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WESTERN AUSTRALIA

**FINANCIAL INSTITUTIONS DUTY
ACT 1983**

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WESTERN AUSTRALIA

FINANCIAL INSTITUTIONS DUTY ACT 1983

**AN ACT to impose a duty upon certain receipts, deposits,
liabilities and investments of financial institutions
and other persons, to provide for the assessment and
collection of that duty and for related purposes.**

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PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Financial Institutions Duty Act 1983*.¹

Commencement

2. This Act shall come into operation on 1 January 1984.

Interpretation

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

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

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

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

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

“approved superannuation scheme” means —

- (a) a scheme of superannuation, retirement benefit or pension —
 - (i) created or arranged by an employer for the benefit of his employees and operated under the terms of an instrument of trust executed by or on behalf of the employer;
 - (ii) created for the benefit of self-employed persons and operated under an instrument of trust; or
 - (iii) created for the benefit of employees or self-employed persons,

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

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

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

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

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

“cash” includes cheques;

“certificate of deposit” includes an interest bearing deposit;

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

“charitable institution” means —

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

- (e) an institution, not being a tertiary educational institution and not being a charitable institution within the meaning of paragraph (a), (b), or (c), established for charitable purposes;

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

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

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

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

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

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

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

- (a) credit provided to a debtor, for the purposes of a business carried on by him, by —
 - (i) a documentary letter of credit; or
 - (ii) becoming surety for a debtor;

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- (b) credit provided for the purchase of goods for re-supply;
- (c) credit provided for the purchase of goods that —
 - (i) are raw materials; or
 - (ii) are ordinarily acquired for the purpose of treating or repairing other goods or fixtures on land or of being incorporated in other goods,

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

“credit contract” means —

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

“credit sale contract” means a contract of sale of goods or services where in respect of the payment for the goods

or services credit is, or is to be, provided to a buyer by a supplier in the course of a business carried on by the supplier and, under the contract —

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

“credit sale deposit” —

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

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

- (a) that is registered or incorporated as a credit union or credit society under the law in force in a State or a Territory relating to credit unions or credit societies; or

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(b) the principal business of which consists of borrowing money from its members or intended members and lending money so borrowed to its members and which is registered or incorporated under the law in force in a State or a Territory,

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

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

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

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

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

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

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

“exempt account” means —

(a) a special account;

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

“exempt financial institution” means a person who —

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

“financial institution” —

- (a) means —
 - (i) a bank;

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- (ii) a dealer;
- (iii) a trustee corporation;
- (iv) a pastoral finance company;
- (v) a management company within the meaning of Division 6 of Part IV of the *Companies (Western Australia) Code*² or of a corresponding law in force in another State or Territory that carries on business in Western Australia;
- (vi) the Treasury in its capacity as a banker;
- (vii) except in Parts III, IV, and V, a person who is a short term dealer but is not a financial institution by reason of a preceding subparagraph of this definition;
- (viii) a person whose sole or principal business in Western Australia is that of the provision of finance,

and in Parts VII, VIII, IX and X includes a person who has at any time been a financial institution under this Act; and

- (b) does not include —
 - (i) a person the sole or principal business of whom in Western Australia is the operation of an approved superannuation scheme;
 - (ii) a corporation that is registered under the *Life Insurance Act 1945* of the Commonwealth, as amended and in force for the time being;

- (iii) a corporation the sole or principal business of which in Western Australia is insurance business as defined by section 3 (1) of the *Insurance Act 1973* of the Commonwealth, as amended and in force for the time being;
- (iv) a corporation that is a medical benefits organization or a hospital benefits organization registered under the *National Health Act 1953* of the Commonwealth, as amended and in force for the time being;
- (v) a dealer who is not a person referred to in paragraph (a) (i), (iii) to (vi) or (viii) and who does not carry on a business of dealing in securities except —
 - (I) in his capacity as an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* of the Commonwealth, as amended and in force for the time being; or
 - (II) in his capacity as a receiver, as a receiver and manager, or as another person appointed by a court to carry on the business concerned;
- (vi) a dealer, being a corporation that is not a person referred to in paragraph (a) (i), (iii) to (vi) or (viii) and that carries on, or holds itself out as carrying on, a business of dealing in debentures of that body corporate but does not carry on a business of dealing in any other securities;
- (vii) T.C.S. Computer Services Pty. Ltd.;
- (viii) Funds Transfer Services (Australia) Limited; or

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- (ix) a person or class of persons who is prescribed not to be a financial institution for the purposes of this definition;

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

“foreign exchange dealer” means a person to whom a general authority to engage in foreign currency transactions has been granted under regulation 38A of the *Banking (Foreign Exchange) Regulations* of the Commonwealth and is in force;

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

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

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

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

- (a) by paying an amount to or in accordance with the instructions of that other person;
- (b) by applying an amount in satisfaction or reduction of an amount owed to him by that other person;
- (c) by varying the terms of a contract under which moneys owed to him by that other person are payable;

- (d) by deferring the obligation of that other person to pay an amount to him;
- (e) by taking from that other person a bill of exchange or other negotiable instrument on which the other person (whether alone or with another person) is liable as drawer, acceptor or endorser;

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

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

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

“municipality” includes a regional council constituted under the *Local Government Act 1960*;

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

“pastoral finance company” means —

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

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Banking Act 1959 of the Commonwealth, as amended and in force for the time being, applies and who is approved for the time being as a pastoral finance company by the Commissioner;

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

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

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

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

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

“registered financial institution” means —

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

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

“share” includes stock;

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

“short term dealing” means —

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

where —

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

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dealing is entered into or a face value of not less than \$50 000;

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

“short term investment” means —

- (a) the making of an investment (other than a deposit to the credit of an account with a bank or pastoral finance company which is repayable on demand or to the credit of a current account, in either case, kept by the bank or pastoral finance company for another person);
- (b) a dealing in —
 - (i) securities;
 - (ii) bills of exchange;
 - (iii) promissory notes;

- (iv) certificates of deposit;
 - [(v) *deleted*]
 - [(vi) *deleted*]
 - (vii) any matter or thing prescribed for the purposes of this definition; or
- (c) a dealing involving an agreement that a security will be repurchased,

where —

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

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completed not later than 185 days after the date of deposit or investment of the amount,

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

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

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

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

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

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

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

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

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

“trustee corporation” means —

- (a) the Public Trustee in and for Western Australia;
- (b) any corporation authorized by an Act of the Parliament of this State to administer the estates of deceased persons and other trust estates;

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- (c) a corporation that is constituted under the law of another State or of a Territory and, in the opinion of the Commissioner, corresponds in that State or Territory to the Public Trustee or to a corporation referred to in paragraph (b); and
- (d) a corporation prescribed for the purposes of this definition;

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

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

(2) In this Act a reference to goods and services includes a reference to goods or services.

(3) Unless the contrary intention appears, a reference in this Act to a preceding or succeeding month or to a preceding or succeeding number of months is a reference to the month of the year or the number of months of the year preceding or succeeding, as the case may be, the month in which the question arises.

(4) In this Act, a reference to the provision of finance includes a reference to —

- (a) the borrowing of money or the obtaining of other financial accommodation, including the issue of redeemable or withdrawable share capital by a financial institution that is not a bank;
- (b) the dealing in —
 - (i) securities;
 - (ii) bills of exchange;

- (iii) promissory notes;
 - (iv) certificates of deposit; or
 - (v) any matter or thing prescribed for the purposes of this paragraph;
- (c) the lending of money, with or without security;
 - (d) the purchase, acquisition, discounting or factoring of debts due to another person; and
 - (e) the provision of credit, pursuant to a credit contract or proposed credit contract.

(5) For the purposes of this Act, a debt shall be taken to be due notwithstanding that the time for payment of the debt has not arrived.

(6) In this Act, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

(7) A receipt to the credit of a registered financial institution account which is an exempt account shall, unless the receipt has been credited to an account or accounts in the books of the person in whose name the account is kept, be deemed to be a receipt of that person otherwise than to the credit of the registered financial institution account.

(8) Where a person receives a consideration, other than money (whether or not in consideration of his having given credit to any person), whereby any debt or obligation or part of a debt or obligation owing to that person is settled, satisfied, discharged or met, the person shall, when he receives the consideration, be deemed for the purposes of this Act, to have received an amount of money equal to the amount of the debt or obligation or part of the debt or obligation that has been settled, satisfied, discharged or met.

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(9) In this Act, a reference to carrying on a business of a particular kind includes a reference to carrying on that business in the course of, or as part of, or as incidental to, or in connection with, the carrying on of another business.

(10) Where a receipt or deposit is or includes an amount of money in a currency other than Australian currency, the amount of that money is for the purposes of this Act the equivalent of that amount in Australian currency calculated at a rate of exchange that is a relevant ruling telegraphic transfer buying rate in Australia on the day on which the money is received or deposited or, with the approval of the Commissioner, the equivalent rate of exchange at the time the money is received or deposited.

(11) A reference in this Act to depositing money with a financial institution includes a reference to paying money to a financial institution.

(12) For the purposes of this Act, a reference to the crediting of an account includes a reference to —

- (a) the depositing of money to the credit of the account by the person in whose name the account is kept or by another person;
- (b) without limiting the generality of paragraph (a), the transfer of money to the credit of the account from another account of the person in whose name the account is kept or from an account of another person; and
- (c) the transfer between ledgers or divisions in an account of a person where different terms and conditions apply in respect of those ledgers or divisions.

(13) For the purposes of this Act, the crediting of an account of a person, including the crediting of an account effected by means of an entry or record made by use of a machine or device, shall be deemed to constitute a receipt of money by the person whose account is so credited.

(14) Where money is, after it is received (otherwise than by the crediting of an account) by a financial institution, credited by the financial institution to an account in the books of the financial institution (being an exempt account, an account the receipts to the credit of which are dutiable receipts, a suspense account, an account of the kind referred to in subsection (19e) or a prescribed account), the money shall for the purposes of this Act, be deemed not to have been received by the financial institution before it is first so credited.

(15) The exchange of money for money does not, for the purposes of this Act, constitute a receipt, except to the extent, if any, to which a party to the exchange receives an amount which is greater than the amount paid or given by him.

(16) Subsection (15) does not apply to or in respect of an exchange involving a bill of exchange (other than the issuing of a bank cheque, the issuing of travellers cheques or the cashing of a cheque) or a promissory note.

(17) Notwithstanding subsections (12) and (13) but subject to subsection (20), where money is invested on term deposit with a financial institution and the principal is not repaid immediately and in full upon the expiration of the term, the non-repayment of the principal does not constitute a receipt of the financial institution if the money is re-invested on a term deposit.

(18) Notwithstanding subsections (12) and (13), —

- (a) a transfer between ledgers or divisions of an internal account of a financial institution; or
- (b) the crediting of an internal account of a financial institution where the offsetting debit is to another internal account of that financial institution,

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

(19) Notwithstanding subsections (12) and (13), the crediting of a suspense account of a financial institution does not constitute a receipt for the purposes of this Act so long as any

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amount so credited is transferred from the suspense account within 30 days to an account kept in Western Australia by the financial institution in the name of a person other than the financial institution.

(19a) Notwithstanding subsections (12) and (13), the crediting of an account by a financial institution for a person does not constitute a receipt for the purposes of this Act where there is an offsetting debit to another account kept by the financial institution for that person at the same branch and within the same division of the financial institution and the crediting of the account is the result of the loss of a passbook issued by the financial institution to that person.

(19b) Notwithstanding subsections (12) and (13), where an amount is credited to an account kept by a financial institution and the credit is subsequently offset by a debit of the same amount by reason of the dishonour of a cheque or because the initial credit was made in error, the credit does not constitute a receipt for the purposes of this Act.

(19c) Notwithstanding subsections (12) and (13), where an amount is debited to an account kept by a financial institution and the debit is subsequently offset by a credit of the same amount by reason of the dishonour of a cheque or because the initial debit was made in error, the credit does not constitute a receipt for the purposes of this Act.

(19d) Notwithstanding subsections (12) and (13), where a bad debt arises in an account kept by a financial institution for a person and for the purpose of closing the account and cancelling the bad debt, a credit of the same amount as the bad debt is made to the account, the crediting of the account for the purpose does not constitute a receipt for the purposes of this Act.

(19e) Notwithstanding subsections (12) and (13), where an amount is credited to an account kept by a bank and used only to facilitate the transfer of money to a State or a Territory in which a corresponding law is in force, the credit does not constitute a receipt for the purposes of this Act.

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

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

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

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

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

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

[Section 3 amended by No. 19 of 1984 s.3; No. 110 of 1984 s.3; No. 31 of 1987 s.4; No. 30 of 1991 s.4.]

Continuing credit contract

4. Where a person —

- (a) agrees with another person to provide credit to that other person in respect of payment for goods and services or cash supplied by him to that other person from time to time; or

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- (b) agrees with another person —
 - (i) to satisfy on behalf of that other person liabilities of that other person to a third person in respect of payment for goods and services or cash supplied by that third person to that other person from time to time; and
 - (ii) to provide credit to that other person in respect of payment by that other person of amounts owing from time to time to him in respect of the satisfaction by him of those liabilities on behalf of that other person,

and agrees to calculate the amount owing to him from time to time under the agreement on the basis that all amounts owing and all payments made by the other person under or in respect of the agreement, are entered in the same account, that agreement is, for the purposes of this Act, a continuing credit contract.

Amount credited to creditor's account with debtor

5. (1) Where a debtor, not being a registered financial institution, at the request or on the authority of his creditor, being a financial institution, instead of paying a debt or any part of a debt owing by him to his creditor, credits an amount of money owing under the debt to an account of the creditor in the books of the debtor, the creditor shall, when he first receives notice of the amount having been so credited or upon the expiration of 3 months after the amount having been so credited, whichever first occurs, be deemed for the purposes of this Act, to have received, in payment of the debt or that part of the debt, an amount of money equal to the amount credited, and to have so received that amount at the place where the books of the debtor are kept, or, if the books of the debtor are kept outside Western Australia, at the place where the books of the creditor are kept.

(2) Subsection (1) does not apply in any case where section 3 (8) applies in relation to the amount credited.

(3) Where —

(a) by virtue of the operation of subsection (1), duty has become payable in respect of an amount or amounts of money credited to the account of a creditor in the books of his debtor; and

(b) money is withdrawn by the creditor from the account,

the receipt of the money so withdrawn is, except to the extent that the amount of that money, together with any moneys previously withdrawn by the creditor from that account being moneys in relation to which this subsection has had effect, exceeds the amount or the total of the amounts referred to in paragraph (a), exempt from duty.

Act to bind Crown

6. This Act binds the Crown, not only in right of Western Australia but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART II — ADMINISTRATION

Functions of Commissioner

7. (1) The Commissioner shall have the general administration of this Act.

(2) The Commissioner may by instrument under his hand delegate to the person holding office as the Assistant Commissioner or to any other officer assisting the Commissioner in the administration of this Act all or any of his powers or functions under this Act, except this power of delegation or his power to issue a certificate under section 72 (6).

(3) A delegation under subsection (2) may be revoked at any time by the Commissioner.

(4) A power or function, the exercise or performance of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation by the delegate.

(5) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(6) Notwithstanding subsection (2) or any delegation made under this section, the Commissioner may continue to exercise or perform all or any of the powers or functions conferred or imposed on him by this Act.

(7) Any act or thing done or suffered by a delegate of the Commissioner while acting in the exercise of a delegation under this section, shall have the same force and effect as if the act or thing done had been done or suffered by the Commissioner.

(8) Where the exercise or performance by the Commissioner of any power or function under this Act or the operation of any provision of this Act is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised or performed by a delegate of the Commissioner acting as such in relation to that matter, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of that delegate acting as such.

Secrecy provisions

8. (1) The Commissioner or any person authorized by him may communicate any information respecting the affairs of any person disclosed or obtained under the provisions of this Act and relevant to the exercise or performance of the powers, authorities, duties or functions of the person to whom it is communicated to —

[(a) *deleted*]

[(b) *deleted*]

(c) the Commissioner for Corporate Affairs for Western Australia.

(2) Except as provided in subsection (1) or in the *Taxation (Reciprocal Powers) Act 1989*, a person shall not —

(a) make a record of, divulge, communicate to any person or publish any information that is or was acquired by him by reason of his being, or having been, employed for the purposes of or in connection with the administration or execution of this Act; or

(b) be required to produce in court any book connected with the administration or execution of this Act in his custody in the course of his employment or to divulge or communicate to any court any matter or thing

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coming under his notice in the course of his employment,

unless the recording, divulgence, communication, publication or production is made —

- (c) with the consent of the person from whom the information or book was obtained;
- (d) in connection with the administration or execution of this Act; or
- (e) for the purpose of any legal proceedings arising out of this Act or any report of any such proceedings.

Penalty: \$1 000.

[Section 8 amended by No. 18 of 1989 s.16.]

Power of Commissioner to use information

9. 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.

PART III — LIABILITY TO DUTY

Financial institutions duty

10. (1) Subject to this Act, a financial institution to which this section applies that receives money in Western Australia during a month is liable to pay financial institutions duty in respect of each such receipt.

(2) This section applies to a financial institution that is registered under this Act as a financial institution or is required to be so registered under this Act.

(3) The amount of financial institutions duty payable by a financial institution in respect of each receipt is \$1 200 or 0.06 per centum of the amount of the receipt, whichever is the lesser.

(4) Subsection (1) does not apply to —

- (a) a receipt by a registered financial institution for the credit of an exempt account kept by it;
- (b) a receipt in the course of short term dealings by a certified short term dealer, being —

[(i) *deleted*]

(ii) (I) the proceeds derived from a short term dealing;

(II) a receipt creating a short term liability (not being, where the short term dealer is a bank or pastoral finance company, a deposit to the credit of an account with the bank or pastoral finance company which is repayable on demand or to the credit of a current account, in either case, kept by the bank or pastoral finance company for another person);

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(III) the repayment or redemption of an amount deposited or invested in a short term dealing; or

(IV) an amount prescribed for the purposes of this paragraph,

but not being a receipt comprising a fee, brokerage, commission or other charge made by the short term dealer or interest received otherwise than as a non-identifiable part of the repayment of principal;

[(c) *deleted*]

(d) a receipt by the trustee of an approved superannuation scheme or by any person who holds any assets comprised in an approved superannuation scheme on behalf of the trustee, in each case in his capacity as such a trustee or person;

(e) a receipt by a bank that is a registered financial institution during the course of a customary general clearance —

(i) of the kind referred to in section 64 of the *Banking Act 1959* of the Commonwealth, as amended and in force for the time being; or

(ii) pursuant to an agreement between 2 or more banks for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between banks relating to a customary general clearance;

(f) a receipt of money by a foreign exchange dealer in the course of a transaction entered into by the foreign exchange dealer pursuant to the general authority granted to him under regulation 38A of the *Banking (Foreign Exchange) Regulations* of the Commonwealth, but not including, where the foreign exchange dealer

is a bank, a receipt for the credit of an account kept by the bank for a person comprising the whole or part of the proceeds of such a transaction;

- (g) a receipt by a dealer as agent in respect of the issue of securities, bills of exchange (other than cheques), promissory notes or certificates of deposit (not including an amount that is a fee or commission);
- (h) a receipt by a dealer in respect of a sale or purchase of securities that is liable to duty under Item 4 of the Second Schedule to the *Stamp Act 1921* or to stamp duty in another State or Territory (not including an amount that is a fee or commission);
- (i) a receipt —
 - (i) by a management company from a person who is the trustee or representative for the purposes of a deed relating to the management company in accordance with Division 6 of Part IV of the *Companies (Western Australia) Code*² or a corresponding law in force in another State or in a Territory; or
 - (ii) by such a trustee or representative from such a management company;
- (j) a receipt by a trustee corporation from the estate of a deceased person committed to the management of the trustee corporation;
- (k) a receipt by a person who is a financial institution by reason only that the person is a pastoral finance company, other than a receipt that is an amount received by the pastoral finance company in the course of banking business, including receipts in respect of interest bearing deposits, carried on by it;

[(l) *deleted*]

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- (m) a receipt by a financial institution in consideration of the supply of goods by the financial institution (otherwise than under a credit contract or in the course of carrying on rental business within the meaning of section 112I of the *Stamp Act 1921*);
- (n) a receipt by or to the credit of an account kept on behalf of a person with respect to his business of being a clearing house for, or of enabling or effecting settlements between, 2 or more persons, being —
 - (i) building societies;
 - (ii) co-operative societies;
 - (iii) credit unions;
 - (iv) dealers;
 - (v) futures brokers;
 - (vi) wool buyers or sellers; or
 - (vii) persons or classes of persons prescribed for the purposes of this paragraph;
- (o) a receipt by a financial institution acting as agent for the purpose of collecting money on behalf of a person who is prescribed, or is a member of a class prescribed, for the purposes of this paragraph where the money so collected is not paid to an account kept by the financial institution in the name or on behalf of that person;
- (p) a receipt by a credit union that is a registered financial institution from another credit union for the purpose of effecting the settlement of balances arising between them;
- (q) a receipt by a registered financial institution from, or on behalf of, a person for whose benefit the financial institution has drawn, accepted or endorsed a bill of exchange, the term of which bill of exchange is not

more than 185 days and the face or nominal value of which is not less than \$50 000, being a receipt to satisfy the amount of the financial institution's engagement on the bill of exchange;

- (r) a receipt or class of receipts that is prescribed as a receipt or class of receipts to which this Act does not apply.

[Section 10 amended by No. 19 of 1984 s.4; No. 110 of 1984 s.4; No. 81 of 1985 s.3; No. 31 of 1987 s.5; No. 9 of 1989 s.4; No. 37 of 1990 ss.4 and 5.]

Financial institutions duty and short term dealings

11. (1) Subject to this Act, a certified short term dealer who is not a prescribed short term dealer and who is not a member of a group is liable to pay financial institutions duty in respect of the amount comprising one-tenth of the sum of the short term liabilities in respect of his Australian-based operations at the close of each day during the month to which the relevant return made by him relates divided by the number of days in that month at the rate of 0.005 per centum of such amount.

(2) Subject to this Act, a certified short term dealer who is not a prescribed short term dealer and who is a member of a group is liable to pay financial institutions duty in respect of the amount comprising one-tenth of the sum of the short term liabilities of the group in respect of their Australian-based operations at the close of each day during the month to which the relevant return of the short term dealer relates divided by the number of days in that month at the rate of 0.005 per centum of such amount.

(3) Where a certified short term dealer who is not a prescribed short term dealer and who is a member of a group pays financial institutions duty under subsection (2), the amount of financial institutions duty payable by each other certified short

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term dealer who is a member of the group shall be reduced by the extent to which that duty has been paid by the first-mentioned member of the group.

(4) Subject to this Act, a certified short term dealer who is a prescribed short term dealer is liable to pay financial institutions duty in respect of the sum of the short term investments at the close of each day during the month to which the relevant return made by him relates divided by the number of days in that month at the rate of 0.004 per centum of such amount.

(5) Subject to this Act, a certified short term dealer who is a prescribed short term dealer not being a registered financial institution is liable to pay financial institutions duty at the rate of 0.004 per centum in respect of the amount comprising whichever is the greater of —

- (a) the sum of the short term liabilities at the close of each day during the month to which the relevant return made by him relates divided by the number of days in that month; or
- (b) the sum of the short term investments at the close of each day during the month to which the relevant return made by him relates divided by the number of days in that month,

or, if neither sum is greater than the other, the sum referred to in paragraph (b).

[Section 11 amended by No. 110 of 1984 s.5.]

Financial institutions duty imposed on certain depositors

12. (1) Subject to this Act, a person to whom this section applies who deposits money in Western Australia during a month with a financial institution, other than a registered financial institution, is liable to pay financial institutions duty in respect of each such deposit of money.

(2) This section applies to a person if the financial institution, other than a registered financial institution, with whom the person deposits money in Western Australia —

- (a) during the preceding period of 12 months had dutiable receipts exceeding \$5 000 000; or
- (b) during the preceding month had dutiable receipts exceeding \$416 666.

(3) The amount of financial institutions duty payable by a person to whom this section applies in respect of each deposit of money is \$1 200 or 0.06 per centum of the money deposited, whichever is the lesser.

(4) Subsection (1) does not apply to a deposit of money to which section 10 (1) would not apply if the deposit were a receipt by a registered financial institution.

[Section 12 amended by No. 86 of 1983 s.3; No. 110 of 1984 s.6; No. 81 of 1985 s.4; No. 9 of 1989 s.4; No. 37 of 1990 ss.4 and 5.]

PART IV — EXEMPT ACCOUNTS

Special accounts

13. (1) An eligible person may apply in the approved form and manner to the Commissioner for approval of an account kept in the name of the eligible person by a bank that is a registered financial institution as a special account for the purposes of this Act.

(2) A bank that is a registered financial institution may apply in the approved form and manner to the Commissioner for approval of an account kept in the name of the bank by another bank that is a registered financial institution as a special account for the purposes of this Act.

(3) Two or more persons, or a person on behalf of 2 or more persons, being —

- (a) building societies;
- (b) co-operative societies;
- (c) credit unions;
- (d) dealers;
- (e) futures brokers;
- (f) wool buyers or sellers; or
- (g) persons or classes of persons prescribed for the purposes of this subsection,

may apply in the approved form and manner to the Commissioner for approval of a clearing or settlement account kept by such persons or person with a bank that is a registered financial institution as a special account for the purposes of this Act.

(4) The trustee or manager of assets the subject of a deed approved under Division 6 of Part IV of the *Companies (Western Australia) Code*², or under a corresponding law of another State or of a Territory, may apply in the approved form and manner to the Commissioner for approval of a clearing or settlement account kept by the trustee or manager otherwise than with a bank as a special account for the purposes of this Act.

(5) Where an application is made under subsection (1), (2), (3) or (4), the Commissioner may issue to the applicant a certificate of approval of the account to which the application relates as a special account for the purposes of this Act.

(6) Where the Commissioner has issued a certificate of approval of an account referred to in subsection (4) kept by a trustee, as so referred to, as a special account, he shall not issue such a certificate in respect of such an account kept by a manager, as so referred to, and where the Commissioner has issued such a certificate in respect of such an account kept by the manager, he shall not issue such a certificate in respect of such an account kept by the trustee.

(7) Where a certificate under this section is produced to a bank that is a registered financial institution, the bank shall designate the account to which the certificate relates as a special account for the purposes of this Act.

(8) Where a person in whose name a special account is kept by a bank is a pastoral finance company, an amount shall not be paid to the credit of the special account unless the amount —

- (a) is an amount received by the pastoral finance company in the course of banking business carried on by it and for the purposes of this paragraph banking business includes receipts and payments in respect of interest bearing deposits with a pastoral finance company;
- (b) is an amount received by the pastoral finance company in the course of short-term dealings, provided that the pastoral finance company is a

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certified short term dealer who is not a prescribed short term dealer; or

[(c) *deleted*]

(d) is an amount paid to that account from another account kept in the name of the pastoral finance company by a bank that is a registered financial institution.

[(9) *repealed.*]

(10) Where a person in whose name a special account is kept is a person of the kind referred to in subsection (1), (2), (3) or (4) an amount shall not be paid to the credit of the special account if it is a prescribed amount or an amount included in a class of prescribed amounts.

(11) Cuatm Pty Ltd shall, within 14 days of paying any amount to the credit of a special account kept in its name by a bank, pay to the credit of a non-exempt account kept in its name by a registered financial institution an amount equivalent to that part of the amount paid to the credit of the special account that has not within that period been paid to the credit of an account held with a credit union by a person other than that credit union.

(12) Where —

- (a) there has been a contravention of subsection (8) by reason of the payment of an amount to the credit of a special account kept in the name of a pastoral finance company;
- (b) there has been a contravention of subsection (10) by reason of the payment of a prescribed amount to the credit of a special account; or
- (c) there has been a contravention by Cuatm Pty Ltd of subsection (11) by reason of the failure to make a payment from a special account kept by that company,

the Commissioner may determine that, for the purposes of subsection (13), the account has ceased to be an account of an eligible person.

(13) Where the Commissioner is satisfied that an account to which a certificate issued under subsection (1), (3) or (4) applies has ceased to be an account of the kind described in those subsections —

- (a) the Commissioner may, by notice given to the bank or person by which the account is kept, cancel the certificate;
- (b) the Commissioner may determine a period, not exceeding 12 months, during which the person in whose name the account is kept is ineligible to make application under this section; and
- (c) the Commissioner shall send a copy of the notice given under paragraph (a) and any determination made under paragraph (b) to the person in whose name the account was kept.

(14) In this section, “**eligible person**” means —

- (a) a registered financial institution, not being a bank; and
- [(b), (c), (d), (e), (f), (g) *deleted*]
- (h) any other person or class of persons prescribed for the purposes of this subsection.

[Section 13 amended by No. 110 of 1984 s.7; No. 30 of 1991 s.5.]

Short term dealing account

14. (1) A certified short term dealer who is a prescribed short term dealer and a certified short term dealer who is a prescribed short term dealer not being a registered financial institution shall apply in the approved form and manner to the

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Commissioner for approval of an account kept in the name of the dealer by a bank that is a registered financial institution as a short term dealing account for the purposes of this Act.

(2) Where an application is made under subsection (1) and the Commissioner is satisfied that the account is an account of a certified short term dealer kept in respect of his short term dealings in accordance with subsection (4), the Commissioner shall issue to the applicant a certificate of approval of the account as a short term dealing account for the purposes of this Act.

(3) Where a certificate under this section is produced to a bank that is a registered financial institution, the bank shall designate the account to which the certificate relates as a short term dealing account for the purposes of this Act.

(4) Where —

- (a) a certified short term dealer who is a prescribed short term dealer; or
- (b) a certified short term dealer who is a prescribed short term dealer not being a registered financial institution,

receives amounts in respect of his short term dealings (being amounts of the kind referred to in section 10 (4) (b)), he may pay those amounts into his short term dealing account and shall not pay any other amounts received by him into that account, other than such amounts or classes of amounts as may be prescribed for the purposes of this subsection.

(4a) Notwithstanding subsection (4), a certified short term dealer who is a prescribed short term dealer shall pay into his short term dealing account the proceeds, repayments or receipts derived from realization of his short term investments.

(5) An amount shall not be paid to the debit of a short term dealing account if the amount is a prescribed amount or an amount included in a class of prescribed amounts.

(6) Notwithstanding subsection (4), where a certified short term dealer who is a prescribed short term dealer or a certified short term dealer who is a prescribed short term dealer not being a registered financial institution —

- (a) pays to the credit of his short term dealing account an amount of interest received by him in respect of his short term dealing, being an amount other than an amount that he is authorized under subsection (4) to pay to that account; and
- (b) pays to the credit of another account kept in Western Australia in his name by a bank that is a registered financial institution (not being an exempt account) within 14 days after the first-mentioned amount is paid to the credit of the short term dealing account, that part of that amount that he is not authorized to pay to the credit of the short term dealing account,

there shall be deemed not to have been a contravention of subsection (4) by reason only of the payment of the first-mentioned amount to the credit of the short term dealing account.

(7) Where —

- (a) the Commissioner is satisfied that an amount has been paid to the credit or debit of a short term dealing account in contravention of subsection (4) or (5); or
- (b) the Commissioner cancels the certification of the person in whose name the account is kept as a certified short term dealer,

the Commissioner —

- (c) may by notice in writing given to the bank at which the short term dealing account is kept, cancel the certificate;

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- (d) may determine a period, not exceeding 12 months, during which the person in whose name the account is kept is ineligible to make application under this section; and
- (e) shall send a copy of the notice given under paragraph (c) and any determination made under paragraph (d) to the person in whose name the account was kept.

[Section 14 amended by No. 110 of 1984 s.8.]

Trust fund account

15. (1) An eligible person may apply in the approved form and manner to the Commissioner for approval of an account kept in the name of the eligible person by a bank, building society or credit union that is a registered financial institution, being an account —

- (a) that is a dealer's trust account for the purposes of the *Securities Industry (Western Australia) Code*³; or
- (b) that is a prescribed trust account required to be kept under a prescribed Act,

as a trust fund account for the purposes of this Act.

(2) Where an application is made under subsection (1), the Commissioner may issue to the applicant a certificate of approval of the account as a trust fund account for the purposes of this Act.

(3) Where a certificate under this section is produced to a bank, building society or credit union that is a registered financial institution, that bank, building society or credit union shall designate the account to which the certificate relates as a trust fund account for the purposes of this Act.

(4) An amount shall not be paid to the credit of a trust fund account kept by a bank, building society or credit union in the name of an eligible person under this section unless the amount

is an amount that under the *Securities Industry (Western Australia) Code*³ or the prescribed Act, as the case may be, is an amount that may be paid to the credit of that account.

(5) Where the Commissioner is satisfied that —

- (a) an amount has been paid to the credit of a trust fund account in contravention of subsection (4); or
- (b) a trust fund account has ceased to be an account of an eligible person,

the Commissioner —

- (c) may by notice in writing given to the bank, building society or credit union at which the trust fund account is kept, cancel the certificate;
- (d) may determine a period, not exceeding 12 months, during which the person in whose name the account is kept is ineligible to make application under this section; and
- (e) shall send a copy of the notice given under paragraph (c) and any determination made under paragraph (d) to the person in whose name the account is kept.

(6) In this section, “**eligible person**” means a person who is not required to be registered as a financial institution under this Act and who is —

- (a) a dealer; or
- (b) a person who, under a prescribed Act under subsection (1), is required to pay moneys into a trust fund kept by a bank.

[16. *Repealed by No. 110 of 1984 s.9.*]

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Sweeping account

17. (1) A person who carries on a business in Western Australia may apply in the approved form and manner to the Commissioner for approval of an account kept in Western Australia in the name of the applicant by a bank that is a registered financial institution as a sweeping account for the purposes of this Act.

(2) Where an application is made under subsection (1), the Commissioner may, in his absolute discretion and subject to subsection (3), issue to the applicant a certificate of approval of the account as a sweeping account for the purposes of this Act.

(3) The Commissioner shall not issue a certificate under subsection (2) unless he is satisfied that the nature of the applicant's business is such that proceeds of the business must be paid to the credit of several accounts and then, at regular intervals, transferred to the credit of a consolidated account (being the account to which the application for a sweeping account relates).

(4) Where a certificate under this section is produced to the bank by which the account to which it relates is to be held as a sweeping account, the bank shall designate the account to which the certificate relates as a sweeping account for the purposes of this Act.

(5) An amount shall not be paid to the credit of a sweeping account kept by a bank unless —

- (a) the amount is paid to the credit of the account by debiting the amounts standing to the credit of other accounts and forthwith crediting, by mechanical or other device, the sweeping account with the total sum of the amounts so debited; and

- (b) the accounts that are debited in order that the sweeping account may be credited in accordance with paragraph (a) —
 - (i) are kept in Western Australia in the name of the person in whose name the sweeping account is kept;
 - (ii) are kept by the same bank that keeps the sweeping account; and
 - (iii) are non-exempt accounts or special accounts of a registered financial institution.

(6) An amount shall not be credited to or debited against a sweeping account in contravention of a prohibition imposed by regulation.

(7) Where the Commissioner is satisfied that an amount has been credited to, or debited against, a sweeping account in contravention of subsection (5) or (6), the Commissioner —

- (a) may, by notice in writing given to the bank at which the sweeping account is kept, cancel the certificate;
- (b) may determine a period, not exceeding 12 months, during which the person in whose name the account is kept is ineligible to make application under this section; and
- (c) shall send a copy of the notice given under paragraph (a) and any determination made under paragraph (b) to the person in whose name the account was kept.

Local Government account

18. (1) The council of a municipality or an association comprised solely of municipalities or councils of municipalities may give notice in writing to a registered financial institution that an account kept in the name of that municipality or

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association by the registered financial institution is a Local Government account for the purposes of this Act.

(2) Where a notice under this section is given to a registered financial institution by the council of a municipality, that registered financial institution shall designate the account to which the notice relates as a Local Government account for the purposes of this Act and the account shall be deemed to have become a Local Government account on 1 June 1984 or on the date on which the account was opened, whichever is the later.

(3) Where a notice under this section is given to a registered financial institution by an association comprised solely of municipalities or councils of municipalities, that registered financial institution shall designate the account to which the notice relates as a Local Government account for the purposes of this Act and the account shall be deemed to have become a Local Government account on 1 January 1986 or on the date on which the account was opened, whichever is the later.

[Section 18 inserted by No. 110 of 1984 s.10; amended by No. 81 of 1985 s.5.]

Government Department account

19. (1) A Department of the Government of the Commonwealth, a State or a Territory may give notice in writing to a registered financial institution that an account kept in the name of that Department by the registered financial institution is a Government Department account for the purposes of this Act.

(2) Subject to subsection (3), where a notice under this section is given to a registered financial institution, that registered financial institution shall designate the account to which the notice relates as a Government Department account for the purposes of this Act and the account shall be deemed to have become a Government Department account on 1 January 1984 or on the date on which the account was opened, whichever is the later.

(3) Except in the case of a Department the name or title of which includes the word "Department", a registered financial institution shall designate an account under this section as a Government Department account only upon receipt of a certificate issued by the Commissioner confirming that the Department concerned is a Department of the Government of the Commonwealth, a State or a Territory for the purposes of this Act.

[Section 19 inserted by No. 110 of 1984 s.10.]

Charitable institution's account

19A. (1) A charitable institution may apply in the approved form and manner to the Commissioner for approval of an account kept for the charitable institution under an account name listed in the form of application by a registered financial institution as a charitable institution's account for the purposes of this Act.

(2) Where an application is made under subsection (1), the Commissioner may issue to the applicant a certificate of approval of the account to which the application relates as a charitable institution's account for the purposes of this Act and approval of an account under an account name listed in the form of application shall constitute approval of all accounts kept for the charitable institution by one or more registered financial institutions under that account name.

(3) Where a certificate under this section is produced to a registered financial institution, that institution shall designate any account to which the certificate relates as a charitable institution's account for the purposes of this Act.

(4) An amount shall not be paid to the credit of a charitable institution's account kept by a registered financial institution unless the amount is received by the charitable institution solely for the purposes of the charitable institution.

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(5) Where the Commissioner is satisfied that —

- (a) an amount has been paid to the credit of a charitable institution's account in contravention of subsection (4);
or
- (b) the charitable institution for which the account is kept is no longer a charitable institution for the purposes of this Act,

the Commissioner —

- (c) may cancel the certificate by notice given to each registered financial institution that to his knowledge keeps a charitable institution's account for that charitable institution;
- (d) may determine a period, not exceeding 12 months, during which the charitable institution is ineligible to make application under this section; and
- (e) shall send a copy of the notice given under paragraph (c) and any determination made under paragraph (d) to the charitable institution.

[Section 19A inserted by No. 19 of 1984 s.6.]

Cancellation of designation of exempt account

20. Where a registered financial institution receives a notice given by the Commissioner under section 13 (13), 14 (7), 15 (5), 17 (7) or 19A (5) cancelling an account as a special account, a short term dealing account, a trust fund account, a sweeping account or a charitable institution's account for the purposes of this Act, as the case may be, the registered financial institution shall forthwith cancel the designation of the account as such an account.

[Section 20 inserted by No. 19 of 1984 s.7; amended by No. 110 of 1984 s.11.]

Certified returns of exempt accounts

21. (1) A person in whose name an exempt account to which this section applies is kept, shall, not later than 2 months after the end of each financial year, furnish to the Commissioner a certificate in the approved form stating whether or not all amounts paid into the exempt account were so paid in accordance with this Act.

Penalty: \$2 000.

(2) Where any amount was paid into an exempt account in contravention of this Act, the person in whose name the exempt account is kept shall pay to the Commissioner \$1 200 or 0.06 per centum of that amount, whichever is the less.

(3) The exempt accounts to which this section applies are —

- (a) a short term dealing account;
- (b) a special account kept in the name of a pastoral finance company;
- (c) a special account kept in the name of the Legal Contribution Trust;
- (d) a special account that is a clearing or settlement account of the kind referred to in section 13 (3) or (4);
- (e) a trust fund account; and
- [(f) *deleted*]
- (g) a sweeping account.

(4) In this section, “**financial year**” means the year ending on 30 June or on such other date as the Commissioner approves in a particular case.

[Section 21 amended by No. 19 of 1984 s.8; No. 110 of 1984 s.12; No. 81 of 1985 s.6; No. 9 of 1989 s.4; No. 37 of 1990 ss.4 and 5.]

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**PART V — REGISTRATION, CERTIFICATION
AND RETURNS**

Registration of financial institutions

22. (1) A financial institution (not being a registered financial institution or a member of a group) the total of whose dutiable receipts —

- (a) during the preceding period of 12 months exceeded \$5 000 000; or
- (b) during the preceding month exceeded \$416 666,

shall apply to the Commissioner, within 21 days after the end of that period or month in the approved form and manner, for registration as a financial institution and the Commissioner shall register the applicant as a financial institution under this Act.

(2) A financial institution (not being a registered financial institution) that is a member of a group the total dutiable receipts of which —

- (a) during the preceding period of 12 months exceeded \$5 000 000; or
- (b) during the preceding month exceeded \$416 666,

shall apply to the Commissioner, within 21 days after the end of that period or month in the approved form and manner, for registration as a financial institution and the Commissioner shall register the applicant as a financial institution under this Act.

(3) A financial institution —

- (a) that is not required to apply for registration under subsection (1) or (2); and
- (b) the total of whose dutiable receipts is expected —
 - (i) during the succeeding month to exceed \$416 666; or

- (ii) during the succeeding period of 12 months, to exceed \$5 000 000,

may apply to the Commissioner in the approved form and manner for registration as a financial institution and the Commissioner may, if he is of the opinion that an expectation referred to in paragraph (b) is reasonable, register the financial institution as a financial institution under this Act.

(4) The Commissioner may cancel the registration under subsection (1), (2) or (3) of a financial institution if —

- (a) during the preceding period of 12 months the total of the dutiable receipts of the financial institution or of the group of which the financial institution is a member did not exceed \$5 000 000; and
- (b) during the preceding month the total of the dutiable receipts of the financial institution or of the group of which the financial institution is a member did not exceed \$416 666,

or if, in his opinion, the total of the dutiable receipts of the financial institution or of the group of which the financial institution is a member during the succeeding period of 12 months is not likely to exceed \$5 000 000.

(5) The Commissioner may cancel the registration of a financial institution if that financial institution is registered only by reason of subsection (2) and has ceased to be a member of the group referred to in that subsection.

Returns by financial institutions

23. A financial institution that is registered or required to apply for registration in accordance with the provisions of section 22 shall, within 21 days after the end of each month, furnish to

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the Commissioner, in accordance with the approved form and manner, a return relating to that month in which it specifies —

- (a) the total of the dutiable receipts, other than dutiable receipts referred to in paragraph (b); and
- (b) the number of dutiable receipts of, or exceeding, \$2 000 000,

that were received by it during that month.

[Section 23 amended by No. 111 of 1984 s.3; No. 81 of 1985 s.7; No. 9 of 1989 s.5; No. 37 of 1990 s.6.]

Exemption from furnishing monthly returns of financial institutions

24. (1) If the Commissioner is of the opinion that, having regard to the small amount of duty payable by a registered financial institution, it is expedient to do so, he may issue a certificate to that financial institution exempting it from furnishing monthly returns in accordance with section 23 and any financial institution to which such a certificate is issued may refrain from furnishing monthly returns but shall, unless the contrary is expressed in the certificate, furnish a return relating to each financial year within 21 days after the end of that financial year.

(2) A certificate issued under subsection (1) may be either unconditional or subject to such conditions as are prescribed or as the Commissioner specifies in the certificate.

(3) The Commissioner may at any time by notice in writing revoke a certificate issued under subsection (1).

(4) The issue of a certificate under subsection (1) shall not exempt a financial institution from the payment of any duty, notwithstanding that it may have the effect of postponing the time for payment of duty.

(5) In subsection (1), “**financial year**” means the period of 12 months ending on 30 June or at the end of such other month as the Commissioner determines in a particular case, but does not include any part of such a financial year before the financial institution was required to be registered under this Act.

Further returns

25. The Commissioner may, by notice in writing, call upon any financial institution or person, whether on his own behalf or as an agent or a trustee, to furnish to him, within the time specified in the notice, such return or such further or fuller return, as the Commissioner requires.

Certification of short term dealers

26. (1) Subject to this section, a person may apply to the Commissioner in the approved form and manner for certification as a certified short term dealer for the purposes of this Act.

(2) A person may not apply under this section for certification as a certified short term dealer unless that person carries on a business in Western Australia involving short term dealings or short term investments.

(3) On receipt of an application under this section for certification from a person, the Commissioner shall certify the person as a certified short term dealer under the Act in accordance with subsection (4) if he is satisfied that the application is duly made and the person complies with any further requirements that may be prescribed; and, in certifying a person as a certified short term dealer who is a prescribed short term dealer or a certified short term dealer who is a prescribed short term dealer not being a registered financial institution, the Commissioner shall impose a condition that the person complies with section 14 (4).

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(4) A person who applies under this section for certification shall be certified as a certified short term dealer who is not a prescribed short term dealer unless the person is —

- (a) a building society or credit union or a registered financial institution and less than half of the institution's short term dealings give rise to short term liabilities of that institution; or
- (b) not a registered financial institution,

and a person of the kind referred to in paragraph (a) shall be certified as a certified short term dealer who is a prescribed short term dealer and a person of the kind referred to in paragraph (b) shall be certified as a certified short term dealer who is a prescribed short term dealer not being a registered financial institution.

[(5) repealed]

(5a) A person who is a certified short term dealer may by notice in writing given to the Commissioner apply for the cancellation of his certification and upon receipt of such an application the Commissioner shall cancel the certification and notify the person in writing of the effective date of the cancellation.

(6) The Commissioner may by notice in writing given to a person who is a certified short term dealer, cancel his certification if the person —

- (a) has ceased to be a person who may make application for certification under this section;
- (b) breaches at any time a condition imposed under subsection (3); or
- (c) contravenes this Act,

and may determine a period not exceeding 12 months, during which the person is ineligible to make an application under this section.

(7) Subject to this section, a person may make further applications for certification as a certified short term dealer upon the expiry of certification under this section, except that an application may not be made by a person whose certification was cancelled upon his application under subsection (5a) for a period of 2 years after cancellation under that subsection.

(8) Where in consequence of an application made under subsection (5) the Commissioner, prior to the commencement of section 8 of the *Financial Institutions Duty Amendment Act 1985*¹, certified a person to be a certified short term dealer who is not a prescribed short term dealer, the Commissioner shall, notwithstanding that certification, certify that person as a certified short term dealer in accordance with subsection (4) for all purposes of this Act and every certification under this subsection shall take effect from the day of that commencement.

[Section 26 amended by No. 110 of 1984 s.13; No. 81 of 1985 s.8; No. 30 of 1991 s.6.]

Returns by certified short term dealers

27. (1) A certified short term dealer shall furnish a return to the Commissioner within 21 days after the end of —

- (a) except as provided by paragraph (b), each month; or
- (b) where in relation to a certified short term dealer the Commissioner has approved a period longer than a month, each such longer period.

(2) For the purposes of subsection (1), a return —

- (a) shall be in a form approved by the Commissioner; and
- (b) shall, in addition to such other matters as may be required to be specified in the form, specify —
 - (i) in the case of a certified short term dealer who is not a prescribed short term dealer and who is not a member of a group — the amount

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comprising one-tenth of the sum of the short term liabilities in respect of his Australian-based operations at the close of each day during the month to which the return relates divided by the number of days in that month;

- (ii) in the case of a certified short term dealer who is not a prescribed short term dealer and who is a member of a group — the amount comprising one-tenth of the sum of the short term liabilities of the group in respect of their Australian-based operations at the close of each day during the month to which the return relates divided by the number of days in that month;
- (iii) in the case of a certified short term dealer who is a prescribed short term dealer — the amount comprising the sum of the short term investments at the close of each day during the month to which the return made by him relates divided by the number of days in that month; and
- (iv) in the case of a certified short term dealer who is a prescribed short term dealer not being a registered financial institution — the amount comprising whichever is the greater of —
 - (A) the sum of the short term liabilities at the close of each day during the month to which the return relates divided by the number of days in that month; or
 - (B) the sum of the short term investments at the close of each day during the month to which the return made by him relates divided by the number of days in that month,or, if neither sum is greater than the other, the sum referred to in item (B).

[Section 27 amended by No. 110 of 1984 s.14.]

Further returns by certified short term dealers

28. The Commissioner may, by notice in writing, call upon any certified short term dealer, whether on his own behalf or as an agent or a trustee, to furnish to him, within the time specified in the notice, such return or such further or fuller return, as the Commissioner requires.

Registration of persons depositing with unregistered financial institutions

29. (1) Where a person (not being a person registered under this section) deposits money with a financial institution, other than a registered financial institution, and that financial institution has —

- (a) during the preceding period of 12 months had dutiable receipts exceeding \$5 000 000; or
- (b) during the preceding month had dutiable receipts exceeding \$416 666,

the person shall apply, within 21 days after the end of the month in which the deposit was made, to the Commissioner in the approved form and manner for registration as a depositor and the Commissioner shall register him as a depositor under this Act.

(2) The Commissioner may cancel the registration under subsection (1) of a person as a depositor if —

- (a) during the preceding period of 12 months the total of the dutiable receipts of the financial institution with which the depositor has deposited money did not exceed \$5 000 000; and
- (b) during the preceding month the total of the dutiable receipts of the financial institution with which the depositor has deposited money did not exceed \$416 666; or

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- (c) the financial institution with which the depositor has deposited money becomes a registered financial institution for the purposes of this Act.

[Section 29 amended by No. 86 of 1983 s.4.]

Returns by depositors

30. A depositor shall, within 21 days after the end of each month, furnish to the Commissioner in the approved form and manner a return relating to that month in which he specifies —

- (a) the total dutiable deposits other than dutiable deposits referred to in paragraph (b); and
- (b) the number of dutiable deposits of, or exceeding \$2 000 000,

that were made by him during that month.

[Section 30 amended by No. 111 of 1984 s.4; No. 81 of 1985 s.9; No. 9 of 1989 s.5; No. 37 of 1990 s.6.]

Exemption of depositor from furnishing returns

31. (1) If the Commissioner is of the opinion that, having regard to the small amount of duty payable by a depositor, it is expedient to do so, he may issue a certificate to the depositor exempting him from furnishing monthly returns in accordance with section 30 and any depositor to whom such a certificate is issued may refrain from furnishing monthly returns but shall, unless the contrary is expressed in the certificate, furnish a return relating to each financial year within 21 days after the end of that financial year.

(2) A certificate issued under subsection (1) may be either unconditional or subject to such conditions as are prescribed or as the Commissioner specifies in the certificate.

(3) The Commissioner may at any time by notice in writing revoke a certificate issued under subsection (1).

(4) The issue of a certificate under subsection (1) shall not exempt a depositor from the payment of any duty, notwithstanding that it may have the effect of postponing the time for payment of duty.

(5) In subsection (1), “**financial year**” means the period of 12 months ending on 30 June or at the end of such other month as the Commissioner determines in a particular case but does not include any part of such a financial year before the depositor became a depositor.

Further returns by depositor

32. The Commissioner may, by notice in writing, call upon a depositor or person to furnish to him, within the time specified in the notice, such return or such further and fuller return, as the Commissioner requires, whether on his own behalf or as an agent or trustee.

Undertaking by financial institution not required to be registered

33. (1) A financial institution that is not registered under this Act and is not required to be so registered may give an undertaking in accordance with the approved form and manner to the Commissioner to make such payments to the Commissioner in respect of such receipts of money and at such times as he would be required to make if he were required to be registered under this Act.

(2) Where the Commissioner receives an undertaking under subsection (1), the Commissioner shall determine whether or not to accept the undertaking.

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(3) Where the Commissioner accepts an undertaking from a financial institution under subsection (1), the financial institution shall be deemed to be registered under this Act during the period during which the undertaking has effect in accordance with subsection (4).

(4) An undertaking accepted by the Commissioner under this section has effect from the date on which the Commissioner accepts the undertaking until —

- (a) the financial institution by notice in writing given to the Commissioner withdraws the undertaking; or
- (b) the Commissioner by notice in writing given to the financial institution, withdraws his acceptance of the undertaking.

PART VI — CONSTITUTION OF GROUPS

Interpretation

34. In this Part, “**business**” includes —

- (a) a trade or profession; and
- (b) any other activity carried on for fee, gain or reward.

Grouping of corporations

35. (1) Subject to subsection (2) for the purposes of this Act, 2 corporations constitute a group if they are by reason of section 7 (5) of the *Companies (Western Australia) Code*² to be deemed, for the purposes of that Code, to be related to each other.

(2) Where the Commissioner is satisfied, having regard to any matters that he considers relevant, that it would not be just and reasonable to include as a member of a group a corporation that is deemed by reason of section 7 (5) of the *Companies (Western Australia) Code*² to be related for the purposes of that Code to another corporation which is a member of that group, the Commissioner may, by order in writing served on that first-mentioned corporation, exclude it from the group.

[Section 35 amended by No. 110 of 1984 s.15.]

Grouping of commonly controlled businesses

36. (1) A reference in this section to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has, or the same persons have together, a controlling interest, as referred to in subsection (3), in each of 2 businesses, the persons who carry on those businesses constitute a group.

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(3) For the purposes of subsection (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business —

- (a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors, of the corporation are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;
- (b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, 50 per centum or more of the voting power attached to voting shares issued by the corporation;
- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons —
 - (i) owns, or own together (whether beneficially or not) 50 per centum or more of the capital of the partnership; or
 - (ii) is, or are together, entitled (whether beneficially or not) to 50 per centum or more of any profits of the partnership;

- (d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of 50 per centum or more of the value of the interests in the trust first-mentioned in this paragraph;
- (e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is, by reason of section 7 (5) of the *Companies (Western Australia) Code*² to be deemed, for the purposes of that Code, to be related to it has a controlling interest.

(5) Where —

- (a) a person has, or persons have together, a controlling interest under subsection (3) in a business; and
- (b) the person or persons who carries or carry on that business has or have such a controlling interest in another business,

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in the business referred to in paragraph (b).

(6) Where —

- (a) a person is a beneficiary under a trust; or
- (b) 2 or more persons together are beneficiaries under a trust,

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in respect of 50 per centum or more of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3), be deemed to have a controlling interest in that business.

(7) Where the Commissioner is satisfied, having regard to the nature and degree of ownership or control of the business and to any other matters that he considers relevant, that it would not be just and reasonable to include as a member of a group a person or persons carrying on a business, the Commissioner may, by order in writing served on that person or persons, exclude him or them from the group.

Smaller groups subsumed into larger groups

37. (1) Notwithstanding any other provision of this Part (except subsection (2)), where a person is, whether or not by virtue of this subsection, a member of 2 or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1), a group which, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1).

(3) Where the Commissioner is satisfied, having regard to any matters that he considers relevant, that it would not be just and reasonable to include as members of one group the members of 2 or more groups, the Commissioner may, by order in writing served on the person or persons who are members of those groups, exclude them from that one group.

Beneficiaries under discretionary trusts

38. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and other person, may benefit under that trust shall be deemed, for the purposes of this Part, to be a beneficiary in respect of 50 per centum or more of the value of the interests in that trust.

Exclusion of persons from groups

39. (1) An order may be made under section 35, 36 or 37 to exclude a person or persons from a group if an application, setting out the grounds on which it is made and supported by a statement of the reasons for the existence of those grounds, is made to the Commissioner by that person or those persons.

(2) Notwithstanding subsection (1), the Commissioner may, of his own motion, make an order to exclude a person or persons from a group if, on information in his possession, he is satisfied as required by the provision under which the order is authorized to be made.

[(3) repealed]

(4) A person who is excluded from a group by order of the Commissioner under section 35, 36 or 37 shall inform the Commissioner in writing immediately if the circumstances which were prevailing at the time of the exclusion order, as made known to the Commissioner prior to the making of the order, change in a material respect.

(5) The Commissioner may at any time, by order in writing served on the person or persons excluded from a group, revoke an order made under section 35, 36 or 37.

(6) Notwithstanding any other provision of this Part, an order under section 35, 36 or 37 shall have effect according to its tenor on and from the date specified in the order (being a date that is the date of the order or before the date of the order) as

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the date on and from which the person referred to in the order is or shall be deemed to have been excluded from the group so referred to.

[Section 39 amended by No. 110 of 1984 s.16.]

**PART VII — COLLECTION AND RECOVERY
OF DUTY**

Time for payment of duty

40. (1) A financial institution and a depositor liable to pay financial institutions duty shall pay the duty within the period within which he is required by this Act to lodge the return of the receipts, short term liabilities, short term investments, or deposits in respect of which the duty is payable.

(2) Where —

- (a) a financial institution pays financial institutions duty at the rate of 0.06 per centum of the total dutiable receipts received by him during a month (other than receipts of, or exceeding, \$2 000 000); or
- (b) a depositor pays financial institutions duty at the rate of 0.06 per centum of the total dutiable deposits made by him during a month (other than deposits of, or exceeding, \$2 000 000),

the financial institution or depositor shall be deemed to have paid duty in respect of each receipt or deposit included in that total.

(3) Where a registered financial institution in accordance with the prior approval in writing of the Commissioner does not, during a month, pay an amount to the credit of an exempt account kept in its name by a bank (other than a short term dealing account), building society or credit union, the financial institution shall be deemed to have paid duty in respect of the receipt of money by it during that month that, under this Act, could have been paid to the credit of an exempt account, other than a short term dealing account.

[Section 40 amended by No. 110 of 1984 s.17; No. 111 of 1984 s.5; No. 81 of 1985 s.10; No. 9 of 1989 ss.4 and 5; No. 37 of 1990 ss.5 and 6.]

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Assessments and amended assessments

41. (1) Where the Commissioner finds in any case that duty is payable by a financial institution or a depositor, the Commissioner may —

- (a) assess the amount of dutiable receipts or the short term liabilities or short term investments of the financial institution or the amount of dutiable deposits made by the depositor, as the case may be; and
- (b) calculate the duty payable by the financial institution or the depositor.

(2) Where —

- (a) a financial institution or a depositor fails or neglects duly to furnish a return or information as and when required by this Act or by the Commissioner;
- (b) the Commissioner is not satisfied with a return made or information furnished by a financial institution or a depositor; or
- (c) the Commissioner has reason to believe or suspect that a financial institution or a depositor (though he may not have furnished any return) is liable to pay financial institutions duty,

the Commissioner may cause an assessment or an amended assessment to be made of the amount of the dutiable receipts, the short term liabilities or short term investments or the dutiable deposits upon which, in his judgment, financial institutions duty ought to be imposed and that financial institution or depositor shall be liable to pay financial institutions duty thereon, except in so far as he establishes on objection or appeal that the assessment or amended assessment is excessive.

(3) A financial institution or depositor who becomes liable to pay financial institutions duty by virtue of an assessment or amended assessment made under subsection (2) shall also be

liable to pay, by way of an additional duty, an amount equal to the amount of that financial institutions duty, but the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional duty or any part of that duty.

(4) As soon as conveniently may be after an assessment or amended assessment is made under this section, the Commissioner shall cause notice in writing of the assessment or amended assessment and of the financial institutions duty or additional duty to be served on the financial institution or depositor liable to pay it.

(5) The amount of financial institutions duty or additional duty specified in the notice shall be due and payable on or before the date specified in the notice together with any other amount which may be payable in accordance with any other provision of this Act.

Refunds or deductions of duty overpaid

42. (1) If —

- (a) an application is made in writing to the Commissioner by a registered financial institution, certified short term dealer or depositor (in this subsection called “the applicant”) for a refund of duty overpaid by it within the period of 3 years ending on the date of making of the application; and
- (b) the Commissioner finds that duty was overpaid by the applicant within the period referred to in paragraph (a),

the Commissioner shall —

- (c) refund to the applicant the amount of duty found to have been overpaid; or

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- (d) give the applicant notice in writing that the applicant is entitled to deduct the amount of duty found to have been overpaid from —
 - (i) a single amount of duty payable by the applicant after the giving of that notice; or
 - (ii) if the amount of duty found to have been overpaid exceeds a single amount of duty referred to in subparagraph (i), successive amounts of duty payable within the meaning of that subparagraph.

(2) A person who has been given notice under subsection (1) (d) may deduct the amount of duty found to have been overpaid from —

- (a) the single amount of duty referred to in subsection (1) (d) (i); or
- (b) the successive amounts of duty referred to in subsection (1) (d) (ii),

as the case requires.

(3) If, in the case of an amount of duty refunded under subsection (1) to, or deducted under subsection (2) from an amount or amounts of duty payable by —

- (a) a registered financial institution, the whole or part of the amount so refunded or deducted represents duty overpaid to the registered financial institution by a person on whose behalf the registered financial institution keeps an account (in this section called “the client”), the registered financial institution; or
- (b) a certified short term dealer, the whole or part of the amount so refunded or deducted represents duty overpaid to the certified short term dealer by a person on whose behalf the certified short term dealer has

had short term dealings (in this section called "the client"), the certified short term dealer,

shall, within a period of 90 days after receiving that refund, or after the making of the relevant deduction, as the case requires, or such longer period as the Commissioner allows in writing, pay to the client an amount equal to the relevant amount of duty overpaid by the client.

(4) A registered financial institution or certified short term dealer which contravenes subsection (3) —

- (a) is liable to repay to the Commissioner the amount which the registered financial institution or certified short term dealer has failed to pay to the client in accordance with that subsection; and
- (b) if repayment to the Commissioner is not effected under this subsection within a period of 90 days, or such longer period as the Commissioner allows in writing, after that contravention, commits an offence and is liable to a penalty of \$2 000.

(5) An amount repayable to the Commissioner under subsection (4) (a) is a debt due to the Crown and may be sued for and recovered in any court of competent jurisdiction by the Commissioner suing in his official name.

[Section 42 inserted by No. 30 of 1991 s.7.]

Financial institution leaving Western Australia

43. When the Commissioner has reason to believe that a financial institution or a depositor may leave Western Australia before any duty becomes due and payable by him, the duty shall be due and payable on such date as the Commissioner fixes and specifies in a notice served on the financial institution or depositor.

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Time to pay, extensions and instalments

44. The Commissioner may —

- (a) extend the time for payment of any duty by such period as he considers the circumstances warrant; or
- (b) permit the payment of any duty to be made by instalments within such time as he considers the circumstances warrant,

and may make the extension or permission subject to such terms and conditions as he thinks fit, including conditions that provide for the payment from time to time of interest on the balance of duty outstanding at a rate not exceeding 20 per centum per annum.

Penal duty

45. (1) If the duty is not paid before the expiration of the period or before the date specified in section 40 or such further time as may be allowed by the Commissioner under section 44 there shall be payable a penal duty of an amount equal to the unpaid duty.

(2) The Commissioner may, in any particular case, remit the whole or any part of the penal duty imposed under this section.

Recovery of duty

46. (1) Duty shall be deemed when it becomes due and payable to be a debt due to the Crown and payable to the Commissioner.

(2) Any duty unpaid may be sued for and recovered in any court of competent jurisdiction by the Commissioner suing in his official name.

(3) Any duty payable under this Act by a member or members of a group is a debt due jointly and severally by every person who is a member of the group during the period in which the duty becomes due.

(4) Proceedings brought under this section in the name of the Commissioner shall in the absence of evidence to the contrary be presumed to have been brought by his authority.

(5) An officer of the State Taxation Department authorized for the purpose by the Commissioner may appear in proceedings brought under this section on behalf of the Commissioner.

Substituted service

47. If, in any proceedings against a person for the recovery of any duty, the defendant —

- (a) is absent from Australia and has not, to the knowledge of the Commissioner after reasonable inquiry in that behalf, any attorney or agent in Australia on whom service of process can be effected; or
- (b) cannot after reasonable inquiry be found,

service of any process in the proceedings may, without leave of the court, be effected on him by posting it, or a sealed copy of it, in a letter addressed to him at his last known place of business or abode in Australia.

Liquidator to give notice

48. (1) A person who is the liquidator of a company which has been a financial institution or depositor registered or required to be registered under this Act shall, within 14 days after he has become liquidator of that company, serve on the Commissioner notice in writing of his appointment as liquidator.

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(2) The Commissioner shall, as soon as practicable thereafter, notify to the liquidator the amount which appears to the Commissioner to be sufficient to provide for any duty which then is or will thereafter become payable by the company.

(3) The liquidator —

- (a) shall not without leave of the Commissioner part with any of the assets of the company until he has been so notified;
- (b) shall set aside out of the assets available for the payment of the duty, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
- (c) shall, to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the duty.

(4) If the liquidator fails to comply with any provision of this section (or fails as trustee duly to pay the duty for which he is liable under subsection (3)), he shall, to the extent of the value of the assets of which he has taken possession and which are, or were at any time, available to him for the payment of the duty, be personally liable to pay the duty, and shall be guilty of an offence.

Penalty: \$2 000.

(5) Where more persons than one are appointed liquidators or required by law to carry out the winding-up, the obligations and liabilities attaching to a liquidator under this section shall attach to each of those persons and, where any one of those persons has paid the duty due in respect of the company being wound-up, the other person or persons shall each be liable to pay that person his equal share of the amount of the duty so paid.

(6) Notwithstanding anything contained in this section, all costs, charges and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator in

the winding-up of a company, including the remuneration of the liquidator, may be paid out of the assets of the company in priority to any duty payable in respect of the company.

(7) Nothing in this section —

- (a) limits the liability of a liquidator under section 67 or his liability, as a trustee, under Part VI; or
- (b) affects any of the provisions of the *Companies (Western Australia) Code*².

Agent for absentee principal winding-up business

49. (1) Where an agent for an absentee principal has been required by the principal to wind-up the business of his principal he shall, before taking any steps to wind-up the business, notify the Commissioner of his intention so to do, and shall, to the extent of the value of the assets of which he has taken possession and which are, or were at any time, available to him for the payment of the duty, set aside such sum out of the assets of the principal as appears to the Commissioner to be sufficient to provide for any duty that becomes payable.

(2) An agent who fails to give notice to the Commissioner or fails to provide for payment of the duty as required by this section shall be personally liable for any duty that becomes payable in respect of the business of the principal and shall be guilty of an offence.

Penalty: \$2 000.

Where duty not paid during lifetime

50. (1) Subsections (2) to (5) apply where, whether intentionally or not, a person escapes full payment of duty in his lifetime by reason of his not having duly made any, or full, complete and accurate returns.

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(2) The Commissioner has the same powers and remedies against the trustees of the estate of that person in respect of the liability to which that person was subject as he would have had against that person if he were still living.

(3) The trustees shall make such returns under this Act as the Commissioner requires.

(4) The trustees are subject to duty to the same extent as the deceased person would be subject to duty if he were still living, but the Commissioner may in a particular case, for reasons that, in his discretion, he thinks sufficient, remit any duty or a part thereof.

(5) The amount of any duty payable by the trustees is a charge on all the deceased person's estate in their hands in priority to all other encumbrances.

Provision for payment of duty by executors

51. (1) Where, at the time of a person's death, he had not paid the whole of the duty payable up to the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of duty from the executors and administrators as he would have had against that person, if he were alive.

(2) The executors or administrators shall furnish such of the returns mentioned in Part V as have not been made by the deceased.

(3) Where the executors or administrators are unable or fail to furnish a return, the Commissioner may estimate and make an assessment of the dutiable receipts, short term liabilities, short term investments or deposits on which, in his judgment, duty ought to be charged.

(4) Where, in respect of the estate of any deceased person, probate has not been granted or letters of administration have not been taken out within 6 months of his death, the

Commissioner may cause an assessment to be made of the amount of duty payable by the deceased.

(5) The Commissioner shall cause notice of the assessment to be published twice in a daily newspaper circulating in a State or Territory in which the deceased resided.

(6) Any person claiming an interest in the estate of the deceased may, within 60 days after the first publication of notice of the assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if the person so claiming an interest were the deceased.

(7) Subject to any amendment of the assessment by the Commissioner, or by the Supreme Court under section 56, the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Commissioner.

(8) The Commissioner may issue an order in the prescribed form authorizing any member of the Police Force or any other person named therein to levy the amount of duty due by the deceased, with costs, by distress and sale of any property of the deceased.

(9) Upon the issue of an order under subsection (8) the member or person so authorized shall have power to levy that amount in the prescribed manner.

(10) Notwithstanding anything contained in subsections (7), (8) and (9), if at any time probate of the will of the deceased is, or letters of administration of the estate are, granted to a person, that person may, within 60 days after the date on which probate was, or letters of administration were, granted, lodge an objection against the assessment stating fully and in detail the grounds on which he relies, and the Commissioner shall consider any such objection and shall make such amendment (if any) as he considers necessary.

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Recovery of duty paid on behalf of another person

52. Every person who, under this Act, pays any duty for or on behalf of any other person shall be entitled to recover the amount so paid from that other person as a debt, together with the costs of recovery, or to retain or deduct that amount out of any money in his hands belonging or payable to that other person.

Contributions from persons jointly liable to pay duty

53. Where 2 or more persons are jointly liable to pay duty each of them shall be liable for the whole duty, but any of them who has paid the duty may recover contributions as follows —

- (a) a person who has paid duty in respect of any dutiable receipts, short term liabilities, short term investments or dutiable deposits may recover by way of contribution from any other person jointly liable to that duty a sum which bears to the duty the same proportion as the share of dutiable receipts, short term liabilities, short term investments or dutiable deposits which that other person received, owed, held or paid bears to the total dutiable receipts, short term liabilities, short term investments or dutiable deposits which the persons jointly liable to the duty received, owed, held or paid;
- (b) a person entitled to contribution under this section may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his request, or may retain or deduct the amount of the contribution out of any money in his hands belonging or payable to the person liable to contribute.

Commissioner may collect duty from person owing money to financial institution or depositor

54. (1) The Commissioner may, by notice in writing (a copy of which shall be served on the financial institution or depositor at his last known place of abode or business), require —

- (a) any person by whom any money is due or accruing or may become due to a financial institution or depositor;
- (b) any person who holds or may subsequently hold money for or on account of a financial institution or depositor;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to a financial institution or depositor; or
- (d) any person having authority from some other person to pay money to a financial institution or depositor,

to pay to him forthwith upon the money becoming due or being held, or within such further time as the Commissioner allows, the money or so much thereof as is sufficient to pay the duty due by the financial institution or depositor.

(2) A person who fails to comply with a notice under subsection (1) shall be guilty of an offence.

Penalty: \$2 000.

(3) Where any amount referred to in subsection (1) is less than the amount of the duty due by the financial institution or depositor, the person served with the notice under that subsection shall pay to the Commissioner, in reduction of the amount of the duty due, the amount payable by that person to the financial institution or depositor.

(4) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority

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of the financial institution or depositor and of all other persons concerned, and is hereby indemnified in respect of the payment.

(5) If the duty due by the financial institution or depositor is paid before any payment is made under a notice given under subsection (1), the Commissioner shall forthwith give notice of the payment to the person served with the notice under that subsection.

(6) In this section “**duty**” includes any judgment debt and costs in respect of duty.

PART VIII — OBJECTIONS AND APPEALS

Objections

55. (1) A person who is dissatisfied with any decision made by the Commissioner under this Act by which his liability to pay duty is affected, or with any assessment made by the Commissioner under this Act, may, within 60 days, or such longer period as the Commissioner may in writing allow, after service of notice of the decision or assessment, as the case may be, post to or lodge with, the Commissioner an objection in writing stating fully and in detail the grounds on which he relies.

(2) Notwithstanding subsection (1), in the case of an objection to an amended assessment the person objecting shall have no further right of objection than he would have had if the amended assessment had not been made except to the extent to which, by reason of the amended assessment, a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.

(3) The Commissioner shall consider the objection, and may either disallow it or allow it, either wholly or in part.

(4) If the person's liability or assessment has been reduced by the Commissioner after considering the objection, the Commissioner shall refund to the person any amounts paid by him in excess.

(5) The Commissioner shall serve on the objector written notice of his decision on the objection.

Appeals

56. (1) When a person, who has objected under section 55 to a decision made by the Commissioner under this Act by which his liability to pay duty is affected or to any assessment made by the Commissioner under this Act is dissatisfied with the decision of the Commissioner on that objection, he may, within 60 days

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after the service on him of notice of that decision or such longer period after that service as the Supreme Court may allow, appeal to the Supreme Court against that decision.

(2) The Supreme Court shall hear and determine an appeal under subsection (1), and for the purposes of this section —

(a) the jurisdiction of the Supreme Court may be exercised by a Judge sitting in chambers; and

(b) rules of court may be made for regulating the procedure and practice to be followed on an appeal to the Supreme Court under subsection (1).

(3) The appellant shall be limited, on the hearing of the appeal, to the grounds stated in his objection.

(4) If the appellant's liability or assessment has been reduced on objection, the reduced liability or assessment shall be the liability or assessment appealed against.

(5) On the hearing of an appeal by the Supreme Court under this section, the Supreme Court may make such order as it thinks fit and may by its order confirm, reduce, increase or vary the decision or assessment.

Commissioner may state case

57. (1) The Commissioner may state a case on any question of law arising with regard to any decision or assessment made by the Commissioner under this Act 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.

Pending appeal not to delay payment of duty

58. (1) The fact that an objection, appeal or case stated is pending with respect to any liability or assessment shall not in the meantime interfere with or affect the liability or assessment the subject of that objection, appeal or case stated and the duty may be recovered as if no objection, appeal or case stated were pending.

(2) If the liability or assessment is altered on appeal or in consequence of a case stated, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded together with interest paid at the rate prescribed for the purposes of this subsection, and amounts short paid shall be recoverable.

PART IX — PENAL PROVISIONS

Offences

59. (1) A person who —
- (a) fails or neglects duly to furnish any return or information or to comply with any requirement of the Commissioner as and when required by this Act, or by the Commissioner;
 - (b) without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Commissioner or to answer truly and fully any questions put to him, or to produce any book or papers required of him by the Commissioner;
 - (c) makes or delivers a return which is false in any particular or makes any false answer whether orally or in writing; or
 - (d) being the person in whose name an exempt account is kept, pays, causes to be paid, or permits or authorizes to be paid to the credit of that account an amount in contravention of this Act,

commits an offence.

Penalty: \$2 000.

(2) Any person who, after conviction for an offence against this section, continues to fail to comply with the requirements in respect of which he was convicted, shall be guilty of an offence and punishable as provided in section 60.

(3) Where an offence against this section arises under subsection (1) (a) by reason of the neglect or failure of a person to do anything within a particular period, the offence shall, for the purposes of subsection (2), be deemed to continue for as long as the thing remains undone, notwithstanding that that period has elapsed.

Evading duty

60. Any person who, by any wilful act, default or neglect, evades or attempts to evade financial institutions duty chargeable under this Act, shall be guilty of an offence.

Penalty: \$2 000 and treble the amount of financial institutions duty evaded or attempted to be evaded.

Time for commencing prosecutions

61. (1) A prosecution in respect of an offence against section 60 may be commenced at any time within 3 years after the commission of the offence.

(2) A prosecution in respect of an offence arising under section 59 (1) (a), (c) or (d) may be commenced at any time.

Penalties not to relieve from duty

62. Payment of penalties under this Act shall not relieve any person from liability to any duty for which he would otherwise be liable.

Obstructing officers

63. Any person who obstructs or hinders an officer of the State Taxation Department acting in the administration of this Act shall be guilty of an offence.

Penalty: \$2 000.

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Offences by bodies corporate

64. (1) Where a body corporate is guilty of an offence against this Act any officer of the body corporate who was knowingly a party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.

(2) In this section “**officer**”, in relation to a body corporate, includes a person who is an officer of the body corporate within the meaning of section 5 (1) of the *Companies (Western Australia) Code*².

Offences by partnerships, etc.

65. Where this Act provides that a person, being a partnership or an unincorporated body or association, is guilty of an offence, that reference to the person shall —

- (a) in the case of a partnership — be read as a reference to each member of the partnership; and
- (b) in the case of an unincorporated body or association — be read as a reference to each member of the committee of management of the body or association.

PART X — MISCELLANEOUS

Public officer of company

66. (1) The Commissioner may, by notice served on a company, require the company to appoint, within such period as is specified in the notice, a public officer (being a natural person whose principal place of residence is in Western Australia) of the company for the purposes of this Act, and to keep the office of public officer constantly filled by such a person.

(2) An appointment of a public officer shall be deemed not to be duly made until after notice of the appointment in writing, specifying the name and residential address of the officer, has been lodged with the Commissioner.

(3) Where —

(a) the Commissioner has required a company to appoint a public officer and the company has not made such an appointment within the period specified in the notice served under subsection (1); or

(b) the office of public officer is left vacant,

the Commissioner may appoint a public officer of the company.

(4) Where the company has appointed a public officer under subsection (1) and the Commissioner is dissatisfied with the appointment, the Commissioner may appoint a person to be the public officer in place of the person appointed by the company.

(5) Service of a document on the public officer of the company is sufficient service on the company for the purposes of this Act, and, if at any time there is no public officer, then service on any person acting or appearing to act in the business of the company is sufficient.

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(6) The public officer is answerable for the doing of all such things as are required to be done by the company under this Act, and, in case of default, is liable to the same penalties.

(7) Everything done by the public officer that he is required to do in his representative capacity shall be deemed to have been done by the company and the absence or non-appointment of a public officer does not excuse the company from the necessity of complying, or from any penalty for failure to comply, with any of the provisions of this Act, but the company is liable to comply with the provisions of this Act as if there were no requirement to appoint a public officer.

(8) A notice served on or requisition made upon the public officer shall be deemed to be served on or made upon the company.

(9) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and the company is liable jointly with the public officer for any penalty imposed upon him.

(10) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding that under this Act may be given to, served on or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served on or taken against any director, secretary or other officer of the company or any attorney or agent of the company, and that director, secretary, officer, attorney or agent has the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served on or taken against the company or public officer.

(11) In this section, “**company**” does not include an unincorporate body or association or a partnership.

Agents and trustees

67. (1) The following provisions shall apply with respect to every agent and every trustee —

- (a) he shall be answerable as a financial institution or depositor for the doing of all such things as are required to be done by virtue of this Act in respect of the receipt or deposit of money which is subject to duty under this Act;
- (b) he shall, in respect of any such receipts or deposits, make the returns and be chargeable with duty thereon, but in his representative capacity only, and each return shall, except as otherwise provided by this Act, be separate and distinct from any other;
- (c) if he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make;
- (d) where as agent or trustee he pays duty, he is hereby authorized to recover the amount so paid from the person on whose behalf he paid it, or to deduct it from any money in his hands belonging to that person;
- (e) he is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the duty;
- (f) he is hereby made personally liable for the duty payable if, after the Commissioner has required him to make a return, or while the duty remains unpaid, he, except with the written permission of the Commissioner, disposes of or parts with any fund or money which comes to him from or out of which the duty could legally be paid, but he shall not be otherwise personally liable for the duty;

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- (g) he is hereby indemnified for all payments which he makes in pursuance of this Act or in accordance with the requirements of the Commissioner;
- (h) for the purpose of ensuring the payment of duty the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other person in respect of duty, and in as full and ample a manner.

(2) Nothing in subsection (1) affects the operation of Part VI in relation to trustees.

Person in receipt or control of money for absentee

68. The following provisions shall, subject to this Act, apply with respect to every person who has the receipt, control or disposal of money belonging to a person resident out of Western Australia who is liable to pay duty under this Act —

- (a) he shall when required by the Commissioner pay the duty due and payable by the person on whose behalf he has the receipt, control or disposal of money;
- (b) where he pays duty in accordance with paragraph (a) he is hereby authorized to recover the amount so paid from the person on whose behalf he paid it or to deduct it from any money in his hands belonging to that person;
- (c) he is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the person resident out of Western Australia so much as is sufficient to pay the duty which is or will become due by that person;

- (d) he is hereby made personally liable for the duty payable by him on behalf of the person resident out of Western Australia after the duty becomes payable or if, after the Commissioner has required him to pay the duty, he, except with the written permission of the Commissioner, disposes of or parts with any fund or money then in his possession, or which comes to him from or out of which the duty could legally be paid, but he shall not be otherwise personally liable for the duty;
- (e) he is hereby indemnified for all payments which he makes in pursuance of this Act or in accordance with the requirements of the Commissioner.

Books to be kept

69. (1) Subject to subsection (2), a person who is registered or required to be registered under this Act as a financial institution or a depositor shall keep, or cause to be kept, in Western Australia such books as are necessary to give a true and complete indication —

- (a) in the case of a financial institution, of the dutiable receipts of that institution;
- (b) in the case of a certified short term dealer who is not a prescribed short term dealer, of the short term liabilities of that dealer in respect of his Australian-based operations at the close of each day;
- (c) in the case of a certified short term dealer who is a prescribed short term dealer, of the sum of the short term investments relating to his short term dealing account at the close of each day;
- (ca) in the case of a certified short term dealer who is a prescribed short term dealer not being a registered financial institution, of the sum of the short term liabilities of that dealer at the close of each day and of

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the sum of the short term investments of that dealer at the close of each day; and

- (d) in the case of a depositor, of the dutiable deposits of that depositor,

and shall retain those books for a period of 3 years after the completion of the transactions to which they relate.

Penalty: \$2 000.

(2) A person does not contravene subsection (1) by reason only that he keeps, or causes to be kept, the books referred to in that subsection elsewhere than in Western Australia if he keeps, or causes to be kept, those books in accordance with the terms and conditions of a permit issued to that person by the Commissioner.

(3) The Commissioner may, at any time, cancel, or vary the terms and conditions of, a permit issued by him for the purposes of this section.

[Section 69 amended by No. 110 of 1984 s.18.]

Power to obtain information and evidence

70. (1) The Commissioner may, by notice in writing, require any person —

- (a) within such period as is specified in that notice, to furnish him with such information as he requires; or
- (b) to attend and give evidence before him on a date specified in that notice,

for the purpose of inquiring into or ascertaining his or any other person's liability or entitlement under any of the provisions of this Act, and may require him to produce all books and other papers whatsoever in his custody or under his control relating thereto.

(2) The Commissioner may require the information or evidence to be given on oath, and either orally or in writing, or to be given by statutory declaration and for that purpose he may administer an oath.

(3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

Access to books, etc.

71. The Commissioner, or any officer of the State Taxation Department authorized by him in writing, whether generally or in a specific case, shall have full and free access to all buildings, places, books and other papers for any of the purposes of this Act and for any such purpose may make extracts from or copies of any such books or papers.

Evidence

72. (1) For the purposes of any proceedings against a person for the recovery of duty, a certificate purporting to be signed by the Commissioner certifying that —

- (a) the financial institution or depositor named in the certificate was liable to duty in respect of the period specified in the certificate;
- (b) an assessment of duty was duly made against him;
- (c) the particulars of the assessment are as stated in the certificate;
- (d) notice of the assessment was duly served upon the person; or

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- (e) the amount specified in the certificate was at the date of the certificate payable as duty by the financial institution or depositor named in the certificate,

shall be admissible in evidence in any proceedings against a person for the recovery of duty and, in the absence of evidence to the contrary, shall be proof of the matters stated in the certificate.

(2) The production of any document or a copy of a document under the hand or purporting to be under the hand of the Commissioner, or purporting to have been issued by the Commissioner (that document or copy purporting to be a notice or a copy of a notice specifying any liability of a financial institution or depositor under this Act), shall be conclusive evidence of the due exercise of any act required by this Act to be done or performed by the Commissioner for the purpose of ascertaining the liability so specified and (except in proceedings on appeal when it shall be sufficient evidence only) shall be conclusive evidence of the correctness of any calculations upon which that liability is ascertained.

(3) The production of any document purporting to be under the hand of the Commissioner (that document purporting to be a copy of or extract from any document or return furnished to, or of any document issued by, the Commissioner) shall for all purposes be sufficient evidence of the matter therein set forth, without producing the original.

(4) In any proceedings against a person for failing or neglecting duly to furnish a return, a certificate in writing purporting to be signed by the Commissioner certifying that the return has not been received from that person shall be admissible in evidence in those proceedings and, in the absence of evidence to the contrary, shall be proof that the defendant has failed or neglected duly to furnish the return.

(5) In any proceedings against a person for failing or neglecting duly to furnish the Commissioner with any information required by the Commissioner in pursuance of

section 70, a certificate purporting to be signed by the Commissioner certifying that —

- (a) the defendant was so required to furnish the Commissioner with the information of the nature specified in the certificate; and
- (b) the defendant failed or neglected duly to furnish the information as and when required by the Commissioner,

shall be admissible in evidence in those proceedings and, in the absence of evidence to the contrary, shall be proof of the matters so stated in the certificate.

(6) A certificate, purporting to be under the hand of the Commissioner certifying that on a day specified in the certificate a person named in the certificate was a delegate of the Commissioner under section 7 to whom such powers and functions of the Commissioner as are specified in the certificate had been delegated on terms, if any, so specified shall be admissible in evidence in any proceedings and, in the absence of evidence to the contrary, shall be proof of the matters stated in the certificate.

Service of documents by Commissioner

73. (1) Any certificate, notice, form or other document required or authorized by this Act to be served or given by the Commissioner shall be deemed to have been duly served upon or given to a person —

- (a) if delivered personally to, or if left at his address as shown on the return last furnished by him with some person apparently in his employment; or
- (b) if sent by prepaid letter post, addressed to the person at his address as shown on the last return furnished by him.

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(2) Service of a certificate, notice, form or other document in accordance with subsection (1) (b) shall in the absence of evidence to the contrary be presumed to have been effected at the time when it would be delivered in the ordinary course of post.

(3) The provisions of this section are in addition to and not in derogation of any other provisions of this Act relating to the service of documents, the *Interpretation Act 1918*⁴, or the provisions of sections 528, 529 and 530 of the *Companies (Western Australia) Code*².

Service of documents on Commissioner

74. Any notice, summons, writ or other process and any return, application, notice, statement or form to be served on the Commissioner for the purposes of this Act may be served by being lodged at the office of the Commissioner.

Institution of prosecutions

75. (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 authorized 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.

(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.

Refunds to charities

[**76.** *Omitted under the Reprints Act 1984 S.7 (4) (e).*]

Passing on duty

77. (1) Nothing in this Act prevents a registered financial institution from recovering from a person on whose behalf it keeps an account financial institutions duty paid by the financial institution in respect of money received by it for the credit of that account.

(2) Nothing in this Act prevents a certified short term dealer from recovering from a person on whose behalf the dealer has had short term dealings financial institutions duty paid by the dealer in respect of the short term liabilities or short term investments of the dealer in respect of those short term dealings.

Regulations

78. (1) The Governor may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may —

(a) control the making of charges or the implementation or carrying out of practices or procedures by a financial institution which require or have the effect of requiring —

(i) a person from whom the financial institution receives money, whether or not that receipt is a dutiable receipt; or

(ii) a person otherwise involved in the provision of finance by a financial institution,

to pay to the financial institution any amount equivalent or having reference to or by way of payment of or towards any amount of duty paid or payable by the financial institution in relation to dutiable receipts;

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- (b) control the making of charges or the implementation or carrying out of practices or procedures by a short term dealer which require or have the effect of requiring —
 - (i) a person from whom the short term dealer, or any member of a group of which the short term dealer is a member, receives an amount comprising a short term liability or short term investment; or
 - (ii) a person otherwise involved in a short term dealing by a short term dealer, or any member of a group of which the short term dealer is a member,

to pay to the short term dealer or any such member any amount equivalent or having reference to or by way of payment of or towards any amount of duty paid or payable by the short term dealer in relation to short term liabilities or short term investments;

- (c) control the making of charges or the implementation or carrying out of practices or procedures by a person, not being a financial institution or short term dealer, but whether or not the person is liable to pay duty under this Act, which require or have the effect of requiring any other person to pay to the person any amount equivalent or having reference to or by way of payment of or towards any amount of duty to which this Act applies;
- (d) provide that contravention of or failure to comply with a regulation constitutes an offence and provide for penalties not exceeding a fine of \$2 000 for offences against the regulations;
- (e) regulate the manner of making any application to the Commissioner under this Act;

- (f) prescribe the evidence that the Commissioner may require for the purpose of determining whether or not a certificate under section 24 or 31 should be given;
 - (g) regulate the signing of returns, applications, notices, certificates, statements or forms by or on behalf of financial institutions or depositors and deeming any return, application, notice, certificate, statement or form signed on behalf of a financial institution or depositor to have been signed by the financial institution or depositor;
 - (h) regulate the authentication of any certificate, notice or other document issued for the purposes of this Act;
 - (i) provide for the manner of notifying the appointment of a public officer of a company;
 - (j) prescribe fees to be paid in respect of matters arising under or provided for or authorized under this Act.
- (3) Regulations may be made under this section —
- (a) so as to apply —
 - (i) generally or in a particular class of case or in particular classes of cases;
 - (ii) at all times or at a specified time or at specified times; and
 - (iii) throughout the State or in a specified part or specified parts of the State;
 - (b) so as to require a matter affected by them to be —
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;

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- (c) so as to confer on a specified person or body or a specified class of person or body a discretionary authority; and
- (d) so as to provide that, in specified cases or a specified class of case or specified classes of cases whether on specified conditions or unconditionally, persons or things of a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified.

(4) In subsection (3) “**specified**” means specified in the regulations.

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PART XI — TRANSITIONAL PROVISIONS

[Part XI omitted under Reprints Act 1984 s.7 (4) (g)]



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NOTES

1. This reprint is a compilation as at 19 November 1992 of the *Financial Institutions Duty Act 1983* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Financial Institutions Duty Act 1983</i>	65 of 1983	13 December 1983	1 January 1984	
<i>Financial Institutions Duty Amendment Act 1983</i>	86 of 1983	29 December 1983	1 January 1984 (see section 2)	
<i>Financial Institutions Duty Amendment Act 1984</i>	19 of 1984	23 May 1984	1 June 1984 (see section 2)	
<i>Financial Institutions Duty Amendment Act (No.3) 1984</i>	110 of 1984	19 December 1984	1 January 1985	Savings ⁵
<i>Financial Institutions Duty Amendment Act (No.4) 1984</i>	111 of 1984	19 December 1984	1 January 1985 (see section 2)	
<i>Financial Institutions Act (Revival of section 76) Act 1985</i>	22 of 1985	24 April 1985	22 May 1985	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Financial Institutions Duty Amendment Act 1985</i>	81 of 1985	4 December 1985	Section 8: 4 December 1985; balance: 1 January 1986 (see section 2)	
<i>Financial Institutions Duty Amendment Act 1987</i>	31 of 1987	29 June 1987	29 June 1987	
<i>Financial Institutions Duty Amendment Act 1989</i>	9 of 1989	2 November 1989	1 November 1989 (see section 2(b))	
<i>Taxation (Reciprocal Powers) Act 1989 section 16</i>	18 of 1989	1 December 1989	5 October 1990 (see <i>Gazette</i> 5 October 1990 p.5122)	
<i>Financial Institutions Duty Amendment Act 1990</i>	37 of 1990	2 November 1990	2 November 1990	
<i>Financial Institutions Duty Amendment Act 1991</i>	30 of 1991	23 November 1991	23 November 1991 (see section 2)	

2 In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990*.

3 In respect of matters arising after 1 January 1991, the operation of the *Securities Industry (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990*.

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4 Now see the *Interpretation Act 1984*.

5 Section 19 of Act No. 110 of 1984 reads as follows —

“ 19. Without prejudice to the *Interpretation Act 1984*, the principal Act in the form in which it was immediately before the commencement of this Act shall continue to have effect, according to its tenor, with respect to the period before the commencement of this Act as if it had not been amended.

”.