

Western Australia

## **Stamp Amendment Act 2005**

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As at 12 Dec 2005

No. 34 of 2005

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## **Stamp Amendment Act 2005**

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**No. 34 of 2005**

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**An Act to amend the *Stamp Act 1921*, and for related purposes.**

*[Assented to 12 December 2005]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This is the *Stamp Amendment Act 2005*.

**2. Commencement**

- (1) Subject to this section, this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Part 3 comes into operation, or is deemed to have come into operation, on 1 January 2006.

**3. The Act amended**

The amendments in this Act are to the *Stamp Act 1921*\*.

[\* *Reprint 15 as at 3 June 2005.*

*For subsequent amendments see Acts Nos. 11 and 12 of 2005.]*

## Part 2 — Vehicle licences

### 4. Section 76B amended

(1) Section 76B(1) is amended as follows:

(a) by inserting in the appropriate alphabetical position —

“

**“charitable organisation”** means a charitable institution or public benevolent institution endorsed by the Commonwealth Commissioner of Taxation under the Commonwealth *Income Tax Assessment Act 1997* as a deductible gift recipient or as exempt from income tax;

”;

(b) in the definition of “new vehicle” by deleting all of the definition from and including “used — ” and inserting instead —

“

used for a purpose referred to in section 76D(5)(a) or (5a)(a), but does not include a vehicle that has been used for the purpose referred to in section 76D(5)(a)(ii), or a purpose referred to in section 76D(5a)(a), for a period of more than 3 months;

”.

(2) Section 76B(2) is amended as follows:

(a) by deleting “the purpose referred to in section 76D(4)(a) or the purposes referred to in section 76D(5)(a)” and inserting instead —

“

a purpose referred to in section 76D(4)(a), 5(a) or (5a)(a);

”;

(b) by deleting “or those purposes”.

**5.            Section 76D amended**

(1) After section 76D(5) the following subsections are inserted —

“

(5a) Duty is not payable on the grant or transfer of a licence to a dealer if —

(a) the vehicle for which the licence was granted or transferred is to be loaned by the dealer —

(i) to a charitable organisation to be used solely for providing assistance to underprivileged or disadvantaged persons;

(ii) to a charitable organisation to be used solely for providing emergency assistance;

(iii) to a school (as defined in the *School Education Act 1999*) to be used solely for student driver training;

(iv) to an individual solely for a philanthropic purpose approved by the Commissioner; or

(v) solely for a purpose prescribed in the regulations;

and

(b) the application for the grant or transfer of the licence is accompanied by a certificate certifying that while the applicant holds the licence the vehicle will be used solely for a purpose referred to in paragraph (a).

(5b) The Commissioner may approve a philanthropic purpose for the purposes of subsection (5a)(a)(iv) for a particular dealer or class of dealer, and the approval may take effect from a day that is earlier than the day

on which the Commissioner grants the approval, but no earlier than 23 August 2000.

”.

- (2) Section 76D(7) is amended by inserting after “(5)(b)” —  
“ , (5a)(b) ”.

**6. Section 76I amended**

- (1) Section 76I(1) is amended as follows:
- (a) by deleting “or (5)” and inserting instead —  
“ , (5) or (5a) ”;
  - (b) by deleting “the purpose referred to in section 76D(4)(a) or the purposes referred to in section 76D(5)(a) (as the case may be)” and inserting instead —  
“  
a purpose referred to in section 76D(4)(a), (5)(a) or (5a)(a)  
”.

- (2) Section 76I(2)(a) is amended by deleting “or (5)” and inserting instead —  
“ , (5) or (5a) ”.

**7. Section 76N inserted**

After section 76M the following section is inserted in Part IIC —

“

**76N. Records**

A dealer must keep —

- (a) the records that are prescribed in the regulations for the purposes of this Part (if any); and

- (b) any other records necessary to enable the Commissioner to determine the dealer's liability to pay duty under this Part.

Penalty: \$20 000.

”.

**8. Retrospective effect of certain provisions**

- (1) A person who was a dealer at any time during the retrospective period is to be treated, in respect of the person's liability to duty under Part IIIC during that period, as if Part IIIC included a provision to the effect of the *Stamp Act 1921* section 76D(5a) (excluding paragraph (b)) as inserted by section 5(1) of this Act.
- (2) Despite the *Taxation Administration Act 2003* section 17, the Commissioner may make any assessment or reassessment necessary to give effect to subsection (1).
- (3) For the purposes of assessing or reassessing the liability, at a particular time during the retrospective period, of a person who was a dealer at that time —
  - (a) a reference in subsection (1) to Part IIIC is a reference to the *Stamp Act 1921* Part IIIC as in force at that time; and
  - (b) a reference to a dealer in subsection (1) is a reference to a dealer as defined in the *Stamp Act 1921* Part IIIC as in force at that time.
- (4) In this section —
  - “**assessment**” has the meaning given to that term in the *Taxation Administration Act 2003*;
  - “**Commissioner**” has the meaning given to that term in the *Taxation Administration Act 2003*;
  - “**reassessment**” has the meaning given to that term in the *Taxation Administration Act 2003*;

**“retrospective period”** means the period beginning on 23 August 2000 and ending on the day before the day on which this Part comes into operation.

### **Part 3 — Mortgage duty**

**9. Section 86 amended**

Section 86(1) is amended by inserting after “Third Schedule” —  
“ and in this Part ”.

**10. Sections 86A and 86B inserted and application provision**

(1) After section 86 the following sections are inserted —

“

**86A. Exemption — refinancing home loans**

- (1) Duty is not payable on a home mortgage to the extent to which the secured amount is to refinance a previous secured amount that was used for the dwellinghouse (as provided by section 85(2)).
- (2) A secured amount is to refinance a previous secured amount if —
  - (a) the secured amount is, or is to be, used to pay out all of the unpaid amount of the previous secured amount;
  - (b) the previous secured amount was secured by a home mortgage (the “**previous mortgage**”);
  - (c) the previous mortgage is, or is to be, discharged;
  - (d) the mortgagor, or one of the mortgagors, who executed the previous mortgage is the mortgagor, or one of the mortgagors, who executed the home mortgage; and
  - (e) at least some of the property subject to the home mortgage is the same as some of the property subject to the previous mortgage.

- (3) Subsection (1) does not apply unless all mortgage duty payable on the previous mortgage (if any) has been paid.
- (4) If —
- (a) the previous secured amount was used to purchase land upon which a dwellinghouse was to be built for the mortgagor, or at least one of the mortgagors, as the sole or principal place of residence of the mortgagor; or
  - (b) the previous secured amount was used to purchase or build a dwellinghouse that was not the sole or principal place of residence of the mortgagor, or any of the mortgagors, and, prior to the home mortgage being executed, the dwellinghouse became the sole or principal place of residence of the mortgagor or one of the mortgagors,
- then —
- (c) subsection (1) has effect as if the reference to the previous secured amount being used for the dwellinghouse included a reference to the previous secured amount being used to purchase the land referred to in paragraph (a); and
  - (d) subsection (2)(b) has effect as if it referred to the previous secured amount being secured by a mortgage rather than a home mortgage.
- (5) For the purposes of this section, the amount of the previous secured amount is to be worked out disregarding section 89(2).
- (6) The mortgagee must discharge the previous mortgage as soon as practicable.

**86B. Exemption — refinancing small business loans**

- (1) Duty is not payable on a business mortgage to the extent to which —
  - (a) the secured amount is to refinance a previous secured amount; and
  - (b) the previous secured amount was used for the purposes of carrying on the business.
- (2) A secured amount is to refinance a previous secured amount if —
  - (a) the secured amount is, or is to be, used to pay out all of the unpaid amount of the previous secured amount;
  - (b) the previous secured amount was secured by a business mortgage (the “**previous mortgage**”);
  - (c) the previous mortgage is, or is to be, discharged;
  - (d) the mortgagor, or one of the mortgagors, who executed the previous mortgage is the mortgagor, or one of the mortgagors, who executed the business mortgage;
  - (e) the business owner, or one of the business owners, before the business mortgage is executed is the business owner, or one of the business owners, after the business mortgage is executed; and
  - (f) at least some of the property subject to the business mortgage is the same as some of the property subject to the previous mortgage.
- (3) Subsection (1) does not apply unless —
  - (a) the unpaid amount of the previous secured amount is less than or equal to \$5 000 000;

- (b) the secured amount is less than or equal to \$5 000 000; and
  - (c) mortgage duty was payable on the previous mortgage and all of that duty has been paid, or the previous mortgage was exempt from mortgage duty under this section.
- (4) A mortgage is a “**business mortgage**” if part or all of the secured amount is, or is to be, used for the purposes of carrying on a business.
  - (5) An amount is used for the purposes of carrying on a business if it is used for operating or capital purposes.
  - (6) A “**business owner**”, in relation to a business mortgage, is an entity (which may be an individual, a body corporate, a trust or a partnership) that carries on the business (whether alone or with others) for which the amount secured by the business mortgage is, or is to be, used.
  - (7) For the purposes of this section, the amount of the previous secured amount is to be worked out disregarding section 89(2).
  - (8) The mortgagee must discharge the previous mortgage as soon as practicable.
- ”.
- (2) The *Stamp Act 1921* sections 86A(1) and 86B(1) do not apply to mortgages (as defined in the *Stamp Act 1921* section 82) executed before 1 January 2006.

**11. Section 91B amended**

Section 91B(3) is amended by inserting after “mortgage package” —

“

and the extent to which the mortgage, instrument or mortgage package is exempt from mortgage duty

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