrument or statement would, if executed or lodged, relate or be likely to relate to a duty avoidance arrangement.
  - (3) Even if on an application under section 75JD it is shown to the satisfaction of the Commissioner that section 75JB applies, the

Commissioner may refuse to grant an exemption under section 75JB(3) in respect of an instrument or a Part IIIBA statement if the Commissioner considers that the instrument or statement relates or is likely to relate to a duty avoidance arrangement.

- (4) Despite subsection (3), if the Commissioner is required under section 75JC(5) to grant an exemption in respect of an instrument or a Part IIIBA statement, the exemption is to be granted even if the Commissioner considers that the instrument or statement relates or is likely to relate to a duty avoidance arrangement.

*[Section 75JDA inserted by No. 29 of 2000 s. 8(1) <sup>16</sup>.]*

**75JE. Claw-back (instruments)**

- (1) If this section applies to an instrument —
- (a) the instrument shall be deemed not to have been exempted;
  - (b) the instrument shall be charged with a fine equal to 20% per annum of the duty chargeable on the instrument calculated from the date of the execution of the instrument to the date the Commissioner is notified under section 75JB(4) or (5f)(c), or if the Commissioner is not so notified, to the date an assessment for that duty and fine is issued by the Commissioner;
  - (c) the duty and fine shall be paid within one month after an assessment for the duty and fine is issued by the Commissioner;
  - (d) the parties to the instrument or, in the case of a section 31B statement, the parties to the transaction, are jointly and severally liable to pay the duty and fine;
  - (da) in a case where this section applies because of section 75JA(4), the target or targets are jointly and severally liable with the persons referred to in paragraph (d) to pay the duty and fine;

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- (e) if a body corporate that is liable to pay the duty and fine has been wound up voluntarily, its directors at the time of the resolution to wind-up shall be jointly and severally liable to pay the duty and fine unless the Commissioner is satisfied that —
    - (i) the winding-up was a creditors' voluntary winding-up (as defined in the Corporations Act); and
    - (ii) no creditor was an associate (as defined in the Corporations Act) of the body corporate;and
  - (f) on payment of the duty and fine the instrument shall be deemed to have been duly stamped.
- (2) The Commissioner may remit wholly or in part a fine chargeable under subsection (1).

*[Section 75JE inserted by No. 48 of 1996 s. 42; amended by No. 51 of 1997 s. 8; No. 29 of 2000 s. 9; No. 10 of 2001 s. 172.]*

**75JF. Claw-back (Part IIIBA statements)**

- (1) If this section applies to a Part IIIBA statement —
- (a) the statement shall be deemed not to have been exempted;
  - (b) the statement shall be charged with a fine equal to 20% per annum of the duty chargeable on the statement calculated from the date of the relevant acquisition to the date the Commissioner is notified under section 75JA(3)(c) or 75JB(4) or (5f)(c), or if the Commissioner is not so notified, to the date an assessment for that duty and fine is issued by the Commissioner;
  - (c) the duty and fine shall be paid within one month after an assessment for the duty and fine is issued by the Commissioner;



- (d) these persons are jointly and severally liable to pay the duty and fine:
    - (i) in the case of a statement lodged under section 76AG — the parties to the instrument that gave rise to the relevant acquisition;
    - (ii) in the case of a statement lodged under section 76AN — the parties to the instrument that gave rise to the relevant acquisition and the corporation that is required to lodge the statement;
  - (e) if a body corporate that is liable to pay the duty and fine has been wound up voluntarily, its directors at the time of the resolution to wind-up shall be jointly and severally liable to pay the duty and fine unless the Commissioner is satisfied that —
    - (i) the winding-up was a creditors' voluntary winding-up (as defined in the Corporations Act); and
    - (ii) no creditor was an associate (as defined in the Corporations Act) of the body corporate;and
  - (f) on payment of the duty and fine the statement shall be deemed to have been duly stamped.
- (2) The Commissioner may remit wholly or in part a fine chargeable under subsection (1).

*[Section 75JF inserted by No. 48 of 1996 s. 42; amended by No. 29 of 2000 s. 9; No. 10 of 2001 s. 172.]*

**75JG. Offences and recovery of duty etc.**

- (1) If a person contravenes section 75JA(3)(c) or 75JB(4) or (5f)(c) —
  - (a) the person commits an offence against this Act; and

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- (b) in the case of a body corporate, an officer (as defined in section 9 of the Corporations Act) of the body corporate who is knowingly a party to the contravention commits an offence against this Act,

and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to the duty that would have been payable in respect of the instrument or Part IIIBA statement had it not been exempted under section 75JA or 75JB.

- (2) If a body corporate contravenes section 75JA(3)(c) or 75JB(4) or (5f)(c) and the Commissioner is for any reason unable to recover the duty or fine referred to in section 75JE or 75JF, each officer (as defined in section 9 of the Corporations Act) of the body corporate at the time of the contravention who is knowingly a party to the contravention shall be liable for the duty or fine, as the case may be.
- (3) If in connection with a request under section 75JBA or 75JC or an application under section 75JB(5g) or 75JD, a person gives the Commissioner information knowing that it is false in a material particular or knowingly does not give the Commissioner all material information, the person commits an offence against this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty —
  - (a) if a draft has been provided to the Commissioner under section 75JC — equal to duty that would have been chargeable on the draft had it been executed or lodged; or
  - (b) if a request has been made under section 75JBA or an application has been made under section 75JB(5g) or 75JD — equal to the duty chargeable on the instrument or statement concerned.

*[Section 75JG inserted by No. 48 of 1996 s. 42; amended by No. 29 of 2000 s. 10; No. 10 of 2001 s. 173.]*

## **Part IIIBA — Duty on change of control of certain land-owning corporations**

*[Heading inserted by No. 33 of 1987 s. 22.]*

### **Division 1 — Provisions applicable to Divisions 2 and 3**

*[Heading inserted by No. 33 of 1987 s. 22.]*

#### **76. Interpretation in Part IIIBA**

- (1) In this Part, unless the contrary intention appears —
- “**acquire**”, in relation to an interest in a WA company or a corporation, means to acquire beneficially in any manner or by any means and includes the increasing of an existing interest, but does not include an acquisition —
- (a) that is chargeable with duty under section 73E(4);
  - (b) that occurs solely as the result of —
    - (i) the appointment of a receiver or trustee in bankruptcy;
    - (ii) the appointment of a liquidator; or
    - (iii) the making of a compromise or arrangement under Part 5.1 of the Corporations Act —
      - (I) which has been made with the corporation’s creditors or a class of them;
      - (II) which has been approved by the court;
      - (III) which does not involve a cancellation of shares, or a variation, abrogation or alteration of the rights of shares, to which section 112HA applies; and
      - (IV) in respect of which the Commissioner is satisfied that it is not an arrangement having as its purpose, or

one of its purposes, the defeat of the object of this Part;

- (iv) the distribution of the estate of a deceased person, including an acquisition that occurs as the result of —
  - (I) a will, a codicil or an order of a court varying or modifying the provisions of a will or codicil; or
  - (II) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of the provisions of a law relating to the distribution of the assets of persons who die intestate;

or

- (c) that is effected or evidenced by an instrument on which duty is declared by this Act to be chargeable under item 6 of the Second Schedule;

**“chattels”** means goods, wares or merchandise other than —

- (a) goods, wares or merchandise referred to in item 2(7), (7a) or (7b) of the Third Schedule;
- (b) a motor vehicle the transfer of the licence of which is exempt under item 9 of the Third Schedule;
- (c) goods, wares or merchandise that are usually situated on farming land (as defined in section 75D(1)),

and includes an estate or interest in them;

**“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 which is, by regulation, declared to be a discretionary trust for the purposes of this Part,

but does not include —

- (c) a trust that is solely a charitable trust; or  
(d) a trust that is, by regulation, declared not to be a discretionary trust for the purposes of this Part;

**“distributable property”** has the meaning given by subsection (4a);

**“entitled”** means beneficially entitled, and **“entitlement”** has a corresponding meaning;

**“land”** includes a mining tenement, and also includes —

- (a) any estate or interest in land; and  
(b) anything fixed to the land including anything that is, or purports to be, the subject of ownership separate from the ownership of the land;

**“minerals”** means naturally occurring substances obtained or obtainable from the Earth;

**“mining tenement”** means —

- (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*<sup>17</sup>;
- (b) a mining tenement or right of occupancy continued in force by section 5 of the *Mining Act 1978*; and
- (c) a tenement, right or interest that is —
- (i) similar to a tenement or right referred to in paragraph (a) or (b); and

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- (ii) held under the law of another State, a Territory, the Commonwealth or another jurisdiction;

**“primary products”** has a meaning corresponding with the definition of “primary production” in section 75D(1) except that in relation to plants the term extends to plants that have not been grown or reared and to parts of them and their produce;

**“rules”** of a corporation means one or more of the following —

- (a) the corporation’s constitution;
- (b) replaceable rules applying to the corporation under the Corporations Act;
- (c) internal management rules applying to the corporation under the Corporations Act;

**“share”** means a share or stock of a corporation and includes an interest in a share, and **“shareholding”** has a corresponding meaning;

**“trust”** includes a unit trust scheme, but, except in section 76A, does not include a unit trust scheme referred to in paragraph (c) of the definition of “marketable security” in section 4(1).

- (1a) For the purpose of this Division a reference to the acquisition of an interest includes a reference to the acquisition of a majority interest or a further interest within the meaning of section 76AK or 76AR.
- (2) For the purposes of sections 76AI(3)(c) and 76AP(3)(c) the following —
  - (a) are associated persons in relation to a corporation —
    - (i) a related corporation;
    - (ii) a related person within the meaning in subsection (3);

- (iii) a director or secretary of the corporation or a related corporation;
  - (iv) a person who is entitled to any shareholding in the corporation or a related corporation;
  - (v) a relative of any natural person referred to in subparagraph (ii), (iii), or (iv);
  - (vi) a corporation in which the corporation or any person referred to in subparagraph (iii), (iv) or (v) is entitled to any shareholding;
- (b) are relatives of a person for the purposes of paragraph (a)(v) —
- (i) a child or remoter lineal descendant of the person or his spouse;
  - (ii) a parent or remoter lineal ancestor of the person or his spouse;
  - (iii) a brother or a sister of the person or his spouse;
  - (iv) his spouse and a spouse of any person referred to in subparagraph (i), (ii) or (iii).
- (3) For the purposes of this Part the following persons are related —
- (a) natural persons who are spouses of each other or between whom the relationship is that of parent and child;
  - (b) related corporations;
  - (c) 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;
  - (d) a natural person and a corporation if the natural person is a majority shareholder, director or secretary of the corporation or a related corporation;

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- (e) a natural person and a trustee if the natural person 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 may benefit from a discretionary trust;
  - (f) a corporation and a trustee if —
    - (i) the corporation, a majority shareholder, director or secretary of the corporation is a beneficiary of the trust of which the trustee is a trustee; or
    - (ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,  
  
whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust; and
  - (g) persons who acquire interests in a corporation by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions.
- (4) For the purposes of subsections (2) and (3) —
- (a) an illegitimate person shall be treated as the legitimate child of his mother and reputed father;
  - (b) a spouse includes a *de facto* spouse; and
  - (c) a majority shareholder in relation to a corporation is a person who would have a substantial holding in the corporation under the definition of “substantial holding” in section 9 of the Corporations Act even if the reference in that definition to 5% were a reference to 50%.
- (4a) For the purposes of this Part, a reference to entitlement to property of a corporation or trust, or to participate in a distribution of property of a corporation or trust, is a reference to entitlement otherwise than as a creditor or other person to whom the corporation or trust is liable, and a reference to



distributable property is a reference to property distributable to persons otherwise than as creditors or other persons to whom the corporation or trust is liable.

- (5) For the purposes of this Part, the entitlement that a person would have at a particular time to participate in the distribution of the property of a corporation on a winding up of the corporation is an entitlement to an amount calculated —
- (a) as if the winding up were carried out at that time in accordance with the rules of the corporation and any law relevant to the winding up, as the rules and law then exist; or
  - (b) as if the person had, immediately prior to the winding up, exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the corporation —
    - (i) to effect or compel an alteration to the rules;
    - (ii) to vary the rights conferred by shares in the corporation; or
    - (iii) to effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation,in such manner as to maximise that amount,

whichever of the amounts under paragraph (a) or (b) results in the greater amount, unless the Commissioner determines, after consideration of the circumstances of the case, and where the calculation under paragraph (b) results in the greater amount, that the amount of the entitlement should be calculated under paragraph (a).

- (5a) If the extent of a person's entitlement to participate in a distribution of the property of a corporation is unascertainable or uncertain, that entitlement shall be determined for the purposes of this Part as being the greatest entitlement that the person could derive from the distribution.

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- (6) For the purposes of this Part, the entitlement of a person on the distribution of a trust shall be determined as the greatest entitlement that the person could derive at any time from the trust whether by the fulfilment of any condition, the outcome of any contingency or the exercise of any power or discretion or otherwise, and in particular a person that may benefit from, or the trust property of another trust that may comprise or be augmented by a benefit from, a discretionary trust shall be deemed to be entitled to or comprise or be augmented by —
- (a) the property subject to the discretionary trust unless the Commissioner determines otherwise; or
  - (b) such part of that property as the Commissioner determines.
- (7) For the purposes of sections 76AI(4), 76AP(4) and 76AR(4) reference to a trust includes any other trust if the property of the first-mentioned trust —
- (a) includes a share or interest, whether vested or contingent, or direct or indirect, in that other trust; or
  - (b) in the case of a discretionary trust, may comprise or be augmented by a benefit from that other trust.

*[Section 76 inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 57 of 1996 s. 7; No. 13 of 1997 s. 32 and 42; No. 22 of 1998 s. 36; No. 60 of 2000 s. 4; No. 10 of 2001 s. 174.]*

**76A. Lodgment of statements by trustees**

- (1) Where a person by a relevant acquisition acquires a majority interest or a further interest in a WA company or a corporation in the capacity of a trustee, the liability to prepare and lodge a statement under section 76AG or 76AN, as the case may require, is not affected by the fact that the acquisition is not made by the person beneficially, and this Part shall apply as if the acquisition had been made beneficially.

- (2) Notwithstanding subsection (1), if the Commissioner considers that —
- (a) any person beneficially entitled to a share or interest in the trust property, whether he has a vested share or is contingently entitled or may benefit from a discretionary trust, is related to any person, within the meaning in section 76(3), who has acquired an interest in the WA company or corporation; and
  - (b) the beneficial interest of the beneficiary in the WA company or corporation when taken with that of any such related person amounts to a greater interest than the interest of the trustee and any person who is related to the trustee,
- he may create a memorandum under section 31A in respect of the statement lodged by the trustee, and that section shall apply accordingly.
- (3) Where the Commissioner creates a memorandum as mentioned in subsection (2), duty is not payable on the statement lodged by the trustee.

*[Section 76A inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 60 of 2000 s. 5.]*

**76AA. Valuation of land**

- (1) The Commissioner may —
- (a) require a person who is required to lodge a statement under section 76AG or 76AN to furnish him with a further statement in a form approved by the Commissioner concerning the unencumbered value of any land or other property, or such other evidence of that value as the Commissioner thinks fit; and
  - (b) assess duty in accordance with the evidence of value referred to in paragraph (a).
- (1a) A person who fails to comply with a requirement made under subsection (1) commits an offence against this Act.

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- (1b) Whether or not evidence of value has been required or furnished under subsection (1), the Commissioner may cause the land or other property concerned to be valued and may assess the duty chargeable in accordance with that valuation.
- (2) Section 75A(3) and (4) apply for the purposes of subsection (1b).
- (2a) For the purposes of this section, in applying the ordinary principles of valuation to determine the value of land or other property it shall be assumed that a hypothetical purchaser would, for the purpose of negotiating the price for the land or other property, have knowledge of all existing information relating to the land or other property, and no account is to be taken of any amount that a hypothetical purchaser would have to expend to reproduce, or otherwise acquire a permanent right of access to and use of, existing information relating to the land or other property.
- (3) The Commissioner shall, if required by any person, express his opinion as to the value of any specified land at a specified time for the purposes of section 76AI(2)(a) or section 76AP(2)(a), and for the purposes of this Part the Commissioner is bound by any opinion expressed in terms of such a requirement but subject to any qualification that he may have attached to his opinion.

*[Section 76AA inserted by No. 33 of 1987 s. 22; amended by No. 53 of 1991 s. 5; No. 20 of 1996 s. 36; No. 22 of 1998 s. 37.]*

**76AB. Basis for assessment of duty**

*[(1) repealed]*

- (2) Where a corporation that is, or is reasonably believed by the Commissioner to be, required to lodge a statement under section 76AN fails or refuses to comply with a requirement of the Commissioner under section 7 or 7A and the Commissioner is by reason of that failure or refusal unable to determine

whether an acquisition or suspected acquisition by a person is a relevant acquisition for the purposes of Division 3 or a corporation is one to which that Division applies, the Commissioner may assess duty on the basis that —

- (a) an acquisition occurred and resulted in the person having an entitlement referred to in section 76AR(1) to such an extent as the Commissioner may determine; or
  - (b) the corporation is one to which Division 3 applies,
- or both, as the case may require and the corporation is liable to pay the duty so assessed.

*[Section 76AB inserted by No. 33 of 1987 s. 22; amended by No. 41 of 1989 s. 14; No. 60 of 2000 s. 6.]*

**76AC. Memorial may be registered on title**

- (1) Where the Commissioner has reason to believe that duty is payable under section 76AH or 76AO on the value of land to which a WA company or corporation is entitled or where any such duty has been assessed but not paid, the Commissioner may, if the WA company, or a subsidiary as defined in section 76AI(4), or the corporation is the registered proprietor of the land, deliver to the Registrar of Titles a memorial in a form approved by the Commissioner relating to the duty and any fine that is or may be payable under this Act, and the Registrar of Titles shall, on payment of the prescribed fee, register the memorial on the certificate of title to the land.
- (2) After the memorial is registered the Registrar of Titles shall not register or accept for registration an instrument affecting the land without the consent of the Commissioner until the land ceases under subsection (4) to be subject to this subsection.
- (3) When —
  - (a) payment of the duty and any fine in respect of which a memorial is registered under this section has been made; or

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- (b) the Commissioner is satisfied that no duty is payable, the Commissioner shall deliver to the Registrar of Titles a notice to that effect.
- (4) The Registrar shall, on payment of the prescribed fee, record the notice on the certificate of title, and thereupon the land ceases to be subject to subsection (2).
- (5) In subsections (1) and (4) “**the prescribed fee**” means such fee as may be prescribed under the *Transfer of Land Act 1893*.

*[Section 76AC inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 22 of 1998 s. 55.]*

**76AD. Charge on land**

Where a memorial has been registered under section 76AC on the certificate of title to any land, any duty and any fine to which the memorial relates that have become payable are a first charge on the land and the charge continues in force notwithstanding any disposition of the land, until the duty and any fine are paid.

*[Section 76AD inserted by No. 33 of 1987 s. 22.]*

**76AE. Power of sale**

- (1) Where —
- (a) duty has been assessed on the value of any land in accordance with section 76AH or 76AO;
  - (b) the duty and any fine have not been paid at the expiration of one year from the date of the assessment; and
  - (c) a memorial is registered on the certificate of title to the land,

the Commissioner may, notwithstanding any judgement against the person liable to pay the duty and fine, cause to be published in the *Government Gazette*, a notice specifying the land, and the amount of duty and any fine payable, and stating that if such amount is not paid within 6 months from the publication of the

notice the Commissioner intends to apply to the Supreme Court for an order for the sale of the land.

- (2) A copy of a notice under subsection (1) shall be served on the registered proprietor of the land, which service may be effected by posting the document on the land if service cannot reasonably be effected in the State by other means.
- (3) The Commissioner may apply to the Supreme Court or any Judge thereof for sale of so much of the land described in the notice as may be necessary, and the Court or Judge, on being satisfied by affidavit or otherwise that the amount is lawfully due and that all things required by this Act to be done by the Commissioner have been done, shall order the sale of the said land and that the proceeds be applied in accordance with section 76AF(a).

*[Section 76AE inserted by No. 33 of 1987 s. 22.]*

**76AF. Application of proceeds of sale**

Where any land has been sold under section 76AE —

- (a) the Court or a Judge shall order payment of the duty, fine, costs, and expenses to be made out of the proceeds of the sale, and the balance of the proceeds of the sale shall be paid into Court, and after such advertisement as the Court or Judge may direct shall be applied as the Court or Judge may think proper for the benefit of the parties interested therein;
- (b) the conveyance or transfer, as the case may be, shall be executed by the officer of the Court nominated by the Court or Judge for such purpose to the purchaser, in such form as shall be approved by the Court or Judge;
- (c) the conveyance or transfer shall vest the land, estate, or interest sold in the purchaser as completely and effectually as if the conveyance or transfer had been executed by the owner of the land, estate, or interest; and

- (d) the Registrar of Titles shall, upon production to him of the transfer, register it and, notwithstanding any provision of the *Transfer of Land Act 1893* to the contrary, production of the duplicate certificate of title shall not be required; but for the purposes of registration, the Registrar of Titles shall, if necessary, do and perform all such acts and things as are provided for in the case of dealings with land where the duplicate certificate of title is lost or not produced, in which case a new certificate of title for such land shall be created and registered.

*[Section 76AF inserted by No. 33 of 1987 s. 22; amended by No. 81 of 1996 s. 153(1).]*

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*[Heading inserted by No. 33 of 1987 s. 22; amended by No. 10 of 2001 s. 175.]*

**76AG. When statement to be lodged**

- (1) Where by a relevant acquisition a person acquires a majority interest or a further interest in —
- (a) a WA company to which this Division applies; or
  - (b) a WA company to which this Division would apply if the reference to the value of land in section 76AI(2)(b) were a reference to the value of land, goods, wares and merchandise,

the person shall prepare and lodge with the Commissioner a statement in respect of that acquisition.

- (2) If a requirement under subsection (1) arises in circumstances where a person acquires a majority interest or a further interest by reason of acquisitions by him and a related person or related persons being aggregated, one of such persons shall prepare and lodge a statement under that subsection of all acquisitions on behalf of all such persons.



- (3) The statement shall be lodged within 3 months of the occurrence of the relevant acquisition.
- (4) The statement shall be in a form approved by the Commissioner and shall include the following information —
- (a) the name and address of the person who has acquired a majority interest or a further interest and of any related person referred to in subsection (2);
  - (b) the date of the acquisition;
  - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the WA company;
  - (d) the person's estimate of the unencumbered value of all land and chattels in the State to which the WA company is entitled as at that date;
  - (da) particulars of any chattels, whether situated in the State or not, to which the WA company was entitled in the 12 months preceding that date and acquired, directly or indirectly, by the person or a related person in that period;
  - (db) the person's estimate of the unencumbered value of those chattels;
  - (e) the person's estimate of the unencumbered value of the property of the WA company as at that date; and
  - (f) if the statement is lodged because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.
- (5) For the purposes of this Act —
- (a) a statement lodged because of subsection (1)(a); and
  - (b) subject to subsection (5c), a statement lodged because of subsection (1)(b),

is to be regarded as an instrument executed on the day on which the relevant acquisition occurs.

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- (5a) If, in the case of a statement lodged because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the Commissioner may determine that subsection (5) does not apply to the statement.
- (5b) In deciding whether or not to make a determination under subsection (5a) the Commissioner may have regard to —
- (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;
  - (b) their nature and their relevance to any business carried on by the WA company or subsidiary;
  - (c) the period for which they have been and are likely to remain the property of the WA company or subsidiary; and
  - (d) any other matter that the Commissioner considers relevant.
- (5c) A determination made under subsection (5a) has effect according to its terms and the Commissioner is to give written notice of it to the person who lodged the statement.
- (5d) If the person who lodged the statement requests the Commissioner, in writing, to give reasons why the Commissioner has not made a determination under subsection (5a), the Commissioner is to give written reasons to the person.
- (5e) A person who —
- (a) is required to lodge a statement because of subsection (1)(b); and
  - (b) fails to do so within the period set out in subsection (3),
- commits an offence against this Act.

- (6) A person who lodges a statement under subsection (1) which is false in a material particular commits an offence against this Act.

*[Section 76AG inserted by No. 33 of 1987 s. 22<sup>19</sup>; amended by No. 41 of 1989 s. 15; No. 39 of 1994 s. 21; No. 22 of 1998 s. 38 and 39; No. 60 of 2000 s. 7<sup>20</sup>; No. 3 of 2001 s. 20.]*

**76AH. Statement chargeable with duty**

- (1) A statement to which section 76AG(5) applies is chargeable, in accordance with section 76AL, with duty at the rate provided for in item 4(1) of the Second Schedule calculated as follows —
- (a) where the statement relates to a relevant acquisition within section 76AJ(1)(a), the duty shall be calculated on the dutiable value determined under section 76AL(2); and
  - (b) where the statement relates to a relevant acquisition within section 76AJ(1)(b), the duty —
    - (i) shall be calculated on the dutiable value determined under section 76AL(3)(a); but
    - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76AL(3)(b).
- (2) Notwithstanding item 4(1) of the Second Schedule, where the value of the land and chattels under section 76AL(4) does not exceed \$1 500 000 the duty chargeable under this section shall be calculated as follows, and where paragraph (b) of subsection (1) applies shall be so calculated in terms of subparagraphs (i) and (ii) of that paragraph —

$$\frac{A - \$1\,000\,000}{\$500\,000} \times B + \left[ 1 - \left[ \frac{A - \$1\,000\,000}{\$500\,000} \right] \right] \times C$$

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where —

- A is the value of the land and chattels situated in the State to which the WA company is entitled as provided in section 76AL(4) at the time of the relevant acquisition;
- B is the duty calculated under item 4(1) of the Second Schedule on the dutiable value determined under section 76AL; and
- C is the duty calculated under item 4A(1) of the Second Schedule on the value of the shares comprised in the relevant acquisition had the acquisition been effected by an instrument chargeable under that paragraph.

(2a) Subsection (2) does not apply unless —

- (a) the acquisition referred to in section 76AJ(1)(a)(i) or (ii) or (b), as the case may be, consists of the acquisition of a shareholding in a corporation; and
- (b) the shareholding acquired confers an entitlement to participate in a distribution of the property of the corporation (if the corporation were to be wound up) that bears the same relationship to the value of the distributable property as the shareholding acquired bears to the total shareholding in the corporation.

(3) There shall be deducted from the duty chargeable on a statement, any duty paid under item 4A(1) of the Second Schedule in respect of any instrument effecting or evidencing the acquisition of any interest which is taken into account in determining liability under section 76AG to lodge that statement, except any duty previously deducted under this subsection in respect of a statement previously lodged under that section.

(4) Subject to subsection (5), if a statement to which section 76AG(5) applies contains particulars of any chattels as required by section 76AG(4)(da), then, in addition to the duty chargeable under subsection (1), the statement is chargeable with duty at the rate provided for in item 4(1) of the Second

Schedule calculated on the unencumbered value of the chattels, but duty shall not be charged in respect of —

- (a) any of the chattels in respect of which duty has been paid under section 31B or 70 by the person who made the relevant acquisition to which the statement relates or by a related person;
  - (b) any of the chattels in respect of which *ad valorem* duty has been paid by that person, or a related person, in another jurisdiction;
  - (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in the State.
- (5) The statement is not chargeable with duty under subsection (4) if the Commissioner is satisfied that no transaction by means of which the chattels were transferred from the WA company to the person who made the relevant acquisition, or a related person, was effected for the collateral purpose of reducing the duty that otherwise would be chargeable in respect of the relevant acquisition.

*[Section 76AH inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 14 and 21; No. 22 of 1998 s. 38 and 40; No. 60 of 2000 s. 8.]*

**76AI. Companies to which this Division applies**

- (1) This Division applies to a WA company if it is a land-holder within the meaning in subsection (2) unless —
- (a) it is listed on a recognized stock exchange; and
  - (b) the Commissioner is satisfied that its listing was not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Part.
- (1a) For the purposes of subsection (1)(b) the Commissioner may take into account any matter that the Commissioner considers is relevant but must take into account —
- (a) how long the WA company has been listed on a recognized stock exchange;

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- (b) any conditions or exemptions that apply to the exchange's approval of the listing of the company;
  - (c) who owns the company's shares;
  - (d) what proportion of the company's shares are available to be traded on the exchange; and
  - (e) the turnover of the company's shares on the exchange.
- (2) A WA company is a land-holder for the purposes of this Division if at the time of a relevant acquisition —
- (a) it is entitled to land situated in the State and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in the State as a co-owner of the freehold or of a lesser estate in the land and the value of the whole of the freehold or lesser estate is not less than \$1 000 000; and
  - (b) the value of all land to which the WA company is entitled, whether situated in the State or elsewhere, is 80% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (3),

or if the Commissioner determines that paragraphs (a) and (b) would have applied to the WA company at the time of the relevant acquisition but for a transaction, or series of transactions, which in the Commissioner's opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.

- (2a) If the Commissioner makes a determination under subsection (2), the Commissioner is to give written notice of it to the person who made the relevant acquisition.
  - (2b) The notice is to contain written reasons for the determination.
  - (2c) For the purposes of section 76AG(3) the relevant acquisition is to be regarded as having occurred when the notice is given.
- (3) The following property of a WA company, or of any subsidiary within the meaning in subsection (4), shall not be included for

the purpose of calculating the value of property under subsection (2)(b) —

- (a) cash or money in an account at call;
- (b) negotiable instruments, and money on deposit with any person;
- (ba) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;
- (c) money lent by the WA company or a subsidiary to —
  - (i) any person who in relation to the WA company is an associated person; or
  - (ii) any person at call or in terms that require or allow full repayment to the WA company within 12 months after the money is lent;
- (d) where by virtue of Division 6 of Part 1.2 of the Corporations Act a corporation is a subsidiary of the WA company, the shareholding of that WA company in the subsidiary corporation, but without limiting subsection (4);
- (e) in the case of the WA company, property consisting of a share or interest in a trust referred to in subsection (4);
- (ea) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —
  - (i) locate, extract, process, transport or market minerals; or
  - (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
- (eb) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the WA company or a related person;

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- (ec) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
  - (ed) any property prescribed for the purposes of this subsection; and
  - (f) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner's satisfaction that a reason for ownership by the WA company or the subsidiary within the meaning in subsection (4) is not for the purpose of defeating the object of this Division.
- (3a) In forming an opinion for the purposes of subsection (3)(f) the Commissioner may have regard to —
- (a) the source of the property and the source of funding for its acquisition;
  - (b) its nature and its relevance to any business carried on by the WA company or the subsidiary;
  - (c) the period for which it has been and is likely to remain the property of the WA company or the subsidiary; and
  - (d) any other matter that the Commissioner considers relevant.
- (4) Without limiting the meaning of “entitled”, a WA company is deemed to be entitled to land or property to the extent that a subsidiary is entitled to that land or property, and for the purposes of this subsection a subsidiary is —
- (a) a subsidiary corporation by virtue of Division 6 of Part 1.2 of the Corporations Act, or any other corporation where the WA company would be entitled if the corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the corporation to an extent greater than 50% of the value of the distributable property;



- (b) the trustee of any trust where the WA company or a subsidiary corporation of the WA company, as defined in paragraph (a) —
    - (i) is entitled to a share or interest in the trust, whether vested or contingent; or
    - (ii) in the case of a discretionary trust, may benefit from that trust;
  - (c) any corporation, where the trustee of a trust in which the WA company or a subsidiary corporation —
    - (i) is entitled to a share or interest, whether vested or contingent; or
    - (ii) in the case of a discretionary trust, may benefit from that trust,  
  
would be entitled if the corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the corporation to an extent greater than 50% of the value of the distributable property; or
  - (d) any other corporation or the trustee of any other trust that would by an application of this subsection be a subsidiary of a corporation that is a subsidiary of the WA company.
- (5) In determining the entitlement of an entity to land for the purposes of this section or section 76AL —
- (a) if the entity has contracted or agreed to acquire an interest in land, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
  - (b) if the entity has contracted or agreed to dispose of an interest in land but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.

- (6) In determining the entitlement of an entity to property other than land for the purposes of this section —
- (a) if the entity has contracted or agreed to dispose of an interest in such property, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
  - (b) if the entity has contracted or agreed to acquire an interest in such property but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.

*[Section 76AI inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 57 of 1997 s. 113(2); No. 53 of 1999 s. 23; No. 60 of 2000 s. 9; No. 3 of 2001 s. 25; No. 10 of 2001 s. 176.]*

**76AJ. Meaning of “relevant acquisition”**

- (1) An acquisition is a relevant acquisition for the purposes of this Division —
- (a) if by that acquisition a person acquires a majority interest in a WA company by acquiring an interest —
    - (i) that is itself a majority interest in the WA company; or
    - (ii) that is, when taken with each previous acquisition of an interest in the WA company made by the person on or after the relevant day for that acquisition, a majority interest in the WA company;
- or
- (b) if by that acquisition a person acquires a further interest in the WA company.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.

- (3) For the purposes of subsection (1)(a)(ii), if a person acquires an interest in a WA company (the “**earlier acquisition**”) and, after that acquisition, that person acquires another interest in the WA company (the “**later acquisition**”) because of an arrangement that was entered into during the relevant period, the earlier acquisition is to be regarded as having been made on or after the relevant day for the later acquisition even if it was not so made.
- (4) In this section —  
“**relevant day**” for an acquisition means —
- (a) if the acquisition was or is made on or after 10 August 2000 but before 11 August 2002 — 10 August 1999; or
  - (b) if the acquisition is made on or after 11 August 2002 — the day that is 3 years before the day of the acquisition.
- (5) In subsection (3) —  
“**relevant period**” means —
- (a) if the earlier acquisition was made before 10 August 1999 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is one year after the day of that acquisition;
  - (b) if the earlier acquisition was made on or after 10 August 1999 but before 10 August 2000 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is 3 years after the day of that acquisition; or
  - (c) if the earlier acquisition was or is made on or after 10 August 2000 — the period beginning on the relevant day for that acquisition and ending on the day that is 3 years after the day of that acquisition.
- (6) Subsection (3) does not apply in relation to an arrangement entered into before 10 August 2000 unless, because of the

arrangement, the person referred to in that subsection had the right to acquire the other interest referred to in that subsection.

*[Section 76AJ inserted by No. 60 of 2000 s. 10.]*

**76AK. Meaning of acquiring an interest, majority interest or further interest**

- (1) For the purposes of this Division, a person acquires an interest in a WA company if the person acquires, or the person and any related person acquire, an entitlement such that the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate in a distribution of the property of the WA company.
- (2) For the purposes of this Division, a person acquires a majority interest in a WA company if the person acquires, or the person and any related person acquire, an interest in the WA company such that having acquired that interest the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate in a distribution of the property of the WA company to an extent greater than 50% of the value of the distributable property and, in section 76AJ(1)(a)(i) and (ii) and subsection (3), “**majority interest**” has a corresponding meaning.
- (3) For the purposes of this Division, a person acquires a further interest in a WA company if —
  - (a) the person has, or the person and any related person have, a majority interest in the WA company;
  - (b) the acquisition of that majority interest gave rise to a liability for duty under this Part; and
  - (c) the person acquires, or the person and any related person acquire, an interest in the WA company such that having acquired that interest the person, or the person and any related person, would be entitled if the WA company

were to be wound up to participate further in a distribution of the property of the WA company.

*[Section 76AK inserted by No. 60 of 2000 s. 10.]*

**76AL. How dutiable value is determined**

- (1) Where section 76AH(1) applies, duty is chargeable in accordance with this section on the basis of the value free of encumbrances (in this section called “**the dutiable value**”) of the land and chattels situated in the State to which the WA company is entitled.
- (2) Where by a relevant acquisition, a person acquires a majority interest in a WA company the dutiable value is the same proportion of the value of the land and chattels situated in the State to which the WA company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and any related person, would be entitled, as provided in subsection (5), after the acquisition.
- (3) Where the relevant acquisition is within section 76AJ(1)(b) the dutiable value —
  - (a) for the purposes of section 76AH(1)(b)(i), is the same proportion of the value of the land and chattels situated in the State to which the WA company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and a related person, would be entitled, as provided in subsection (5), after the acquisition of the further interest;
  - (b) for the purposes of section 76AH(1)(b)(ii), is the same proportion of the value of the land and chattels situated in the State to which the WA company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the WA

company to which the person, or the person and a related person, would have been entitled, as provided in subsection (5), at the time of the immediately preceding relevant acquisition by that person, or a related person.

- (4) For the purposes of subsections (2) and (3), the unencumbered value of the land and chattels to which a WA company is entitled at any time is the sum of —
- (a) in the case of land and chattels to which the WA company is entitled without reference to subsection (4) of section 76AI, the unencumbered value of the land and chattels at that time; and
  - (b) in the case of land and chattels to which a subsidiary is entitled as mentioned in that subsection, the amount to which, if the property of a subsidiary or of all subsidiaries in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same, the WA company would be entitled in respect of the unencumbered value at that time of land and chattels to which the subsidiary is, or all subsidiaries are, entitled.
- (5) For the purposes of subsections (2) and (3), the property of a WA company to which a person, or the person and any related person, would be entitled is the property to which the person, or the person and any related person, would be entitled if the WA company were to be wound up after the acquisition.

*[Section 76AL inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 22 of 1998 s. 38; No. 60 of 2000 s. 11.]*

**76AM. Liability for duty**

- (1) A person who is required to lodge a statement under section 76AG is liable, if section 76AG(5) applies to the statement, to pay the duty chargeable under this Division.

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- (2) Where an acquisition is a relevant acquisition by virtue of a person and any related person acquiring an interest in a WA company all such persons are jointly and severally liable for the duty chargeable under this Division.

*[Section 76AM inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 60 of 2000 s. 12.]*

**Division 3 — Corporations incorporated, or taken to be registered, outside the State, and certain other companies not within Division 2**

*[Heading inserted by No. 10 of 2001 s. 177.]*

**76AN. When statement to be lodged**

- (1) Where by a relevant acquisition a person acquires a majority interest or a further interest in —
- (a) a corporation to which this Division applies; or
  - (b) a corporation to which this Division would apply if the reference to the value of land in section 76AP(2)(b) were a reference to the value of land, goods, wares and merchandise,
- the corporation shall prepare and lodge with the Commissioner a statement in respect of that acquisition.
- (2) The statement shall be lodged within 3 months of the occurrence of the relevant acquisition.
- (3) The statement shall be in a form approved by the Commissioner and shall include the following information —
- (a) the name and address of the person who has acquired a majority interest or a further interest, and of any related person if the acquisition is required to be aggregated with an acquisition by such person;
  - (b) the date of the acquisition;

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- (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the corporation;
  - (d) the corporation's estimate of the unencumbered value of all land and chattels in the State to which the corporation is entitled as at that date;
  - (da) particulars of any chattels, whether situated in the State or not, to which the corporation was entitled in the 12 months preceding that date and acquired, directly or indirectly, by the person or a related person in that period;
  - (db) the corporation's estimate of the unencumbered value of those chattels;
  - (e) the corporation's estimate of the unencumbered value of the property of the corporation as at that date; and
  - (f) if the statement is lodged because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.
- (4) For the purposes of this Act —
- (a) a statement lodged because of subsection (1)(a); and
  - (b) subject to subsection (4c), a statement lodged because of subsection (1)(b),

is to be regarded as an instrument executed on the day on which the relevant acquisition occurs.

- (4a) If, in the case of a statement lodged because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the



- Commissioner may determine that subsection (4) does not apply to the statement.
- (4b) In deciding whether or not to make a determination under subsection (4a) the Commissioner may have regard to —
- (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;
  - (b) their nature and their relevance to any business carried on by the corporation, trustee or related corporation;
  - (c) the period for which they have been and are likely to remain the property of the corporation, trustee or related corporation; and
  - (d) any other matter that the Commissioner considers relevant.
- (4c) A determination made under subsection (4a) has effect according to its terms and the Commissioner is to give written notice of it to the corporation.
- (4d) If the corporation requests the Commissioner, in writing, to give reasons why the Commissioner has not made a determination under subsection (4a), the Commissioner is to give written reasons to the corporation.
- (4e) A corporation that —
- (a) is required to lodge a statement because of subsection (1)(b); and
  - (b) fails to do so within the period set out in subsection (2),
- commits an offence against this Act.
- (5) A corporation that lodges a statement under subsection (1) which is false in a material particular commits an offence against this Act.

*[Section 76AN inserted by No. 33 of 1987 s. 22<sup>19</sup>; amended by No. 41 of 1989 s. 16; No. 22 of 1998 s. 38 and 41; No. 60 of 2000 s. 13<sup>20</sup>; No. 3 of 2001 s. 21.]*

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**76AO. Statement chargeable with duty**

- (1) A statement to which section 76AN(4) applies is chargeable, in accordance with section 76AS, with duty at the rate provided for in item 4(1) of the Second Schedule calculated as follows —
- (a) where the statement relates to a relevant acquisition within section 76AQ(1)(a), the duty shall be calculated on the dutiable value determined under section 76AS(2); and
  - (b) where the statement relates to a relevant acquisition within section 76AQ(1)(b), the duty —
    - (i) shall be calculated on the dutiable value determined under section 76AS(3)(a); but
    - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76AS(3)(b).
- (2) Notwithstanding item 4(1) of the Second Schedule, where the value of the land and chattels under section 76AS(4) does not exceed \$1 500 000 the duty chargeable under this section shall be calculated as follows, and where paragraph (b) of subsection (1) applies, shall be so calculated in terms of subparagraphs (i) and (ii) of that paragraph —

$$\frac{A - \$1\,000\,000}{\$500\,000} \times B + \left[ 1 - \left[ \frac{A - \$1\,000\,000}{\$500\,000} \right] \right] \times C$$

where —

- A is the value of the land and chattels situated in the State to which the corporation is entitled as provided in section 76AS(4) at the time of the relevant acquisition;
- B is the duty calculated under item 4(1) of the Second Schedule on the dutiable value determined under section 76AS; and

- 
- C is the duty calculated under item 4A(1) of the Second Schedule on the value of the shareholding or entitlement comprised in the relevant acquisition had the acquisition been effected by an instrument chargeable under that paragraph.
- (2a) Subsection (2) does not apply unless —
- (a) the acquisition referred to in section 76AQ(1)(a)(i) or (ii) or (b), as the case may be, consists of the acquisition of a shareholding in a corporation; and
  - (b) the shareholding acquired confers an entitlement to participate in a distribution of the property of the corporation (if the corporation were to be wound up) that bears the same relationship to the value of the distributable property as the shareholding acquired bears to the total shareholding in the corporation.
- (3) There shall be deducted from the duty chargeable on a statement, any duty paid under item 4A(1) of the Second Schedule in respect of any instrument effecting or evidencing the acquisition of any interest which is taken into account in determining liability under section 76AN to lodge that statement, except any duty previously deducted under this subsection in respect of a statement previously lodged under that section.
- (4) Subject to subsection (5), if a statement to which section 76AN(4) applies contains particulars of any chattels as required by section 76AN(3)(da), then, in addition to the duty chargeable under subsection (1), the statement is chargeable with duty at the rate provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of the chattels, but duty shall not be charged in respect of —
- (a) any of the chattels in respect of which duty has been paid under section 31B or 70 by the person who made the relevant acquisition to which the statement relates or by a related person;

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- (b) any of the chattels in respect of which *ad valorem* duty has been paid by that person, or a related person, in another jurisdiction;
  - (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in the State.
- (5) The statement is not chargeable with duty under subsection (4) if the Commissioner is satisfied that no transaction by means of which the chattels were transferred from the corporation to the person who made the relevant acquisition, or a related person, was effected for the collateral purpose of reducing the duty that otherwise would be chargeable in respect of the relevant acquisition.

*[Section 76AO inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 14; No. 22 of 1998 s. 38 and 42; No. 60 of 2000 s. 14.]*

**76AP. Corporations to which this Division applies**

- (1) This Division applies to a corporation if —
- (a) it is —
    - (i) a body corporate that is taken to be registered outside the State (for the purposes of the Corporations Act) or that is otherwise formed or incorporated outside the State, not being a body corporate that is —
      - (A) within paragraphs (a) to (d) of section 66A(4) of the Corporations Law; or
      - (B) a subsidiary, within the meaning in section 76AI(4), of a WA company to which Division 2 applies;
    - or
    - (ii) a WA company that would be a subsidiary, within the meaning in section 76AI(4), of a body

corporate referred to in subparagraph (i) if that  
body corporate were a WA company;

and

*[(b) deleted]*

(c) it is a land-holder within the meaning in subsection (2),

unless —

(d) it is listed on a recognized stock exchange; and

(e) the Commissioner is satisfied that its listing was not part  
of an arrangement or scheme having as its purpose, or  
one of its purposes, the defeat of the object of this Part.

(1a) For the purposes of subsection (1)(e) the Commissioner may  
take into account any matter that the Commissioner considers is  
relevant but must take into account —

(a) how long the corporation has been listed on a recognized  
stock exchange;

(b) any conditions or exemptions that apply to the  
exchange's approval of the listing of the corporation;

(c) who owns the corporation's shares;

(d) what proportion of the corporation's shares are available  
to be traded on the exchange; and

(e) the turnover of the corporation's shares on the exchange.

(2) A corporation is a land-holder for the purposes of this Division  
if at the time of a relevant acquisition —

(a) it is entitled to land situated in the State and the  
unencumbered value of the land is not less than  
\$1 000 000, or it is entitled to land situated in the State  
as a co-owner of the freehold or of a lesser estate in the  
land and the value of the whole of the freehold or lesser  
estate is not less than \$1 000 000; and

(b) the value of all land to which the corporation is entitled,  
whether situated in the State or elsewhere, is 80% or

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more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (3),

or if the Commissioner determines that paragraphs (a) and (b) would have applied to the corporation at the time of the relevant acquisition but for a transaction, or series of transactions, which in the Commissioner's opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.

- (2a) If the Commissioner makes a determination under subsection (2), the Commissioner is to give written notice of it to the corporation.
- (2b) The notice is to contain written reasons for the determination.
- (2c) For the purposes of section 76AN(2) the relevant acquisition is to be regarded as having occurred when the notice is given.
- (3) The following property of a corporation, or of a trustee or another corporation referred to in subsection (4), shall not be included for the purpose of calculating the value of property under subsection (2)(b) —
  - (a) cash or money in an account at call;
  - (b) negotiable instruments, and money on deposit with any person;
  - (ba) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;
  - (c) money lent by the corporation or a trustee or a related corporation referred to in subsection (4) to —
    - (i) any person who in relation to the corporation is an associated person; or
    - (ii) any person at call or in terms that require or allow full repayment to the corporation within 12 months after the money is lent;

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- (d) in the case of the corporation, property consisting of a shareholding in another corporation referred to in subsection (4) or of a share or interest or entitlement under a trust referred to in that subsection;
  - (da) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —
    - (i) locate, extract, process, transport or market minerals; or
    - (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
  - (db) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the corporation or a related person;
  - (dc) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
  - (dd) any property prescribed for the purposes of this subsection; and
  - (e) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner's satisfaction that a reason for ownership by the corporation or the trustee or other corporation referred to in subsection (4) is not for the purpose of defeating the object of this Division.
- (3a) In forming an opinion for the purposes of subsection (3)(e) the Commissioner may have regard to —
- (a) the source of the property and the source of funding for its acquisition;

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- (b) its nature and its relevance to any business carried on by the corporation or the trustee or other corporation;
  - (c) the period for which it has been and is likely to remain the property of the corporation or the trustee or other corporation; and
  - (d) any other matter that the Commissioner considers relevant.
- (4) Without limiting the meaning of “entitled”, a corporation is deemed to be entitled to land or property where —
- (a) the trustee of a trust is entitled to that land or property and the corporation —
    - (i) has a share or interest in the trust whether vested or contingent; or
    - (ii) in the case of a discretionary trust, may benefit from that trust,but an entitlement under subparagraph (i) is limited to the extent of that share or interest;
  - (b) in a case where the entitlement to participate referred to in section 76AR(2) or (3), (whichever is applicable to the relevant acquisition) relates to the corporation itself, any of the following corporations is entitled to that land or property —
    - (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the corporation;
    - (ii) any other corporation where the corporation would be entitled if the other corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the other corporation to an extent greater than 50% of the value of the distributable property;

or



- 
- (c) in a case where the entitlement to participate referred to in section 76AR(2) or (3), (whichever is applicable to the relevant acquisition) relates to a holding corporation (as defined in section 76AR(4)(a)) of the corporation, any of the following corporations is entitled to that land or property —
- (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the holding corporation;
  - (ii) any other corporation where the holding corporation would be entitled if the other corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the other corporation to an extent greater than 50% of the value of the distributable property.
- (5) In determining the entitlement of an entity to land for the purposes of this section or section 76AS —
- (a) if the entity has contracted or agreed to acquire an interest in land, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
  - (b) if the entity has contracted or agreed to dispose of an interest in land but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.
- (6) In determining the entitlement of an entity to property other than land for the purposes of this section —
- (a) if the entity has contracted or agreed to dispose of an interest in such property, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
  - (b) if the entity has contracted or agreed to acquire an interest in such property but that contract or agreement

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has not yet been completed, that contract or agreement is to be disregarded.

*[Section 76AP inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 53 of 1999 s. 24; No. 60 of 2000 s. 15; No. 3 of 2001 s. 26; No. 10 of 2001 s. 178.]*

**76AQ. Meaning of “relevant acquisition”**

- (1) An acquisition is a relevant acquisition for the purposes of this Division —
  - (a) if by that acquisition a person acquires a majority interest in a corporation by acquiring an interest —
    - (i) that is itself a majority interest in the corporation;  
or
    - (ii) that is, when taken with each previous acquisition of an interest in the corporation made by the person on or after the relevant day for that acquisition, a majority interest in the corporation;  
or
  - (b) if by that acquisition a person acquires a further interest in the corporation.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.
- (3) For the purposes of subsection (1)(a)(ii), if a person acquires an interest in a corporation (the “**earlier acquisition**”) and, after that acquisition, that person acquires another interest in the corporation (the “**later acquisition**”) because of an arrangement that was entered into during the relevant period, the earlier acquisition is to be regarded as having been made on or after the relevant day for the later acquisition even if it was not so made.

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- (4) In this section —  
**“relevant day”** for an acquisition means —
- (a) if the acquisition was or is made on or after 10 August 2000 but before 11 August 2002 — 10 August 1999; or
  - (b) if the acquisition is made on or after 11 August 2002 — the day that is 3 years before the day of the acquisition.
- (5) In subsection (3) —  
**“relevant period”** means —
- (a) if the earlier acquisition was made before 10 August 1999 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is one year after the day of that acquisition;
  - (b) if the earlier acquisition was made on or after 10 August 1999 but before 10 August 2000 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is 3 years after the day of that acquisition; or
  - (c) if the earlier acquisition was or is made on or after 10 August 2000 — the period beginning on the relevant day for that acquisition and ending on the day that is 3 years after the day of that acquisition.
- (6) Subsection (3) does not apply in relation to an arrangement entered into before 10 August 2000 unless, because of the arrangement, the person referred to in that subsection had the right to acquire the other interest referred to in that subsection.  
*[Section 76AQ<sup>19</sup> inserted by No. 60 of 2000 s. 16.]*

**76AR. Meaning of acquiring an interest, majority interest or further interest**

- (1) For the purposes of this Division, a person acquires an interest in a corporation if the person acquires, or the person and any

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related person acquire, an entitlement such that the person, or the person and any related person, would be entitled if the property of the corporation or the holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate in a distribution of the property of the corporation or holding corporation.

- (2) For the purposes of this Division, a person acquires a majority interest in a corporation if the person acquires, or the person and any related person acquire, an interest in the corporation such that having acquired that interest the person, or the person and any related person, would be entitled if the property of the corporation or a holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate in a distribution of the property of the corporation or holding corporation to an extent greater than 50% of the value of the distributable property and, in section 76AQ(1)(a)(i) and (ii) and subsection (3), “**majority interest**” has a corresponding meaning.
- (3) For the purposes of this Division, a person acquires a further interest in a corporation if —
  - (a) the person has, or the person and any related person have, a majority interest in the corporation;
  - (b) the acquisition of that majority interest gave rise to a liability for duty under this Part; and
  - (c) the person acquires, or the person and any related person acquire, an interest in the corporation such that having acquired that interest the person, or the person and any related person, would be entitled if the property of the corporation or a holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate further in a distribution of the property of the corporation or holding corporation.

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- (4) In this section “**holding corporation**” in relation to a corporation —
- (a) means a corporation —
- (i) that is an ultimate holding company as defined in section 9 of the Corporations Act; or
- (ii) of which a body corporate is a subsidiary by virtue of Division 6 of Part 1.2 of the Corporations Act;
- and
- (b) is deemed to include —
- (i) any trust if the trustee of the trust would be entitled if the corporation or a holding corporation (as defined in paragraph (a)) were to be wound up to participate in a distribution of the property of the corporation or holding corporation to an extent greater than 50% of the value of the distributable property;
- (ii) a corporation, if in respect of any trust referred to in subparagraph (i) that corporation —
- (I) is entitled to a share or interest in the trust whether vested or contingent; or
- (II) in the case of a discretionary trust, may benefit from that trust;
- and
- (iii) any other corporation, or the trustee of any other trust that would by an application of this subsection be a holding corporation of a corporation that is a holding corporation of the corporation.

*[Section 76AR inserted by No. 60 of 2000 s. 16; amended by No. 10 of 2001 s. 179.]*

**Stamp Act 1921**

**Part III BA** Duty on change of control of certain land-owning corporations  
**Division 3** Corporations incorporated, or taken to be registered, outside the State, and certain other companies not within Division 2

**s. 76AS**

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**76AS. How dutiable value is determined**

- (1) Where section 76AO(1) applies, duty is chargeable in accordance with this section on the basis of the value free of encumbrances (in this section called “**the dutiable value**”) of the land and chattels situated in the State to which the corporation is entitled.
- (2) Where by a relevant acquisition a person acquires a majority interest in a corporation the dutiable value is the same proportion of the value of the land and chattels situated in the State to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and any related person, would be entitled, as provided in subsection (5), after the acquisition.
- (3) Where the relevant acquisition is within section 76AQ(1)(b) the dutiable value —
  - (a) for the purposes of section 76AO(1)(b)(i), is the same proportion of the value of the land and chattels situated in the State to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would be entitled, as provided in subsection (5), after the acquisition of the further interest;
  - (b) for the purposes of section 76AO(1)(b)(ii), is the same proportion of the value of the land and chattels situated in the State to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would have been entitled, as provided in

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subsection (5), at the time of the immediately preceding relevant acquisition by that person, or a related person.

- (4) For the purposes of subsections (2) and (3), the unencumbered value of the land and chattels to which a corporation is entitled at any time is the sum of —
- (a) in the case of land and chattels to which the corporation is entitled without reference to subsection (4) of section 76AP, the unencumbered value of the land and chattels at that time; and
  - (b) in the case of land and chattels to which a trustee or a corporation is entitled as mentioned in that subsection, the amount to which, if the property of a trust or corporation referred to in that subsection or all such trusts and corporations in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same, the corporation would be entitled in respect of the unencumbered value at that time of land and chattels to which all such trusts and corporations are entitled.
- (5) For the purposes of subsections (2) and (3), the property of a corporation to which a person, or the person and any related person, would be entitled is the property to which the person, or the person and any related person, would be entitled if the property of the corporation and all holding corporations, as defined in section 76AR(4), in the chain of relationships were to be distributed after the acquisition (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same.

*[Section 76AS inserted by No. 33 of 1987 s. 22; amended by No. 22 of 1998 s. 38; No. 60 of 2000 s. 17.]*

**76AT. Liability for duty**

A corporation that is required to lodge a statement under section 76AN is liable, if section 76AN(4) applies to the statement, to pay the duty chargeable under this Division.

*[Section 76AT inserted by No. 33 of 1987 s. 22; amended by No. 60 of 2000 s. 18.]*

**Division 4 — Reassessment of liability for duty**

*[Heading inserted by No. 60 of 2000 s. 19.]*

**76AU. Definitions and operation**

(1) In this Division —

“**assessment**” means the assessment of duty issued in relation to the statement;

“**duty**” means duty chargeable under Division 2 or 3, whichever is applicable;

“**statement**” means the statement that was charged with duty;

“**taxpayer**” means —

(a) a person liable under section 76AM to pay duty; or

(b) a corporation liable under section 76AT to pay duty.

(2) This Division is in addition to the provisions of Part III relating to the reassessment of duty and does not affect the operation of those provisions.

*[Section 76AU inserted by No. 60 of 2000 s. 19.]*

**76AV. Request for reassessment of liability for duty**

(1) A taxpayer may request the Commissioner to reassess the taxpayer’s liability to pay duty if —

(a) the taxpayer considers that the duty would not have been chargeable, or that the amount of the duty would have been less, but for the operation of section 76AI(5)(a) or



- (6)(a) or 76AP(5)(a) or (6)(a) in relation to a contract or agreement mentioned in the request; and
  - (b) that contract or agreement has been rescinded, annulled or otherwise terminated without being completed.
- (2) A taxpayer may request the Commissioner to reassess the taxpayer's liability to pay duty if —
- (a) the taxpayer considers that the duty would not have been chargeable, or that the amount of the duty would have been less, but for the operation of section 76AI(5)(b) or (6)(b) or 76AP(5)(b) or (6)(b) in relation to a contract or agreement mentioned in the request; and
  - (b) that contract or agreement has been completed.
- (3) A request for reassessment must be made in writing and can only be made within 5 years after the date on which the assessment was issued.

*[Section 76AV inserted by No. 60 of 2000 s. 19.]*

**76AW. Reassessment**

- (1) If the Commissioner is satisfied that the contract or agreement mentioned in a request under section 76AV(1) has been rescinded, annulled or otherwise terminated without being completed, the Commissioner is to consider whether or not duty would have been chargeable and, if so, the amount of duty that would have been chargeable, but for the operation of section 76AI(5)(a) or (6)(a) or 76AP(5)(a) or (6)(a), as the case may be.
- (2) If the Commissioner is satisfied that the contract or agreement mentioned in a request under section 76AV(2) has been completed, the Commissioner is to consider whether duty would have been chargeable and, if so, the amount of duty that would have been chargeable, but for the operation of section 76AI(5)(b) or (6)(b) or 76AP(5)(b) or (6)(b), as the case may be.

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**Part III BA** Duty on change of control of certain land-owning corporations

**Division 4** Reassessment of liability for duty

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- (3) If after consideration under subsection (1) or (2) the Commissioner is of the opinion that a reassessment of duty is appropriate, the Commissioner is to —
- (a) issue the reassessment; and
  - (b) endorse on the statement —
    - (i) a notation that this Part no longer applies to it and that it is not chargeable with duty; or
    - (ii) the reduced amount of duty with which it is chargeable,as the case requires.
- (4) Without limiting subsection (3), if after consideration under subsection (1) the Commissioner is not satisfied that the rescission, annulment or other termination of the contract or agreement was not part of a scheme or arrangement under which the object of the contract or agreement has been or may be achieved in another way, the Commissioner is not obliged to issue a reassessment.

*[Section 76AW inserted by No. 60 of 2000 s. 19.]*

**76AX. Effect of reassessment**

- (1) A reassessment supersedes the assessment.
- (2) A reassessment that results in the statement being endorsed under section 76AW(3)(b)(ii) does not invalidate proceedings for the recovery of duty but an appropriate adjustment may be made to the amount to be recovered in the proceedings to accord with the reassessment.
- (3) If an objection to the assessment is lodged and, before determination of the proceedings on the objection, a reassessment that results in the statement being endorsed under section 76AW(3)(b)(ii) is issued, the proceedings may be continued against the reassessment to the extent that it is liable

to the same objection or to an objection that is the same or similar in substance.

*[Section 76AX inserted by No. 60 of 2000 s. 19.]*

**76AY. Refund of duty or payment of reassessed amount**

- (1) If a reassessment results in the statement being endorsed under section 76AW(3)(b)(i), the Commissioner is to refund the amount of any duty which may have been paid in accordance with the assessment and the amount of any fine charged under section 20 or 31AC.
- (2) If a reassessment results in the statement being endorsed under section 76AW(3)(b)(ii), the Commissioner is to refund the amount of any excess of duty which may have been paid in accordance with the assessment and the amount of any excess of any fine charged under section 20 or 31AC.
- (3) If no duty or less than the reassessed amount of duty has been paid in accordance with the assessment, section 31AC(1), (7) and (8) apply.

*[Section 76AY inserted by No. 60 of 2000 s. 19.]*

## Part IIIC — Motor vehicle licences and transfers thereof

[Heading inserted by No. 37 of 1979 s. 53.]

### 76B. Interpretation in Part IIIC

In this Part, except so far as the context otherwise requires —

“**dealer**” means a person who —

- (a) carries on the business of selling new motor vehicles;
- (b) is the holder of a dealer’s licence under the *Motor Vehicle Dealers Act 1973*;
- (c) carries on the business of acquiring new or used motor vehicles for resale or disposal under hire purchase or leasing agreements; or
- (d) in the course of his business, takes possession of any motor vehicles comprised in hire purchase or leasing agreements and resells them;

“**Director General**” means the Director General of Transport referred to in section 8 of the *Transport Co-ordination Act 1966*;

“**issue**”, in relation to a licence, includes a grant or renewal of the licence;

“**licence**” means a vehicle licence issued under the provisions of Part III of the *Road Traffic Act 1974*, and in respect of which a fee under that Act has been paid or is payable, but does not include a duplicate vehicle licence or certified copy thereof issued under regulations made under that Act;

“**motor vehicle**” means any vehicle licensed or required to be licensed under the *Road Traffic Act 1974*;

“**purchase price**” includes —

- (a) an amount allowed by the seller of a motor vehicle on a trade-in or an exchange of any article; and

- (b) any amount paid to the seller of a motor vehicle for things included with or incorporated into the vehicle and for the preparation of the vehicle for delivery to the purchaser; and

**“transfer”** means a transfer, under section 24 of the *Road Traffic Act 1974*, of a licence, but does not include a transfer of a licence to a person who, if he were the person named in the licence, would not be required by or under that Act to pay the prescribed fee for the licence.

*[Section 76B inserted by No. 37 of 1979 s. 53; amended by No. 106 of 1981 s. 37; No. 41 of 1989 s. 17; No. 21 of 1995 s. 14; No. 76 of 1996 s. 44; No. 13 of 1997 s. 43.]*

**76C. Duty on motor vehicle licences and transfers thereof**

- (1) Duty referred to in item 14 or, where subsection (6a) or section 76CA or 112UE(2) applies, item 6 of the Second Schedule shall, except where —

- (a) it is denoted on a licence or transfer by an impressed stamp or an adhesive stamp which has been duly cancelled; or
- (b) subsection (11) applies,

be paid to the licensing authority to which an application is made for the issue or transfer of a licence.

- (2) A licensing authority which is —

- (a) the Director General shall furnish to the Commissioner each month details of amounts of duty brought to account for licences and transfers during the preceding month;
- (b) not the Director General shall, subject to subsection (3), furnish to the Commissioner within a period of 15 days after the end of the month in which licences were issued or transferred a return in such form as the Commissioner approves in writing setting out details of those issued or

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transferred licences, together with a remittance for the amount of duty payable in respect thereof.

- (3) If no duty is payable in respect of the licences, if any, issued or transferred in any month by a licensing authority which is not the Director General, that licensing authority shall furnish the Commissioner with a nil return in respect of that month.
- (4) Every licensing authority shall cause licences issued or transferred by it and charged with duty in accordance with item 14 or, where subsection (6a) or section 76CA applies, item 6 of the Second Schedule to be endorsed as to the payment of duty in such manner as the Commissioner may require.
- (5) When the charging of duty is denoted, on licences issued or transferred as referred to in this section, by adhesive stamps, the person issuing or transferring those licences shall furnish the Commissioner, not later than the 15th day of the month following the month in which those licences were issued or transferred, with a statement relating to those issued or transferred licences in such form as the Commissioner requires in writing.
- (6) No duty is chargeable under this Act —
  - (a) in the case of a transfer to a dealer, if that transfer has been obtained by the dealer for the purpose of the resale to another person by the dealer of the motor vehicle to which that transfer relates, and for no other purpose, and that resale is in the ordinary course of the business of the dealer; or
  - (b) in the case of a licence issued to a person who carries on the business of selling motor vehicles, if that licence has been obtained by that person for the purpose of —
    - (i) selling the motor vehicle to which that licence relates to another person in the ordinary course of that business; or

- (ii) demonstrating the motor vehicle referred to in subparagraph (i) to prospective purchasers thereof,  
and for no other purpose.
- (6a) A transfer of a licence for a motor vehicle under a testamentary instrument or upon an intestacy to a person who is entitled to that vehicle in terms of that instrument or upon that intestacy —
  - (a) shall be charged with duty under item 6 of the Second Schedule; and
  - (b) is not subject to the requirements of subsection (8).
- (7) A person applying for —
  - (a) the transfer of a licence referred to in subsection (6)(a); or
  - (b) the issue of a licence referred to in subsection (6)(b),shall, before the transfer or issue of the licence, certify in such form as the Commissioner requires that, if the licence is issued or transferred to the person, the motor vehicle in respect of which the application is made will, while the person is the holder of the licence, be used for the purpose specified in the certification, being one of the purposes referred to in that subsection, and for no other purpose except a minor incidental purpose.
- (8) For the purposes of this Part an application for the issue or transfer of a licence shall contain or be accompanied by —
  - (a) a statement signed by the person who is the proposed licensee or transferee showing —
    - (i) the market value of the motor vehicle at the time of the application; and
    - (ii) whether or not the proposed licensee or transferee is a purchaser of the motor vehicle and, if he is, the purchase price paid for the vehicle;and

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- (b) where the proposed licensee or transferee is a purchaser of the motor vehicle a statement signed by the seller of the motor vehicle showing the purchase price paid for the vehicle by the purchaser.
- (9) If an application does not contain any statement required by subsection (8)(a) or (b) or if the licensing authority considers that the market value of the motor vehicle stated is less than the market value at the time of the application, the licensing authority —
  - (a) may call on the proposed licensee or transferee to furnish to it such evidence or further evidence of the market value as he may wish to supply;
  - (b) shall determine the market value of the motor vehicle on such evidence, including the evidence (if any) furnished under paragraph (a), as it thinks fit;
  - (c) shall, on the basis of that determination, assess the amount of duty payable on the licence or transfer; and
  - (d) shall not issue or transfer the licence until that amount has been paid.
- (10) If it appears to a licensing authority that a person has contravened section 24(2) of the *Road Traffic Act 1974* in respect of a motor vehicle and if the time for commencing proceedings for the offence has not elapsed, the authority may —
  - (a) determine the market value of the motor vehicle as at the date the person became the owner of the motor vehicle;
  - (b) assess the duty payable by the person as if the licence had been transferred on the application of the person; and
  - (c) include a fine equal to the amount of duty assessed.
- (10A) A licensing authority may remit the whole or part of any fine included under subsection (10).



- (10B) The total amount of the duty assessed under this Part, and any fine included under subsection (10) —
- (a) shall be paid by the person to a licensing authority before the licence for the vehicle is transferred; and
  - (b) may be recovered —
    - (i) if the offence against section 24(2c) of the *Road Traffic Act 1974* is prescribed for the purposes of section 102 of that Act, by issuing a traffic infringement notice to the person for an alleged offence against section 24(2c) of that Act; or
    - (ii) on a complaint alleging that the person has committed an offence against section 24(2c) of that Act.
- (10C) If it appears to the Commissioner that a person has contravened section 24(2) of the *Road Traffic Act 1974* in respect of a motor vehicle, the Commissioner may —
- (a) determine the market value of the motor vehicle as at the date the person became the owner of the motor vehicle;
  - (b) assess the duty payable by the person as if the licence had been transferred on the application of the person; and
  - (c) serve a notice of the assessment on the person.
- (10D) The Commissioner shall not take action to recover any duty or fine payable under this section if a licensing authority is taking action to recover the duty or fine, and *vice versa*.
- (11) If the Commissioner considers that duty has been paid or assessed on the basis of a value of a motor vehicle that is less than the market value at the time of the application he may, notwithstanding that the licence for the vehicle has been issued or transferred and an amount of duty has been paid, serve —
- (a) a notice of assessment showing the duty or the balance of the duty assessed on the person liable under item 14 of the Second Schedule to pay the duty;

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(b) a notice of assessment showing the proportion of the duty assessed on a person liable under subsection (12) to pay a proportion of duty.

(12) If —

(a) duty has been paid or assessed on the basis of a value of a motor vehicle that is less than the market value at the time of the application; and

(b) the seller of the motor vehicle has in a statement under subsection (8)(b) understated the purchase price of the vehicle,

the seller is liable to pay the part of the duty that relates to the difference between the purchase price stated by him and the lesser of the actual purchase price or the market value of the vehicle.

(13) The liability of the seller under subsection (12) is joint and several with the liability of the person referred to in item 14 of the Second Schedule.

(13A) Section 31A(1a), (1b), (3), (4) and (5) and section 32 apply to a notice under subsection (10C) or (11) as if it were a memorandum created by the Commissioner and an assessment of duty under section 31A.

(13B) Section 32 applies to an assessment or a determination made by a licensing authority under this Part as if it were an assessment or determination, as the case requires, made by the Commissioner.

(13C) If a traffic infringement notice issued under section 102 of the *Road Traffic Act 1974* for an alleged offence against section 24(2c) of that Act specifies the amount referred to in subsection (10B), the person to whom it is issued shall not object under section 32 to the assessment made under subsection (10) unless he has paid the total amount payable under and in respect of the infringement notice.

(14) A person who for the purposes of this section makes any return, statement, certificate or valuation, or furnishes any evidence,

which is false in a material particular commits an offence against this Act.

- (15) Section 75A does not apply to any determination by the Commissioner of the market value of a motor vehicle for the purposes of this section.
- (16) A person referred to in subsection (8)(a) who fails or refuses to comply with paragraph (a)(i) or (ii) of that subsection commits an offence.
- (17) A seller of a motor vehicle who fails or refuses to comply with subsection (8)(b) commits an offence.
- (18) If under the *Road Traffic Act 1974* a licence is issued to a person and, within 15 months after the date of the issue, the Director General or a specified person under that Act —
- (a) determines that the person did not have to pay the vehicle licence fee at the time of the issue; and
  - (b) refunds the whole of that vehicle licence fee paid by the person,

the Commissioner shall refund the whole of the duty paid by the person in respect of the issue of the licence.

- (19) If under the *Road Traffic Act 1974* a licence is transferred to a person and, within 15 months after the date of the transfer, the Director General or a specified person under that Act determines that had the person applied for the issue of a licence at the date of the transfer, he would not have had to pay a vehicle licence fee, the Commissioner shall refund the duty paid by the person in respect of the transfer.

*[Section 76C inserted by No. 37 of 1979 s. 54; amended by No. 106 of 1981 s. 38; No. 84 of 1985 s. 9; No. 41 of 1989 s. 18; No. 52 of 1991 s. 16; No. 41 of 1995 s. 7; No. 57 of 1995 s. 9; No. 76 of 1996 s. 45; No. 13 of 1997 s. 44; No. 24 of 1999 s. 5 and 7<sup>21</sup>.]*

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**76CA. Duty on transfer of motor vehicle licence not passing a beneficial interest**

- (1) Upon application made in the manner provided in subsection (4) the Commissioner may authorise duty in accordance with item 6 of the Second Schedule to be charged on a transfer of a licence for a motor vehicle when the Commissioner is satisfied that the proposed transfer —
- (a) is to be made for effectuating the appointment of a new trustee, or the retirement of a trustee, whether the trust is expressed or implied;
  - (b) is to be made to a beneficiary by a trustee or by another person in a fiduciary capacity, except a discretionary trustee or a unit trustee, under any trust whether express or implied;
  - (c) is to be made to a beneficiary by a discretionary trustee under any trust whether express or implied otherwise than in exercise of any power of appointment;
  - (d) is to be made by a discretionary trustee of a trust, in exercise of a power of appointment over that motor vehicle, to a beneficiary who is a natural person for his or her own use and benefit, if —
    - (i) at the time when the discretionary trustee acquired the motor vehicle 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 whose favour the discretionary trustee was empowered by that instrument to appoint the motor vehicle; and
    - (ii) the motor vehicle was acquired by the discretionary trustee as such trustee of that trust;
  - (e) is to be made to the holder of a unit in a unit trust scheme by a unit trustee if —
    - (i) the motor vehicle was acquired by the unit trustee as such trustee of that unit trust;

- (ii) the proposed transfer will have the effect of reducing the rights of the holder of the unit in respect of the property held by the unit trustee to the extent of the motor vehicle, or the value of the motor vehicle, proposed to be transferred; and
  - (iii) the proposed transfer will not have the effect of varying, abrogating or altering the rights of the holder or holders of other units under the unit trust scheme in respect of the remaining property held by the unit trustee;
- or
- (f) does not otherwise come within this section but —
    - (i) will not pass a beneficial interest in the motor vehicle licence proposed to be transferred;
    - (ii) is not to be made in contemplation of the passing of a beneficial interest therein; and
    - (iii) will not be part of, or made pursuant to, a scheme whereby any beneficial interest in the licence proposed to be transferred, whether vested or contingent, has passed or will or may pass.
- (2) A transfer of a licence for a motor vehicle which is accompanied by an authorisation issued by the Commissioner under subsection (1) —
- (a) shall be charged with duty under item 6 of the Second Schedule; and
  - (b) is not subject to the requirements of section 76C(8).
- (3) Where duty has been paid under item 14 of the Second Schedule on a transfer, the person liable to pay the duty may, within a period of 12 months after the payment of that duty, make application in the manner provided in subsection (4) for the duty on that transfer to be re-assessed on the basis of item 6 of the Second Schedule and if the Commissioner is satisfied that the transfer is a transfer to which subsection (1) would have applied

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had application been made to the Commissioner under that subsection before the licence was transferred the Commissioner shall refund the difference between the duty paid and the duty so re-assessed as determined by the Commissioner.

- (4) An application under subsection (1) or (3) shall —
- (a) be made in writing in a form approved by the Commissioner; and
  - (b) be accompanied by —
    - (i) where the application is under subsection (1), an application for a transfer of the licence for the relevant motor vehicle; and
    - (ii) such record or other information as the Commissioner may require.
- (5) For the purposes of this section the Commissioner may by notice in writing require any person to provide, within such reasonable time as may be specified in that notice, such further record or other information specified in the notice as that person may be able to give.
- (6) A person who, in an application under subsection (1) or (3) or in providing a record or information under subsection (5), provides a false record or makes a statement which is false in any material particular commits an offence under this Act.
- (7) In this section each of the terms —  
**“discretionary trustee”, “trustee” and “unit trust scheme”**  
has the same meaning as it has in section 63.

*[Section 76CA inserted by No. 41 of 1995 s. 8(1)<sup>22</sup>; amended by No. 13 of 1997 s. 45.]*

**76CB. Duty on certain licences and transfers of motor vehicles**

- (1) In this section —  
**“eligible vehicle”** means a motor vehicle which is a —
- (a) caravan (motor propelled);

- (b) mobile crane;
- (c) motor wagon;
- (d) tractor plant; or
- (e) tow truck,

as each of those motor vehicles is described in the First Schedule to the *Road Traffic Act 1974*, or such other class of motor vehicle as is prescribed for the purposes of this section;

**“specialized equipment”** means —

- (a) plant or equipment referred to in the description of an eligible vehicle in the First Schedule to the *Road Traffic Act 1974*; or
  - (b) plant or equipment not so referred to, but which —
    - (i) forms part of an eligible vehicle; and
    - (ii) without which the eligible vehicle is not able to be licensed under the *Road Traffic Act 1974*.
- (2) Subject to subsection (3), this section applies to an eligible vehicle to which specialized equipment is affixed where —
- (a) the value of that specialized equipment has been taken into account in determining the market value for the purposes of this Part of another motor vehicle which is licensed or was last licensed in the name of the person applying for the issue or transfer of a licence to which this Part applies (**“the applicant”**); and
  - (b) the applicant intends to continue to use the specialized equipment in the future operation of the eligible vehicle.
- (3) This section does not apply to a vehicle (**“the subsequent vehicle”**) where duty has been assessed, or a refund paid, under this section by reason of a vehicle (**“the initial vehicle”**) licensed in the name of the applicant being a vehicle to which this section applied, if the Commissioner or the licensing

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authority is of the opinion that the specialized equipment affixed to the subsequent vehicle is the same specialized equipment which was affixed to the initial vehicle.

- (4) A person applying for the issue or transfer of a licence in relation to a vehicle, at the time of making that application, may apply in the manner provided in subsection (10) —
  - (a) for the vehicle to be a vehicle to which this section applies; and
  - (b) for duty under item 14 of the Second Schedule on that licence or transfer to be assessed on the market value of the vehicle determined as if the specialized equipment were not attached to that vehicle (“**net market value**”).
- (5) A person making an application under subsection (4) shall comply with section 76C(8) in all respects except for the payment of duty with the application.
- (6) Where a licensing authority is satisfied that a vehicle is a vehicle to which this section applies the licensing authority shall —
  - (a) assess the amount of duty payable on the licence or transfer on the basis of its determination of the net market value of the vehicle instead of the market value of that vehicle; and
  - (b) notify the applicant of the amount of duty payable,and the amount of duty payable shall be paid by the applicant upon receipt of the notification referred to in paragraph (b).
- (7) Where a licensing authority is not satisfied that a vehicle is a vehicle to which this section applies the licensing authority shall notify the applicant of that decision and the amount of duty based on the market value shown in the statement made under section 76C(8) or as determined by the licensing authority under section 76C(9), as the case requires, shall be paid by the applicant upon receipt of that notification.



- (8) Subsections (11) and (12) of section 76C apply to an application for the issue or transfer of a licence in relation to a vehicle to which this section applies as if a reference in those subsections to market value, were a reference to net market value.
- (9) Where duty has been paid on a licence or transfer under this Part and the assessment of that duty was based on a determination of the market value of the vehicle, the person liable to pay the duty may, within a period of 12 months after the payment of that duty, make application in the manner provided in subsection (10) —
- (a) for the vehicle to be a vehicle to which this section applies; and
  - (b) for the duty on that licence or transfer to be re-assessed on the basis of a determination of the net market value of the vehicle,

and if the Commissioner is satisfied that a refund should be paid the Commissioner shall refund the difference between the duty paid and the duty so re-assessed as determined by the Commissioner.

- (10) An application under subsection (4) or (9) shall —
- (a) be made in writing in a form approved by the Commissioner; and
  - (b) be accompanied by such record or other information as the Commissioner may require.
- (11) For the purposes of this section the Commissioner may by notice in writing require any person to provide, within such reasonable time as may be specified in that notice, such further record or other information specified in the notice as that person may be able to give.
- (12) A person who, in an application under subsection (4) or (9) or in providing a record or information under subsection (11),

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provides a false record or makes a statement which is false in any material particular commits an offence under this Act.

*[Section 76CB inserted by No. 41 of 1995 s. 8(1)<sup>22</sup>; amended by No. 13 of 1997 s. 46.]*

*[Part IIICA (section 76D) repealed by No. 13 of 1997 s. 39<sup>23</sup>.]*

## Part IIID — Leases

[Heading inserted by No. 37 of 1979 s. 56.]

### 77. Agreement for any lease to be charged as a lease

- (1) An agreement for a lease, or with respect to the letting of any lands or tenements for any term, is to be charged with duty under item 12 of the Second Schedule as if it were an actual lease made for the term and consideration mentioned in the agreement.
- (2) A lease made subsequently to and in conformity with an agreement referred to in subsection (1) shall not be liable to duty and the Commissioner shall, on production to him of that agreement, duly stamped, denote on that lease the duty paid on that agreement, whereupon that lease shall be deemed to be duly stamped.

[Section 77 amended by No. 113 of 1965 s. 8(1); No. 37 of 1979 s. 57.]

### 78. Leases — how to be charged in respect of produce, etc.

- (1) Where the consideration or any part of the consideration for which any lease is granted or agreed to be granted does not consist of money, but consists of any produce or other goods, the value of such produce or goods is to be deemed a consideration in respect of which the lease or agreement is chargeable with *ad valorem* duty. And where it is stipulated that the value of such produce or goods is to amount at least to, or is not to exceed a given sum, or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of such produce or goods is, for the purpose of assessing the *ad valorem* duty, to be estimated at such given sum or according to such permanent rate.
- (2) A lease or agreement for a lease made either entirely or partially for any such consideration, if it contains a statement of the value of such consideration, and is stamped in accordance with such

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statement, is, so far as regards the subject matter of such statement, to be deemed duly stamped, unless or until it is otherwise shown that such statement is incorrect, and that it is in fact not duly stamped.

**79. Directions as to duty in certain cases**

- (1) A lease or agreement for a lease, or with respect to any letting, is not to be charged with any duty in respect of any penal rent or increased rent in the nature of a penal rent thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease or agreement of or relating to the same subject matter.
- (2) No lease or agreement for a lease made for any consideration or considerations in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease or agreement for a lease; is to be charged with any duty in respect of such further consideration.

Provided that this subsection shall not apply as respects any further consideration in the lease or agreement for a lease consisting of a covenant which if it were contained in a separate deed would be chargeable with *ad valorem* duty, and accordingly the lease or agreement for a lease shall in any such case be charged with duty in respect of any such further consideration under section 19.

- (3) An instrument, whereby the rent reserved by any other instrument chargeable with duty and duly stamped is increased, is not to be charged with duty otherwise than as a lease in consideration of the additional rent thereby made payable.
- (4) When the amount of rent payable in respect of a lease or agreement for a lease is a nominal amount or unascertainable at the time of granting or entering into the lease or agreement for a

lease, the Commissioner may express his opinion in accordance with section 31 with reference to the amount of duty with which the lease or agreement for a lease is chargeable.

- (5) The Commissioner shall, for the purposes of subsection (4), ascertain the fair annual rental of the property which is the subject of the lease or agreement for a lease concerned and apply the rates of duty set out in item 12 of the Second Schedule.
- (6) In this Act, for the purposes of determining the rent reserved or payable under a Homeswest lease entered into on or after 1 September 1992, the rent is to be taken to be, and since that date is to be taken always to have been, the rent payable after taking into account any subsidization of the rent by The State Housing Commission.
- (7) In subsection (6) —  
“**Homeswest lease**” means a lease, or an agreement for a lease, of any lands or tenements for use as a dwellinghouse from The State Housing Commission.

*[Section 79 amended by No. 37 of 1979 s. 58; No. 20 of 1996 s. 37.]*

**80. Duty on periodic re-appraisal of rent**

A lease or agreement for a lease whereby provision is made for a fixed rent which is subject to periodic re-appraisal whereby the amount of that rent may be increased or reduced to an amount which is not ascertainable at the time when that lease or agreement is granted or entered into shall be charged with duty under item 12 of the Second Schedule as an actual lease for the term stated therein and shall in addition be charged with duty under subitem (5) of that item in respect of each re-appraisal of the rent.

*[Section 80 inserted by No. 37 of 1979 s. 59; amended by No. 18 of 1998 s. 11.]*

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**80A. Power of exemption or refund for certain purposes**

Where the Commissioner is satisfied that any lease or agreement for a lease has been made for the purpose of a university or for charitable or similar public purposes, he may exempt from duty, or refund any duty paid on, that lease or agreement for a lease.

*[Section 80A inserted by No. 14 of 1983 s. 3.]*

## Part III E — Mortgages and other securities

[Heading inserted by No. 37 of 1969 s. 60.]

### 81. Interpretation in Part III E

- (1) The term “**mortgage**” means a security by way of mortgage for the payment of any definite and certain sum of money advanced and lent at the time or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current together with any sum already advanced or due, or without (as the case may be) and includes any agreement, contract or bond, whether or not accompanied by a deposit of title deeds, for making a mortgage, or any such other security of any lands, estate or property comprised in the title deeds, or for pledging or charging the same as a security, and any security for periodical payments or repayments of money.
- (2) The term “**title deeds**” includes documents of title over any kind of property.

[Section 81 amended by No. 37 of 1979 s. 61; No. 52 of 1991 s. 4.]

### 82. Duty chargeable on certain transfers or conveyances by way of security

- (1) Subject to this section, an instrument of mortgage which by itself or in conjunction with another instrument effects a conveyance or transfer of any estate or interest in —
  - (a) freehold land registered under the *Transfer of Land Act 1893*;
  - (b) a Crown lease registered under that Act;
  - (c) a mining tenement registered under the *Mining Act 1978*; or

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- (d) a marketable security or right in respect of shares, is chargeable with duty under item 4 or 4A(1), as the case requires, of the Second Schedule as a conveyance or transfer of that estate or interest.
- (2) References in items 4 and 4A(1) of the Second Schedule to consideration shall, for the purposes of this section, be construed as references to the amount or value of the estate or interest conveyed or transferred.
- (3) The mortgagor or obligor under an instrument of mortgage referred to in subsection (1) is liable to pay duty with which it is chargeable.
- (4) Subsection (1) does not apply to or in relation to an instrument of mortgage which is, in the opinion of the Commissioner, a *bona fide* instrument of mortgage.

*[Section 82 inserted by No. 81 of 1984 s. 28; amended by No. 39 of 1994 s. 14; No. 48 of 1996 s. 34.]*

**83. Security for future advances, how to be charged**

- (1) A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current either with or without money previously due is to be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with duty under item 13 of the Second Schedule as a security for the amount so limited.
- (1a) Where —
  - (a) a security, or a deemed instrument of security under subsection (3), for the payment or repayment of an amount in excess of \$35 000 is given or made for the purpose of securing the payment or repayment of money that is being, is to be, or has been, used wholly in or towards the cost of —
    - (i) purchasing any property which includes a dwellinghouse used or intended to be used as the principal place of residence of the mortgagor or



obligor, being property used solely or principally for residential purposes associated with that dwellinghouse;

- (ii) erecting a dwellinghouse which the mortgagor or obligor uses or intends to use as his principal place of residence;
- (iii) effecting improvements or additions to a dwellinghouse occupied or intended to be occupied by the mortgagor or obligor as his principal place of residence; or
- (iv) repaying moneys which have been used wholly in or towards the cost of —
  - (A) purchasing any property which includes a dwellinghouse used by the mortgagor or obligor as his principal place of residence, being property used solely or principally for residential purposes associated with that dwellinghouse; or
  - (B) erecting, or effecting improvements or additions to, a dwellinghouse used by the mortgagor or obligor as his principal place of residence;

and

- (b) the mortgagor or obligor is a natural person,

the instrument concerned is —

- (c) in the case of a security referred to in subsection (1), or a deemed instrument of security under subsection (3), chargeable with *ad valorem* duty at the rate set out under item 13(1a) of the Second Schedule; and
- (d) in the case of a security referred to in subsection (2), chargeable with *ad valorem* duty at the rate set out under item 13(1a) of the Second Schedule on —
  - (i) the total amount secured or to be ultimately recoverable thereunder; or

- (ii) the amount of \$2 000,  
whichever is the greater.
- (1b) Where a security, or deemed instrument of security under subsection (3), for the payment or repayment of an amount in excess of \$35 000 is given or made for the purpose of securing the payment or repayment of money that is being, is to be, or has been, used partly in or towards the cost of the matters described in subsection (1a)(a)(i), (ii), (iii) or (iv), and the mortgagor or obligor is a natural person —
  - (a) the instrument concerned is chargeable with *ad valorem* duty at the rate set out under item 13(1a) of the Second Schedule to the extent of that part; and
  - (b) the instrument concerned is chargeable with *ad valorem* duty in accordance with subsection (1) or (2), as the case requires, to the extent of the balance as if that balance were a new and separate instrument of security.
- (2) Subject to subsections (1a) and (1b), when the total amount secured or to be ultimately recoverable by or under an instrument of security is not in any way limited, the instrument concerned shall be chargeable with *ad valorem* duty at the rate set out under item 13(2) of the Second Schedule on —
  - (a) the total amount secured or to be ultimately recoverable thereunder; or
  - (b) an amount of \$2 000,  
whichever is the greater.
- (3) A security referred to in subsection (2) shall be available only for the amount in respect of which duty is denoted on that instrument, but when an advance or loan in excess of that amount is made or the indebtedness thereby secured is increased, the instrument of security concerned shall be chargeable with additional *ad valorem* duty in respect of the excess or increase and the additional advance or loan or indebtedness is, for the purpose of duty, deemed to be a new

and separate instrument of security executed in Western Australia on the day on which that advance or loan is made or that indebtedness is increased and, without prejudice to any other provisions of this Act, subject to the provisions of sections 20 and 39 accordingly.

- (3a) Notwithstanding subsection (3), where an advance or loan is made in excess of the amount in respect of which duty is denoted on an instrument referred to in subsection (2), or indebtedness secured by an instrument referred to in subsection (2) is increased, *ad valorem* duty in respect of that excess or increase is, subject to subsections (1a) and (1b), chargeable —
- (a) at the rate set out under item 13(2)(a) of the Second Schedule to the extent that the sum of —
    - (i) the amount in respect of which duty is denoted on that instrument; and
    - (ii) the amount of the advance or loan, or the advance or loan and one or more additional advances or loans, or the total amount of the increase in indebtedness, does not exceed \$35 000; and
  - (b) at the rate set out under item 13(2)(b) of the Second Schedule in subparagraph (ii) of the column headed “Duty payable” to the extent that the sum referred to in paragraph (a) exceeds \$35 000.
- (4) Each mortgagor or obligor and each mortgagee or obligee under an instrument of security referred to in subsection (2) or a deemed instrument of security under subsection (3) is liable to pay duty with which the instrument or the deemed instrument, as the case may be, is chargeable.
- (5) If a security referred to in subsections (2) and (3) is registered under any Act relating to the registration of securities, that registration shall be effective in respect of the additional

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advance or loan or indebtedness, but subject in the case of a bill of sale to section 6(4) of the *Bills of Sale Act 1899*.

- (6) Additional duty referred to in subsection (3) may be paid and denoted from time to time as further advances or loans are made or as indebtedness is further increased by stamps impressed on or affixed to the security concerned and, in the case of adhesive stamps or adhesive coupons, duly cancelled or by endorsement under section 112V.
- (7) When the original security concerned is deposited in the Department within the meaning of the *Transfer of Land Act 1893* or any other public office in which registration is required, any duplicate or counterpart of the original instrument may be stamped with the additional duty referred to in subsection (3) and that stamping shall have the same effect as if the stamps concerned had been impressed on or affixed to the original instrument.
- (8) Notwithstanding anything in this section no money to be advanced for the insurance of any property comprised in any such security against damage by fire, or for keeping up any policy of life insurance comprised in the security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in the security upon the dropping of any life whereon the property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty.

*[Section 83 amended by No. 9 of 1974 s. 10; No. 37 of 1979 s. 63; No. 81 of 1984 s. 29; No. 109 of 1984 s. 6; No. 41 of 1989 s. 20; No. 81 of 1996 s. 153(2).]*

**84. Charges secured on property in and out of the State**

- (1) Where money to be paid or repaid, or which is ultimately recoverable, under an instrument of security is secured wholly or in part on property out of the State duty shall, subject to this section, be payable as provided under this Part and item 13 of the Second Schedule on the full amount of such money.

(2) If the Commissioner is satisfied that any duty of a like nature to duty payable under subsection (1) has been paid in respect of the instrument, or any other instrument that secures the same money, in another State or Territory of the Commonwealth the duty calculated under subsection (1) shall be reduced by —

- (a) the same proportion of the duty payable under subsection (1) as the value of the property situated in that other State or Territory bears to the aggregate value of all property to which the instrument relates; or
- (b) the actual amount of the duty that is paid or payable in that other State or Territory,

whichever is the lesser.

(2a) If the Commissioner is satisfied that the instrument, or any other instrument that secures the same money, is an exempt instrument in another State or Territory the duty calculated under subsection (1) shall be reduced by —

- (a) the same proportion of the duty payable under subsection (1) as the value of the property situated in that other State or Territory bears to the aggregate value of all property to which the instrument relates; or
- (b) the actual amount of the duty that would have been payable in that other State or Territory if the instrument or other instrument had not been exempt,

whichever is the lesser.

(2b) If the Commissioner is satisfied —

- (a) that the instrument, or any other instrument that secures the same money, is an exempt instrument in another State or Territory, or would have been an exempt instrument in another State or Territory if the instrument had related to property in that State or Territory; and
- (b) that in another State or Territory (not being the State or Territory referred to in paragraph (a)) no duty of a like

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nature to duty payable under subsection (1) is payable in respect of instruments,

the duty calculated under subsection (1) shall be reduced by the same proportion of the duty payable under subsection (1) as the value of the property situated in the State or Territory referred to in paragraph (b) bears to the aggregate value of all property to which the instrument relates.

- (2c) For the purposes of subsections (2a) and (2b) an instrument is an exempt instrument in a State or Territory if, under a prescribed provision of a law of that State or Territory, it is exempt from duty that —
- (a) would otherwise be payable under a law of that State or Territory; and
  - (b) is of a like nature to duty payable under subsection (1).
- (2d) Notwithstanding subsection (2c), regulations may declare that instruments of a class specified in the regulations are not exempt instruments for the purposes of subsections (2a) and (2b).
- (3) Where a reduction is allowed under subsection (2), (2a) or (2b) the Commissioner shall denote on the instrument the amount of the reduction that has been allowed, the date of the allowance, and the duty payable.
- (4) Notwithstanding subsection (2), where an instrument referred to in subsection (1) is produced to the Commissioner and the person liable to pay the duty thereon gives notice in writing to the Commissioner that he intends to pay or cause to be paid duty on the instrument, or any other instrument securing the same moneys, in another State or Territory of the Commonwealth, the following provisions shall apply —
- (a) the instrument may be stamped under subsection (2) as if the duty had been paid in another State or Territory and may be released for that purpose to the person who produced it;

- (b) the Commissioner shall issue an assessment of duty for the difference between the amount of duty payable under subsection (1) and the duty paid under paragraph (a);
- (c) if the instrument is produced to the Commissioner within 3 months after the issue of the assessment, or where reasonable cause has been shown to the Commissioner such further period as he allows in the circumstances, together with proof of payment of the duty payable in another State or Territory the assessment ceases to have effect and the instrument shall be denoted accordingly;
- (d) if paragraph (c) is not complied with —
  - (i) the assessment is payable at the expiration of the period of 3 months after it was issued, or any further period allowed by the Commissioner under paragraph (c), together with a fine under section 20(3);
  - (ii) no reduction shall be allowed for any duty paid in another State or Territory; and
  - (iii) the instrument is available only for the amount in respect of which duty has been paid under paragraph (a) as if the instrument related to property only in Western Australia until the assessment and penalty (if any) are paid in full.

*[Section 84 inserted by No. 33 of 1987 s. 23; amended by No. 100 of 1987 s. 6; No. 41 of 1989 s. 21.]*

*[84A. Repealed by No. 39 of 1994 s. 9.]*

*[85, 86. Repealed by No. 37 of 1979 s. 64.]*

**87. Collateral, additional or substituted securities**

- (1) Where an instrument of security for moneys (“**the stamped instrument**”) is duly stamped under item 13 of the Second

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Schedule and duty is chargeable under item 13 on another instrument that is security for some or all of the same moneys, that duty is to be calculated —

- (a) where it is chargeable at an *ad valorem* rate that is the same as the *ad valorem* rate that was applied to the stamped instrument — by deducting from the amount chargeable under item 13 an amount equal to the amount of duty that was paid on the stamped instrument in respect of moneys for which the other instrument is security;
  - (b) where it is chargeable at an *ad valorem* rate (“**the new rate**”) that is different from the *ad valorem* rate that was applied to the stamped instrument — by deducting from the amount chargeable under item 13 an amount equal to the amount of duty that would have been charged on the stamped instrument in respect of moneys for which the other instrument is security if duty on the stamped instrument had been charged at the new rate.
- (1a) Where a reduction of duty was allowed under section 84 in respect of the stamped instrument, no reduction of duty is to be allowed under subsection (1) in respect of the other instrument unless the person liable to pay duty on the other instrument provides the Commissioner with the necessary information, in a form approved by the Commissioner, to enable an assessment of duty to be made.
- (1b) Subsection (1)(b) does not apply if the difference in *ad valorem* rates results from duty on the other instrument being chargeable under item 13(1)(b) of the Second Schedule whereas duty on the stamped instrument was charged under item 13(1)(a), (1a) or (2).
- (2) When a deed of defeasance or other instrument executed for the purpose of defeasing or making redeemable or explaining or qualifying any conveyance or transfer has been duly stamped under item 13 of the Second Schedule, any conveyance or transfer of any estate or interest in property, other than that



described in section 82(1)(a), (b), (c) and (d), apparently absolute but intended only as security pursuant to that deed or other instrument shall not be chargeable with any further duty.

- (3) The Commissioner shall denote on the conveyance or transfer referred to in subsection (2) the payment of the *ad valorem* duty on that deed or other instrument and that conveyance or transfer shall thereupon be deemed to be duly stamped.

*[Section 87 inserted by No. 37 of 1979 s. 65; amended by No. 93 of 1982 s. 6; No. 81 of 1984 s. 30; No. 109 of 1984 s. 8; No. 33 of 1987 s. 24; No. 52 of 1991 s. 5.]*

*[87A. Repealed by No. 37 of 1979 s. 66.]*

**88. Instruments that can become securities on a future act or event**

- (1) If an instrument is not an instrument of security when it is executed but it will become an instrument of security, or evidence of the terms of a security, if —
- (a) a deposit of title deeds occurs; or
  - (b) any other matter, thing or event is done or happens,
- the instrument is deemed for the purposes of this Part to be an instrument of security for the payment or repayment of money and is chargeable with duty under item 13 of the Second Schedule as an instrument of that kind.
- (2) Where the matter, thing or event mentioned in subsection (1)(b) is the exercising of an option or right —
- (a) it does not matter whether the option or right is granted before, at the time of, or after the execution of the instrument; but
  - (b) if the option or right is granted after the execution of the instrument, section 20 applies to the instrument as if references in that section to the execution of the instrument were references to the granting of the option or right.

*[Section 88 inserted by No. 52 of 1991 s. 6.]*

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**88A. Instruments held outside the State that become securities**

(1) Where —

- (a) section 88(1) does not extend and apply to an instrument held in some place outside Western Australia because the instrument does not necessarily relate to property situate in Western Australia or to any matter or thing to be done in Western Australia; but
- (b) the instrument becomes an instrument of security, or evidence of the terms of a security, on —
  - (i) the deposit (in Western Australia or elsewhere) of title deeds to property situate in Western Australia; or
  - (ii) the doing of any matter or thing in Western Australia,

this Part applies and extends to the instrument as an instrument of security for the payment or repayment of money and the instrument is chargeable with duty under item 13 of the Second Schedule as an instrument of that kind.

(2) Section 20 applies to the instrument as if references in that section to the execution of the instrument were references to the time at which it became an instrument of security.

*[Section 88A inserted by No. 52 of 1991 s. 6.]*

**89. Contingent securities**

(1) If an instrument of security —

- (a) secures the performance of financial obligations that are directly or indirectly related to financial obligations under another transaction; or
- (b) will, if any matter, thing or event is done or happens, secure the performance of financial obligations that are directly or indirectly related to financial obligations under another transaction,

the provisions of this Part and item 13 of the Second Schedule apply to the instrument of security as if —

- (c) the total amount secured or payable or to be ultimately recoverable or payable under the other transaction were secured or ultimately recoverable under the instrument of security; and
  - (d) any advances, loans, indebtedness or money made, arising or payable from time to time under the other transaction were advances, loans or indebtedness made or recoverable under the instrument of security.
- (2) It does not matter whether the parties to the other transaction are, or are not, the same persons as the parties to the instrument of security.
- (3) A reference in this section to another transaction includes a reference to —
- (a) one or more instruments or agreements forming part of a transaction that includes the instrument of security; or
  - (b) a series of other transactions.

*[Section 89 inserted by No. 52 of 1991 s. 6.]*

**90. Limits on application of sections 88 to 89**

- (1) Sections 88 and 88A do not apply to an instrument that is executed by a person for the purpose of conducting the person's money market trading operations.
- (2) Regulations may exempt instruments of a specified class from the operation of any or all of sections 88 to 89.

*[Section 90 inserted by No. 52 of 1991 s. 6.]*

**90A. Power to exempt certain instruments of security from duty**

When the Commissioner is satisfied that any mortgage, bond, debenture, covenant, bill of sale, guarantee, lien or other instrument of security has been given or made for the purpose of

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securing the payment or repayment of money that is being or is to be used for, or has been used for, a university or any charitable or similar public purpose, he may exempt from duty, or refund any duty paid on, that mortgage, bond, debenture, covenant, bill of sale, guarantee, lien or other instrument of security.

*[Section 90A inserted by No. 37 of 1979 s. 67; amended by No. 81 of 1984 s. 31.]*

*[91 and heading. Repealed by No. 96 of 1976 s. 6.]*

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## Part IIIF — Policies of insurance

[Heading inserted by No. 37 of 1979 s. 68.]

### 92. Interpretation in Part IIIF

In this Part, except so far as the context requires otherwise —

**“insurance company”** includes the Insurance Commission of Western Australia continued under the *Insurance Commission of Western Australia Act 1986*;

**“person resident in the State”** includes any body corporate —

- (a) which is a corporation; or
- (b) which carries on business in the State;

**“policy of insurance”** includes every certificate, receipt or declaration concerning the existence of any instrument of guarantee or indemnity or any agreement for any insurance or any instrument whereby any contract of insurance is made and which operates in Western Australia wholly or in part as an insurance, whether issued in or outside Western Australia, and includes a policy of insurance against accident;

**“policy of insurance against accident”** means a policy of insurance for any payment agreed to be made on the death of any person only from accident or violence or otherwise than from a natural cause or as compensation for personal injury;

**“policy of life insurance”** means 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, except a policy of insurance against accident;

**“premium”**, in respect of a policy of insurance or a policy of insurance against accident, means the gross premium reckoned so as to include any commission or discount paid in respect of that premium.

[Section 92 inserted by No. 37 of 1979 s. 69; amended by No. 10 of 1982 s. 28; No. 41 of 1989 s. 23; No. 49 of 1992 s. 29; No. 39 of 1994 s. 21; No. 45 of 1996 s. 38.]

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**92A. Duty payable on returns where policy issued out of the State**

- (1) Every person resident in the State who effects a policy of life insurance or any insurance in respect of property in the State, or in respect of any liability, loss or damage occurring, or brought about by the happening of any event, within the State, for which insurance a policy of insurance or renewal of any such policy is or is to be issued outside the State shall within one month after effecting the insurance furnish to the Commissioner a return containing such particulars and information as to the insurance as the Commissioner requires in writing.
- (2) Every return under subsection (1) is liable to the same duty as would have been chargeable if the insurance to which it relates had been effected under a policy of insurance issued in the State.
- (3) The person liable for payment of the duty under subsection (2) is the person who effected the insurance, and the duty is, subject to subsection (4), payable upon the lodgement of the return with the Commissioner or at such later time as the Commissioner allows.
- (4) Where the policy of insurance or renewal has, before the expiration of the period specified in subsection (1) for the furnishing of the return to the Commissioner, or where the Commissioner has allowed further time, before the expiration of that time, been received in the State and duly stamped, no duty is payable under this section in respect of that policy of insurance or renewal.
- (5) Any person resident in the State who effects any insurance of the nature referred to in subsection (1) and who —
  - (a) neglects or fails to furnish a return as required by that subsection; or
  - (b) accepts payment of, or agrees to have allowed to him on account, any money upon or in respect of any insurance

for which a return as required by that subsection has not been furnished,

commits an offence against this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to double the duty that would have been payable had the return been so furnished.

- (6) A person who furnishes a return pursuant to subsection (1) that is false or misleading commits an offence against this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to double the duty evaded.

*[Section 92A inserted by No. 54 of 1968 s. 5; amended by No. 32 of 1972 s. 5; No. 37 of 1979 s. 70; No. 61 of 1983 s. 3.]*

**92AA. Duty payable on returns where insurer not liable**

- (1) A person who effects any insurance in respect of property in the State, or in respect of any liability, loss or damage occurring, or brought about by the happening of any event, within the State, for which insurance a policy of insurance or renewal of any such policy is or is to be issued by a person who is not liable to pay duty under this Act shall within one month after effecting the insurance furnish to the Commissioner a return containing such particulars and information as to the insurance as the Commissioner requires in writing.
- (2) Every return under subsection (1) is liable to the same duty as would have been chargeable if the insurance to which it relates had been effected under a policy of insurance issued by a person who is liable to pay duty under this Act.
- (3) The person liable for payment of the duty under subsection (2) is the person who effected the insurance and the duty is, subject to subsection (4), payable upon the lodgement of the return with the Commissioner or at such later time as the Commissioner allows.

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- (4) Where the policy of insurance or renewal has, before the expiration of the period specified in subsection (1) for the furnishing of the return to the Commissioner, or where the Commissioner has allowed further time, before the expiration of that time, been duly stamped, no duty is payable under this section in respect of that policy of insurance or renewal.
- (5) A person who effects any insurance of the nature referred to in subsection (1) and who —
- (a) neglects or fails to furnish a return as required by that subsection; or
  - (b) accepts payment of, or agrees to have allowed to him on account, any money upon or in respect of any insurance for which a return as required by that subsection has not been furnished,
- commits an offence against this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to double the duty that would have been payable had the return been so furnished.
- (6) A person who furnishes a return pursuant to subsection (1) that is false or misleading commits an offence against this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to double the duty evaded.

*[Section 92AA inserted by No. 14 of 1983 s. 4.]*

**92B. Returns to be made in respect of certain insurance**

- (1) Every person —
- (a) with whom there is effected by any person resident in the State, a policy of life insurance or any insurance in respect of property in the State, or in respect of any liability, loss or damage occurring, or brought about by the happening of any event, within the State, and who in connection therewith issued or issues a policy of insurance or a renewal of any such policy outside the State; or



- (b) who for or on behalf of any person resident in the State arranges, a policy of life insurance or any insurance in respect of property in the State, or in respect of any liability, loss or damage occurring, or brought about by the happening of any event, within the State, for which insurance a policy of insurance or a renewal of any such policy was or is issued outside the State,

shall furnish a return each month to the Commissioner giving such particulars of that policy or renewal as the Commissioner requires in writing.

- (2) A return required to be furnished to the Commissioner under subsection (1) —
- (a) shall be furnished within a period of 15 days after the end of the month to which that return relates;
- (b) may contain particulars of more than one policy of insurance or renewal of a policy of insurance; and
- (c) shall, when no insurance referred to in that subsection has been effected during the month to which that return relates, be a nil return.
- (3) Any person resident in the State —
- (a) shall when required by the Commissioner by notice in writing so to do, furnish to the Commissioner written particulars of any insurance of the nature referred to in section 92A(1); and
- (b) shall furnish those particulars to the Commissioner within the time specified in the notice.
- (4) A person who neglects or fails to furnish a return or written particulars, as the case may be, in accordance with this section or who furnishes any return or written particulars, as the case may be, that is or are false or misleading commits an offence against this Act.

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- (5) A return and any written particulars furnished to the Commissioner under this section are admissible in evidence in any proceedings under section 92A or section 94 and are evidence of the facts stated therein.

*[Section 92B inserted by No. 54 of 1968 s. 6; amended by No. 32 of 1972 s. 6; No. 37 of 1979 s. 71; No. 61 of 1983 s. 4.]*

*[93. Repealed by No. 37 of 1979 s. 72.]*

**94. Penalty for not making out policy**

- (1) Every person who —
- (a) receives or takes credit for any premium or consideration for any contract of insurance, and does not, within 3 months after receiving or taking credit for such premium or consideration, make out and execute a duly stamped policy of such insurance;
  - (b) makes, executes, or delivers out, or pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of any policy which is not duly stamped,

commits an offence against this Act.

- (2) Any person who in consideration of any premium, sum of money, or other valuable consideration, paid, furnished or provided by any person in Western Australia, makes, enters into or renews any contract of insurance for or on behalf of any insurer outside the State shall forthwith issue to any person for whose benefit the insurance is to operate in the State a note or memorandum of the transaction in a form approved by the Commissioner, stamped with the duty which would be chargeable thereon if it were a policy of insurance or a renewal of a policy as the case may be, and any policy or renewal subsequently issued for such consideration shall be deemed to be exempt from duty if a duly stamped note or memorandum of the transaction has been issued as aforesaid.

- (3) A person who contravenes or fails to comply with subsection (2) commits an offence against this Act.
- (3a) Where a person satisfies the Commissioner that he cannot, with reasonable diligence, ascertain the premium paid in respect of a policy of insurance or renewal thereof issued outside the State, the Commissioner may approve of the policy, or document stampable as such or the renewal, as the case may be, being stamped with the duty payable under item 16(2) of the Second Schedule, and the stamping of the policy, document or renewal in accordance with this subsection within one month after it is received in this State constitutes sufficient compliance with the provisions of this section relating to the stamping of, and payment of duty upon, the policy, stampable document or renewal.
- (4) Where duty has been paid under section 92A upon a return furnished under subsection (1) of that section and the policy of insurance or renewal thereof, in respect of the insurance to which the return relates is thereafter received in the State, the duty so paid shall be allowed as a set off against any duty payable under this section in respect of the policy or the renewal.

*[Section 94 amended by No. 113 of 1965 s. 8(1); No. 54 of 1968 s. 7; No. 32 of 1972 s. 7; No. 37 of 1979 s. 73; No. 22 of 1998 s. 55.]*

**95. Policies of reinsurance to be exempt from duty**

No duty shall be chargeable on a transfer or assignment of a policy of fire insurance nor upon any policy upon the face whereof it is expressed that such policy is a policy of reinsurance, and whereby any insurance company, or underwriter, or association of underwriters effects an insurance the subject matter of which, at the time of such reinsurance, is insured under a policy upon which the duty imposed by this Act has been paid before such time.

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**95A. Alternative to stamping of individual insurance policies**

- (1) Notwithstanding anything in this Part an insurance company may apply to the Commissioner in a form approved by him in writing for permission to pay duty in accordance with the provisions of this section in respect of policies of insurance and renewals thereof effected by the insurance company as an alternative to paying duty by the individual stamping of those policies and renewals on which duty is payable.
- (2) The Commissioner may in writing grant or refuse permission applied for under subsection (1) and may at any time in writing revoke permission so granted.
- (3) In granting permission under subsection (2), the Commissioner shall specify the date on which that permission comes into force.
- (4) A person whose application for permission has been granted by the Commissioner under subsection (2) is, while that permission is in force, an approved person for the purposes of this section.
- (5) An approved person shall not pay duty by the individual stamping of any policies of insurance or renewals thereof to which the permission concerned relates.
- (6) Subject to subsection (7), an approved person shall —
  - (a) at such intervals as the Commissioner specifies in writing from time to time lodge with the Commissioner a return in such form as the Commissioner requires in writing;
  - (b) transmit with the return referred to in paragraph (a) the amount of duty payable in respect of the policies and renewals to which that return relates; and
  - (c) endorse on each policy or renewal to which the return referred to in paragraph (a) relates the passage “W.A. Stamp Duty Paid”.

- (7) If no duty is payable in respect of the policies or renewals to which the return concerned relates or, if no policies or renewals were effected during the period to which that return relates, the approved person concerned shall lodge with the Commissioner a nil return.
- (8) An approved person shall maintain a record containing sufficient particulars relating to policies of insurance and renewals thereof effected by the approved person to enable the Commissioner to verify the particulars contained in every return lodged by the approved person.
- (9) Any policy or renewal —
- (a) on which duty has been paid; and
  - (b) which has been endorsed,
- in accordance with subsection (6) is deemed to be duly stamped.
- (10) A person who —
- (a) contravenes or fails to comply with subsection (5), (6), (7) or (8); or
  - (b) lodges with the Commissioner under subsection (6) a return which is false in any material particular,
- commits an offence against this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to double the amount of duty that would have been payable in respect of the return concerned had that return been lodged with the Commissioner in accordance with this section or that is payable in accordance with the particulars given in the return concerned after correction of any false particular therein, as the case may be.
- (11) Notwithstanding anything in this section, an insurance company which was, immediately before the date on which section 74 of the *Stamp Act Amendment Act 1979* came into operation<sup>1</sup>, furnishing the Commissioner with returns in accordance with regulation 7 of the *Stamp Act Regulations 1966*<sup>24</sup>, as from time to time amended, shall be deemed to have applied for, and been granted, permission under this section.

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- (12) In subsections (13) and (14) —
- “**workers’ compensation policy**” means a policy of insurance against an employer’s liability to pay compensation under the *Workers’ Compensation and Rehabilitation Act 1981*.
- (13) It is a defence to a charge under subsection (10)(b) in relation to a return that relates to a workers’ compensation policy in respect of which duty is paid at the rate provided in item 16(1)(a)(ii) of the Second Schedule to prove that the return was false in a material particular because the person charged had been supplied information which was false as to the liability of the person insured to pay pay-roll tax.
- (14) If an approved person is supplied information relating to a workers’ compensation policy —
- (a) which is false in a material particular; and
  - (b) which results in the approved person transmitting to the Commissioner less duty than is payable in respect of the policy under item 16(1)(a) of the Second Schedule,
- the approved person —
- (c) shall include details of the additional duty payable in the next return that the person lodges under subsection (6);
  - (d) shall transmit with the return the additional duty payable; and
  - (e) may recover the additional duty from the person insured under the policy in a court of competent jurisdiction.

*[Section 95A inserted by No. 37 of 1979 s. 74; amended by No. 3 of 2001 s. 22.]*

**96. No duty chargeable on amount received on account of duty**

- (1) This section applies in relation to a policy of insurance referred to in item 16(1)(a), (1)(c) or (3)(a) of the Second Schedule that is issued or renewed on or after 1 November 1989.

- (2) The amount that is chargeable with duty under item 16(1)(a), (1)(c) or (3)(a) of the Second Schedule shall be calculated by ascertaining the total amount paid to the person with whom the policy of insurance is effected in respect of the issue or renewal of the policy.
- (3) Where a policy of insurance or a renewal certificate in respect of a policy of insurance shows an amount that represents the amount payable on account of duty under this Act in respect of the issue or renewal of the policy that amount shall be disregarded for the purposes of the calculation under subsection (2).
- (4) In the case of a policy of insurance to which item 16(3)(a) of the Second Schedule applies the reference in subsection (3) to a policy of insurance includes a reference to a statement of account in respect of a policy of insurance.

*[Section 96 inserted by No. 41 of 1989 s. 24.]*

**97. Workers' compensation policies, refunds of excess duty**

- (1) If on an application made by a person under subsection (2) the Commissioner is satisfied that the person has paid duty at the rate specified in item 16(1)(a)(i) of the Second Schedule but should have paid duty at the rate specified in item 16(1)(a)(ii), the Commissioner may refund the difference.
- (2) An application for a refund under subsection (1) shall —
  - (a) be made within 2 years after the beginning of the relevant insurance policy's cover period;
  - (b) be made in writing, in a form approved by the Commissioner, by the person who issued the policy; and
  - (c) be accompanied by such further information as the Commissioner may require.
- (3) If the Commissioner refunds duty to the person who issued the policy and the duty was originally paid by that person out of

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money provided by the person insured, the person who issued the policy shall —

- (a) reimburse the person insured an amount equal to the refund within 90 days after the refund was paid or within any longer period allowed by the Commissioner; and
  - (b) if the reimbursement is not made within that period — repay the amount of the refund to the Commissioner within 7 days from the end of that period.
- (4) The Commissioner may recover any amount that should have been, but was not, repaid under subsection (3)(b) as if it were unpaid duty.

*[Section 97 inserted by No. 3 of 2001 s. 23.]*

*[98, 99. Repealed by No. 102 of 1970 s. 2.]*

*[99A. Repealed by No. 102 of 1970 s. 7.]*

*[99B. Repealed by No. 102 of 1970 s. 8.]*

*[99C. Repealed by No. 102 of 1970 s. 9.]*

*[99D. Repealed by No. 102 of 1970 s. 2.]*

*[100. Repealed by No. 102 of 1970 s. 10.]*

*[101. Repealed by No. 67 of 1966 s. 12.]*

*[101A. Repealed by No. 102 of 1970 s. 11.]*

*[102, 103. Repealed by No. 5 of 1954 s. 2.]*

*[Part IV: s. 106 repealed by No. 37 of 1979 s. 78*

*Heading and s. 103A, 104, 105, 107 repealed by No. 58 of 1990 s. 4.]*

*[Part IVAA (sections 108 to 112) repealed by No. 6 of 2000 s. 5<sup>25</sup>.]*



## Part IVA — Marketable securities and rights in respect of shares

*[Heading inserted by No. 39 of 1994 s. 10.]*

### Division 1 — Interpretation

*[Heading inserted by No. 39 of 1994 s. 10.]*

*[112A. Repealed by No. 53 of 1999 s. 31.]*

#### **112AB. Share buy-back**

- (1) For the purposes of this Part and of item 4A of the Second Schedule a share buy-back is taken to be a transfer that gives effect to the sale and purchase of shares.
- (2) In this section —
  - “**shares**” includes stock;
  - “**share buy-back**” means a buy-back by a company of its own shares in accordance with —
    - (a) Division 4B of Part 2.4 of the Corporations Act as in force immediately before the commencement of Schedule 1 to the *Company Law Review Act 1998* of the Commonwealth; or
    - (b) Division 2 of Part 2J.1 of the Corporations Law.

*[Section 112AB inserted by No. 58 of 1998 s. 7(1)<sup>26</sup>; amended by No. 10 of 2001 s. 180.]*

### Division 2 — General

*[Heading inserted by No. 39 of 1994 s. 10.]*

#### **112B. Where marketable securities etc. situated**

- (1) These marketable securities and rights in respect of shares (other than a right in respect of shares described in paragraph (b) of the definition in section 4 of “right in respect of

shares”) shall be treated for the purposes of this Act as if they are situated in this State:

- (a) a marketable security or right in respect of shares of a WA company; irrespective of where the register on which it is registered by the company is situated and despite section 1085(3) of the Corporations Act or any other law;
- (b) a marketable security or a right in respect of shares of a foreign company — if it is registered on a register kept in this State by that company;
- (c) a marketable security that is a unit of a unit trust scheme — if the scheme’s principal register is kept in this State;
- (d) a marketable security that is a unit of a unit trust scheme no register of which is kept in Australia —
  - (i) if the scheme has a manager and the manager is a natural person resident in this State or a relevant company; or
  - (ii) if the scheme does not have a manager but has a trustee that is a natural person resident in this State or a relevant company.

[(2) *repealed*]

- (3) Despite section 1085(3) of the Corporations Act or any other law, unless otherwise provided in this Act, a marketable security, or a right in respect of shares, of a company taken to be registered under the Corporations Act in another State or Territory, if registered on a register in this State, shall not, for the purposes of this Act, be treated as if it is situated in this State.
- (4) The situation of a marketable security or a right in respect of shares that is not referred to in this section is not affected by this section.

(5) In subsection (1)(d) —

**“relevant company”** means —

- (a) a WA company; or
- (b) a foreign company with a registered office under the Corporations Act that is situated in this State.

*[Section 112B inserted by No. 48 of 1996 s. 35; amended by No. 22 of 1998 s. 29; No. 53 of 1999 s. 25 and 31; No. 10 of 2001 s. 181.]*

**112BA. Valuing unlisted marketable securities**

(1) In this Act, for the purposes of valuing an unlisted marketable security —

- (a) it is to be assumed that the memorandum and articles of association or rules of the body issuing the marketable security satisfy those requirements of the Australian Stock Exchange Limited that must be satisfied before the marketable security can be quoted on the Australian Stock Exchange Limited; and
- (b) a provision in the memorandum or articles of association or rules of the body issuing the marketable security providing for the valuation of the marketable security held by any deceased or other member is to be disregarded.

(2) Notwithstanding subsection (1), the Commissioner may determine the value of an unlisted marketable security to be the amount that, in the opinion of the Commissioner, would be received by the holder of the marketable security in respect of it if the body issuing the marketable security were to be voluntarily wound up on the day on which the marketable security is to be valued for the purposes of this Act.

(3) In this section —

**“unlisted marketable security”** means a marketable security that is not quoted on a recognized stock exchange.

*[Section 112BA inserted by No. 20 of 1996 s. 39; amended by No. 53 of 1999 s. 26.]*

**112C. Prohibition of registration of transfers unless in proper form and duly stamped**

(1) A transfer of a marketable security or right in respect of shares to which this subsection applies shall not be registered, recorded or entered in the books of a corporation to whose security or right the transfer relates unless —

- (a) a proper instrument of transfer has been delivered to that corporation and, in the case of a transfer by way of sale, the consideration for the transfer is expressed in the instrument in terms of money and the actual date of the sale and the date of the execution by the transferor, or the transferor and the transferee where both are required to execute the instrument, are set out in the instrument; and
- (b) if the instrument is chargeable with duty under this Act, the instrument is duly stamped.

(1a) Subsection (1) applies to any transfer of a marketable security or right in respect of shares to give effect to the sale or purchase or other disposition of that security or right other than —

- (a) an overseas transfer; or
- (b) a transfer of a marketable security or right in respect of shares that is quoted on a recognized stock exchange.

(2) If an instrument of transfer of a marketable security or of any right in respect of shares, or an instrument of transfer in relation to an overseas transfer, is chargeable with duty under this Act, or would be if it were not exempt from duty under this Act, the corporation shall retain the instrument of transfer for at least 5 years after the date on which it is registered or recorded.

- (3) A corporation that contravenes or fails to comply with any provision of this section commits an offence against this Act.
- (4) The right or title of a transferee or subsequent holder of a marketable security or right in respect of shares is not invalidated by reason only that the transfer of that security or that right was registered or recorded in contravention of a provision of this section.

*[Section 112C inserted by No. 39 of 1994 s. 10; amended by No. 13 of 1997 s. 26; No. 53 of 1999 s. 27.]*

*[112D-112F. Repealed by No. 53 of 1999 s. 31.]*

*[Division 3, 4, 5 (s. 112FA-112FQ) repealed by No. 53 of 1999 s. 31.]*

### **Division 6 — Overseas transfers**

*[Heading inserted by No. 13 of 1997 s. 27.]*

#### **112FR. Interpretation**

In this Division —

“**registered**” means registered in a register kept under Chapter 2C of the Corporations Act.

*[Section 112FR inserted by No. 13 of 1997 s. 27; amended by No. 10 of 2001 s. 182.]*

#### **112FS. Record of overseas transfers**

- (1) Before an overseas transfer in respect of which there is not an instrument of transfer is registered by a WA company, the WA company shall make a record in accordance with this section.
- (2) The record shall show —
  - (a) the date of the transfer;
  - (b) the names of the transferee and the transferor;
  - (c) the quantity and a full description of the shares or rights in respect of shares transferred;

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- (d) the transfer value of the share or right in respect of shares or, if more than one, of each share or right in respect of shares and the total transfer value of them all;
  - (e) the amount of duty chargeable in accordance with the Second Schedule in respect of the transfer; and
  - (f) any other particulars prescribed for the purposes of this section.
- (3) A WA company may, in any record made under this section, incorporate additional information for the company's own use.
- (4) A record made under this section shall be kept by the WA company in a legible written form, or so as to be readily convertible into such a form, for a period of not less than 5 years from the date of transfer.
- (5) A WA company shall produce to the Commissioner for inspection a record kept by the company under this section within one month after receiving a written request from the Commissioner to do so.
- (6) A WA company that —
- (a) fails to make a record as required by this section;
  - (b) makes a record under this section that is false in any material particular; or
  - (c) contravenes subsection (5),
- commits an offence against this Act.
- (7) Regulations may provide that, subject to any condition that the regulations may impose, an obligation imposed by subsection (1) does not apply.
- (8) In subsection (2)(d) —
- “transfer value”** means —
- (a) in the case of a transfer on sale — the amount or value of total consideration for the sale or the unencumbered value of the marketable security or

right in respect of shares transferred at the date of the sale, whichever is the greater; or

- (b) in any other case — the unencumbered value of the marketable security or right at the date of the transfer.

*[Section 112FS inserted by No. 13 of 1997 s. 27; amended by No. 53 of 1999 s. 28.]*

**112FT. WA company liable for duty on registered overseas transfers**

If an overseas transfer of a share of a WA company, or a right in respect of shares of a WA company, is registered by the WA company, the WA company is liable to pay the duty chargeable in respect of the transfer.

*[Section 112FT inserted by No. 13 of 1997 s. 27.]*

**112FU. Return of overseas transfers and payment of duty**

- (1) Within 15 days after the end of a month in which an overseas transfer is registered by a WA company, the WA company shall —
- (a) lodge with the Commissioner a return in a form approved by the Commissioner of all overseas transfers registered by the WA company in that month other than those that are exempt from duty under this Act; and
- (b) when lodging the return, pay to the Commissioner the amount of duty payable in respect of the transfers to which the return relates.
- (2) On payment of duty under subsection (1) in respect of a transfer of a share or right, the transfer is deemed to have been duly stamped.
- (3) A WA company that —
- (a) contravenes subsection (1); or
- (b) lodges a return that is false in a material particular, commits an offence against this Act.

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- (4) The right or title of a transferee or subsequent holder of a share or right in respect of shares is not invalidated by reason only that the WA company registering the transfer contravened subsection (1).

*[Section 112FU inserted by No. 13 of 1997 s. 27<sup>27</sup>.]*

*[Part IVAB (s. 112GA-112GG) repealed by No. 53 of 1999 s. 31.]*



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## Part IVAC — Capital reductions by WA companies

*[Heading inserted by No. 57 of 1996 s. 8.]*

### 112H. Interpretation

- (1) In this Part, unless the contrary intention appears —  
“**voting share**” has the same definition as in section 9 of the Corporations Act.
- (2) In this Part, unless the contrary intention appears, a person is entitled to a voting share if the person has a relevant interest in the share within the meaning of the Corporations Act.

*[Section 112H inserted by No. 57 of 1996 s. 8; amended by No. 10 of 2001 s. 183.]*

### 112HA. Certain capital reductions dutiable

- (1) This section applies if a taxable event occurs because a WA company reduces its share capital by cancelling any of its shares (“**the capital reduction**”).
- (2) This section applies if —
  - (a) a taxable event occurs because a WA company varies or abrogates the voting rights of any of its voting shares (“**the rights alteration**”); and
  - (b) within 6 months after doing so the WA company reduces its share capital by cancelling those shares (“**the share cancellation**”).
- (3) A taxable event occurs if —
  - (a) a person who immediately prior to the capital reduction or the rights alteration —
    - (i) was not entitled to any voting shares in the company; or
    - (ii) was entitled to less than 50% of the voting shares in the company,

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becomes entitled to at least 50% of the voting shares of the company; or

- (b) a person who immediately prior to the capital reduction or the rights alteration was entitled to at least 50% of the voting shares of the company becomes entitled to at least 5% more of the voting shares.
- (4) If this section applies the WA company shall prepare and lodge a statement with the Commissioner unless the capital reduction, the rights alteration or the share cancellation also results in a relevant acquisition occurring under Part IIIBA.
  - (5) The statement is to be in a form approved by the Commissioner and is to be lodged within 3 months after the date when the capital reduction or the share cancellation has effect (as the case requires).
  - (6) The statement shall be deemed, for the purposes of this Act, to be an instrument executed on the date when the capital reduction or the share cancellation has effect, as the case may be.
  - (7) The statement shall be charged with duty at the rate provided for in item 4A(1) of the Second Schedule, according to the nature of the cancelled shares, on the dutiable value.
  - (8) The dutiable value is the greater of —
    - (a) the unencumbered value of the cancelled shares immediately prior to the company's resolution for the capital reduction or for the rights alteration (as the case requires); or
    - (b) the amount, or value at the date of the resolution, of the consideration payable to the holders of the cancelled shares by the company or any other person.
  - (9) If under section 74A(1) duty is charged on the conveyance or transfer of any property to a shareholder of the company that is made on or pursuant to the capital reduction or the share

cancellation, the dutiable value shall be reduced by the unencumbered value of the property conveyed or transferred.

- (10) The Commissioner —
- (a) may require the company to provide him with evidence in a form approved by him of the unencumbered value of the cancelled shares or of the value of the consideration payable; and
  - (b) either on the basis of that evidence or of a valuation obtained by him, may determine the dutiable value.
- (11) The company and its directors at the time of the company's resolution for the capital reduction or for the rights alteration (as the case requires) are jointly liable to pay the duty charged on the statement.
- (12) A WA company that contravenes subsection (4) or (5) or that lodges a statement that is false in a material particular commits an offence against this Act.
- (13) A WA company that fails to comply with a requirement made under subsection (10)(a) commits an offence against this Act.

*[Section 112HA inserted by No. 57 of 1996 s. 8<sup>16</sup>; amended by No. 13 of 1997 s. 23 and 42; No. 26 of 1999 s. 103(2); No. 53 of 1999 s. 29; No. 10 of 2001 s. 184.]*

**[112HB.** *Repealed by No. 10 of 2001 s. 185.]*

*[Part IVBA repealed by No. 39 of 1994 s. 11.]*

## Part IVB — Rental business

*[Heading inserted by No. 113 of 1969 s. 10; amended by No. 61 of 1983 s. 5.]*

### 112I. Interpretation in Part IVB

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

**“customer”** means a person to whom rights to use goods are granted, being rights the granting of which involves the carrying on of rental business;

**“goods”** includes —

- (a) all chattels personal;
- (b) a fixture which is severable from the realty; and
- (c) a fixture which is not severable from the realty, but which is treated by an arrangement between the owner of the realty and any other person, made in connection with a grant of the right to use the fixture, as if it were not a part of the realty,

but does not include money, livestock and things in action;

**“registered person”** means a person who is registered, or required to be registered, under this Part;

**“rental business”** means the business of granting to any person rights to use any goods other than books, whether pursuant to a lease, bailment or licence or otherwise, but does not include the business of granting to any person the right to use goods in conjunction with a lease of, or licence to occupy or use, any real property;

**“service costs”** means such proportion or percentage of the amount received in relation to rental business as is, in the opinion in writing of the Commissioner, properly attributable to the cost of maintaining in a serviceable condition the goods which are the subject of the rental business.

- (1a) For the purposes of this Part, the total amount received in respect of rental business includes —
- (a) any amount received from a customer as or on account of duty under this Act; and
  - (b) any amount received from a customer that is for GST.
- (1b) In subsection (1a) —
- “**GST**” has the same meaning as it has in the Commonwealth *A New Tax System (Goods and Services Tax) Act 1999* 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.
- (2) This Part does not apply to any rental business in the course of which the right to use any goods is granted to a person who is engaged in the trade or business of selling goods, or of carrying on rental business in goods, of the same nature or description as those goods.

*[Section 112I inserted by No. 113 of 1969 s. 10; amended by No. 102 of 1970 s. 12; No. 9 of 1974 s. 7; No. 37 of 1979 s. 87; No. 47 of 1979 s. 4; No. 81 of 1981 s. 4; No. 10 of 1982 s. 28; No. 15 of 1982 s. 3; No. 93 of 1982 s. 7; No. 112 of 1982 s. 10; No. 61 of 1983 s. 6; No. 81 of 1984 s. 35; No. 100 of 1987 s. 7; No. 73 of 1990 s. 45; No. 6 of 1994 s. 13; No. 14 of 1995 s. 44; No. 20 of 1996 s. 41; No. 57 of 1997 s. 113(4); No. 53 of 1999 s. 34.]*

**112J. Persons carrying on rental business required to be registered**

- (1) Subject to subsection (5), a person who receives the total amount of \$2 000 or more during any month in respect of any rental business carried on by him in the State is required to be registered under this Part within 15 days after the end of the month that he receives that amount, whether or not he carries on

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any other business and whether the head office or principal place of business of that person is in the State or elsewhere.

- (1a) A person who contravenes or fails to comply with subsection (1) commits an offence against this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to double the amount of any duty payable under this Part which he has not paid.
- (2) A person who in the course of any business undertakes negotiations in the State with the object of transacting any rental business shall be deemed to carry on rental business in the State, whether he has an established place of business in the State or not.
- (3) Application for registration shall be made to the Commissioner in such form as the Commissioner approves in writing.
- (3a) On receiving an application made under subsection (3), the Commissioner shall —
  - (a) register the applicant; and
  - (b) issue to the applicant a certificate of registration in respect of each address in the State at which the registered person wishes to carry on any rental business.
- (4) Where the Commissioner is satisfied that a person is not, and in the future is not likely to be, required to be registered under this Part he shall cancel the registration of that person and inform the person concerned of that cancellation and the date from which it takes effect.
- (5) A person is not required to be a registered person by reason only of the fact that he is acting as an agent for, or is an employee of, a person who carries on any rental business.

*[Section 112J inserted by No. 113 of 1969 s. 11; amended by No. 37 of 1979 s. 88; No. 61 of 1983 s. 7; No. 100 of 1987 s. 8.]*

**112K. Statements to be lodged with the Commissioner by registered persons**

- (1) A registered person —
- (a) shall lodge with the Commissioner each month a statement in such form as the Commissioner requires in writing within 15 days after the end of the month to which the statement relates showing —
    - (i) the total amount received by him during the last preceding month in respect of his rental business other than rental business to which subparagraph (iii) applies; and
    - (ia) the prescribed amount; and
    - (ii) an amount equal to 1.8% of the amount arrived at by deducting service costs and the prescribed amount from the total amount referred to in subparagraph (i), as set out in the statement; and
    - (iii) the total amount received by him during the last preceding month in respect of his rental business in respect of which stamp duty or duty of a similar nature has been paid on the hiring arrangement concerned in accordance with the provisions of any law of the Commonwealth or of any other State or Territory such duty being paid at a rate that is less than the rate specified in subparagraph (ii); and
    - (iv) an amount determined by deducting the stamp duty or duty of a similar nature paid elsewhere in Australia on the rental business referred to in subparagraph (iii) from the sum equal to 1.8% of the sum arrived at by deducting service costs from the total amount referred to in subparagraph (iii) as set out in the statement;
- and

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(b) at the time of lodging the statement referred to in paragraph (a) with the Commissioner, shall pay in cash to the Commissioner as duty on that statement the amounts referred to in subparagraphs (ii) and (iv) of paragraph (a) as set out in the statement.

(1a) Notwithstanding anything in subsection (1), when a person who is registered under this Part has not during the relevant month carried on any rental business, he shall lodge with the Commissioner a nil statement.

*[(1b) repealed]*

(1c) In subsection (1) “**prescribed amount**” means 1.769% of the amount arrived at by deducting service costs from the total amount referred to in subsection (1)(a)(i), as set out in the statement lodged under that subsection.

(2) Where the total amount received by a registered person during the last preceding 12 months in respect of his rental business did not exceed \$50 000 after deduction of service costs, that person may instead of complying with subsection (1), elect —

(a) to lodge with the Commissioner not later than 31 August in each year a statement showing the amounts referred to in subsection (1)(a) but instead of being in relation to the total amount received by him during the last preceding month in respect of his rental business, the amounts shall be in relation to the total amount received by him during the last financial year in respect of his rental business (not including any amount previously included in a statement lodged with the Commissioner pursuant to that subsection); and

(b) to pay to the Commissioner as duty on that statement the amount of duty that would be payable on that statement if it were lodged by him with the Commissioner under subsection (1)(b).



- (2a) A notice of election under subsection (2) shall be in writing in such form as the Commissioner approves in writing.
- (3) Subject to section 112KA, a registered person who has given to the Commissioner a notice of election under subsection (2), is liable to pay and shall pay to the Commissioner at the time the statement is lodged with the Commissioner, the amount of duty on the statement in accordance with the notice of election.
- (4) An election made by a registered person pursuant to subsection (2) may be cancelled, with effect from and in relation to the financial year next following, by notice in writing under the hand of the registered person given to the Commissioner or by notice in writing under the hand of the Commissioner given to the registered person if the Commissioner is satisfied that the total amount received by the registered person who has made the election was in excess of \$60 000 after deduction of service costs, in any period of 12 months.
- (5) A registered person who —
- (a) contravenes, or fails to comply with, any of the requirements of this section; or
  - (b) lodges with the Commissioner under subsection (1) or (2) a statement which is false in any material particular,

commits an offence against this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to double the amount of any duty that would have been payable if the requirement concerned had not been contravened or had been complied with or if the particular concerned had been corrected, as the case requires.

*[Section 112K inserted by No. 113 of 1969 s. 12; amended by No. 102 of 1970 s. 13; No. 37 of 1979 s. 89; No. 81 of 1981 s. 5<sup>28</sup>; No. 61 of 1983 s. 8; No. 109 of 1984 s. 9; No. 98 of 1986 s. 18; No. 100 of 1987 s. 9<sup>29</sup>; No. 41 of 1989 s. 26; No. 53 of 1999 s. 35.]*

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**112KA. Exemption from duty**

- (1) Notwithstanding section 112K(3), a person is not liable to pay the Commissioner duty on any statement lodged by him under section 112K(2) beginning with any statement relating to the financial year ending on 30 June 1989 where —
  - (a) he was a registered person for the whole of the financial year to which the statement relates, and the total amount received by him during the financial year in respect of his rental business does not exceed \$25 000, after deducting service costs; or
  - (b) he was a registered person for only a part of the financial year to which the statement relates, and the proportion that the total amount received by him in respect of his rental business during that part of the financial year, after deducting service costs, bears to the amount referred to in paragraph (a) does not exceed the proportion that the part of the financial year bears to a whole financial year.
- (2) Where a person has paid duty under section 112K(1) in relation to any month of a financial year beginning with the financial year ending 30 June 1989 and the circumstances described in subsection (1)(a) or (b) apply to that person in respect of the financial year the Commissioner shall refund the duty paid.

*[Section 112KA inserted by No. 100 of 1987 s. 10.]*

**112L. Amounts to be included in statement**

In calculating any total amount received for the purposes of sections 112J, 112K and 112KA, the total amount shall include, in relation to —

*[(a), (b) and (c) deleted]*

- (d) rental business, amounts received by or on behalf of the registered person in respect of the use of goods where —
  - (i) the right to use the goods was granted in the State; or

- (ii) any of the negotiations by or on behalf of the registered person with respect to the grant of the right to use the goods were undertaken in the State; or
- (iii) the goods were delivered in the State to the person to whom the right to use the goods was granted.

*[Section 112L inserted by No. 113 of 1969 s. 13; amended by No. 61 of 1983 s. 9; No. 100 of 1987 s. 11.]*

*[112M. Repealed by No. 37 of 1979 s. 90.]*

**112N. Matters not required to be included in statement**

- (1) In calculating any total amount received for the purposes of sections 112J, 112K and 112KA, no amount shall be included in respect of —

*[(a)-(e) deleted]*

- (f) rental business in respect of which stamp duty or duty of a similar nature has been paid on the hiring arrangement concerned in accordance with the provisions of any law of the Commonwealth or of any other State, or of any Territory, at a rate that is not less than the rate specified in section 112K(1)(a)(ii);
- (fa) any rental business transacted with —
  - (i) the Crown; or
  - (ii) any Crown instrumentality, agent of the Crown or Government authority designated by the Minister as an exempt instrumentality for the purposes of this subsection pursuant to subsection (1a),

or any person acting on behalf of or for the benefit of the Crown or any body so designated;

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- (g) any business transacted by him outside the State where —
  - (i) none of the negotiations leading to the transaction of the business took place in the State; and
  - (ii) the goods obtained by the other party to the transaction were obtained for the purpose of being wholly used outside the State.
- (1a) The Minister may by order published in the *Government Gazette* designate any Crown instrumentality, agent of the Crown or Government authority as an exempt instrumentality for the purposes of subsection (1)(fa)(ii).
- (1b) An order under subsection (1a) may be varied or revoked by the Minister by a further order published in the *Government Gazette*.
- (2) A registered person shall supply to the Commissioner such particulars of the matters referred to in subsection (1) as are required by the Commissioner in writing.

*[Section 112N inserted by No.113 of 1969 s. 15; amended by No. 37 of 1979 s. 91; No. 1 of 1982 s. 2; No. 99 of 1982 s. 4; No. 61 of 1983 s. 10; No.109 of 1984 s. 3 and 10; No. 100 of 1987 s. 12.]*

**112O. Registered persons to keep records**

- (1) A registered person shall keep or cause to be kept in the State sufficient books and records to enable all amounts required to be set out in a statement to be lodged by him with the Commissioner under section 112K to be accurately calculated.
- (1a) A registered person who contravenes or fails to comply with the requirements of subsection (1) commits an offence against this Act.

- (2) A registered person shall keep available for inspection the books and records referred to in subsection (1), together with all working papers used in making the calculations referred to in that subsection, for a period of 2 years from the month or year, as the case may be, to which each statement in which the amounts so referred to and set out relates, or for such lesser period as the Commissioner may, in any particular case, allow.
- (2a) A registered person who contravenes or fails to comply with the requirements of subsection (2) commits an offence against this Act.
- (3) Where the Commissioner is satisfied that —
- (a) it is not reasonably practicable to calculate precisely any total amount that is to be set out in the statement of a registered person required to be lodged under section 112K, the Commissioner may agree to accept from the registered person statements in which that amount is calculated in such a manner or on such a basis as the Commissioner thinks fit; or
  - (b) in the circumstances of a particular case it is not reasonable to require statements to be lodged by the registered person in each month, he may agree to accept statements at such times and relating to such periods as the Commissioner thinks fit.
- (4) Where, pursuant to subsection (3), the Commissioner agrees to accept from a registered person a statement —
- (a) in which an amount is calculated in a manner or on a basis different from that required under section 112K; or
  - (b) at a time or relating to a period otherwise than in accordance with that section,

the registered person shall, at the time of lodging that statement with the Commissioner, pay to him the amount of duty that would be payable on that statement if it were lodged by him with the Commissioner in accordance with that section.

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- (5) The Commissioner may, by notice in writing served on a registered person, cancel any agreement made pursuant to subsection (3), and upon the day specified in the notice as the day on which the agreement is cancelled, the agreement has no further force or effect in relation to that registered person.

*[Section 112O inserted by No. 113 of 1969 s. 16; amended by No. 37 of 1979 s. 92.]*

**112P. As to transactions with unregistered persons**

- (1) Where any person domiciled or resident in the State transacts or offers to transact any business with a person who is not registered under this Part and who —

- (a) is required to be so registered; or
- (b) is carrying on any rental business outside the State,

he shall forthwith make a note or memorandum in writing of the transaction or offer containing such particulars as are prescribed.

- (2) A note or memorandum made under subsection (1) is chargeable with duty, at the rate of 1.8% of, in the case of a note or memorandum relating to —

*[(a), (b) and (c) deleted]*

- (d) any rental business, the amount that is or will be payable for the use of the goods, but where the amount is not capable of being determined, the person making the note or memorandum is liable, instead of paying duty as hereinbefore provided in this subsection, to pay —

- (i) a duty of \$2 by an impressed stamp on the note or memorandum, which duty shall be paid by the person required to make the note or memorandum within 7 days of the making thereof; and

- (ii) not later than 31 August in each year further duty on the note or memorandum of an amount equal to 1.8% of the amount paid by him in respect of the use of the goods during the year ending on the last preceding 30 June.

*[(3) repealed]*

- (4) A note or memorandum that is not stamped as required by this section may be stamped on payment of a penalty of double the amount of the duty that should have been paid.
- (5) A person who fails to comply with subsection (1) commits an offence against this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to double the amount of the duty that would have been payable if he had made a note or memorandum in writing of the transaction or offer in compliance with the requirements of that subsection.
- (6) Notwithstanding anything contained in this section, a person domiciled or resident in the State is not required to make a note or memorandum of any business transacted or offered to be transacted —

*[(a) and (b) deleted]*

- (c) if the business relates to the grant of the right to use any goods and the total amount that is or will be payable for the use thereof does not exceed \$100 or the grant of the right to the use of the goods is for a period of 14 days or less;
- (d) with a person carrying on business outside the State if —
  - (i) none of the negotiations leading to the transaction of or to the offer to transact the business were carried out in the State; and
  - (ii) the goods obtained by him were obtained for the purpose of being wholly used outside the State;

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- (e) with the Crown or any person acting on behalf of the Crown whether in right of the Commonwealth or any State thereof; or
- (f) which is not the grant of the right to use goods.

*[Section 112P inserted by No. 113 of 1969 s. 17; amended by No. 3 of 1971 s. 4; No. 37 of 1979 s. 93; No. 81 of 1981 s. 6; No. 14 of 1983 s. 5; No. 61 of 1983 s. 11; No. 100 of 1987 s. 13; No. 20 of 1996 s. 42.]*



## Part IVC — Exemptions in relation to aged or disabled persons

*[Heading inserted by No. 13 of 1997 s. 41(1)]*

### **112Q. Certain residential agreements with charitable bodies exempt**

- (1) Notwithstanding anything in this Act, duty shall not be charged on an agreement between —
- (a) a charitable body or a body established for similar public purposes; and
  - (b) a qualified person,

and for the purpose of granting the qualified person the right to occupy residential accommodation that is not available to a non-qualified person.

- (2) In subsection (1) —

“**qualified person**” means a person —

- (a) with a disability within the meaning of section 3 of the *Disability Services Act 1993*; or
- (b) who is 55 or over, or who is or was the spouse of such a person, or who, with such a person, is or was one of a *de facto* married couple (as that expression is defined in section 75C(4)).

*[Section 112Q inserted by No. 13 of 1997 s. 41(1).]*

### **112R. Certain aged care agreements exempt**

- (1) Notwithstanding anything in this Act, duty shall not be charged on an agreement under the *Aged Care Act 1997* of the Commonwealth between an approved provider and a person relating to aged care services for the person.

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(2) In subsection (1) —

**“aged care service”** has the same meaning as in the *Aged Care Act 1997* of the Commonwealth;

**“approved provider”** has the same meaning as in the *Aged Care Act 1997* of the Commonwealth.

*[Section 112R inserted by No. 22 of 1998 s. 27.]*

**112S. Instruments not required to be lodged**

An agreement referred to in section 112Q or 112R does not have to be lodged with the Commissioner for assessment.

*[Section 112S inserted by No. 13 of 1997 s. 41(1).]*

*[112T. Repealed by No. 37 of 1979 s. 97.]*

*[112U. Repealed by No. 61 of 1983 s. 12.]*

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## Part IVD — Maintenance agreements and orders

[Heading inserted by No. 45 of 1982 s. 3.]

### 112UA. Interpretation in Part IVD

- (1) In this Part, unless the contrary intention appears —
- “**Family Court Act**” means the *Family Court Act 1997* of the Parliament of the State;
- “**Family Law Act**” means the *Family Law Act 1975* of the Parliament of the Commonwealth and any Act of the Parliament of the Commonwealth amending or in substitution for that Act;
- “**maintenance agreement**” means an agreement in writing with respect to any one or more of the following, namely —
- (a) the maintenance of one of the parties to the agreement;
  - (b) the conveyance or transfer of property (whether real or personal) of the parties to the agreement or either of them to one of the parties or to a dependent child of the parties or of either of them or to both a dependent child of one of the parties and one of them;
  - (c) the maintenance of a dependent child of the parties or either of them;
- “**order**” means a sealed copy of an order made by a court exercising federal or non-federal jurisdiction in any proceeding under the Family Court Act or the Family Law Act with respect to one or both of the following, namely —
- (a) the conveyance or transfer of real or personal property;
  - (b) the vesting of property;
- “**property**” includes an interest in property.
- (2) A reference in this Part to persons who are married to each other or have been married to each other includes persons who are

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married to each other or who have been married to each other by a marriage that is void under the Family Law Act.

*[Section 112UA inserted by No. 45 of 1982 s. 3; amended by No. 41 of 1997 s. 37.]*

**112UB. Application of Part IVD**

- (1) Sections 112UC and 112UD do not apply to or in relation to a maintenance agreement between parties who are married to each other or have been married to each other or in relation to an instrument of conveyance or transfer of property pursuant to such an agreement unless the parties to the agreement are separated or divorced from each other.
- (2) Where —
  - (a) one of the parties referred to in a maintenance agreement, an order, or an instrument of conveyance or transfer effected pursuant to a maintenance agreement or order is a person who is not entitled to or liable to provide maintenance under the Family Court Act or the Family Law Act; and
  - (b) the maintenance agreement, order, or instrument of conveyance or transfer in addition to being a maintenance agreement, order, or instrument of conveyance or transfer for the purposes of the Family Court Act or the Family Law Act relates to one or more distinct matters between any party or parties other than a person who is entitled to or liable to provide maintenance under the Family Court Act or the Family Law Act which would otherwise be dutiable under the provisions of this Act other than this Part,

the Commissioner shall assess the maintenance agreement, order, or instrument of conveyance or transfer under such of the provisions of this Act other than this Part as apply in relation to such other matters.

*[Section 112UB inserted by No. 45 of 1982 s. 3.]*

**112UC. Duty on maintenance agreements and orders**

Notwithstanding anything in this Act but subject to section 112UB —

- (a) a maintenance agreement that is entered into for the purposes of the Family Court Act or the Family Law Act; or
- (b) an order,

except a sale, shall be charged with duty in accordance with item 8 of the Second Schedule.

*[Section 112UC inserted by No. 45 of 1982 s. 3.]*

**112UD. Duty on conveyance or transfer under maintenance agreement or order**

Notwithstanding anything in this Act but subject to section 112UB an instrument of conveyance or transfer that is effected pursuant to a maintenance agreement or an order that has been duly stamped in accordance with this Act is not to be charged with any duty higher than the duty set out in item 6 of the Second Schedule.

*[Section 112UD inserted by No. 45 of 1982 s. 3.]*

## **Part IVE — Managed investment schemes**

[Heading inserted by No. 24 of 1999 s. 6.]

### **112UE. Duty on certain instruments for the purpose of managed investment schemes**

(1) In this section —

**“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 Division 11 (sections 1451 to 1465) of Part 11.2 of the Corporations Law applied by reason of section 1452 of that Law.

(2) Upon application the Commissioner may authorise duty at the rate specified in item 6 of the Second Schedule to be charged on —

- (a) a conveyance or transfer;
- (b) a deed of settlement or deed of gift; or
- (c) the transfer of a licence for a motor vehicle,

in respect of which *ad valorem* duty would otherwise be payable if the Commissioner is satisfied that it is one to which subsection (4) applies.

(3) Upon application the Commissioner may authorise duty at the rate specified in item 6 of the Second Schedule to be charged on an instrument in respect of which *ad valorem* duty would otherwise be payable, other than one referred to in subsection (2), if the Commissioner is satisfied that —

- (a) the instrument is one to which subsection (4) applies;
- (b) the instrument replaces another instrument; and
- (c) the terms and conditions of the instrument are the same as the instrument it replaces.

- (4) This subsection applies to an instrument described in subsection (2) or (3) —
- (a) if the instrument is entered into on or after 6 April 1999 for the purpose of, or as a consequence of, an old public unit trust becoming, in accordance with Division 11 (sections 1451 to 1465) of Part 11.2 of the Corporations Law, a managed investment scheme that is registered under section 601EB of that Law; and
  - (b) if, after the instrument is executed, 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.
- (5) If under subsection (2) the Commissioner issues an authorisation in respect of the transfer of a licence for a motor vehicle, section 76C(8) does not apply to an application for the transfer of the licence.
- (6) An application to the Commissioner shall be made in a form approved by the Commissioner.
- (7) A person who, in an application to the Commissioner, makes a statement that is false in a material particular commits an offence under this Act.

*[Section 112UE inserted by No. 24 of 1999 s. 6; amended by No. 10 of 2001 s. 186.]*

**Part V — Miscellaneous**

**112V. Payment of duty by returns**

- (1) Any person may apply to the Commissioner in a form approved by him in writing for permission to pay duty in respect of any class of instruments specified in that application in accordance with the provisions of this section as an alternative to paying duty by the individual stamping of any instrument on which duty is payable.
- (2) The Commissioner may in writing grant or refuse permission applied for under subsection (1) and may at any time in writing revoke permission so granted.
- (3) When the Commissioner grants permission under subsection (2), he shall in that permission specify the date on which that permission comes into force and the class of instruments to which that permission relates.
- (4) A person whose application for permission has been granted by the Commissioner under subsection (2) is, while that permission is in force, an approved person for the purposes of this section.
- (5) Subject to subsection (6), an approved person shall, within a period of 15 days after the end of the month to which the return relates, lodge with the Commissioner —
  - (a) a return in such form as the Commissioner requires in writing; and
  - (b) if one or more instruments have been made during that month, a remittance for the amount of duty that would, if the permission concerned had not been granted, have been payable in respect of each individual instrument to which that return relates.
- (6) If no instruments of the class to which his permission relates are made in any one month, the approved person concerned shall lodge with the Commissioner a nil return in respect of that month.



- (7) An approved person shall make a record at such times and of such particulars relating to an instrument to which the permission concerned relates as the Commissioner may require in writing.
- (8) An approved person shall endorse on every instrument of a class to which the permission concerned relates the passage “W.A. Stamp Duty Paid — Section 112V” and in the case of an instrument which is to be charged with duty pursuant to section 83(2) and (3), he shall endorse on every such instrument details of the total amount secured or to be ultimately recoverable, or of any advance or loan made or indebtedness increased in excess of that amount, as the case may be, or, in the case of instruments referred to in section 87(1), shall make an endorsement on each of those instruments in accordance with instructions in writing given from time to time by the Commissioner.
- (9) An instrument bearing an endorsement made under subsection (8) details of which are to be included in a return lodged with the Commissioner under subsection (5) and on which duty is paid by a remittance made under that subsection is deemed to be duly stamped.
- (10) Any approved person paying duty in accordance with any permission granted under subsection (2) shall retain the records required to be made under subsection (7) for a period of 2 years from the date on which they were made and make those records available to the Commissioner or any of his officers for checking purposes at any reasonable time within that period.
- (11) Subject to subsection (12), any approved person who contravenes or fails to comply with any provision of this section commits an offence against this Act.
- (12) Notwithstanding anything contained in subsection (11), any approved person who fails to lodge a return in accordance with subsection (5) or lodges with the Commissioner a return which is false in any material particular commits an offence against

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this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to double the amount of any duty that would have been payable in respect of the return had the return been lodged in accordance with subsection (5) or that is payable in accordance with the particulars given in the return concerned after correction of any false particular therein, as the case may be.

*[Section 112V inserted by No. 37 of 1979 s. 100; amended by No. 109 of 1984 s. 11.]*

*[112W. Repealed by No. 37 of 1979 s. 99.]*

**113. Defacing adhesive stamps**

Every person who by writing or by any other means whatsoever defaces an adhesive stamp before it is used commits an offence against this Act.

*[Section 113 amended by No. 113 of 1965 s. 8(1); No. 37 of 1979 s. 101.]*

**114. Penalties for obstructing officers, and similar offences**

- (1) No person —
  - (a) shall resist or obstruct any officer or other person in the performance of any duties or the exercise of any powers under this Act;
  - (b) shall wilfully mislead any officer in any particular likely to affect the discharge of his duty;
  - (c) being lawfully asked any question by any officer pursuant to this Act shall fail to answer the same truthfully and completely to the best of his knowledge, information and belief.
- (2) A person who contravenes or fails to comply with any of the provisions of subsection (1) commits an offence against this Act.

- (3) In subsection (1) —

“**officer**” means officer of the staff assisting the Commissioner in the administration of this Act.

*[Section 114 amended by No. 113 of 1965 s. 8(1); No. 37 of 1979 s. 102.]*

**115. Attempted offences**

An attempt to commit an offence against this Act shall be punishable as if the offence had been committed.

**116. General penalty**

Unless otherwise expressly provided, a person who commits an offence against this Act shall on conviction be liable to a penalty not exceeding \$10 000.

*[Section 116 inserted by No. 37 of 1979 s. 103; amended by No. 19 of 1985 s. 19; No. 98 of 1986 s. 19.]*

**117. Limitation of criminal proceedings**

Subject to section 112, a prosecution for an offence against this Act may be commenced at any time within 3 years after that offence was committed and not afterwards.

*[Section 117 inserted by No. 37 of 1979 s. 104; amended by No. 19 of 1985 s. 20; No. 33 of 1987 s. 25.]*

**118. Institution of prosecutions**

- (1) A complaint for an offence against any provision of this Act may be laid in the name of the Commissioner by any officer of the State Taxation Department<sup>8</sup> employed in the administration of this Act and authorised to lay complaints on behalf of the Commissioner, and any prosecution instituted in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by his authority.

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- (2) An officer referred to in subsection (1) may appear on behalf of the Commissioner in any proceedings for an offence against any provision of this Act.

*[Section 118 inserted by No. 37 of 1979 s. 105.]*

**119. Certain exemptions where the State etc. is a party**

- (1) In this section —

**“exempt body”** means —

- (a) the State of Western Australia or the Crown in right of Western Australia;
  - (b) an agent or instrumentality of the Crown, or a government authority, declared to be an exempt body by the Minister by notice published in the *Gazette*; or
  - (c) a local government, except when it acts in its capacity as the trustee of a superannuation fund.
- (2) If an exempt body is the only party that would be liable to pay the duty that would, but for this subsection, be chargeable on an instrument, the instrument is exempt from duty.
- (3) If an exempt body is not the only party liable to pay the duty on an instrument the Commissioner shall apportion the duty chargeable on the instrument between those parties in accordance with subsection (4) or (5) (as the case requires).
- (4) If the instrument is chargeable with duty under item 4 or 4A of the Second Schedule, the portion of the duty payable by a party shall bear the same proportion to the whole of the duty chargeable as the interest in the property acquired by the party bears to the whole of the interest acquired by the parties liable to pay the duty on the instrument.
- (5) If the instrument is chargeable with duty under an item of the Second Schedule other than item 4 or 4A, the portion of the duty payable by a party shall be as determined by the Commissioner.

- (6) An instrument referred to in subsection (3) is exempt from that portion of the duty chargeable on it that would, but for this subsection, be payable by an exempt body.
- (7) The Commissioner shall endorse on an instrument referred to in subsection (3) the amount of duty from which the instrument has been exempted under this section.
- (8) An exempt body is not liable to pay the duty charged on an instrument referred to in subsection (3).
- (9) This section does not apply to an instrument to which section 83(2) applies if an exempt body is a mortgagee or obligee of the instrument.

*[Section 119 inserted by No. 20 of 1996 s. 43; amended by No. 57 of 1997 s. 113(5).]*

## **120. Regulations**

- (1) The Governor may make regulations in respect of —
  - (a) the stamping of documents for the purposes of this Act;
  - (b) the exercise of any powers of the Commissioner by subordinate officers or other persons;
  - (c) the payment of fees for the purposes of this Act;
  - (d) returns to be furnished under this Act;
  - [(e) deleted]*
  - (ea) the appointment of persons as persons authorised to make out and affix adhesive coupons;
  - (eb) measures to be taken to prevent the re-use of adhesive coupons;
  - (f) all matters which are required or permitted to be prescribed by regulations or which are necessary or convenient to be prescribed for giving effect to this Act, or for the better securing of the revenue of the Crown as it may be affected by this Act.

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- (2) A person who contravenes or fails to comply with any provision of regulations made under subsection (1) commits an offence against this Act.
- (3) The regulations may require that, in such cases as may be prescribed, documents required by or under this Act to be lodged with the Commissioner shall be verified by statutory declaration or by affidavit made by such persons as may be prescribed.

*[Section 120<sup>19</sup> amended by No. 113 of 1965 s. 8(1); No. 67 of 1966 s. 14; No. 102 of 1970 s. 14; No. 9 of 1974 s. 8; No. 96 of 1976 s. 7; No. 37 of 1979 s. 107; No. 19 of 1985 s. 21; No. 58 of 1990 s. 5; No. 6 of 2000 s. 6.]*

*[First Schedule omitted under the Reprints Act 1984 s. 7(4)(f).]*

## Second Schedule

[Section 16(1)]

### Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
[1, 1A.	<i>deleted</i>		
2.	BILL OF EXCHANGE OR PROMISSORY NOTE		
	(1) Bill of exchange (excluding cheque within the meaning of the <i>Cheques Act 1986</i> (Cwlth)) or promissory note payable on demand, at sight or on presentation. . . . .	0.10	The drawer or maker. (See section 50)
	(2) Cheque within the meaning of the <i>Cheques Act 1986</i> (Cwlth) drawn against an account maintained in Western Australia. . . . .	0.10	The drawer. (See section 50)
3.	CATTLE SALES STATEMENT		The vendor
	(1) Any statement written out or caused to be written out by the owner or his agent, pursuant to the <i>Cattle Industry Compensation Act 1965</i> in respect of the sale of any cattle or carcasses of cattle, whether payment of the purchase money therefor is or is not made in full at the time of the sale or is to be made by instalments or is otherwise deferred — for every \$1 and also for any fractional part of \$1 — (a) of the amount of the purchase money in respect of one animal or one carcass sold singly. . . . .	5/12 cent	
	or (b) of the total amount of the purchase money in respect of any number of cattle or carcasses, as the case may be, sold in one lot . . . . .	5/12 cent	

Second Schedule

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Item	Nature of instrument	Duty payable \$	Person liable to pay duty
	or such amount, not being more than 5/12 of a cent, as the Governor may, from time to time, by proclamation declare.		
(2)	Notwithstanding the provisions of subitem (1), the duty in respect of the amount of the purchase money of any one animal, or any one carcass, whether sold singly or as part of a lot, shall not exceed the sum of 50 cents or such lesser sum as the Governor may, from time to time, by proclamation declare.		
4.	CONVEYANCE OR TRANSFER ON SALE OF PROPERTY		
(1)	Transfer of land under the <i>Transfer of Land Act 1893</i> on a sale thereof or conveyance or transfer of any other property (except any marketable security or right in respect of shares) —		The purchaser
	Where the amount or value of the consideration —		
(a)	does not exceed \$80 000. . . . .	\$1.95 for every \$100 of the amount or value of the consideration and every fractional part of \$100	
(b)	exceeds \$80 000 but does not exceed \$100 000. . . . .	\$1 560 and \$2.85 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$80 000	



## Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(c)	exceeds \$100 000 but does not exceed \$250 000. . . . .	\$2 130 and \$3.70 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$100 000	
(d)	exceeds \$250 000 but does not exceed \$500 000. . . . .	\$7 680 and \$4.55 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$250 000	
(e)	exceeds \$500 000. . . . .	\$19 055 and \$4.85 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$500 000	
<i>[(2), (3), (3a), (4) and (4a) deleted]</i>			
(5)	Transfer of land under the <i>Transfer of Land Act 1893</i> on a sale thereof or conveyance or transfer of any other property where the purchaser is an entitled person under section 75AE —		The purchaser
(a)	where the amount or value of the consideration does not exceed \$100 000. . . . .	\$1.50 for every \$100 of the amount or value of the consideration and every fractional part of \$100	

Second Schedule

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Item	Nature of instrument	Duty payable \$	Person liable to pay duty
	(b) where the amount or value of the consideration exceeds \$100 000. . . . .	\$1 500 and \$5.50 for every \$100 and every fractional part of \$100 by which the amount or value of the consideration exceeds \$100 000	
4A.	CONVEYANCE OR TRANSFER OF MARKETABLE SECURITY OR RIGHT IN RESPECT OF SHARES		
	(1) Conveyance or transfer of any marketable security or right in respect of shares if the marketable security or right in respect of shares is, or under section 112B is to be treated as if it is, situated in this State — <i>[(a)-(f) deleted]</i>		The purchaser or, if section 112FT applies, the WA company
	(fa) where the marketable security or right in respect of shares is not quoted on a recognized stock exchange. . . . .	0.60 for every \$100 and also for any fractional part of \$100 of the amount or value of consideration	
	<i>[(2), (3) and (4) deleted]</i>		
5.	CONVEYANCE OR TRANSFER		
	(1) Conveyance or transfer of a lot by the responsible authority for a town planning scheme, including the Metropolitan Region Scheme, to a person who on the date of the coming into operation of the scheme was the owner of —		
	(a) the land comprised in the lot; or		The transferee

Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
	(b) land comprised in the scheme and to whom the lot is conveyed or transferred in substitution or exchange for that land or part thereof,  where the lot is comprised in the scheme and the conveyance or transfer is made in order to carry out or facilitate the carrying out of the scheme. . . . .	20.00	
	(2) Expressions used in this item have the same meaning as they respectively have in the <i>Town Planning and Development Act 1928</i> , or the <i>Metropolitan Region Town Planning Scheme Act 1959</i> , as the case requires.		
6.	CONVEYANCE OR TRANSFER  Conveyance or transfer of any kind not described elsewhere in this Schedule and not being —  (a) a settlement; (b) a deed of gift; (c) an exchange; or (d) a conveyance or transfer of a marketable security, or right in respect of shares, that is quoted on a recognized stock exchange . . . . .		The transferee
		\$20.00 or the same duty as for item 4 or 4A, as the case requires, if less than \$20.00	
[7.	<i>deleted]</i>		
8.	DEED OR DECLARATION <sup>30</sup>  (1) Deed of any kind not otherwise chargeable with duty. . . . .  (2) Declaration of any use or trust of any property by any writing and not being a will or an instrument chargeable with <i>ad valorem</i> duty as a settlement or gift. . . . .	20.00     20.00	The parties thereto  The person making the declaration

Second Schedule

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Item	Nature of instrument	Duty payable \$	Person liable to pay duty
9.	<p>DUPLICATE OR COUNTERPART</p> <p>Duplicate or counterpart of an instrument chargeable with duty. . . . .</p>	\$5.00 or the same duty as the original if less than \$5.00	The person liable to duty on the original instrument
10.	<p>EXCHANGE</p> <p>For any instrument effecting an exchange of any property. . . . .</p>	See section 75AC	The person to whom any property is conveyed by way of exchange
[11.	<i>deleted]</i>		
12.	<p>LEASE OR AGREEMENT FOR LEASE</p> <p>(1) Any lease made in perpetuity or for a term of years or for a period terminable with one or more lives, or otherwise contingent, in consideration of a sum of money paid by way of premium, fine or the like, if without rent, or an agreement for such a lease.</p> <p>(2) A lease, or an agreement for a lease, of land and tenements at a rent without the payment of any sum by way of premium, fine or the like—</p> <p>(a) for a period not exceeding one year, for every \$100 of the rent and also for every fractional part of \$100 thereof that would be payable for a whole year. . . . .</p> <p>(b) for a period exceeding one year, for every \$100 of the total rent payable and also for every fractional part of \$100 thereof. . . . .</p> <p>(c) for an indefinite term, for every \$100 of the rent and also for every fractional part of \$100 thereof that would be payable for a whole year. . . . .</p>	<p>Duty on the amount payable. (See item 4)</p> <p>0.35</p> <p>0.35</p> <p>0.70</p>	<p>The lessee</p> <p>The lessee</p>

Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(3)	A lease of any lands or tenements at a rent and in consideration of a premium, fine or the like, or an agreement for such a lease	Duty equal to the combined amount of duty payable on a conveyance in consideration of the premium, fine or the like under item 4 and the duty payable on a lease or agreement for a lease for the rent under subitem (2)	The lessee
(4)	A lease of any lands or tenements of any other kind whatsoever not herein before described, or an agreement for such a lease. . . . .	20.00	The lessee
(5)	Re-appraisalment of rent (s. 80). . . . .	5.00	The lessee
13.	<b>MORTGAGE (LEGAL OR EQUITABLE), BOND, DEBENTURE, COVENANT, BILL OF SALE, GUARANTEE, LIEN OR INSTRUMENT OF SECURITY OF ANY OTHER KIND WHATSOEVER</b>		
(1)	An instrument referred to in the heading to this item for the payment or repayment of any sum or sums of money at stated periods, being neither interest for any principal sum secured by a duly stamped instrument nor wages or salary—		
(a)	for a definite and certain period so that the total amount ultimately payable can be ascertained — Where the total amount—		Mortgagor or obligor
(i)	does not exceed \$35 000 . . . . .	0.25 for every \$100 and also for every fractional part of \$100	

Second Schedule

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Item	Nature of instrument	Duty payable \$	Person liable to pay duty
	(ii) exceeds \$35 000. . . . .	\$87.50 and 0.40 for every \$100, and also for every fractional part of \$100, by which the amount exceeds \$35 000;	
	(b) for a term of life or any other indefinite period — for every \$100, and also for every fractional part of \$100, of the amount payable annually. . . . .	4.25	
(1a)	An instrument referred to in the heading to this item to which section 83(1a) or (1b) applies — for every \$100, and also for every fractional part of \$100, of the amount payable. . . . .	0.25	Mortgagor or obligor
(2)	An instrument referred to in the heading to this item for the payment or repayment of money —  Where the total amount —		Mortgagor or obligor; and see sections 82(3) and 83(4)
	(a) does not exceed \$35 000. . . . .	0.25 for every \$100, and also for every fractional part of \$100, of the amount payable	
	(b) exceeds \$35 000. . . . .	(i) \$87.50; and (ii) 0.40 for every \$100, and also for every fractional part of \$100, by which the amount payable exceeds \$35 000	

Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(3)	An instrument setting out the transfer or assignment of any mortgage —		
(a)	by way of sale for a consideration in money or money's worth for not less than market value. . . . .	20.00	Transferee
(aa)	by way of sale, other than a sale to which paragraph (a) of this subitem applies. . . . .	See item 4	Transferee
(b)	by way of gift. . . . .	See item 19	Donor
(c)	by way of security. . . . .	See subitem (1) or (2)	Transferor
(d)	of any other kind. . . . .	20.00	Transferee
14.	<b>MOTOR VEHICLE LICENCE, ISSUE OR TRANSFER OF</b> On the issue or transfer of a licence —		
(a)	where the market value of the motor vehicle does not exceed \$15 000. . . . .	2.5% of the market value	The person in whose name the licence is issued or the transferee; and see section 76C(13)
(b)	where the market value of the motor vehicle exceeds \$15 000 but does not exceed \$40 000. . . . .	The percentage rate of: $2.5 + \left( \frac{MV - 15000}{10000} \right)$ of the market value ( <i>MV</i> )	
(c)	where the market value of the motor vehicle exceeds \$40 000. . . . .	5% of the market value The duty payable is to be rounded down to the nearest 5 cents	

Second Schedule

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Item	Nature of instrument	Duty payable \$	Person liable to pay duty
14A.	ORDER TO WHICH SECTION 112UB (2) APPLIES	See item 4 or 4A, as the case requires. Property transferred or vested under an order. On the value of the property referred to the same duty as that set out in item 4 or 4A, as the case requires, references to consideration in that item being construed as references to the amount or value of the property concerned	Transferee or the person in whom the property is ordered to be vested
15.	PARTITION (1) Any instrument effecting a partition of any property. . . . . (2) Any instrument setting out any amount required to achieve equality. . . . .	20.00  See section 75AD	The parties thereto
16.	POLICY OF INSURANCE (1) Any instrument evidencing a policy of insurance, other than life insurance —  (a) against an employer's liability to pay compensation under the <i>Workers' Compensation and Rehabilitation Act 1981</i> —  (i) if, in the 12 months immediately preceding the cover period of the policy the employer —  (A) was liable to pay pay-roll tax under the <i>Pay-roll Tax Assessment Act 1971</i> ; or		The person issuing the policy and see section 94



Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
	(B) paid wages that under section 10 of that Act were not liable to pay-roll tax and employed an average of 15 (or such other number as is prescribed) full time equivalent employees or more —	5% of the amount calculated under section 96(2)	
	(ii) in any other case —	3% of the amount calculated under section 96(2)	
	(b) issued under the <i>Motor Vehicle (Third Party Insurance) Act 1943</i> . . . . .	0.25	
	(c) in any other case — on the amount calculated under section 96(2) . . . . .	8%	
(1a)	The average referred to in subitem (1)(a)(i)(B) is to be calculated on the basis of the number of full time and part time employees as at the last day of each calendar month with part time employees being taken into account as an appropriate fraction of full time employees		
(2)	On a policy of insurance, other than life insurance (undisclosed premium) — for every \$100, and also for every fractional part of \$100, of the sum insured . . . . .	0.08	Insured

Second Schedule

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Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(3)	On a policy of life insurance —		The person issuing the policy and see section 94
	(a) in the case of temporary or term assurance. . . . .	5% of the amount calculated under section 96(2) or 5% of the amount so calculated in respect of the first year if the assurance continues for more than one year	
	(b) in a case other than of temporary or term assurance —		
	(i) where the sum insured does not exceed \$2 000 —  for every \$100, and every fractional part of \$100, of the sum insured . . . . .	0.05	
	(ii) where the sum insured exceeds \$2 000. . . . .	\$1.00 and \$0.10 for every \$100, and every fractional part of \$100 of the part of the sum insured in excess of \$2 000	
17.	RELEASE OR RENUNCIATION OF ANY PROPERTY OR OF ANY RIGHT OR INTEREST IN ANY PROPERTY  An instrument of release or renunciation referred to in the heading to this item —		
	(a) by way of sale. . . . .	See item 4 or 4A(1), as the case requires	Purchaser
	(b) by way of gift. . . . .	See item 19	Donor
18.	RENTAL BUSINESS	See section 112K	Payable by registered person

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**Second Schedule**

<b>Item</b>	<b>Nature of instrument</b>	<b>Duty payable \$</b>	<b>Person liable to pay duty</b>
19.	SETTLEMENT, DEED OF, OR DEED OF GIFT	See item 4 or 4A(1), as the case requires	The settlor or donor
	(1) Any instrument, whether voluntary or upon any good or valuable consideration other than a <i>bona fide</i> pecuniary consideration whereby any property is settled or agreed to be settled in any manner whatsoever, or is given or agreed to be given in any manner whatsoever.	References to consideration in items 4 and 4A(1) being construed as references to the amount or value of the property concerned	
	(2) Any instrument declaring that the property vested in the person executing the same shall be held in trust for the person or persons mentioned therein.		

*[Second Schedule inserted by No. 37 of 1979 s. 108; amended by No. 81 of 1981 s. 8 and 9; No. 45 of 1982 s. 4; No. 93 of 1982 s. 8; No. 99 of 1982 s. 5; No. 14 of 1983 s. 6; No. 61 of 1983 s. 13; No. 81 of 1984 s. 37; No. 19 of 1985 s. 22; No. 85 of 1985 s. 3; No. 98 of 1986 s. 20; No. 16 of 1989 s. 4; No. 58 of 1990 s. 6; No. 42 of 1993 s. 5; No. 39 of 1994 s. 12 and 14; No. 22 of 1995 s. 4; No. 20 of 1996 s. 44; No. 48 of 1996 s. 37; No. 13 of 1997 s. 23 and 28; No. 57 of 1997 s. 113(6); No. 18 of 1998 s. 12; No. 22 of 1998 s. 53; No. 25 of 1999 s. 7(1); No. 53 of 1999 s. 30; No. 6 of 2000 s. 7; No. 4 of 2001 s. 8.]*

## Third Schedule

[Section 16(2)]

### Exemptions from duty

Item	Nature of instrument
1.	<b>BILL OF EXCHANGE OR PROMISSORY NOTE</b>
(1)	Draft or order drawn by any financial institution in Western Australia on any other financial institution in Western Australia not payable to bearer or order, and used solely for the purpose of settling or clearing any account between those financial institutions.
(2)	Letter written by a financial institution in Western Australia to any other financial institution in Western Australia directing the payment of any sum of money, the same not being payable to bearer or to order, and that letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf.
(3)	Letter of credit granted in Western Australia authorising drafts payable in Western Australia to be drawn out of Western Australia.
(4)	Cheques or orders for the withdrawal of moneys deposited in any financial institution, drawn or issued by — (a) a corporation that is a friendly society within the meaning of section 16C of the <i>Life Insurance Act 1995</i> of the Commonwealth; <i>[(b) deleted]</i> (c) the United Kingdom Government for the purpose of paying any person pensions, superannuation, retiring allowances or gratuities; (d) any body in respect of which the Commissioner has granted a certificate referred to in section 49A.
2.	<b>CONVEYANCE OR TRANSFER ON SALE OF PROPERTY:</b>
(1)	A transfer of any marketable securities of — (a) any public statutory body constituted under the law of any other State, or of any Territory, of the Commonwealth; or (b) any Crown instrumentality, agent of the Crown or Government authority designated by the Minister by notice published in the <i>Government Gazette</i> (any such notice being subject to amendment, substitution or revocation in like manner by the Minister). <i>[(2)-(4) repealed]</i>
(5)	Conveyance, transfer or surrender of the fee simple or other less estate in land to the Crown.

Item	Nature of instrument
(6)	<p>A conveyance or transfer of the fee simple in —</p> <ul style="list-style-type: none"> <li>(a) Crown land by way of exchange where the decision to exchange the land is given effect under clause 4;</li> <li>(b) Crown land the subject of a licence referred to in clause 21;</li> <li>(c) Crown land the subject of a lease referred to in clause 22;</li> <li>(d) Crown land the subject of a conditional purchase lease referred to in clause 26;</li> <li>(e) Crown land the subject of a conditional purchase lease referred to in clause 27;</li> <li>(f) war service land referred to in clause 30; or</li> <li>(g) Crown land referred to in clause 32, of Schedule 2 to the <i>Land Administration Act 1997</i>.</li> </ul>
(6a)	<p>A transfer of the fee simple in Crown land —</p> <ul style="list-style-type: none"> <li>(a) pursuant to a request under section 45A; or</li> <li>(b) granted under section 80, of the <i>Land Acquisition and Public Works Act 1902</i><sup>31</sup> as in force immediately before the commencement of the <i>Acts Amendment (Land Administration) Act 1997</i><sup>32</sup>.</li> </ul>
(6b)	A grant of a mining tenement under the <i>Mining Act 1978</i> .
(6c)	A conveyance of the fee simple in Crown land under section 87 of the <i>Land Administration Act 1997</i> to complete a land exchange under section 11(1)(b) of that Act.
(6d)	<p>A conveyance, grant or transfer of the fee simple or other less estate in Crown land pursuant to —</p> <ul style="list-style-type: none"> <li>(a) a request under section 212;</li> <li>(b) an agreement under section 255;</li> <li>(c) an award under section 256; or</li> <li>(d) section 257, of the <i>Land Administration Act 1997</i>.</li> </ul>
(7)	A conveyance or transfer of any estate or interest in any real or personal property locally situated out of Western Australia.
(7a)	<p>A conveyance or transfer of any estate or interest in goods, wares or merchandise that are —</p> <ul style="list-style-type: none"> <li>(a) stock-in-trade held or used in connection with a business;</li> <li>(b) held for use in, or are under, manufacture; or</li> <li>(c) prescribed to be exempt.</li> </ul>

**Third Schedule**

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<b>Item</b>	<b>Nature of instrument</b>
(7b)	A conveyance or transfer of any estate or interest in any ship or vessel, or part interest or share or property of or in any ship or vessel.
(7c)	The conveyance or transfer of any estate or interest in goods, wares or merchandise not referred to in subitems (7a) and (7b), except as provided in sections 70(2) and (3) and 31B(1)(ca) and (cb).
(8)	An agreement under which an option is given or taken for consideration to purchase or sell any marketable security at a future time at a certain price.
(9)	A transfer of the whole or any part of, or any interest in, a corporate debt security that is a marketable security.
<i>[(10) repealed]</i>	
(11)	A transfer to a person of the whole or any part of, or an interest in — <ol style="list-style-type: none"><li>a trade debt;</li><li>cash or money in an account at call;</li><li>money on deposit with any person;</li><li>a negotiable instrument;</li><li>choses in action with respect to work in progress; or</li><li>goodwill to which section 31B(1)(d) applies, except to the extent that actual consideration is given therefor.</li></ol>
<i>[(12)-(14) repealed]</i>	
(15)	A conveyance or transfer of property to the 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.
<i>[(16)-(17) repealed]</i>	
(18)	Any of the following matters under the <i>Strata Titles Act 1985</i> — <ol style="list-style-type: none"><li>the passing of any property that occurs by operation of section 21I, 21M or an order under section 103P;</li><li>a transfer or other document or a disposition statement referred to in section 21V or 31H;</li><li>anything that occurs by operation of section 21W, 21Y, 31G, 31J or an order under section 103P; or</li><li>anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III,</li></ol> but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property.

Item	Nature of instrument
3.	<p data-bbox="395 371 719 398">DEED OR DECLARATION:</p> <p data-bbox="395 409 1264 1137">           (1) Any instrument for the purpose of —           <ul style="list-style-type: none"> <li data-bbox="472 450 1264 539">(a) discharging or releasing any duly stamped instrument of security which discharge or release is not made to effect a voluntary disposition <i>inter vivos</i> or a conveyance or transfer on sale; or</li> <li data-bbox="472 546 1264 607">(b) extending the terms of repayment of the amount secured by a duly stamped security.</li> </ul>           (2) Any instrument or undertaking given by a society registered under the <i>Housing Societies Act 1976</i> to the Treasurer where the instrument is associated with a guarantee given by the Treasurer securing advances to the society.           (3) Any instrument executed on or after 1 July 1992 granting a power of attorney.           (4) An instrument described in item 8(1) of the Second Schedule to which an exempt body (as defined in section 119) is a party.           (5) Any of the following matters under the <i>Strata Titles Act 1985</i> —           <ul style="list-style-type: none"> <li data-bbox="472 913 1264 974">(a) anything that occurs by operation of section 21W, 21Y, 31G or 31J; or</li> <li data-bbox="472 981 1264 1041">(b) anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III,</li> </ul>           but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property.         </p>
4.	<p data-bbox="395 1144 799 1171">DUPLICATE OR COUNTERPART:</p> <p data-bbox="395 1182 916 1211">Duplicates or counterparts of insurance policies.</p>
[5.	<i>Deleted]</i>
6.	<p data-bbox="395 1254 852 1281">LEASE OR AGREEMENT FOR LEASE:</p> <p data-bbox="395 1296 1264 1671">           (1) All leases or agreements for leases from the Crown or the Minister for Lands or the Minister for Mines<sup>33</sup> under the <i>Land Administration Act 1997</i>, the <i>Mining Act 1978</i> and the regulations thereunder, respectively.           (2) Any lease or agreement for lease of land and tenements for use as a dwellinghouse where the total ascertainable rent payable for the term of the lease or agreement is equivalent to an amount not exceeding \$125 for each week of that term.           (3) A lease or an agreement for a lease to the representative in Australia of the Government of another country, a foreign consul, or a trade commissioner of another country, if the property subject to the lease or agreement is intended for official use.         </p>

Third Schedule

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Item	Nature of instrument
7.	MORTGAGE (LEGAL OR EQUITABLE), BOND, DEBENTURE, COVENANT, BILL OF SALE, GUARANTEE, LIEN OR INSTRUMENT OF SECURITY OF ANY OTHER KIND WHATSOEVER:
(1)	Any instrument for —
(a)	the hiring of any goods, wares or merchandise;
(b)	the hiring, construction or installation of any machinery or plant;
(c)	the execution of any building works; or
(d)	works or services of a civil or other engineering or of a technological nature.
(2)	Any bond, covenant or instrument when the total sum of the annuity or amount payable in each year is less than \$100.
(3)	Any mortgage or bond when the total amount secured is less than \$100.
(4)	Any bond with one or more sureties given by a contractor submitting a tender on construction work to be done in the State to provide that the tender shall not be withdrawn by the obligor before it is accepted or rejected and that if the tender is accepted the obligor shall execute the contract for the construction of the work to which the tender relates within a stipulated time.
(5)	Any bond for the administration of the estate of a deceased person.
(6)	Any bond required for the purposes of any State, Territory or Commonwealth legislation.
(7)	Any instrument acknowledging the receipt of money deposited with or lent to —
(a)	a corporation which is —
(i)	an Australian ADI (within the meaning of the Corporations Act); or
(ii)	registered under the <i>Life Insurance Act 1995</i> of the Commonwealth;
	or
(b)	a society registered under the <i>Housing Societies Act 1976</i> .
(8)	Any charter-party agreement.
(9)	Any hire purchase agreement or credit purchase agreement.
(10)	Any instrument of annuity.
(11)	Any instrument charging the assets of a society registered under the <i>Housing Societies Act 1976</i> in favour of the Treasurer where the instrument is associated with a guarantee given by the Treasurer securing advances to the society.



Item	Nature of instrument
(12)	Any instrument securing the repayment of moneys borrowed for the purchase by, or lease to, the representative in Australia of the Government of another country, a foreign consul, or a trade commissioner of another country, if the property purchased or leased is intended for official use.
(13)	<p data-bbox="472 501 1166 528">Any of the following matters under the <i>Strata Titles Act 1985</i> —</p> <p data-bbox="472 539 1270 600">(a) the passing of any property that occurs by operation of section 21I, 21M or an order under section 103P;</p> <p data-bbox="472 611 1254 672">(b) a transfer or other document or a disposition statement referred to in section 21V or 31H;</p> <p data-bbox="472 683 1254 743">(c) anything that occurs by operation of section 21W, 21Y, 31G, 31J or an order under section 103P; or</p> <p data-bbox="472 754 1262 815">(d) anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III,</p> <p data-bbox="472 826 1262 904">but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property.</p>
8.	<p data-bbox="395 916 703 943">POLICY OF INSURANCE:</p> <p data-bbox="395 954 943 981">(1) Any policy of reinsurance. (See section 95.)</p> <p data-bbox="395 992 1262 1084">(2) Any policy of insurance in respect of goods in the course of being transported, whether by rail, road, air or sea, and whether within the State or elsewhere.</p> <p data-bbox="395 1095 1222 1155">(3) Any policy of insurance in respect of a marine hull used primarily for commercial purposes.</p> <p data-bbox="395 1167 1190 1227">(3a) Any policy of insurance effected by an exempt body (as defined in section 119) on or after 30 June 1989.</p> <p data-bbox="395 1238 1270 1290">(4) Any policy of insurance of a class or description prescribed by regulations made under section 120.</p>
9.	<p data-bbox="395 1301 735 1328">MOTOR VEHICLE LICENCE</p> <p data-bbox="395 1339 1262 1626">(1) In this item —</p> <p data-bbox="472 1379 1254 1440">“<b>Commonwealth Act</b>” means the <i>Interstate Road Transport Act 1985</i> of the Commonwealth;</p> <p data-bbox="472 1451 1190 1512">“<b>corresponding State law</b>” means a law of any other State or a Territory corresponding to the RTA;</p> <p data-bbox="472 1523 1230 1583">“<b>heavy vehicle</b>” means a motor vehicle with a gross vehicle mass of more than 4.5 tonnes;</p> <p data-bbox="472 1594 927 1626">“<b>RTA</b>” means the <i>Road Traffic Act 1974</i>.</p>

**Third Schedule**

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<b>Item</b>	<b>Nature of instrument</b>
(2)	<p>A licence issued to a person for a motor vehicle which was, before the issue of that licence, last licensed in that person's name under —</p> <ul style="list-style-type: none"><li>(a) the RTA;</li><li>(b) a law of any other country corresponding to the RTA; or</li><li>(c) a corresponding State law,</li></ul> <p>but this subitem does not apply to a licence issued to a person for a heavy vehicle which was, before the issue of that licence, last licensed in the person's name under a corresponding State law if the vehicle was registered in that person's name under the Commonwealth Act on or after 16 January 1997.</p>
(3)	<p>A licence issued for a tractor or tractor plant, other than a prime mover, (as those terms are defined in the RTA) to a member of a prescribed class of persons where the vehicle is used for a purpose prescribed for the purposes of this subitem.</p>
(4)	<p>A licence issued to a person for a heavy vehicle if —</p> <ul style="list-style-type: none"><li>(a) the vehicle was, immediately before 16 January 1997, registered in that person's name under the Commonwealth Act; and</li><li>(b) since 16 January 1997, no licence has been issued under the RTA or a corresponding State law for the vehicle in any other person's name.</li></ul>
(5)	<p>A licence issued to a person for a motor vehicle —</p> <ul style="list-style-type: none"><li>(a) that was modified and that was, before the issue of the licence, last licensed in that person's name under —<ul style="list-style-type: none"><li>(i) the RTA;</li><li>(ii) a law of any other country corresponding to the RTA; or</li><li>(iii) a corresponding State law;</li></ul>or</li><li>(b) that was part of a motor vehicle that was modified and that was, before the issue of the licence, last licensed in that person's name under —<ul style="list-style-type: none"><li>(i) the RTA;</li><li>(ii) a law of any other country corresponding to the RTA; or</li><li>(iii) a corresponding State law.</li></ul></li></ul>

**Item**            **Nature of instrument**

- (6)    The exemption in subitem (5) applies whether or not a motor vehicle that results from the modification needs to meet a standard or requirement before it can be licensed that is different to the one that the original vehicle had to meet.

*[Third Schedule inserted by No. 37 of 1979 s. 109; amended by No. 63 of 1980 s. 3; No. 10 of 1982 s. 28; No. 14 of 1983 s. 7; No. 61 of 1983 s. 14; No. 81 of 1984 s. 38; No. 109 of 1984 s. 3 and 12; No. 84 of 1985 s. 11; No. 98 of 1986 s. 21; No. 100 of 1987 s. 14; No. 3 of 1989 s. 8; No. 41 of 1989 s. 27; No. 73 of 1990 s. 45; No. 52 of 1991 s. 14; No. 39 of 1994 s. 13, 20 and 21; No. 79 of 1994 s. 5(1); No. 14 of 1995 s. 44; No. 14 of 1996 s. 4; No. 20 of 1996 s. 45; No. 48 of 1996 s. 30(1) and 38; No. 61 of 1996 s. 40; No. 13 of 1997 s. 30 and 47; No. 31 of 1997 s. 82 and 141; No. 22 of 1998 s. 43 and 54; No. 58 of 1998 s. 8; No. 2 of 1999 s. 23; No. 26 of 1999 s. 103(3); No. 53 of 1999 s. 31; No. 29 of 2000 s. 4 and 16; No. 10 of 2001 s. 187; No. 12 of 2001 s. 51.]*

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**Notes**

<sup>1</sup> This reprint is a compilation as at 3 August 2001 of the *Stamp Act 1921* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also includes information about any previous reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Stamp Act 1921</i>	10 of 1922	31 Jan 1922	1 Apr 1922 (see s. 1 and <i>Gazette</i> 17 Mar 1922 p. 479)
<i>Stamp Act Amendment Act 1923</i>	53 of 1923	22 Dec 1923	22 Dec 1923
<i>Stamp Act Amendment Act 1924</i>	23 of 1924	31 Dec 1924	31 Dec 1924
<i>Ministers' Titles Act 1925</i> s. 2	8 of 1925	24 Sep 1925	24 Sep 1925
<i>Stamp Act Amendment Act 1925</i>	47 of 1925	31 Dec 1925	31 Dec 1925
<i>Stamp Act Amendment Act 1926</i>	17 of 1926	6 Nov 1926	6 Nov 1926
<i>Stamp Act Amendment Act 1927</i>	10 of 1927	6 Dec 1927	6 Dec 1927
<i>Stamp Act Amendment Act 1928</i>	22 of 1928	21 Dec 1928	21 Dec 1928
<i>Stamp Act Amendment Act 1929</i> <sup>34</sup>	5 of 1929	7 Oct 1929	7 Oct 1929
<i>Stamp Act Amendment Act (No. 3) 1930</i>	11 of 1930	19 Nov 1930	19 Nov 1930
<i>Stamp Act Amendment Act (No. 1) 1930</i>	12 of 1930	19 Nov 1930	19 Nov 1930
<i>Stamp Act Amendment Act 1931</i>	39 of 1931	26 Nov 1931	1 Dec 1931 (see s. 2 and <i>Gazette</i> 27 Nov 1931 p. 2499)
<b>Reprint of the <i>Stamp Act 1921</i> in Appendix to session Volume 1933-34</b> <sup>35</sup> (includes amendments listed above)			
<i>Stamp Act Amendment Act 1941</i>	35 of 1941	19 Dec 1941	19 Dec 1941

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Short title	Number and year	Assent	Commencement
<i>Stamp Act Amendment Act 1942</i>	40 of 1942	23 Dec 1942	23 Dec 1942
<i>Stamp Act Amendment Act 1944</i>	20 of 1944	23 Dec 1944	23 Dec 1944
<b>Reprint of the Stamp Act 1921 approved 3 Apr 1950 in Volume 5 of Reprinted Acts</b> (includes amendments listed above)			
<i>Stamp Act Amendment Act 1950</i>	11 of 1950	17 Nov 1950	17 Nov 1950
<i>Stamp Act Amendment Act 1954</i>	5 of 1954	25 Aug 1954	25 Aug 1954
<i>Betting Control Act 1954</i> s. 3(2) <sup>36</sup>	63 of 1954	30 Dec 1954	1 Aug 1955 (see s. 2 and <i>Gazette</i> 29 Jul 1955 p. 1767)
<i>Stamp Act Amendment Act 1957</i>	70 of 1957	6 Dec 1957	1 Feb 1958 (see s. 2 and <i>Gazette</i> 24 Jan 1958 p. 129)
<b>Reprint of the Stamp Act 1921 approved 1 May 1958 in Volume 12 of Reprinted Acts</b> (includes amendments listed above)			
<i>Stamp Act Amendment Act (No. 2) 1959</i>	64 of 1959	10 Dec 1959	21 Dec 1959 (see s. 2 and <i>Gazette</i> 18 Dec 1959 p. 3337)
<i>Stamp Act Amendment Act 1959</i>	72 of 1959	14 Dec 1959	1 Jan 1960 (see s. 2 and <i>Gazette</i> 24 Dec 1959 p. 3457)
<i>Stamp Act Amendment Act 1960</i>	22 of 1960	11 Oct 1960	13 Mar 1961 (see s. 2 and <i>Gazette</i> 10 Mar 1961 p. 653)
<i>Stamp Act Amendment Act (No. 2) 1960</i>	41 of 1960	3 Nov 1960	1 Jul 1961 (see s. 2 and <i>Gazette</i> 5 May 1961 p. 1069)
<i>Stamp Act Amendment Act 1961</i>	21 of 1961	30 Oct 1961	30 Oct 1961
<i>Stamp Act Amendment Act 1962</i>	20 of 1962	1 Oct 1962	1 Oct 1962
<i>Stamp Act Amendment Act (No. 2) 1962</i>	60 of 1962	30 Nov 1962	1 Jan 1963 (see s. 2)
<i>Stamp Act Amendment Act (No. 3) 1962</i>	69 of 1962	30 Nov 1962	30 Nov 1962
<b>Reprint of the Stamp Act 1921 approved 22 Apr 1963 (not in a Volume)</b> (includes amendments listed above)			

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## Stamp Act 1921

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Short title	Number and year	Assent	Commencement
<i>Stamp Act Amendment Act 1963</i>	7 of 1963	15 Oct 1963	15 Oct 1963
<i>Stamp Act Amendment Act (No. 2) 1963</i>	37 of 1963	19 Nov 1963	31 Dec 1963 (see s. 2 and <i>Gazette</i> 31 Dec 1963 p. 4055)
<i>Stamp Act Amendment Act (No. 3) 1963</i>	57 of 1963	17 Dec 1963	17 Dec 1963
<i>Stamp Act Amendment Act (No. 4) 1963</i>	58 of 1963	17 Dec 1963	1 Jul 1964 (see s. 2 and <i>Gazette</i> 5 Jun 1964 p. 2335)
<i>Stamp Act Amendment Act 1965</i>	72 of 1965	25 Nov 1965	s. 7, 8, 16(d), (h)(i), (j)(i), (ii), (iii) and (v) and (o): 1 Dec 1965; s. 3, 14 and 16(c): 14 Feb 1966; balance: 1 Jan 1966 (see s. 2)
<b>Reprint of the Stamp Act 1921 approved 14 Feb 1966 in Volume 19 of Reprinted Acts</b> (includes amendments listed above)			
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965
<i>Stamp Act Amendment Act 1966</i>	67 of 1966	12 Dec 1966	s. 1, 2, 4 and 15(a), (b) and (f): 1 Jan 1967; balance: 1 Feb 1967 (see s. 2)
<i>Stamp Act Amendment Act (No. 2) 1966</i>	90 of 1966	12 Dec 1966	1 Jan 1967 (see s. 2)
<i>Stamp Act Amendment Act (No. 3) 1966</i>	93 of 1966	12 Dec 1966	1 Jul 1967 (see s. 2 and <i>Gazette</i> 23 Jun 1967 p. 1691)
<i>Stamp Act Amendment Act 1967</i>	50 of 1967	24 Nov 1967	1 Dec 1967 (see s. 2)
<b>Reprint of the Stamp Act 1921 approved 27 Aug 1968 (not in a Volume)</b> (includes amendments listed above)			
<i>Stamp Act Amendment Act 1968</i>	54 of 1968	13 Nov 1968	1 Jan 1969 (see s. 2 and <i>Gazette</i> 13 Dec 1968 p. 3809)
<i>Stamp Act Amendment Act 1969</i>	113 of 1969	28 Nov 1969	1 Jan 1970 (see s. 2 and <i>Gazette</i> 16 Dec 1969 p. 4077)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Commissioner of State Taxation) Act 1970 Pt. VI</i>	21 of 1970	8 May 1970	1 Jul 1970 (see s. 2 and <i>Gazette</i> 26 Jun 1970 p. 1831)
<i>Stamp Act Amendment Act 1970</i>	102 of 1970	8 Dec 1970	s. 1 and 2: 8 Dec 1970; s. 3, 4, 12(b), 13, 14 and 15(a): 1 Jan 1971 (see s. 2(1)(c)); s. 5-11 and 15(b): 1 Oct 1970 (see s. 2(2)); s. 12(a), (c), (d) and (e): 1 Jul 1970 (see s. 2(3))
<i>Stamp Act Amendment Act 1971</i>	3 of 1971	13 Sep 1971	13 Sep 1971
<i>Stamp Act Amendment Act (No. 2) 1971</i>	29 of 1971	1 Dec 1971	1 Jan 1972 (see s. 2 and <i>Gazette</i> 10 Dec 1971 p. 5169)
<i>Stamp Act Amendment Act 1972</i>	32 of 1972	16 Jun 1972	1 Jul 1972 (see s. 2 and <i>Gazette</i> 30 Jun 1972 p. 2100)
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19 of 1973 s. 4)	4 Dec 1972	Relevant amendments (see Second Sch. <sup>37</sup> ) took effect on 1 Jul 1973 (see s. 4(2) and <i>Gazette</i> 22 Jun 1973 p. 2379)
<i>Stamp Act Amendment Act 1974</i>	9 of 1974	27 Sep 1974	s. 1, 2 and 7: 27 Sep 1974 (see s. 2(1)); s. 5, 6 and 9: 1 Dec 1974; s. 3, 4, 8 and 10: 1 Jan 1975 (see s. 2 and <i>Gazette</i> 22 Nov 1974 p. 5089)
<i>Stamp Act Amendment Act (No. 2) 1974</i>	46 of 1974	18 Nov 1974	1 Dec 1974 (see s. 2 and <i>Gazette</i> 29 Nov 1974 p. 5167)
<b>Reprint of the Stamp Act 1921 approved 20 Feb 1976</b> (includes amendments listed above)			
<i>Stamp Act Amendment Act 1976</i>	96 of 1976	12 Nov 1976	1 Jan 1977 (see s. 2)
<i>Stamp Act Amendment Act 1977</i>	63 of 1977	23 Nov 1977	23 Nov 1977

## Stamp Act 1921

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Short title	Number and year	Assent	Commencement
<i>Stamp Act Amendment Act 1979</i>	37 of 1979	18 Oct 1979	s. 1, 2, 42 and 61: 18 Oct 1979 (see s. 2(2)); balance: 1 Jan 1980 (see s. 2(1) and <i>Gazette</i> 7 Dec 1979 p. 3769)
<b>Reprint of the <i>Stamp Act 1921</i> approved 25 Mar 1980</b> (includes amendments listed above)			
<i>Credit Unions (Consequential Provisions) Act 1979 Pt. 1</i>	47 of 1979	7 Nov 1979	1 Jul 1980 (see s. 2)
<i>Stamp Amendment Act 1980</i>	63 of 1980	26 Nov 1980	Deemed operative 4 Nov 1980 (see s. 1(4))
<i>Stamp Amendment Act 1981</i> <sup>28</sup>	81 of 1981	9 Nov 1981	s. 3 and 8: 1 Jan 1982; balance 1 Dec 1981 (see s. 2)
<i>Acts Amendment (Traffic Board) Act 1981 Pt. VIII</i>	106 of 1981	4 Dec 1981	2 Feb 1982 (see s. 2)
<i>Stamp Amendment Act 1982</i>	1 of 1982	8 Apr 1982	8 Apr 1982
<i>Companies (Consequential Amendments) Act 1982 s. 28</i>	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1))
<i>Stamp Amendment Act (No. 2) 1982</i>	15 of 1982	14 May 1982	s. 4: 14 May 1982; balance deemed operative: 8 Apr 1982 (see s. 2)
<i>Stamp Amendment Act (No. 3) 1982</i>	45 of 1982	26 Aug 1982	24 Dec 1981 (see s. 2)
<i>Stamp Amendment Act (No. 4) 1982</i>	93 of 1982	22 Nov 1982	s. 3-6, 7(1) and 8: 1 Jan 1983; balance: 22 Nov 1982 (see s. 2)
<i>Stamp Amendment Act (No. 5) 1982</i>	99 of 1982	24 Nov 1982	Deemed operative 1 Jan 1983 (see s. 2)
<i>Stamp Amendment Act (No. 6) 1982</i>	112 of 1982	8 Dec 1982	Deemed operative 26 Oct 1982 (see s. 2)



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Short title	Number and year	Assent	Commencement
<i>Stamp Amendment Act 1983</i>	14 of 1983	31 Oct 1983	s. 6(d): 1 Dec 1983 (see s. 2(1) and <i>Gazette</i> 25 Nov 1983 p. 4649); balance: 1 Nov 1983 (see s. 2(2))
<i>Stamp Amendment Act (No. 2) 1983</i>	61 of 1983	13 Dec 1983	s. 1, 2, 3, and 4: 13 Dec 1983; balance: 1 Jan 1984 (see s. 2)
<i>Stamp Amendment Act 1984</i>	81 of 1984	7 Dec 1984	1 Jan 1985 (see s. 2 and <i>Gazette</i> 28 Dec 1984 p. 4197)
<i>Stamp Amendment Act (No. 2) 1984</i>	109 of 1984	19 Dec 1984	1 Jan 1985 (see s. 2)
<i>Acts Amendment (Lotteries) Act 1985 Pt. V</i>	19 of 1985	19 Apr 1985	19 Apr 1985 (see s. 2(1))
<b>Reprint of the Stamp Act 1921 as at 9 Jun 1985</b> (includes amendments listed above)			
<i>Stamp Amendment Act 1985</i> <sup>7</sup>	84 of 1985	4 Dec 1985	1 Jan 1986 (see s. 2)
<i>Stamp Amendment Act (No. 2) 1985</i>	85 of 1985	4 Dec 1985	1 Jan 1986 (see s. 2)
<i>Stamp Amendment Act 1986</i> <sup>38</sup>	98 of 1986	11 Dec 1986	s. 4-10: deemed operative 11 Nov 1986 (see s. 2(2)); s. 11 and 19: 8 Jan 1987 (see s. 2(3)); s. 21(1)(b) and (2): 1 Jan 1987, and s. 12 and 21(1)(a)(ii): 1 Feb 1987 (see s. 2(4) and <i>Gazette</i> 19 Dec 1986 p. 4859); balance: 11 Dec 1986 (see s. 2(1))
<i>Stamp Amendment Act 1987</i> <sup>19</sup>	33 of 1987	30 Jun 1987	s. 5, 15 and 19: 24 Jul 1987 (see s. 2(2) and <i>Gazette</i> 24 Jul 1987 p. 2813); balance: 30 Jun 1987 (see s. 2(1))
<i>Stamp Amendment Act (No. 2) 1987</i> <sup>29</sup>	100 of 1987	18 Dec 1987	1 Jan 1988 (see s. 2)
<b>Reprint of the Stamp Act 1921 as at 21 Mar 1989</b> (includes amendments listed above)			

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**Stamp Act 1921**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Stamp Amendment Act (No. 2) 1989</i>	3 of 1989	20 Apr 1989	20 Apr 1989 (see s. 2)
<i>Stamp Amendment Act (No. 4) 1989</i>	16 of 1989 (as amended by No. 1 of 1989 s. 28)	16 Nov 1989	s. 4(1): 16 Nov 1989 (see s. 2(1)); s. 4(2): 1 Nov 1989 (see s. 2(2) and <i>Gazette</i> 29 Dec 1989 p. 4665); s. 4(3): 1 Jul 1990 (see s. 2(3) and <i>Gazette</i> 8 Jun 1990 p. 2615); s. 4(4): 1 Nov 1989 (see s. 2(4))
<i>Taxation (Reciprocal Powers) Act 1989 s. 16</i>	18 of 1989	1 Dec 1989	5 Oct 1990 (see s. 2 and <i>Gazette</i> 5 Oct 1990 p. 5122)
<i>Stamp Amendment Act (No. 3) 1989</i> <sup>11</sup>	41 of 1989	21 Dec 1989	s. 11, 13, 20(a) and (b), 24 and 26: deemed operative 1 Nov 1989 (see s. 2(2)); s. 4, 10(a), (b) and (c), 12, 20(c) and 27(1): deemed operative 1 Dec 1989 (see s. 2(3)(b)); s. 27(3): deemed operative 30 Jun 1989 (see s. 2(4)); s. 17, 18(a), (f) and (g), 19 and 27(2): 1 Jul 1990 (see s. 2(1) and <i>Gazette</i> 8 Jun 1990 p. 2615); balance: 21 Dec 1989 (see s. 2)
<i>Stamp Amendment Act 1990</i> <sup>4</sup>	20 of 1990	24 Jul 1990	24 Jul 1990 (see s. 2)
<i>Acts Amendment (Betting Tax and Stamp Duty) Act (No. 2) 1990 Pt. 2</i>	58 of 1990	17 Dec 1990	Deemed operative 1 Aug 1989 (see s. 2)
<i>R &amp; I Bank Act 1990 s. 45</i>	73 of 1990	20 Dec 1990	1 Jan 1991 (see s. 2(2) and <i>Gazette</i> 28 Dec 1990 p. 6369)
<i>Stamp Amendment Act 1991</i> <sup>39</sup>	52 of 1991	17 Dec 1991	s. 4 and 6 deemed operative 29 Aug 1991 (see s. 2(2)); balance: 17 Dec 1991 (see s. 2(1))
<i>Stamp Amendment Act (No. 2) 1991</i>	53 of 1991	17 Dec 1991	17 Dec 1991 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>SGIO Privatisation Act 1992</i> s. 29	49 of 1992	9 Dec 1992	7 Jan 1993 (see s. 2(3) and <i>Gazette</i> 7 Jan 1993 p. 15)
<i>Stamp Amendment Act 1993</i>	42 of 1993	20 Dec 1993	Pt. 2: 1 Jan 1994 (see s. 2(2)); s. 6: 11 Jan 1994 (see s. 2(3) and <i>Gazette</i> 11 Jan 1994 p. 43); balance: 20 Dec 1993 (see s. 2(1))
<i>R &amp; I Bank Amendment Act 1994</i> s. 13	6 of 1994	11 Apr 1994	26 Apr 1994 (see s. 2 and <i>Gazette</i> 26 Apr 1994 p. 1743)
<i>Stamp Amendment Act 1994</i>	39 of 1994	26 Aug 1994	1 Sep 1994 (see s. 2)
<i>Stamp Amendment Act (No. 2) 1994</i> <sup>13,30</sup>	79 of 1994	22 Dec 1994	22 Dec 1994 (see s. 2)
<i>Bank of Western Australia Act 1995</i> s. 44	14 of 1995	4 Jul 1995	1 Dec 1995 (see s. 2(3) and <i>Gazette</i> 29 Nov 1995 p. 5529)
<i>Road Traffic Amendment Act 1995</i> s. 14	21 of 1995	13 Jul 1995	25 Nov 1995 (see s. 2 and <i>Gazette</i> 24 Nov 1995 p. 5390)
<i>Stamp Amendment (Marketable Securities Duty) Act 1995</i> <sup>40</sup>	22 of 1995	13 Jul 1995	Deemed operative 1 Jul 1995 (see s. 2)
<i>Stamp Amendment Act 1995</i> <sup>5, 9, 22</sup>	41 of 1995	24 Oct 1995	24 Oct 1995 (see s. 2)
<i>Acts Amendment (Vehicle Licences) Act 1995</i> Pt 3	57 of 1995	20 Dec 1995	20 Dec 1995 (see s. 2)
<b>Reprint of the Stamp Act 1921 as at 23 Jan 1996</b> (includes amendments listed above)			
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act 1996</i> Pt 5 <sup>14</sup>	20 of 1996	28 Jun 1996	28 Jun 1996 (see s. 2(1))
<i>Acts Amendment (ICWA) Act 1996</i> s. 38	45 of 1996	25 Oct 1996	1 Oct 1997 (see s. 2 and <i>Gazette</i> 23 Sep 1997 p. 5357)

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Short title	Number and year	Assent	Commencement
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 1996 Pt. 5</i>	48 of 1996	25 October 1996	Div. 1 and 2 of Pt. 5 deemed operative 30 Nov 1995 (see s 2(2)); Div. 3 deemed operative 15 Jul 1996 (see s. 2(3)); Div. 4 deemed operative 1 Oct 1996 (see s 2(4)); Div. 5 operative 25 Oct 1996 (see s. 2(1))
<i>Stamp Amendment Act 1996</i> <sup>18</sup>	57 of 1996	11 Nov 1996	Deemed operative 20 Nov 1995 (see s. 2)
<i>Strata Titles Amendment Act 1996 s. 40</i>	61 of 1996	11 Nov 1996	20 Jan 1997 (see s. 2 and <i>Gazette</i> 17 Jan 1997 p. 405)
<i>Road Traffic Amendment Act 1996 Pt. 3 Div. 8</i>	76 of 1996	14 Nov 1996	1 Feb 1997 (see s. 2 and <i>Gazette</i> 31 Jan 1997 p. 613)
<i>Transfer of Land Amendment Act 1996 s. 153(1) and (2)</i>	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Revenue Laws Amendment (Assessment) Act 1997 Pt. 4</i> <sup>41,42</sup>	13 of 1997	25 Jun 1997	Div. 2 of Pt. 4 deemed operative 27 Dec 1996 (see s. 2(3)); Div. 3 deemed operative 14 Jan 1997 (see s. 2(4)); Div. 4 deemed operative 12 May 1997 (see s. 2(5)); Div. 5 and 6: 25 Jun 1997 (see s. 2)
<i>Acts Amendment (Land Administration) Act 1997 Pt. 55 and s. 141</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2(1) and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Acts Amendment and Repeal (Family Court) Act 1997 s. 37</i>	41 of 1997	9 Dec 1997	26 Sep 1998 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 1997 Pt. 3</i>	51 of 1997	12 Dec 1997	12 Dec 1997 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 113	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2)
<i>Revenue Laws Amendment (Taxation) Act 1998</i> Pt. 3 <sup>43,44</sup>	18 of 1998	30 Jun 1998	1 Jul 1998 (see s. 2(2) and also take note of s. 2(4) and (5))
<i>Revenue Laws Amendment (Assessment) Act 1998</i> Pt. 5, Div. 4 of Pt. 6, and Pt. 7	22 of 1998	30 Jun 1998	Pt. 5 Div. 1 and 3: 30 Jun 1998; Div. 2 deemed operative 1 Oct 1997; Div. 4: 1 Jul 1998; Pt. 6 Div. 4: 2 Jul 1998 (see s. 2(1)); Pt. 7: 30 Jun 1998 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 1998</i> Pt. 3 <sup>26</sup>	58 of 1998	18 Dec 1998	s. 8 deemed operative 30 Mar 1998 (see s. 2(2)); Balance: 18 Dec 1998 (see s. 2)
<i>Friendly Societies (Western Australia) Act 1999</i> s. 23	2 of 1999	25 Mar 1999	24 May 1999 (see s. 2 and <i>Gazette</i> 21 May 1999 p. 1999)
<i>Revenue Laws Amendment (Assessment) Act 1999</i> Pt. 2	24 of 1999	29 Jun 1999	s. 4 deemed operative 1 Jul 1998; s. 5 and 6: 29 Jun 1999 (see s. 2(1)); s. 7: 1 Jul 1999 (see s. 2(3))
<i>Revenue Laws Amendment (Taxation) Act 1999</i> Pt. 3 <sup>21</sup>	25 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(4))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 103	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<b>Reprint of the Stamp Act 1921 as at 22 Oct 1999</b> (includes amendments listed above)			
<i>Financial Relations Agreement (Consequential Provisions) Act 1999</i> Pt. 5 <sup>45</sup>	53 of 1999	13 Dec 1999	Div. 1 and 3 of Pt. 5: 13 Dec 1999 (see s. 2(1)); Div 2: 1 Jul 2001 (see s. 2(2))

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Acts Amendment (Continuing Lotteries) Act 2000</i> Pt. 2 <sup>25</sup>	6 of 2000	11 Apr 2000	1 Jul 2000 (see s. 2 and <i>Gazette</i> 23 Jun 2000 p. 3191)
<i>Stamp Amendment Act 2000</i>	28 of 2000	6 Jul 2000	6 Jul 2000 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act 2000</i> Pt. 2 <sup>15,16</sup>	29 of 2000	6 Jul 2000	6 Jul 2000 (see s. 2(1))
<i>Stamp Amendment Act (No. 3) 2000</i> <sup>20</sup>	60 of 2000	4 Dec 2000	Deemed operative 10 Aug 2000 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act 2001</i> Pt. 4	3 of 2001	26 Jun 2001	Div. 1 and 2: 26 Jun 2001 (see s. 2(1)); Div. 3: 30 Jun 2001 (see s. 2(4)); Div. 4: 1 Jul 2001 (see s. 2(6))
<i>Revenue Laws Amendment (Taxation) Act 2001</i> Pt. 3	4 of 2001	26 Jun 2001	30 Jun 2001 (see s. 2(4))
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 48	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Building Societies Amendment Act 2001</i> s. 51	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)

<sup>1a</sup> On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnote referred to after the short title.

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Road Traffic Amendment Act 2000</i> Pt. 3 Div. 3 <sup>46</sup>	39 of 2000	10 Oct 2000	To be proc. (see s. 2)

<sup>2</sup> Under the *Alteration of Statutory Designations Order (No. 2) 1996*, references to the Commissioner of State Taxation are to be construed as references to the Commissioner of State Revenue.

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<sup>3</sup> Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is to be read as if it had been amended to be a reference to the *Public Sector Management Act 1994*. The reference was substituted under the *Reprints Act 1984* s. 7(4)(g).

<sup>4</sup> The *Stamp Amendment Act 1990* s. 3(2) reads as follows:

“

- (2) Section 15A of the principal Act inserted by subsection (1) applies to a rescission, annulment, discharge or cancellation of an instrument or failure of a matter or matters contained in an instrument or to which an instrument relates that occurred on or after 1 July 1988.

”

<sup>5</sup> The *Stamp Amendment Act 1995* s. 4(2) reads as follows:

“

- (2) Subsection 3 as inserted in section 27 of the principal Act by this Act applies to an instrument or document executed before or after the commencement of this Act.

”

<sup>6</sup> The *Revenue Laws Amendment (Assessment) Act 1997* s. 36(2) reads as follows:

“

- (2) Section 27(3) as inserted in the principal Act by subsection (1) applies to an instrument or document executed before or after the day on which this section commences.

”

<sup>7</sup> The *Stamp Amendment Act 1985* s. 7(2) reads as follows:

“

- (2) Section 33A inserted in the principal Act by subsection (1) shall have effect only in respect of objections made and appeals brought after the commencement of this section.

”

<sup>8</sup> Under the *Public Sector Management Act 1994* the names of departments can be changed. At the time this reprint was prepared the former State Taxation Department was called the State Revenue Department.

<sup>9</sup> The *Stamp Amendment Act 1995* s. 6(2) reads as follows:

“

- (2) Section 73F is enacted to avoid doubt and does not limit the application of the principal Act as enacted before the

commencement of this section to transactions entered into in relation to business licences (within the meaning of that section) before that commencement.

”

<sup>10</sup> The *Stamp Amendment Act (No. 3) 1989* s. 11(2) reads as follows:

“

- (2) Notwithstanding subsection (1), section 75AE(2)(b) of the principal Act as in force before the coming into operation of this section has effect for determining whether a purchaser is an entitled person for the purposes of section 75AE if the conveyance or transfer of property in question was executed before 1 November 1989.

”

<sup>11</sup> The *Stamp Amendment Act (No. 3) 1989* s. 13(2) and (3) reads as follows:

“

- (2) Notwithstanding subsection (1), section 75AG(5)(c)(i) of the principal Act as in force before the coming into operation of this section has effect for determining whether a person is a first home owner for the purposes of section 75AG if the instrument of acquisition of the property in question was executed before 1 November 1989.

- (3) In subsection (2) “**instrument of acquisition**” has the same meaning as it has in section 75AG of the principal Act.

”

<sup>12</sup> The *Revenue Laws Amendment (Assessment) Act 1997* s. 38(3) reads as follows:

“

- (3) Section 75AG(10) of the principal Act as amended by subsection (1) and section 75AG(10a) as inserted in the principal Act by subsection (2) apply to instruments of acquisition, within the meaning of section 75AG(1) of the principal Act, that are executed on or after the day on which this section commences.

”

<sup>13</sup> The *Stamp Amendment Act (No. 2) 1994* s. 4(2) reads as follows:

“

- (2) An exemption or refund may be allowed under Part IIIBAA of the principal Act as inserted by this section in respect of an instrument executed on or after the day on which this Act comes into operation.

”



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<sup>14</sup> The *Revenue Laws Amendment (Assessment) Act 1996* s. 32(5) reads as follows:

“

- (5) Section 75E of the principal Act as amended by this Act applies to an instrument executed on or after the commencement of the *Revenue Laws Amendment (Assessment) Act 1996*.

”

<sup>15</sup> The *Revenue Laws Amendment (Assessment) Act 2000* s. 6(2) reads as follows:

“

- (2) In the event of a cessation of ownership or control referred to in section 75JB(5f)(a) or (b) of the *Stamp Act 1921* as inserted by subsection (1) taking place on or after 25 May 2000 and before this Act receives the Royal Assent, the notification required by section 75JB(5f)(c) of that Act is to be given within one month after this Act receives the Royal Assent.

”

<sup>16</sup> The *Revenue Laws Amendment (Assessment) Act 2000* s. 8(2), (3) and (4) reads as follows:

“

- (2) In subsections (3) and (4) —  
“**transitional period**” means the period beginning on 25 October 1999 and ending when subsection (1) comes into operation.
- (3) If an exemption under section 75JB of the *Stamp Act 1921* has been granted during the transitional period and the Commissioner is of the opinion that it would not have been granted if subsection (1) had come into operation on 25 October 1999, the claw-back under Part IIIBAAA of that Act applies.
- (4) Section 75JDA(4) of the *Stamp Act 1921* does not apply to a requirement under section 75JC(5) of that Act if the determination under section 75JC was made during the transitional period.

”

<sup>17</sup> Repealed by the *Mining Act 1978*.

<sup>18</sup> The *Stamp Amendment Act 1996* s. 9 reads as follows:

“

**9. Transitional**

- (1) If because of the amendments made by this Act to the *Stamp Act 1921*, a person is required under Division 2 of Part IIIBA of that Act to lodge a statement in respect of a relevant acquisition that occurred on or after 20 November 1995 and before this Act

receives the Royal Assent, then despite section 76AG(3) of that Act the statement shall be lodged within 3 months after the date on which this Act receives the Royal Assent.

- (2) If under section 112HA of the *Stamp Act 1921* as inserted by section 8 of this Act, a statement in respect of a capital reduction or a share cancellation is required to be lodged by that section before this Act receives the Royal Assent, then despite section 112HA of that Act the statement shall be lodged within 3 months after the date on which this Act receives the Royal Assent.

”

<sup>19</sup> The *Stamp Amendment Act 1987* s. 4 reads as follows:

“

**4. Retrospective application and transitional provisions**

- (1) Section 76AG inserted in the principal Act by section 22 of this Act extends to any relevant acquisition of a majority interest or a further interest in a company to which Division 2 of Part IIIA of the principal Act applies that occurred on or after 19 January 1987, and the provisions of Divisions 1 and 2 of that Part and any regulations having effect for the purposes of those Divisions shall have effect accordingly.
- (2) Section 76AN inserted in the principal Act by section 22 of this Act extends to any relevant acquisition of a majority interest or a further interest in a corporation to which Division 3 of Part IIIA of the principal Act applies that occurred on or after 19 January 1987, and the provisions of Divisions 1 and 3 of that Part and any regulations having effect for the purposes of those Divisions shall have effect accordingly.
- (3) Subsections (1) and (2) have effect notwithstanding that duty on an instrument effecting or evidencing an acquisition has already been paid under item 4 (3) of the Second Schedule.
- (4) A statement required by subsection (1) or (2) shall be prepared and lodged not later than 3 months after the commencement of this section.
- (5) Notwithstanding subsection (1) or (2), a previous acquisition referred to in subparagraph (ii) of section 76AJ(1)(a) or subparagraph (ii) of section 76AQ(1)(a) of the principal Act shall not be taken into account for the purposes of that subparagraph if it occurred before 19 January 1987.

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- (6) Regulations having retrospective effect to 19 January 1987 may be made under section 120(1) of the principal Act so far as it is necessary or expedient to do so to give effect to this section.
  - (7) An expression used in this section in relation to a Division of Part IIIA of the principal Act has the same meaning as it has for the purposes of that Division.

<sup>20</sup> The *Stamp Amendment Act (No. 3) 2000* s. 21 reads as follows:

“

**21. Transitional**

- (1) In this section —  
“**amended provisions**” means the provisions of Part IIIA and sections 32, 73DA, 75HA, 75I and 75J of the *Stamp Act 1921* as enacted after the coming into operation of this Act;  
“**existing provisions**” means the provisions of Part IIIA and sections 32, 73DA, 75HA, 75I and 75J of the *Stamp Act 1921* as enacted before the coming into operation of this Act.
- (2) Subject to subsection (3), the existing provisions continue to apply to and in relation to an acquisition of an interest in a corporation that occurred before 10 August 2000 and the amended provisions do not apply to it.
- (3) Subsection (2) does not affect the operation of the amended provisions in relation to an acquisition of an interest that occurred before 10 August 2000 in so far as those provisions have effect for the purpose of determining whether an acquisition that occurred on or after 10 August 2000 is a relevant acquisition for the purposes of those provisions.
- (4) If —
  - (a) a legally enforceable agreement in writing was executed before 10 August 2000;
  - (b) that agreement created before 10 August 2000 an entitlement to an interest in a corporation; and
  - (c) that entitlement resulted or results in that interest being acquired on or after 10 August 2000 but before 1 January 2001,

the acquisition of that interest is to be regarded for the purposes of subsections (2) and (3) as having occurred before 10 August 2000.

- (5) Despite section 76AG(3) or 76AN(2), as the case may be, of the amended provisions, if —
- (a) an acquisition of an interest in a corporation occurred on or after 10 August 2000 but before this Act receives the Royal Assent;
  - (b) a statement has to be lodged under section 76AG or 76AN in respect of that acquisition because of the operation of the amended provisions; and
  - (c) the existing provisions would not have required such a statement to be lodged,

the statement may be lodged at any time before the end of the period of 3 months after the day on which this Act receives the Royal Assent.

”

<sup>21</sup> The *Revenue Laws Amendment (Taxation) Act 1999* s. 7(2), (3) and (4) reads as follows:

“

- (2) Subject to subsection (3), if an application for the issue or transfer of a motor vehicle licence is made to a licensing authority before this section commences, then the *Stamp Act 1921* as it was in force immediately before this section commences continues to operate in respect of the issue or transfer of the licence.
- (3) If —
- (a) an application for the issue or transfer of a motor vehicle licence is made to a licensing authority on or after 1 July 1999; and
  - (b) stamp duty in respect of the issue or transfer is not paid before the day on which this section commences,
- then the *Stamp Act 1921* as amended by subsection (1) operates in respect of the issue or transfer of the licence.
- (4) If under section 76C(9), (10) or (10C) of the *Stamp Act 1921* duty is assessed before this section commences, then the *Stamp Act 1921* as it was in force immediately before this section commences continues to operate in respect of any issue or transfer of a licence as a result of the assessment.

”

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<sup>22</sup> The *Stamp Amendment Act 1995* s. 8(2) and (3) reads as follows:

“

- (2) Section 76CA as inserted in the principal Act by this Act applies to an application for a transfer of a licence for a motor vehicle made after the commencement of this Act.
- (3) Section 76CB as inserted in the principal Act by this Act applies to an application for a licence or transfer of a motor vehicle made after the commencement of this Act.

”

<sup>23</sup> The *Revenue Laws Amendment (Assessment) Act 1997* s. 39(2) and (3) reads as follows:

“

- (2) Section 76D of the principal Act as it was in force immediately before the commencement day continues to have effect after the commencement day in relation to deeds made before the commencement day despite the repeal of Part IIIICA by this Act.
- (3) In subsection (2) —  
“**commencement day**” means the day on which this Act comes into operation.

”

<sup>24</sup> Now see *Stamp Act Regulations 1979*.

<sup>25</sup> The *Acts Amendment (Continuing Lotteries) Act 2000* Pt. 4 reads as follows:

“

## Part 4 — Savings and transitional provisions

### 17. Interpretation

In this Part —

“**commencement day**” means the day on which this Act comes into operation;

“**Commission**” means the Gaming Commission of Western Australia, established under the *Gaming Commission Act 1987*;

“**Commissioner of State Revenue**” means the chief executive officer of the State Revenue Department;

“**Gaming Commission Act**” means the *Gaming Commission Act 1987* as amended by this Act;

“**Stamp Act**” means the *Stamp Act 1921* as in force immediately prior to the commencement day.

**18. Licences**

A licence issued under Part IVAA of the Stamp Act and in force immediately before the commencement day —

- (a) is taken to be a licence issued under Part V Division 7 of the Gaming Commission Act; and
- (b) subject to that Division, continues in force until —
  - (i) the day on which the licence would have expired under Part IVAA of the Stamp Act; or
  - (ii) 5 years after the commencement day,whichever is the earlier.

**19. Cancellation of licence**

For the purposes of section 104B(3)(c) of the Gaming Commission Act, the cancellation of a licence under Part IVAA of the Stamp Act is to be treated as if it were a cancellation under the Gaming Commission Act, Part V Division 7.

**20. Pending appeals**

- (1) Subject to subsection (2), an appeal commenced under section 111 of the Stamp Act before the commencement day, may be continued and dealt with as if the amendments in Parts 2 and 3 of this Act had not been passed.
- (2) For the purposes of continuing and dealing with pending appeals, if a Local Court wishes to exercise its power, under section 111(3)(b) of the Stamp Act, to remit a matter under appeal, it is to remit that matter to the Commission, instead of the Commissioner of State Revenue.

**21. Continuing effect of approvals**

Any approval granted under section 111B of the Stamp Act continues in force until that approval is varied or revoked by the Commission under section 104F(2) of the Gaming Commission Act.

**22. Returns**

If duty payable to the Commissioner of State Revenue under section 111B of the Stamp Act on a return lodged, or to be lodged, with the Commissioner of State Revenue under section 111B of the Stamp Act has not been paid prior to the commencement day then, despite this Act, the duty payable continues as a debt due to the Commissioner of State Revenue.

**23. Refund of duty**

Where a licensed supplier is entitled to a refund of duty from the Commissioner of State Revenue under section 111D of the Stamp

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Act, and that duty has not been refunded before or on the commencement day, then despite this Act, the licensed supplier is entitled to a refund of that amount of duty from the Commissioner of State Revenue.

**24. Memoranda**

- (1) Where the Commissioner of State Revenue was entitled to create a memorandum under section 111E of the Stamp Act, and that entitlement had not been exercised by the Commissioner of State Revenue before or on the commencement day, then on and from the commencement day the Commission is instead entitled to create that memorandum.
- (2) In addition to the entitlement under subsection (1), the Commission is entitled to assess the amount to be paid (including any fine), and to collect the outstanding amount, in relation to a memorandum created under subsection (1).

”

<sup>26</sup> The *Revenue Laws Amendment (Assessment) Act (No. 2) 1998* s. 7(2) reads as follows:

“

- (2) Section 112AB of the *Stamp Act 1921* as inserted by subsection (1) applies to a share buy-back, within the meaning of that section, carried out before, on or after the day on which this section commences.

”

<sup>27</sup> The *Revenue Laws Amendment Act (Assessment) 1997* s. 29 reads as follows:

“

**29. Transitional**

A WA company may, within 15 days of the end of the month in which this Act receives the Royal Assent, lodge a return and pay duty under section 112FU as inserted in the principal Act by section 27 in respect of a transfer registered by the WA company after 14 January 1997 and before this Act received the Royal Assent and in that case the return is taken to have been made, and the duty is taken to have been paid, in accordance with section 112FU.

”

28 The *Stamp Amendment Act 1981* s. 5(2) reads as follows:

“

- (2) Where duty has been or is being paid under section 112K of this Act in respect of a loan, other than a loan upon an account current, at the rate provided for by that section as it was prior to the coming into operation of this section of this Act, section 112K(1)(b) shall continue to apply in respect of every such loan as if this section had not been enacted.

”

29 The *Stamp Amendment Act (No. 2) 1987* s. 9(2) reads as follows:

“

- (2) A notice of election given under section 112K(2) of the principal Act as in force before the commencement of this Act and not cancelled shall continue to have effect as if given under that subsection after the commencement of this Act.

”

30 The *Stamp Amendment Act (No. 2) 1994* s. 5(2) and (3) reads as follows:

“

- (2) If before the commencement of this Act, duty has been paid under item 8(1) of the Second Schedule to the principal Act in respect of an instrument that is exempt from duty because of the amendment to the Third Schedule made by subsection (1), the person by or on whose behalf the duty was paid may make written application to the Commissioner for the refund of the duty.
- (3) On receipt of an application under subsection (1) and on being satisfied that the applicant is the person by or on whose behalf the duty was paid, the Commissioner is to refund the duty to the applicant.

”

31 Now the *Public Works Act 1902*.

32 The *Acts Amendment (Land Administration) Act 1997* came into operation 30 Mar 1998.

33 Now Minister for Resources Development.

34 The *Stamp Act Amendment Act 1929* was repealed by the *Stamp Act Amendment Act (No. 3) 1930* s. 4.

35 The renumbering of Parts, Divisions, sections, etc., effected in the 1934 reprint (in the appendix to the annual sessional volume of 1933-1934) and subsequent reprints has been retained. References to the original numbering are contained in those reprints.



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<sup>36</sup> The *Stamp Act Amendment Act (No. 2) 1952* was repealed by the *Betting Control Act 1954* s. 3(1) before it commenced operation.

<sup>37</sup> The Second Schedule to the *Metric Conversion Act 1972* was inserted by the *Metric Conversion Act Amendment Act 1973*.

<sup>38</sup> The *Stamp Amendment Act 1986* s. 21(2) reads as follows:

“

- (2) The exemptions provided for by subitems (2) and (3) inserted by paragraph (b) of subsection (1) apply to a policy of insurance, or a renewal, entered into after the commencement of that paragraph.

”

<sup>39</sup> The *Stamp Amendment Act 1991* s. 8(2) reads as follows:

“

- (2) Nothing in this section affects the approval of an odd lot specialist given under the principal Act before the coming into operation of this section and any odd lot specialist so approved shall be taken to have been approved as an odd lot specialist under the principal Act as amended by this Act.

”

<sup>40</sup> The *Stamp Amendment (Marketable Securities Duty) Act 1995* s. 5 reads as follows:

“

**5. Saving provision**

The principal Act as in force immediately before the commencement of this Act continues to operate in respect of conveyances and transfers of marketable securities and rights in respect of shares made or executed before 1 July 1995.

”

<sup>41</sup> The *Revenue Laws Amendment (Assessment) Act 1997* s. 24 reads as follows:

“

**24. Reassessment**

- (1) This Division has effect notwithstanding that duty on an instrument has been assessed on or after 27 December 1996 and before the day on which this Act receives the Royal Assent (the “**original assessment**”).
- (2) If it appears to the Commissioner that the original assessment is for a lesser amount than would be assessed under the principal Act

as amended by this Division, the Commissioner may make a reassessment of the duty chargeable.

- (3) The reassessment supersedes the original assessment.
- (4) The reassessment is taken to have been made under the principal Act and the provisions of the principal Act apply to and in relation to the reassessment as if it were an assessment under that Act.

”

<sup>42</sup> The *Revenue Laws Amendment (Assessment) Act 1997* s. 48 reads as follows:

“

**48. Transitional**

The Commissioner is to refund the amount of any duty paid on a vehicle licence if —

- (a) the licence was issued on or after 16 January 1997;
- (b) the Commissioner is satisfied that, because of the amendments made to the principal Act by this Division duty is not payable on that licence; and
- (c) an application is made in writing to the Commissioner for the refund within 12 months after the duty was paid.

”

<sup>43</sup> The *Revenue Laws Amendment (Taxation) Act 1998* s. 13 reads as follows:

“

**13. Saving**

Subject to section 2(4) and(5), and without limiting the operation of the *Interpretation Act 1984*, the provisions of the *Stamp Act 1921* as in force immediately before 1 July 1998 continue to have effect in relation to instruments executed before 1 July 1998.

”

<sup>44</sup> The *Revenue Laws Amendment (Taxation) Act 1998* s. 2(4) and (5) reads as follows:

“

- (4) Section 12(11) is deemed to have come into operation on 30 April 1998 in relation to a policy of insurance that is effected on or after 30 April 1998 and before 1 July 1998 if —
  - (a) the period for which the policy is valid commences on or after 1 July 1998; or
  - (b) the period for which the policy is valid commences on or after 30 April 1998 and before 1 July 1998 and the policy

replaces another policy with the same insurer that would otherwise have expired on or after 1 July 1998.

- (5) Section 12(11) is deemed to have come into operation on 30 April 1998 in relation to a policy of insurance that is renewed on or after 30 April 1998 and before 1 July 1998 if —
- (a) the period for which the policy is renewed commences on or after 1 July 1998; or
  - (b) the policy being renewed would otherwise have expired on or after 1 July 1998.

”

<sup>45</sup> The *Financial Relations Agreement (Consequential Provisions) Act 1999* s. 3 and s. 32 read as follows:

“

### 3. Objectives

The main objectives of this Act are —

- (a) to record the intention of this State to comply with, and give effect to, the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*, a copy of which is set out in Schedule 1; and
- (b) to implement, in part, measures described in that agreement.

### 32. Savings

- (1) Subject to subsection (2), the former provisions continue to apply as if this Division were not enacted, to and in relation to —
- (a) information referred to in section 9(1c) of those provisions that was acquired on or before 30 June 2001 or during the continued application under this section of Part IVA Division 4 of those provisions;
  - (b) instruments referred to in section 112D of those provisions that were executed on or before 30 June 2001 and the subsequent SCH-regulated transfers;
  - (c) transfers referred to in section 112E or 112F of those provisions that were made on or before 30 June 2001;
  - (d) sales and purchases referred to in Part IVA Division 3 of those provisions that were made or deemed to have been made on or before 30 June 2001;
  - (e) SCH-regulated transfers to which Part IVA Division 4 of those provisions applies that were made on or before 30 June 2001;

- (f) matters referred to in Part IVA Division 5 of those provisions, until all instruments required to be endorsed under section 112D of those provisions have been so endorsed;
  - (g) relevant transactions referred to in Part IVAB of those provisions that were made or effected, or deemed to have been made or effected, on or before 30 June 2001;
  - (h) the matters referred to in the Second Schedule item 4A of those provisions where the conveyances or transfers were made on or before 30 June 2001; and
  - (i) exemptions in the Third Schedule of those provisions where the conveyances, transfers, sales or purchases were made on or before 30 June 2001.
- (2) Regulations may be made under section 120 of the *Stamp Act 1921* that, subject to any condition that the regulations may impose, terminate an obligation that, because of subsection (1), would otherwise continue under —
- (a) section 112E(6) and (7) of the former provisions, in relation to a record referred to in section 112E(5) of the former provisions;
  - (b) section 112F(11) and (12) of the former provisions, in relation to a record referred to in section 112F(10) of the former provisions;
  - (c) section 112FI(5) and (6) of the former provisions, in relation to a record referred to in section 112FI(3) of the former provisions;
  - (d) section 112FJ(3) and (4) of the former provisions, in relation to a copy of an instrument endorsed under section 112FJ(2) of the former provisions;
  - (e) section 112FQ of the former provisions, in relation to the particulars and records referred to in that section; or
  - (f) section 112GF of the former provisions, in relation to books and records referred to in that section.
- (3) In this section —
- “**former provisions**” means the *Stamp Act 1921* as in force immediately before the coming into operation of this Division.

”.

<sup>46</sup> On the date as at which this reprint was prepared the *Road Traffic Amendment Act 2000* Pt. 3 Div. 3 had not come into operation. It reads:

“

**Division 3 — *Stamp Act 1921* amended**

**63. The Act amended**

The amendments in this Division are to the *Stamp Act 1921*.

**64. Section 76B amended**

Section 76B(1) is amended in the definition of “transfer” by deleting “section 24” and inserting instead —

“ section 17 ”.

**65. Section 76C amended**

- (1) Section 76C(10B) is amended by deleting “section 24(2c)” in the 3 places where it occurs and inserting instead —

“ section 24(2d) ”.

- (2) Section 76C(13C) is amended by deleting “section 24(2c)” and inserting instead —

“ section 24(2d) ”.

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**Defined Terms**


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## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

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