

WESTERN AUSTRALIA

REVENUE LAWS AMENDMENT (ASSESSMENT) ACT 1997

No. 13 of 1997

AN ACT to amend the —

- *Land Tax Assessment Act 1976;*
- *Pay-roll Tax Assessment Act 1971; and*
- *Stamp Act 1921,*

and for related purposes.

[Assented to 25 June 1997]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Revenue Laws Amendment (Assessment) Act 1997*.

Commencement

2. (1) Subject to this section this Act comes into operation on the day on which it receives the Royal Assent.

(2) Parts 2 and 3 —

(a) if this Act receives the Royal Assent on or before 1 July 1997 — come into operation on 1 July 1997; or

(b) if this Act receives the Royal Assent after 1 July 1997 — are deemed to have come into operation on 1 July 1997.

(3) Division 2 of Part 4 is deemed to have come into operation on 27 December 1996.

(4) Division 3 of Part 4 is deemed to have come into operation on 14 January 1997.

(5) Division 4 of Part 4 is deemed to have come into operation on 12 May 1997.

PART 2 — LAND TAX ASSESSMENT ACT 1976

Principal Act

3. In this Part the *Land Tax Assessment Act 1976** is referred to as the principal Act.

[* Reprinted as at 30 July 1996.
For subsequent amendments see 1996 Index to
Legislation of Western Australia, Table 1, pp. 126-7.]

Application

4. The amendments made by section 6 apply in respect of the year of assessment commencing on 1 July 1997 and each subsequent year of assessment.

Section 27 amended

5. Section 27 (2) of the principal Act is amended by inserting after "15A" the following —

“ or 15B ”.

Schedule amended

6. (1) The Schedule to the principal Act is amended in Part I in clause 9 —

(a) in paragraph (aa) —

(i) in subparagraph (i), by deleting “**exempt**”; and

- (ii) by inserting after subparagraph (ii) the following subparagraph —

“

- (iii) For the purposes of the definition of the expression “parcel” in section 5 (1) as it applies to that expression in paragraph (a), the Commissioner is not to deem 2 or more lots to be a single property unless he is satisfied that —

- (I) the lot or lots on which the dwelling-house is constructed; and
(II) each other lot,

are established, and actually used by the owner or owners, as one integrated area that constitutes the place of residence.

”;

- (b) in paragraph (a) —

- (i) by deleting the “or” after subparagraph (x);
(ii) in subparagraph (xi) by deleting the full stop and substituting a semicolon; and
(iii) by inserting after subparagraph (xi) the following subparagraphs —

“

- (xii) the owner of which is an executor or administrator, or the owners of which are executors or administrators, of the estate of a person —

- (I) who died during the previous year of assessment; and

- (II) whose ownership and use of the land as an ordinary place of residence before his death —

- (A) gave rise to; or

(B) if he had so owned and used the land on 30 June before his death, would have given rise to,

an exemption or partial exemption for that year under a provision of this paragraph;

or

(xiii) the owners of which are —

(I) an executor or executors or an administrator or administrators to whom paragraph (xii) applies; and

(II) any other person or persons.

”;

(c) in paragraph (b), by inserting after subparagraph (vii) the following subparagraphs —

“

(viii) The exemption provided for by subparagraph (xii) of paragraph (a) is subject to the following provisions —

(I) it applies for one year of assessment only and is then exhausted;

(II) it is conditional on the estate of the deceased person not having derived rent or other income from the land between —

(A) the date of the person's death; and

(B) the end of the year of assessment for which the exemption may be obtained,

and accordingly an assessment may be made for the year of assessment on the basis that it will be amended if it is shown that the condition is satisfied; and

(III) if under this paragraph the exemption of the deceased person for the previous year of assessment was a partial exemption, the exemption to which this

subparagraph applies is limited to the same extent as the deceased person's exemption would have been limited if he had not died and had continued the same use of the land as applied at the time of his death.

- (ix) The exemption provided by subparagraph (xiii) of paragraph (a) to an executor or executors or an administrator or administrators applies to the unimproved value of the land only to the extent of the proportion of the interest in the land held by him or them.

”;

and

- (d) in paragraphs (aa) (ii) (I), (a) (vi), (a) (vii), (a) (viii), (a) (ix) and (b) (iva) (III), by deleting “an exempt” and substituting the following —

“ a ”.

(2) The Schedule to the principal Act is amended in Part I, in clause 10, by deleting “10. (a) *Class of land*” and substituting the following —

“

10. (aa) *Interpretation*

For the purposes of the definition of the expression “parcel” in section 5 (1) as it applies to that expression in paragraph (a), the Commissioner is not to deem 2 or more lots to be a single property unless he is satisfied that —

- (I) the lot or lots on which the dwelling-house is constructed; and
(II) each other lot,

are established, and actually used by the owner or owners, as one integrated area that constitutes the place of residence.

(a) *Class of land*

”.

PART 3 — PAY-ROLL TAX ASSESSMENT ACT 1971

Principal Act

7. In this Part the *Pay-roll Tax Assessment Act 1971** is referred to as the principal Act.

[* Reprinted as at 12 November 1996.]

Application

8. The amendments to the principal Act set out in this Part apply to and in relation to wages paid or payable on and after 1 July 1997.

Section 3 amended

9. (1) Section 3 (1) of the principal Act is amended in the definition of “Commonwealth Act” by deleting “, as subsequently amended”.

(2) Section 3 (1) of the principal Act is amended by inserting in the appropriate alphabetical positions the following definitions —

“**FBTA Act**” means the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth;

“**fringe benefit**” means anything that is a fringe benefit under the FBTA Act but does not include anything that is prescribed under this Act not to be a fringe benefit;

“**prescribed benefit**” means anything, including a benefit that under the FBTA Act is an exempt benefit, that is prescribed under this Act to be a benefit;

”.

(3) Section 3 (1) of the principal Act is amended in the definition of “wages” —

- (a) by deleting “, allowances, or other benefits” in the first place where it occurs and substituting the following —

“ or allowances ”;

- (b) by deleting “to an employee as such” and substituting the following —

“ to, or in relation to, an employee as an employee ”;

- (c) by inserting after paragraph (a) the following paragraph —

“

(aa) the amount of any superannuation benefit that is deemed by section 3A (1) to be paid by the employer;

”;

- (d) in paragraph (ca) by deleting “, allowances, or other benefits” and substituting the following —

“ or allowances ”; and

- (e) by deleting paragraph (e) and “and” after it and substituting the following —

“

(e) the value of any fringe benefit or prescribed benefit that is deemed by section 3B (4), to be paid or payable to an employee; and

”.

(4) After section 3 (1) of the principal Act the following subsection is inserted —

“
 (1a) For the purposes of this Act, allowances that are prescribed are excluded from being wages to the extent prescribed, or provided for, in the regulations.
”.

(5) Section 3 (2) of the principal Act is repealed and the following subsections are substituted —

“
 (2) A benefit that is an exempt benefit under the FBTA Act other than —

- (a) any such benefit that is a prescribed benefit; or
- (b) a benefit that is an exempt benefit under section 58W of the FBTA Act,

is not wages for the purpose of this Act.

(2aa) The value of taxable wages (other than a fringe benefit or prescribed benefit deemed by section 3B to be wages) that are paid or payable in kind is the greater of —

- (a) the value —
 - (i) agreed or attributed to those taxable wages in; or
 - (ii) ascertainable for those taxable wages from, arrangements between the employer and the employee, whichever is the greater; or
- (b) if regulations made under this Act prescribe how the value of a particular kind of such taxable wages is to be determined — the value so determined.

(2ab) Any wages, salary, commission, bonuses or allowances provided in the circumstances referred to in paragraph (ca) of the definition of “wages” in subsection (1) shall be deemed to be paid or payable by the employer.

”.

Section 3A inserted

10. After section 3 of the principal Act the following section is inserted —

“

Superannuation component of wages

3A. (1) A contribution paid or payable by an employer in respect of a person to a superannuation fund is deemed, for the purposes of the definition of “wages” in section 3, to be a superannuation benefit paid by the employer in relation to the person when and where the contribution is paid or payable, except if clause 5 of Schedule 2 or regulations made under it provide otherwise.

(2) Section 6 (2) and (3) apply for the purposes of working out when and where the contribution is paid or payable as if those provisions referred to contributions instead of wages.

(3) Schedule 2 has effect to —

- (a) deem contributions to be paid or payable in some cases for the purposes of this section;
- (b) provide that in some cases a contribution, or part of it, is not deemed by subsection (1) to be a superannuation benefit;
- (c) define terms used in this section or that Schedule; and
- (d) provide for related matters.

”.

Sections 3B and 3C inserted

11. After section 3 of the principal Act the following sections are inserted —

“

Fringe benefits and prescribed benefits

3B. (1) In this section and section 3C, unless the contrary intention appears —

“**provided**” has a meaning corresponding with the meaning of “provide” given by section 136 of the FBTA Act.

(2) A fringe benefit that is provided or liable to be provided by a person other than the employer is deemed to be provided by the employer.

(3) A prescribed benefit that is provided or liable to be provided to or in relation to an employee by a person acting for or in concert or under an arrangement or undertaking, whether formal or informal and whether express or implied, with the employer is deemed to be provided by the employer.

(4) The value of a fringe benefit or of a prescribed benefit that is provided or liable to be provided to or in relation to an employee is deemed to be wages paid or payable (as the case requires) to the employee.

Value of fringe benefits and prescribed benefits

3C. (1) The value of a fringe benefit is —

(a) if the benefit is a work-related benefit — the value that would be the taxable value of the fringe benefit under the FBTA Act;

- (b) if the benefit is not a work-related benefit — the value that would be the taxable value of the fringe benefit under the FBTA Act if any reduction of that taxable value under that Act because of the “otherwise deductible” rule were disregarded; or
- (c) if regulations made under this Act prescribe how the value of a particular kind of fringe benefit is to be determined — the value so determined.

(2) The value of a prescribed benefit is that determined under the regulations.

(3) In subsection (1) a benefit is a work-related benefit if the benefit is provided to the employee in the course of performing the duties of his or her employment and for the purpose of enabling the employee to perform those duties.

(4) In subsection (1) the reference to the “otherwise deductible” rule is a reference to any enactment of the FBTA Act that provides for a reduction of the taxable value of a fringe benefit because the person receiving the benefit, had he or she personally incurred the cost of providing it, would be allowed a deduction under the *Income Tax Assessment Act 1936* of the Commonwealth in relation to that cost.

”.

Section 6 amended and transitional provision

12. (1) Section 6 (1) of the principal Act is repealed and the following subsections are substituted —

“

(1) Subject to section 10, the wages liable to pay-roll tax under this Act are wages paid or payable by an employer that —

- (a) are for services performed or rendered wholly in Western Australia, irrespective of where they are paid or payable; or

- (b) are paid or payable in Western Australia, except where they are for services performed or rendered —
 - (i) wholly in one other State; or
 - (ii) subject to subsection (1a), wholly in another country or other countries for a continuous period of more than 6 months after wages were first paid to the person for those services.

(1a) The wages referred to in subsection (1) (b) (ii) are liable to pay-roll tax under this Act during the period of 6 months after wages were first paid for the services in question.

”.

(2) It does not matter for the purposes of section 6 (1a) as inserted in the principal Act by subsection (1) whether or not the period of 6 months referred to in section 6 (1a) began before the commencement of this section.

(3) Section 6 (2) of the principal Act is amended —

- (a) by deleting “subsection (1) (a)” and substituting the following —
 - “ subsection (1) (b) (i) ”;
- (b) by deleting paragraph (a); and
- (c) in paragraph (c) by deleting “paragraph (a) or”.

Section 10 amended and saving provision

13. (1) Section 10 (1) of the principal Act is amended —

(a) in paragraph (d) by deleting “(other than a technical school or a technical college)” and substituting the following —

“
(other than a college under the *Vocational Education and Training Act 1996*)
”;

(b) by deleting “or” after paragraph (m);

(c) by inserting after paragraph (m) the following —

“
(ma) by an employer that under subsection (6) are prescribed as exempt wages; or
”;

and

(d) in paragraph (n) by deleting “a benefit” and substituting the following —

“ wages ”.

(2) Section 10 (2) of the principal Act is amended —

(a) in paragraph (e) by deleting “(other than a technical school or a technical college)” and substituting the following —

“
(other than a college under the *Vocational Education and Training Act 1996*)
”;

- (b) in paragraph (e) by deleting “(other than technical schools or colleges)” and substituting the following —

“
(other than colleges under the *Vocational Education and Training Act 1996*)
”;

and

- (c) in paragraph (f) by deleting “object to which the exemption applies.” and substituting the following —

“
purpose for which the body or organization is established or carried on.
”.

- (3) Section 10 (3) of the principal Act is repealed and the following subsections are substituted —

“
(3) The Commissioner may, by written notice given to a charitable body or organization that has made a written application for the purposes of this subsection —

- (a) declare the body to be exempt for the purposes of subsection (1) (k); and
(b) impose any condition subject to which the exemption shall have effect.

- (3a) In subsection (3) —

“**charitable body or organization**” means any body or organization established or carried on for charitable purposes other than —

- (a) a body or organization whose sole or principal purpose is the provision of tertiary education; or

(b) a college or other vocational education and training institution under the *Vocational Education and Training Act 1996*.

(3b) The Commissioner shall specify in the notice the day on which the declaration comes into operation, being a day on or after the giving of the notice or a day prior to that day.

(3c) The Commissioner may, by further written notice given to a body or organization that is exempted under subsection (3), amend or revoke the declaration of exemption and any condition to which the exemption is subject.

”.

(4) After section 10 (5) of the principal Act the following subsection is inserted —

“

(6) Regulations may prescribe as exempt wages, the whole or part of wages paid or payable by an employer where the employer is entitled to recover an amount in respect of those wages from a fund, contributions to which are prescribed benefits.

”.

(5) Without limiting the operation of the *Interpretation Act 1984*, any declaration made or condition imposed under section 10 (3) of the principal Act as in force immediately before the commencement of this section continues to have effect as if it were a declaration made or condition imposed under section 10 (3) of the principal Act as amended by this Act, and the declaration and condition may be amended or revoked by the Commissioner accordingly.

Section 32 amended

14. After section 32 (1) of the principal Act the following subsection is inserted —

- “
- (1a) Despite subsection (1), an employer has no right of objection with respect to a decision of the Commissioner —
 - (a) under section 10 (3b) that a declaration is not to come into operation from a day prior to the giving of the notice of declaration; or
 - (b) under the regulations allowing an employer to change the basis of calculating the value of fringe benefits during a financial year.
- ”.

Section 44 amended

15. Section 44 (1) of the principal Act is amended —

- (a) by inserting before “for a period” the following —

“ and any prescribed documents, ”; and
- (b) by inserting after “5 years” the following —

“ , or such greater period as may be prescribed, ”.

Section 50 amended, and certain retroactive regulations authorized

16. (1) Section 50 (1) of the principal Act is amended —

- (a) by inserting after paragraph (a) the following paragraph —

“ (aa) the records and other evidence required to be kept in respect of —
 - (i) allowances prescribed under section 3 (1a); and

- (ii) anything affecting the extent to which those allowances are excluded from being wages;

”;

and

- (b) by inserting after paragraph (b) the following paragraphs —

“

- (ba) the value of a fringe benefit paid or payable by an employer that is to be included in a return;

- (bb) any other matter for the application of this Act to a fringe benefit or a prescribed benefit;

”.

- (2) Regulations —

- (a) which are made under the principal Act as amended by this Act; and
- (b) which are so made within 6 months after the coming into operation of this section,

may come into operation at a time specified in those regulations that is not earlier than 1 July 1997.

Schedule 1 repealed and a Schedule substituted and saving

17. (1) Schedule 1 to the principal Act is repealed and the following Schedule is substituted —

“

SCHEDULE 1 — PRESCRIBED AMOUNTS

[Sections 9E, 11A, 12 & 16J]

Prescribed amount for s. 9E

1. The amount specified for the purposes of the definition of “prescribed amount” in section 9E (1) is \$56 250.

Prescribed amounts for 1997-98 onwards for ss. 11A and 16J

2. For the purposes of sections 11A (2e) and 16J (6), the amount shall be calculated for the purposes of the financial year commencing on 1 July 1997 and every succeeding financial year in accordance with the following formula —

$$\frac{A}{A+B} \left[\frac{675\,000C}{D} - \frac{1}{3} \left\{ A+B - \frac{675\,000C}{D} \right\} \right]$$

Where:

A = Taxable wages paid or payable during the financial year by an employer, or in the case of a group, by the members of that group.

B = Interstate wages paid or payable during the financial year by an employer, or in the case of a group, by the members of that group.

C = Number of days during the financial year in which wages were paid or payable by an employer, or in the case of a group, by the members of that group.

D = Number of days in the financial year.

Prescribed amount for s. 12

3. The amount per week prescribed for the purposes of section 12 is \$12 981.

”.

(2) Without limiting the operation of the *Interpretation Act 1984* —

- (a) clauses 1 and 4 of Schedule 1 to the principal Act as in force immediately before the commencement of this section continue to have effect with respect to months or other periods before July 1997; and
- (b) clause 3 of Schedule 1 to the principal Act as in force immediately before the commencement of this section continues to have effect with respect to the financial year that commenced on 1 July 1996.

Schedule 2 added

18. After Schedule 1 of the principal Act the following Schedule is added —

“

SCHEDULE 2 — PROVISIONS ABOUT SUPERANNUATION

[Section 3A]

Definitions and general provisions about superannuation

1. (1) In this Schedule and section 3A —

“**actuary**” means a Fellow or an Accredited Member of the Institute of Actuaries of Australia;

“**Australian superannuation scheme**” means a superannuation scheme that —

- (a) was established in Australia or has any asset that is situated in Australia; and
- (b) has its central management and control in Australia;

“defined benefit” means a benefit under a superannuation scheme that is defined, wholly or in part, by reference to either or both of —

- (a) the amount of the participant’s salary —
 - (i) at a particular date, being the date of the termination of the participant’s employment, the date of the participant’s retirement, or an earlier date; or
 - (ii) averaged over a period ending on any such date;

and

- (b) a stated amount;

“individual superannuation guarantee shortfall” has the same meaning as it has in the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

“participant” means a person in respect of whom the scheme provides for benefits that are, or are to be, funded to any extent by the employer’s contributions;

“regulated superannuation fund” has the same meaning as it has in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

“superannuation fund” means any fund carried on —

- (a) for the purposes of a superannuation scheme; or
- (b) to provide retirement savings accounts (as defined in the *Retirement Savings Accounts Act 1997* of the Commonwealth),

and includes the Superannuation Holding Accounts Reserve established by the *Small Superannuation Accounts Act 1995* of the Commonwealth;

“superannuation guarantee charge” means a charge imposed by the *Superannuation Guarantee Charge Act 1992* of the Commonwealth except that it does not include additional superannuation guarantee charge under Part 7 of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

“superannuation scheme” includes a provident or retirement fund or scheme;

“unfunded public sector scheme” means a public sector superannuation scheme (within the meaning given to that term by the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth) other than one that is funded in advance in accordance with actuarial advice at a level that is reasonably expected by the actuary to be adequate to provide for present and prospective liabilities in respect of benefits under the scheme.

(2) Setting aside any money or anything that is worth money as, or as part of, a superannuation fund is deemed, for the purposes of this Schedule and section 3A, to be paying it as a contribution to the superannuation fund.

(3) Making a contribution to a superannuation fund of anything that is worth money is deemed, for the purposes of this Schedule and section 3A, to be paying a contribution of the amount of money that it is worth, and section 3 (2aa) applies to how that amount is to be worked out as if that provision referred to that contribution instead of taxable wages.

(4) If an amount by way of administration or other charges in respect of the carrying on of a superannuation fund is paid other than to the fund, the amount is deemed, for the purposes of this Schedule and section 3A, to be paid as a contribution to the fund.

(5) If, in a return period, a person becomes obliged to, but fails to, do anything that, if it were done, would be deemed by subclause (2), (3), or (4) to be paying a contribution to a superannuation fund, the contribution to the superannuation fund is deemed to be payable in the return period.

(6) A contribution to a superannuation fund paid or payable on behalf of an employer is deemed, for the purposes of this Schedule and section 3A, to be paid or payable by the employer.

(7) Contributions to a superannuation fund that are deemed by different provisions of this Schedule to be paid or payable by an employer are cumulative upon one another, and on contributions that are actually paid or payable, unless it is otherwise provided.

Australian scheme that is unregulated defined benefit scheme or unfunded public sector defined benefit scheme

2. (1) This clause applies if an Australian superannuation scheme operates that —

- (a) is not a regulated superannuation fund; or

- (b) is an unfunded public sector scheme (whether or not a regulated superannuation fund),

and it provides for an employer to contribute and provides for any defined benefit in respect of any person, whether or not it also provides for any benefit that is not a defined benefit.

(2) A contribution is deemed, for the purposes of section 3A (1), to be payable by the employer to the superannuation fund concerned, in the return period, in respect of each participant.

(3) The amount of the contribution in respect of a participant is the amount that an actuary determines would be sufficient, together with earnings on the amount, to fully provide for the cost to the employer of the entitlement accruing under the scheme to benefits in respect of services performed or rendered by the participant in the return period.

(4) The regulations may include provisions about how an actuary is to determine an amount under subclause (3).

(5) If a contribution by an employer under a scheme is deemed by subclause (2) to be payable to the superannuation fund concerned, no other contribution by the employer to the fund under the scheme is deemed by section 3A (1) to be a superannuation benefit unless —

- (a) it is a contribution that the employer is deemed by clause 4 to pay; or
- (b) the contribution is made for any reason other than to make provision for the cost described in subclause (3).

Unfunded credit to unregulated Australian scheme that gives no defined benefit

3. (1) This clause applies if an Australian superannuation scheme operates that —

- (a) is not a regulated superannuation fund; and
- (b) does not provide for any defined benefit in respect of any person,

and under the scheme any amount not excluded by subclause (3) is credited in a return period as an employer's contribution in respect of a person.

(2) An amount that a person is obliged to, but does not, credit in a return period is deemed for the purposes of this clause to be credited in the return period and not at any other time.

- (3) An amount —
- (a) paid or payable as a contribution under the scheme;
or
 - (b) deemed, other than by subclause (4), to be paid or payable as a contribution under the scheme for the purposes of section 3A,

is excluded from the amount mentioned in subclause (1).

(4) A contribution of the amount mentioned in subclause (1) is deemed, for the purposes of section 3A (1), to be payable by the employer to the superannuation fund concerned, in the return period, in respect of each participant.

(5) If an amount credited as an employer's contribution under a scheme is deemed by subclause (4) to be payable to the fund concerned, no contribution paid under the scheme is deemed to be a superannuation benefit by section 3A (1) to the extent that it is paid to meet or partly meet an obligation arising from the credit.

Superannuation guarantee charge

4. (1) If any superannuation guarantee charge payable by an employer is imposed in a return period, a contribution of the amount of the charge is deemed, for the purposes of section 3A (1), to be payable by the employer to a superannuation fund in the return period.

(2) If the charge is imposed because of only one individual superannuation guarantee shortfall, the contribution is deemed to be in respect of the person in respect of whom the employer has the shortfall.

(3) If the charge is imposed because of an individual superannuation guarantee shortfall in respect of each of 2 or more persons, the contribution is deemed to be in respect of them, apportioned according to the amount of the employer's individual superannuation guarantee shortfall in respect of each of them.

- (4) If —
- (a) a contribution that was payable, but the employer failed to pay, in respect of a person is deemed to be a superannuation benefit by section 3A (1); and

- (b) the charge is imposed wholly or in part because of an individual superannuation guarantee shortfall that results wholly or in part from the failure,

the amount of the contribution that is deemed by this clause to be payable in respect of the person is reduced by the amount of the contribution described in paragraph (a).

- (5) Subclause (4) cannot reduce an amount to below 0.

Treatment of certain contributions

5. (1) A contribution in respect of services performed or rendered before 1 July 1997 is not deemed to be a superannuation benefit by section 3A (1).

(2) If a contribution is partly in respect of services performed or rendered before 1 July 1997, the part that is in respect of services performed or rendered before 1 July 1997 is not deemed to be a superannuation benefit by section 3A (1).

(3) For the purposes of this clause, a contribution is in respect of services performed or rendered before 1 July 1997 if, or to the extent that, the payment of the contribution is attributable, or is to satisfy any benefit attributable, to a period of service before 1 July 1997.

(4) If there is no sufficient provision in this Act for dealing with —

- (a) whether, or the extent to which, a contribution is paid or payable to a superannuation fund in respect of a particular person;
- (b) whether, or the extent to which, the payment of a contribution to a superannuation fund is attributable, or is to satisfy any benefit attributable, to a period of service before 1 July 1997; or
- (c) where a contribution is paid or payable to a superannuation fund,

regulations may be made as to all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

”.

Contributions prepaid before this Part commences

19. (1) If the Commissioner considers that anything has been done on 10 April 1997, or after that day but before 1 July 1997, that amounts to a prepayment of contributions referred to in section 3A of the principal Act (as amended by this Act), the Commissioner may determine that, for the purposes of that Act, it is to be treated as having been done on 1 July 1997, and that Act applies accordingly.

(2) Anything done on 10 April 1997, or after that day but before 1 July 1997, amounts to a prepayment of contributions if, had it been done on 1 July 1997, it would have resulted in an amount being deemed to be a superannuation benefit by section 3A (1) of the principal Act as amended by this Act (keeping in mind clause 5 of Schedule 2 to that Act).

PART 4 — STAMP ACT 1921

Division 1 — Preliminary

Principal Act

20. In this Part the *Stamp Act 1921** is referred to as the principal Act.

[* *Reprinted as at 23 January 1996.*
For subsequent amendments see 1996 Index to
Legislation of Western Australia, Table 1, pp. 213-16.]

Division 2 — Amendments deemed to have commenced on
27 December 1996

Section 4 amended

21. Section 4 (1) of the principal Act is amended by inserting after the definition of “the Crown” the following definition —

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

Section 75A amended

22. (1) Section 75A (1) (a) of the principal Act is repealed and the following paragraph is substituted —

- “
 (a) require the purchaser or other person liable in respect of the instrument relating to that conveyance or transfer or in respect of that instrument, as the case may be, to furnish him with a statement in a form approved by the Commissioner concerning —
 (i) the unencumbered value of the property; or

- (ii) the value of the consideration referred to in section 65 (1) (b) or (c),

to which that instrument relates or with such other evidence of that value as the Commissioner thinks fit; ”.

(2) After section 75A (4) of the principal Act the following subsections are inserted —

“

(4a) In determining the unencumbered value of any property for the purpose of assessing the duty on a conveyance, transfer or instrument in relation to it that is chargeable with *ad valorem* duty under this Act —

- (a) an encumbrance on the property shall be disregarded; and
- (b) an interest, agreement or arrangement (not being an encumbrance) granted or made on or after 27 December 1996 in respect of the property that has the effect of reducing the value of the property shall be disregarded.

(4b) An interest, agreement or arrangement referred to in subsection (4a) (b) shall not be disregarded if the Commissioner is satisfied that the interest, agreement or arrangement —

- (a) was granted or made for a purpose other than reducing the value of the property; and
- (b) was not granted to or in favour of or made in favour of —
 - (i) a person liable to pay the duty on the conveyance, transfer or instrument;

- (ii) if the instrument is chargeable under item 19 of the Second Schedule — the person on whom the property is settled or agreed to be settled, or to whom the property is given or agreed to be given, or for whom it is declared to be held in trust;
- (iii) where the valuation is in respect of a relevant acquisition to which Division 3 of Part IIIBA applies — the person who acquired the majority interest or further interest; or
- (iv) a person who is associated with (within the meaning of section 76 (2)) or related to (within the meaning of section 76 (3)), a person referred to in subparagraph (i), (ii) or (iii).

”.

Minor amendments

23. The principal Act is amended as set out in the Table to this section.

Table

s. 112A (1)	In the definition of “transfer value” delete “market” in the 2 places where it occurs.
s. 112F (3)	Delete “market”.
s. 112HA (8)	In paragraph (a) delete “market”.
s. 112HA (10)	In paragraph (a) delete “market”.
Second Schedule	In item 4A (1) (g) delete “market” and substitute the following — “ unencumbered ”.

Reassessment

24. (1) This Division has effect notwithstanding that duty on an instrument has been assessed on or after 27 December 1996 and before the day on which this Act receives the Royal Assent (the “**original assessment**”).

(2) If it appears to the Commissioner that the original assessment is for a lesser amount than would be assessed under the principal Act as amended by this Division, the Commissioner may make a reassessment of the duty chargeable.

(3) The reassessment supersedes the original assessment.

(4) The reassessment is taken to have been made under the principal Act and the provisions of the principal Act apply to and in relation to the reassessment as if it were an assessment under that Act.

***Division 3 — Amendments deemed to have commenced on
14 January 1997***

Section 112A amended

25. Section 112A (1) of the principal Act is amended by inserting after the definition of “odd lot specialist” the following definition —

“

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

- (a) the share or right is listed on a stock exchange situated outside Australia;

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

”.

Section 112C amended

26. (1) Section 112C (1) (a) of the principal Act is amended by inserting after “SCH-regulated transfer” the following —

“ or overseas transfer ”.

(2) Section 112C (2) of the principal Act is amended by inserting after “(other than an SCH-regulated transfer)” the following —

“

, or an instrument of transfer in relation to an overseas transfer,

”.

Division 6 of Part IVA inserted

27. After section 112FQ of the principal Act the following Division is inserted —

“

Division 6 — Overseas transfers

Interpretation

112FR. In this Division —

“**registered**” means registered in a register kept under Part 2.5 of the Corporations Law.

Record of overseas transfers

112FS. (1) Before an overseas transfer in respect of which there is not an instrument of transfer is registered by a WA company, the WA company shall make a record in accordance with this section.

(2) The record shall show —

- (a) the date of the transfer;
- (b) the names of the transferee and the transferor;
- (c) the quantity and a full description of the shares or rights in respect of shares transferred;
- (d) the transfer value of the share or right in respect of shares or, if more than one, of each share or right in respect of shares and the total transfer value of them all;
- (e) the amount of duty chargeable in accordance with the Second Schedule in respect of the transfer; and
- (f) any other particulars prescribed for the purposes of this section.

(3) A WA company may, in any record made under this section, incorporate additional information for the company's own use.

(4) A record made under this section shall be kept by the WA company in a legible written form, or so as to be readily convertible into such a form, for a period of not less than 5 years from the date of transfer.

(5) A WA company shall produce to the Commissioner for inspection a record kept by the company under this

section within one month after receiving a written request from the Commissioner to do so.

- (6) A WA company that —
- (a) fails to make a record as required by this section;
 - (b) makes a record under this section that is false in any material particular; or
 - (c) contravenes subsection (5),

commits an offence against this Act.

WA company liable for duty on registered overseas transfers

112FT. If an overseas transfer of a share of a WA company, or a right in respect of shares of a WA company, is registered by the WA company, the WA company is liable to pay the duty chargeable in respect of the transfer.

Return of overseas transfers and payment of duty

112FU. (1) Within 15 days after the end of a month in which an overseas transfer is registered by a WA company, the WA company shall —

- (a) lodge with the Commissioner a return in a form approved by the Commissioner of all overseas transfers registered by the WA company in that month other than those that are exempt from duty under this Act; and
- (b) when lodging the return, pay to the Commissioner the amount of duty payable in respect of the transfers to which the return relates.

(2) On payment of duty under subsection (1) in respect of a transfer of a share or right, the transfer is deemed to have been duly stamped.

(3) A WA company that —

(a) contravenes subsection (1); or

(b) lodges a return that is false in a material particular,

commits an offence against this Act.

(4) The right or title of a transferee or subsequent holder of a share or right in respect of shares is not invalidated by reason only that the WA company registering the transfer contravened subsection (1).

”.

Second Schedule amended

28. Item 4A (1) of the Second Schedule to the principal Act is amended by inserting after “The purchaser” in the column headed “Person liable to pay duty” the following —

“ or, if section 112FT applies, the WA company ”.

Transitional

29. A WA company may, within 15 days of the end of the month in which this Act receives the Royal Assent, lodge a return and pay duty under section 112FU as inserted in the principal Act by section 27 in respect of a transfer registered by the WA company after 14 January 1997 and before this Act received the Royal Assent and in that case the return is taken to have been made, and the duty is taken to have been paid, in accordance with section 112FU.

Third Schedule amended and transitional

30. (1) Item 2 (16) of the Third Schedule to the principal Act is amended by deleting “such a share” and substituting the following —

“ shares of a WA company ”.

(2) Item 2 of the Third Schedule to the principal Act is amended by inserting after subitem (16) the following subitem —

“

(16a) A transfer of a share of a WA company, or a right in respect of shares of a WA company, if —

- (a) the share or right is listed on a stock exchange situated outside Australia;
- (b) the stock exchange is prescribed for the purposes of this subitem;
- (c) the share or right is registered —
 - (i) by the WA company in a branch register kept under the Corporations Law; or
 - (ii) in the case of a right in respect of shares that is not required to be registered under the Corporations Law, in a register kept by or on behalf of the person that issued the right,

in the country where the share or right is listed on a prescribed stock exchange;

- (d) the share or right —
 - (i) was registered as described in paragraph (c) on or before 14 March 1997;
 - (ii) at the date of the transfer, has been registered as described in paragraph (c) for a period of at least 6 months;
 - (iii) has been registered as described in paragraph (c) since it was issued;

- (iv) was registered as described in paragraph (c) pursuant to a written request given by the transferor at least 6 months before the date of the transfer; or
- (v) has been previously transferred, with *ad valorem* duty paid on the transfer and written instruction given by the transferor at the time of that transfer to the WA company or the person issuing the right that the share or right be registered as described in paragraph (c);

and

- (e) the transfer is made —
 - (i) pursuant to an order lodged with a member of that stock exchange and satisfied by a dealing on that exchange; or
 - (ii) solely for the purpose of facilitating settlement of such a transfer.

”.

(3) If after 14 January 1997 and before this Act receives the Royal Assent duty was paid on a transfer that, because of the amendment to the Third Schedule made by subsection (2), was exempt from duty, the Commissioner, on an application in a form approved by the Commissioner made by the person who paid the duty within 12 months after the date when the duty was paid, shall refund the duty paid.

(4) Regulations made —

- (a) for the purposes of item 2 (16a) of the Third Schedule as inserted in the principal Act by subsection (2); and
- (b) not later than 6 months after this Act receives the Royal Assent,

may commence at a time specified in the regulations that is not earlier than 14 January 1997.

***Division 4 — Amendments deemed to have commenced on
12 May 1997***

Section 20 amended

31. (1) Section 20 (1) of the principal Act is amended —

(a) by deleting “and” after paragraph (c);

(b) by deleting the full stop after paragraph (d) and substituting the following —

“ ; and ”; and

(c) by inserting after paragraph (d) the following paragraph —

“

(e) an instrument which is a statement prepared under section 112HB may be stamped without fine after that preparation if it is lodged within the time allowed under that section.

”.

(2) Section 20 (5a) is amended in the definition of “return” by deleting “or 112HA (4)” and substituting the following —

“ , 112HA (4) or 112HB (2) ”.

Section 76 amended

32. Section 76 (1) of the principal Act is amended in paragraph (e) (iii) of the definition of “acquire” by inserting after “112HA applies” the following —

“ or a conversion of shares to which section 112HB applies ”.

Section 112HB inserted

33. After section 112HA of the principal Act the following section is inserted —

“

Certain share conversions dutiable

112HB. (1) This section applies if, on or after 12 May 1997, a WA company converts any of its issued shares, other than redeemable shares, into redeemable shares —

- (a) by varying or abrogating the rights of the issued shares;
- (b) by cancelling the issued shares and issuing redeemable shares to replace them; or
- (c) by any other means.

(2) If this section applies the WA company shall prepare and lodge a statement with the Commissioner unless the conversion also results in a relevant acquisition occurring under Part IIIIBA.

(3) The statement shall be in a form approved by the Commissioner and shall be lodged within 3 months after the later of —

- (a) the date when the conversion has effect; or
- (b) if the conversion is approved by a court under section 195 of the Corporations Law, the date when under that section an office copy of the court's order is lodged with the Australian Securities Commission.

(4) The statement shall be deemed, for the purposes of this Act, to be an instrument executed on the date when the conversion has effect.

(5) The statement shall be charged with duty at the rate provided for in item 4A (1) (f) or (fa) of the Second Schedule, according to the nature of the shares immediately prior to the company's resolution to convert them, on the dutiable value.

(6) The dutiable value is the unencumbered value of the converted shares immediately prior to the company's resolution to convert them.

(7) The Commissioner —

- (a) may require the company to provide him with evidence in a form approved by him of the unencumbered value of the converted shares; and
- (b) either on the basis of that evidence or of a valuation obtained by him, may determine the dutiable value.

(8) The company and its directors at the time of the company's resolution to convert the shares are jointly liable to pay the duty charged on the statement.

(9) A WA company that contravenes subsection (2) or (3) or that lodges a statement that is false in a material particular commits an offence against this Act.

(10) A WA company that fails to comply with a requirement made under subsection (7) (a) commits an offence against this Act.

”.

Transitional

34. (1) If because of the amendments made by this Division to the *Stamp Act 1921*, a person is required under Division 2 of Part IIIBA of that Act to lodge a statement in respect of a

relevant acquisition that occurred on or after 12 May 1997 and before this Act receives the Royal Assent, then despite section 76AG (3) of that Act the statement shall be lodged within 3 months after the date on which this Act receives the Royal Assent.

(2) If under section 112HB of the *Stamp Act 1921* as inserted by section 33 of this Act a statement in respect of a conversion of shares is required to be lodged by that section before this Act receives the Royal Assent, then despite section 112HB of that Act the statement shall be lodged within 3 months after the date on which this Act receives the Royal Assent.

***Division 5 — General amendments commencing on
Royal Assent***

Section 4 amended

35. Section 4 (1) of the principal Act is amended by inserting after the definition of “record” the following definition —

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

Section 27 amended and transitional provision

36. (1) Section 27 (3) of the principal Act is repealed and the following subsection is inserted —

“
 (3) Sections 29 and 30 and this section do not apply to an instrument or a document relating to a transaction for which a statement is required to be prepared and lodged under section 31B pleaded in a pleading filed in any court, or tendered as evidence in any court, on behalf of a party

(not being a person who is liable to pay the duty in respect of the instrument or statement, as the case requires) —

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

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

(ii) has lodged —

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

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

as the case requires, with the Commissioner;

and

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

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

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

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

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

as the case requires, with the Commissioner.

”.

(2) Section 27 (3) as inserted in the principal Act by subsection (1) applies to an instrument or document executed before or after the day on which this section commences.

Section 74A inserted

37. After section 74 of the principal Act the following section is inserted —

“

Duty chargeable on certain conveyances of corporation property

74A. (1) A conveyance or transfer of any property —

- (a) by a corporation to any of its shareholders in the course of a distribution of assets on a reduction of its capital, including a conveyance or transfer of property in consideration of or pursuant to a surrender, redemption or cancellation of any shareholding;
- (b) by the liquidator of a corporation to any of its shareholders pursuant to a right attaching to any of its shares to select or receive any particular property of it; or
- (c) by the liquidator of a corporation to any of its shareholders in the course of a distribution of its

assets as a consequence of its winding up, not being a conveyance or transfer to which paragraph (b) applies,

shall be chargeable with duty in accordance with item 4 or 4A (1), as the case requires, of the Second Schedule and —

- (d) the unencumbered value of the property shall be taken to be the consideration paid; and
- (e) the shareholder shall be liable to pay the amount of duty charged.

(2) If in a case to which subsection (1) (c) applies, the Commissioner is satisfied that the corporation is not being wound up as part of an arrangement or scheme designed with the collateral purpose of reducing the duty otherwise payable on the conveyance or transfer of the property, the Commissioner may deduct from the unencumbered value of the property an amount calculated under subsection (4) but in any event not greater than the unencumbered value of the property.

(3) In considering whether or not he or she is satisfied for the purpose of subsection (2), the Commissioner may have regard to —

- (a) the duration of the shareholder's shareholding in the corporation;
- (b) whether or not the shareholder held shares in a related corporation of the corporation that owned the property before it was owned by the corporation;
- (c) the period for which the property has been owned by the corporation or a related corporation of the corporation;

- (d) any dealing in shares of the corporation or a related corporation of the corporation —
 - (i) by the shareholder or a related corporation of the shareholder;
 - (ii) by a previous owner of the property;
- (e) whether there is any commercial efficacy to an arrangement or scheme of transactions involving any one or more of —
 - (i) the corporation;
 - (ii) the shareholder;
 - (iii) a related corporation of the corporation or the shareholder;
 - (iv) a substantial shareholder (as defined in Part 6.7 of the Corporations Law) of a person referred to in subparagraph (i), (ii) or (iii),

in relation to the winding up, other than to reduce the duty otherwise payable on the conveyance or transfer;
- (f) any other matters he or she considers relevant.

(4) The deduction to be made under subsection (2) shall be calculated as follows:

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

where:

- A is the value of the shareholder's entitlement in the undistributed assets of the corporation as determined under subsection (5);

- B is the unencumbered value of all the assets that are, or are to be, distributed to the shareholder in the course of the distribution;
- C is the unencumbered value of the property that is the subject of the conveyance or transfer that is chargeable with duty.

(5) In subsection (4) the value of the shareholder's entitlement in the undistributed assets of the corporation is the amount (if any) by which the value of the shareholder's entitlement in the undistributed assets of the corporation immediately before the conveyance or transfer exceeds the sum of —

- (a) any amount owed by the corporation to the shareholder as a creditor at the date of the conveyance or transfer;
- (b) any amount owed by the corporation to the shareholder as a creditor that the shareholder, in the year ending on the date of the conveyance or transfer, has released the corporation from paying; and
- (c) the amount of any liability of the corporation that the shareholder, in the year ending on the date of the conveyance or transfer, has, or has caused to be, assumed or discharged on behalf of the corporation.

”.

Section 75AG amended and transitional provision

38. (1) Section 75AG (10) of the principal Act is amended by deleting “those persons are first home owners” and substituting the following —

“ that each of those persons is a first home owner ”.

(2) After section 75AG (10) of the principal Act the following subsection is inserted —

“

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

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

where:

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

”.

(3) Section 75AG (10) of the principal Act as amended by subsection (1) and section 75AG (10a) as inserted in the principal Act by subsection (2) apply to instruments of acquisition, within the meaning of section 75AG (1) of the principal Act, that are executed on or after the day on which this section commences.

Part IIICA repealed and saving provision

39. (1) Part IIICA of the principal Act is repealed.

(2) Section 76D of the principal Act as it was in force immediately before the commencement day continues to have effect after the commencement day in relation to deeds made before the commencement day despite the repeal of Part IIICA by this Act.

(3) In subsection (2) —

“**commencement day**” means the day on which this Act comes into operation.

Section 112FI amended

40. After section 112FI (6) of the principal Act the following subsection is inserted —

“

(7) If an SCH-regulated transfer of a marketable security or right in respect of shares to which this Division applies is made in circumstances to which section 74A (1) (c) applies, the Commissioner, at the request of the relevant SCH participant, shall determine if and to what extent a deduction is to be made from the transfer value of the marketable security or right in respect of shares in accordance with that section for the purposes of this Division and the Second Schedule.

”.

Part IVC repealed and a Part substituted and transitional provision

41. (1) Part IVC of the principal Act is repealed and the following Part is substituted —

“

PART IVC — EXEMPTIONS IN RELATION TO AGED OR DISABLED PERSONS

Certain residential agreements with charitable bodies exempt

112Q. (1) Notwithstanding anything in this Act, duty shall not be charged on an agreement between —

- (a) a charitable body or a body established for similar public purposes; and
- (b) a qualified person,

and for the purpose of granting the qualified person the right to occupy residential accommodation that is not available to a non-qualified person.

(2) In subsection (1) —

“qualified person” means a person —

- (a) with a disability within the meaning of section 3 of the *Disability Services Act 1993*; or
- (b) who is 55 or over, or who is or was the spouse of such a person, or who, with such a person, is or was one of a *de facto* married couple (as that expression is defined in section 75C (4)).

Certain nursing home and hostel agreements exempt

112R. (1) Notwithstanding anything in this Act, duty shall not be charged on —

- (a) an agreement under Part V of the *National Health Act 1953* of the Commonwealth between the proprietor of an approved nursing home and a person in relation to whom an approval for admission to an approved nursing home has been given, and relating to the care of the person as a patient of the approved nursing home;
- (b) an agreement between the proprietor of a nursing home and a person who by reason of infirmity or illness, disease, incapacity or disability requires admission to a nursing home for nursing care, and relating to the care of the person as a patient of the nursing home, which agreement is declared by the Minister by notice published in the *Government Gazette* to be exempt for the purposes of this section;
- (c) an agreement between the proprietor of a hostel and an eligible person relating to hostel care services for the person.

(2) In subsection (1) (c) —

“eligible person” has the same meaning as it has in the *Aged or Disabled Persons Care Act 1954* of the Commonwealth (**“the Commonwealth Act”**);

“hostel” means a hostel with the meaning of the Commonwealth Act that is approved, or deemed to be approved, under and for the purposes of that Act;

“hostel care services” has the same meaning as it has in the Commonwealth Act.

Instruments not required to be lodged

112S. An agreement referred to in section 112Q or 112R does not have to be lodged with the Commissioner for assessment.

”.

(2) Section 112R (1) (c) of the principal Act as inserted by subsection (1) applies to agreements executed on or after the day on which this section commences.

Minor amendments

42. The principal Act is amended as set out in the Table to this section.

Table

s. 75 (2a)	Repeal the subsection.
s. 75D (1)	Delete the definition of “related corporation”.
s. 76 (1)	Delete the definition of “related corporation”.
s. 112HA (9)	Delete “section 75 (2a)” and substitute the following — “ section 74A (1) ”.

Division 6 — Amendments commencing on Royal Assent about motor vehicle licences

Section 76B amended

43. (1) Section 76B of the principal Act is amended by deleting the definition of “licence” and substituting the following definitions —

“ **“issue”**, in relation to a licence, includes a grant or renewal of the licence;

“**licence**” means a vehicle licence issued under the provisions of Part III of the *Road Traffic Act 1974*, and in respect of which a fee under that Act has been paid or is payable, but does not include a duplicate vehicle licence or certified copy thereof issued under regulations made under that Act;

”.

(2) Section 76B of the principal Act is amended in the definition of “transfer” by deleting “of a licence granted under the provisions of Part III of the *Road Traffic Act 1974*” and substituting the following —

“ , under section 24 of the *Road Traffic Act 1974*, of a licence ”.

Section 76C amended

44. (1) Section 76C (1) of the principal Act is amended by deleting “for a licence or transfer is made” and substituting the following —

“ is made for the issue or transfer of a licence ”.

(2) Section 76C (2) (b) of the principal Act is amended —

(a) by deleting “and transfers were granted” and substituting the following —

“ were issued or transferred ”; and

(b) by deleting “licences and transfers” and substituting the following —

“ issued or transferred licences ”.

(3) Section 76C (3) of the principal Act is amended by deleting “and transfers, if any, granted” and substituting the following —

“ , if any, issued or transferred ”.

(4) Section 76C (4) of the principal Act is amended by deleting “and transfers granted” and substituting the following —

“ issued or transferred ”.

(5) Section 76C (5) of the principal Act is repealed and the following subsection is substituted —

“

(5) When the charging of duty is denoted, on licences issued or transferred as referred to in this section, by adhesive stamps, the person issuing or transferring those licences shall furnish the Commissioner, not later than the 15th day of the month following the month in which those licences were issued or transferred, with a statement relating to those issued or transferred licences in such form as the Commissioner requires in writing.

”.

(6) Section 76C (6) (b) of the principal Act is amended by deleting “granted” and substituting the following —

“ issued ”.

(7) Section 76C (7) of the principal Act is repealed and the following subsection is substituted —

“

(7) A person applying for —

(a) the transfer of a licence referred to in subsection (6) (a); or

(b) the issue of a licence referred to in subsection (6) (b),

shall, before the transfer or issue of the licence, certify in such form as the Commissioner requires that, if the licence is issued or transferred to the person, the motor vehicle in

respect of which the application is made will, while the person is the holder of the licence, be used for the purpose specified in the certification, being one of the purposes referred to in that subsection, and for no other purpose except a minor incidental purpose.

”.

(8) Section 76C (8) of the principal Act is amended by deleting “a licence or transfer” and substituting the following —

“ the issue or transfer of a licence ”.

(9) Section 76C (9) (d) of the principal Act is amended by deleting “grant the application for a licence or transfer” and substituting the following —

“ issue or transfer the licence ”.

(10) Section 76C (10) (b) of the principal Act is amended by deleting “person had applied for and been granted a transfer” and substituting the following —

“

licence had been transferred on the application of the person

”.

(11) Section 76C (10B) (a) of the principal Act is amended by deleting “a transfer is granted” and substituting the following —

“ the licence for the vehicle is transferred ”.

(12) Section 76C (10C) (b) of the principal Act is amended by deleting “person had applied for and been granted a transfer” and substituting the following —

“

licence had been transferred on the application of the person

”.

(13) Section 76C (11) of the principal Act is amended by deleting “or the application for transfer has been granted” and substituting the following —

“ for the vehicle has been issued or transferred ”.

(14) Section 76C (19) of the principal Act is amended by deleting “or renewal”.

Section 76CA amended

45. Section 76CA (3) of the principal Act is amended by deleting “transfer was granted” and substituting the following —

“ licence was transferred ”.

Section 76CB amended

46. (1) Section 76CB (2) (a) of the principal Act is amended by deleting “a licence or transfer” and substituting the following —

“ the issue or transfer of a licence ”.

(2) Section 76CB (4) of the principal Act is amended by deleting “a licence or transfer” and substituting the following —

“ the issue or transfer of a licence ”.

(3) Section 76CB (8) of the principal Act is amended by deleting “a licence or transfer” and substituting the following —

“ the issue or transfer of a licence ”.

Third Schedule amended

47. After item 8 of the Third Schedule to the principal Act the following item is inserted —

“

9. MOTOR VEHICLE LICENCE

(1) In this item —

“**Commonwealth Act**” means the *Interstate Road Transport Act 1985* of the Commonwealth;

“**corresponding State law**” means a law of any other State or a Territory corresponding to the RTA;

“**heavy vehicle**” means a motor vehicle with a gross vehicle mass of more than 4.5 tonnes;

“**RTA**” means the *Road Traffic Act 1974*.

(2) A licence issued to a person for a motor vehicle which was, before the issue of that licence, last licensed in that person's name under —

(a) the RTA;

(b) a law of any other country corresponding to the RTA; or

(c) a corresponding State law,

but this subitem does not apply to a licence issued to a person for a heavy vehicle which was, before the issue of that licence, last licensed in the person's name under a corresponding State law if the vehicle was registered in that person's name under the Commonwealth Act on or after 16 January 1997.

(3) A licence issued for a tractor or tractor plant, other than a prime mover, (as those terms are defined in the RTA) to a member of a prescribed class of persons where the vehicle is used for a purpose prescribed for the purposes of this subitem.

(4) A licence issued to a person for a heavy vehicle if —

(a) the vehicle was, immediately before 16 January 1997, registered in that person's name under the Commonwealth Act; and

- (b) since 16 January 1997, no licence has been issued under the RTA or a corresponding State law for the vehicle in any other person's name. ”.

Transitional

48. The Commissioner is to refund the amount of any duty paid on a vehicle licence if —

- (a) the licence was issued on or after 16 January 1997;
- (b) the Commissioner is satisfied that, because of the amendments made to the principal Act by this Division duty is not payable on that licence; and
- (c) an application is made in writing to the Commissioner for the refund within 12 months after the duty was paid.