

WESTERN AUSTRALIA

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**REVENUE LAWS AMENDMENT  
(ASSESSMENT) ACT 1996**

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**No. 20 of 1996**

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**AN ACT to amend the —**

- *Debits Tax Assessment Act 1990;*
- *Land Tax Assessment Act 1976;*
- *Pay-roll Tax Assessment Act 1971;* and
- *Stamp Act 1921.*

*[Assented to 28 June 1996.]*

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 1996*.

**Commencement**

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

(2) Part 4 —

(a) if this Act receives the Royal Assent on or before 1 July 1996 — comes into operation on 1 July 1996;

(b) if this Act receives the Royal Assent after 1 July 1996 — is deemed to have come into operation on 1 July 1996.

**PART 2 — DEBITS TAX ASSESSMENT ACT 1990**

**Principal Act**

3. In this Part the *Debits Tax Assessment Act 1990*\* is referred to as the principal Act.

[\* Act No. 57 of 1990.]

**Section 3 amended**

4. Section 3 (1) of the principal Act is amended in the definition of “excluded debit” —

(a) in paragraph (a) (v) (C), by deleting “body,” and substituting the following —

“ body; ”;

(b) by inserting, after paragraph (a) (v) (C), the following items —

“

(D) a trust the moneys of which may not be applied otherwise than for charitable purposes;

(E) an institution established for charitable purposes, not being an institution referred to in item (A), (B) or (C),

”;

(c) in paragraph (a) (v), by deleting “or school” in the second place where it occurs and substituting the following —

“ , school or trust ”; and

- (d) in paragraph (a) (vi), by deleting “or school” and substituting the following —

“ , school or trust ”.

**Section 11 amended**

5. (1) Section 11 (2) of the principal Act is amended by inserting after “(which may” the following —

“ , subject to subsection (8), ”.

- (2) After section 11 (7) of the principal Act the following subsection is inserted —

“

- (8) Where —

- (a) a certificate of exemption in relation to an account is issued after the *Revenue Laws Amendment (Assessment) Act 1996* comes into operation; but
- (b) a certificate could not have been issued in relation to the account before that Act came into operation,

the day of commencement of the certificate must not be before the day on which that Act came into operation.

”.

**PART 3 — LAND TAX ASSESSMENT ACT 1976**

**Principal Act**

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

[\* *Reprinted as approved 1 December 1982.  
For subsequent amendments see 1995 Index to  
Legislation of Western Australia, Table 1, pp. 121-2.*]

**Application**

7. The amendments made by sections 8 and 10 apply in respect of the year of assessment commencing on 1 July 1996 and each subsequent year of assessment.

**Section 23AA inserted**

8. After section 23 of the principal Act the following section is inserted —

“

**Rebate where lease etc. terminated before expiry**

**23AA.** (1) The Commissioner shall grant a rebate under this section of land tax levied on a person as an owner where the person applies to the Commissioner in a form approved by the Commissioner and satisfies him that this section applies.

(2) This section applies where —

- (a) for a year of assessment a person is an owner under paragraph (b) or (c) of the definition of “owner” in section 5 (1); and

- (b) on a day during that year (“**the termination day**”) the lease, licence, agreement or arrangement by virtue of which the person is an owner is terminated before its expiry otherwise than —
- (i) on account of some default by the person;  
or
- (ii) with the person’s consent.

(3) A rebate under this section shall be calculated in accordance with the formula —

$$R = A \times T \text{ (where applicable)} \times P$$

where —

A = land tax levied on the aggregated unimproved value of taxable land (“**total value**”) owned by the person;

T = the proportion which the unimproved value of the lot or parcel to which the termination relates bears to the total value; and

P = the proportion of the year of assessment remaining after the termination day.

(4) In this section —

“**land tax**” means —

- (a) tax levied at the rate imposed by the *Land Tax Act 1976*;
- (b) any amount for —
- (i) additional tax under section 25;

- (ii) interest under section 38 (3); and
- (iii) a penalty under section 39 (1);

and

- (c) any charge under the regulations for the payment of land tax in instalments,

but does not include any other amount that comes within the definition of “land tax” in section 5 (1).

”.

### **Section 62 amended**

**9.** Section 62 (2) (b) of the principal Act is amended by deleting “but so that the charges imposed do not” and substituting the following —

“ whether or not the charges ”.

### **Schedule amended**

**10.** The Schedule to the principal Act is amended in Part I in clause 12 —

- (a) in paragraph (a) (i), in the definition of “grazing business”, by inserting after “natural product but” the following —

“ , except for a horse-breeding business, ”;

- (b) in paragraph (a) (i) by inserting after the definition of “grazing business” the following definition —

“

**“horse-breeding business”** in relation to the use of land means its use on a commercial basis to produce income to the user from the rearing or breeding of horses for sale;

”;

- (c) in paragraph (a) (ii) by deleting “for the purposes of the *Companies (Western Australia) Code* to be related by virtue of subsection (5) of section 7 of that Code” in both places where it occurs and substituting the following —

“  
to be related within the meaning of section 50 of the  
Corporations Law  
”;

and

- (d) in paragraph (b) (ii) by inserting after “grazing,” the following —

“ horse-breeding, ”.



**PART 4 — PAY-ROLL TAX ASSESSMENT ACT 1971**

**Principal Act**

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

[\* *Reprinted as at 1 June 1988.*  
*For subsequent amendments see 1995 Index to  
Legislation of Western Australia, Table 1, p. 165.*]

**Section 10 amended**

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

- (a) by deleting “or” after paragraph (l);
- (b) by inserting after paragraph (l) the following paragraph —

“

(la) on or after 1 January 1994 by an employer to a person employed as a trainee by agreement under a traineeship or training scheme that is —

- (i) established or recognized as a traineeship or training scheme by the relevant Minister; and
- (ii) not a prescribed traineeship or training scheme or a traineeship or training scheme of a prescribed class or description;

”;

- (c) by deleting the full stop at the end of paragraph (m) and substituting the following —

“ ; or ”; and

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

“

(n) by an employer as a benefit of a prescribed description to a person by reason of services performed or rendered by that person at a remote location.

”.

(2) After section 10 (3) of the principal Act the following subsections are inserted —

“

(4) If the Commissioner is given notice by the relevant Minister that an agreement under a traineeship or training scheme referred to in subsection (1) (la) has been terminated by reason of the failure of the trainee or the employer of the trainee to comply with the terms of the agreement during a period specified in the notice, the Commissioner may determine that the exemption under that subsection does not apply to the wages paid or payable by the employer of the trainee to the trainee during that period.

(5) For the purposes of this section —

**“relevant Minister”** means the Minister to whom the administration of the *Industrial Training Act 1975* (or an Act which repeals that Act) is for the time being committed by the Governor;

**“remote location”** means a location that is not —

- (a) in an eligible urban area; or
- (b) adjacent to an eligible urban area,

as those expressions are defined in section 140 of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.

”.

(3) Notwithstanding section 19 (2) of the principal Act, where the Commissioner finds that tax has been overpaid on wages paid or payable on or after 1 January 1994 and before the coming into operation of this section that are exempt under section 10 (1) (1a) of the principal Act as amended by this Act, the Commissioner shall refund to the employer who paid the tax the amount of tax found to be overpaid.

(4) Regulations made under section 10 (1) (n) of the principal Act as amended by this Act not later than 3 months after the coming into operation of this section may take effect from a time specified in the regulations that is not earlier than 1 July 1996.

### **Schedule 1 amended**

**13.** Schedule 1 to the principal Act is amended —

(a) by repealing clause 1 and substituting the following clause —

“

**Prescribed amount for s. 9E**

**1.** The amount specified for the purposes of the definition of “prescribed amount” in section 9E (1) is \$52 084.

”;

(b) by repealing clause 3 and substituting the following clause —

“

**Prescribed amounts for 1996-97 onwards for ss. 11A and 16J**

**3.** 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 1996 and every succeeding financial year in accordance with the following formula —

$$\frac{A}{A+B} \left[ \frac{625\,000C}{D} - \frac{1}{3} \left\{ A+B - \frac{625\,000C}{D} \right\} \right]$$

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.

”;

and

- (c) by repealing clause 4 and substituting the following clause —

“

**Prescribed amount for s. 12**

4. The amount per week prescribed for the purposes of section 12 is \$12 020.

”.

**Saving**

**14.** (1) Without limiting the operation of the *Interpretation Act 1984* —

- (a) clauses 1 and 4 of Schedule 1 as in force immediately before the commencement of section 13 (a) and (c)

continue to have effect with respect to months or other periods before July 1996; and

- (b) clause 3 of Schedule 1 as in force immediately before the commencement of section 13 (b) continues to have effect with respect to the financial year that commenced on 1 July 1995.

- (2) In subsection (1) —

“**Schedule 1**” means Schedule 1 to the principal Act.

**PART 5 — STAMP ACT 1921**

**Principal Act**

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

[\* *Reprinted as at 23 January 1996.*]

**Section 15B inserted**

**16.** After section 15A of the principal Act the following section is inserted —

“

**Commissioner may destroy instruments**

**15B.** (1) The Commissioner may destroy any instrument in the Commissioner’s possession if —

- (a) 6 years have elapsed since the instrument was first assessed by the Commissioner; and
- (b) any amount that remains unpaid under this Act in respect of the instrument has been written off under the *Financial Administration and Audit Act 1985*.

(2) Neither the Commissioner, nor any person acting under the Commissioner’s authority, shall be liable in tort for any act done under subsection (1).

”.

**Section 20 amended**

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

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

(b) by deleting the fullstop after paragraph (b) and substituting the following —

“ ; and ”; and

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

“

(c) an instrument which is a statement prepared under section 75HA may be stamped without fine after that preparation if it is lodged within the time allowed under that section.

”.

(2) Section 20 (5a) of the principal Act is amended by deleting “31B, 76AG or 76AN” and substituting the following —

“ 31B, 75HA, 76AG, 76AN or 112F (2) ”.

#### **Section 26 amended**

**18.** After section 26 (3) of the principal Act the following subsection is inserted —

“

(4) For the purposes of this section facts and circumstances referred to in subsection (1) that are set forth in a document accompanying an instrument when it is presented for stamping are to be regarded as being set forth in that instrument.

”.

#### **Section 27 amended**

**19.** Section 27 (2) of the principal Act is amended in paragraph (a) by deleting “or (aa)” and substituting the following —

“ , (aa), (d) or (e) ”.

**Section 31B amended**

**20.** After section 31B (2) of the principal Act the following subsections are inserted —

“

(2a) The requirement to lodge a statement under subsection (1) or give notification under subsection (2) ceases to apply if an instrument that evidences the transaction and is chargeable with *ad valorem* duty is executed at any time after the transaction was entered into, but nothing in this subsection affects the liability of a person for an offence against subsection (7) committed before the instrument was executed.

(2b) Where subsection (2a) has effect, the instrument referred to in that subsection is to be regarded, for the purposes of section 20 (1), as having been first executed on the day on which the transaction was entered into.

”.

**Section 39 amended**

**21.** Section 39 (1a) of the principal Act is amended in paragraph (a) by deleting “(other than a statement prepared and lodged under section 31B (1))”.

**Section 70 repealed**

**22.** Section 70 of the principal Act is repealed.



**Section 72 inserted**

**23.** After section 71 of the principal Act the following heading and section are inserted —

“

*Transfer of mortgages*

**Transfer or assignment of mortgages for value**

**72.** (1) In this section —

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

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

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

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

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

the payment of the duty concerned on that transfer or assignment instrument on production to the Commissioner of the principal instrument or contract or agreement, duly stamped, and that transfer or assignment instrument shall then be deemed to be duly stamped.

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

”.

### **Section 73AA amended**

**24.** (1) Section 73AA (1) (d) of the principal Act is amended by deleting subparagraph (ii) and substituting the following subparagraph —

“

(ii) evidence of the acquisition by the discretionary trustee, as such trustee, of the property conveyed or transferred is produced to the Commissioner with that conveyance or transfer;

”.

(2) Section 73AA (1) (e) of the principal Act is amended by deleting subparagraph (i) and “and” at the end of that subparagraph and substituting the following —

“

(i) evidence of the acquisition by the unit trustee, as trustee of that unit trust scheme, of the property conveyed or transferred is produced to the Commissioner with that conveyance or transfer; and

”.

**Section 75 amended**

**25.** (1) Section 75 (1) of the principal Act is amended by deleting “Every” and substituting the following —

“ Subject to subsection (2), every ”.

(2) Section 75 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) Notwithstanding subsection (1), every conveyance or transfer, or instrument chargeable as a conveyance, that confers a benefit on the person to whom the property is conveyed or transferred because the unencumbered value of the property exceeds the consideration payable in respect of that property, or because of other circumstances, shall be chargeable with duty under item 4 or 4A (1), as the case requires, of the Second Schedule as if that unencumbered value were the consideration paid.

”.

(3) Section 75 (2a) of the principal Act is amended by deleting the passage after paragraph (b) and substituting the following —

“

shall be chargeable with duty in accordance with item 4 or 4A (1), as the case requires, of the Second Schedule as if the unencumbered value of the property conveyed or transferred were the consideration paid.

”.

(4) Section 75 (3) (d) of the principal Act is amended by deleting subparagraph (ii) and substituting the following subparagraph —

“

(ii) evidence of the acquisition by the discretionary trustee, as such trustee, of the property conveyed or

transferred is produced to the Commissioner with that conveyance or transfer;

”.

(5) Section 75 (3) (e) of the principal Act is amended by deleting subparagraph (i) and “and” at the end of that subparagraph and substituting the following —

“

(i) evidence of the acquisition by the unit trustee, as trustee of that unit trust scheme, of the property conveyed or transferred is produced to the Commissioner with that conveyance or transfer; and

”.

#### **Section 75A amended**

**26.** (1) After section 75A (1) of the principal Act the following subsection is inserted —

“

(1a) A person who fails to comply with a requirement made under subsection (1) commits an offence against this Act.

”.

(2) Section 75A (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) Whether or not evidence of value has been required or furnished under subsection (1), the Commissioner may cause the property or consideration concerned to be valued and may assess the duty in accordance with that valuation.

”.

**Section 75AC repealed and a section substituted**

**27.** Section 75AC of the principal Act is repealed and the following section is substituted —

“

**Exchange of property**

**75AC.** Any instrument or instruments effecting an exchange of any property for any other property shall be chargeable with duty as if the exchange involved —

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

”.

**Section 75AE amended**

**28.** Section 75AE (3) of the principal Act is repealed and the following subsections are substituted —

“

(3) An application under subsection (1) shall be made by the purchaser or, if there are 2 or more, by every purchaser that is not a government body, in writing in a form approved by the Commissioner.

(4) If on such an application the Commissioner is satisfied that the purchaser, or if there are 2 or more, all purchasers (other than any government body) are entitled persons for the purposes of this section, he shall assess the duty on the instrument under item 4 (5) of the Second Schedule and not under item 4 (1) of that Schedule.

(5) A person who in such an application makes a statement that is false in a material particular commits an offence against this Act.

(6) This section has effect notwithstanding that an entitled person or persons purchase property in association with a government body.

(7) In this section —

“**government body**” means an agent or instrumentality of the Crown, or an SES organization (as defined in the *Public Sector Management Act 1994*).

”.

### **Section 75AG amended**

**29.** (1) Section 75AG (10) of the principal Act is amended —

(a) by deleting paragraph (a) and substituting the following paragraph —

“

(a) shall be made by the person acquiring the property or, if there are 2 or more, by every one of them that is not a government body (as defined in section 75AE (7)), in writing in a form approved by the Commissioner; and

”;

(b) by deleting “; and” after paragraph (b) and substituting a comma;

(c) by deleting paragraph (c); and

- (d) by deleting “or the amount of duty chargeable,” and substituting the following —

“  
or the amount of duty paid or liable to be paid by  
the first home owner,  
”.

- (2) After section 75AG (12) of the principal Act the following subsection is inserted —

“  
(13) This section has effect notwithstanding that a first home owner acquires property in association with a government body (as defined in section 75AE (7)).  
”.

**Section 75C amended**

- 30.** Section 75C (3) of the principal Act is repealed and the following subsections are substituted —

“  
(3) An application under subsection (1) in respect of an instrument shall be made to the Commissioner by the persons referred to in subsection (1) (a) in writing in a form approved by the Commissioner.  
  
(3a) If on such an application the Commissioner is satisfied that the instrument is an instrument of the kind described in subsection (1), he shall exempt it from duty in accordance with this section and it shall be endorsed or stamped, as applicable, accordingly.  
  
(3b) A person who, in an application under subsection (1), makes a statement that is false in a material particular commits an offence against this Act.  
”.

**Section 75D amended**

**31.** (1) Section 75D (1) of the principal Act is amended —

(a) by deleting the definition of “discretionary trustee” and substituting the following definition —

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

and

(b) by inserting in the appropriate alphabetical positions the following definitions —

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

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

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

(2) Section 75D of the principal Act is amended by inserting after subsection (1) the following subsection —

“

(1a) For the purposes of this Part a person controls a discretionary trust if —

(a) the person is in a position to influence, either directly or indirectly, the vesting of the whole or any part of the capital of the trust property, or of



the whole or any part of the income from that trust property; or

- (b) in a case where a corporation is in a position to influence, either directly or indirectly, the vesting of the whole or any part of the capital of the trust property, or of the whole or any part of the income from that trust property, the person is beneficially entitled to a share, or an interest in a share, in that corporation or a related corporation or to act as a director or secretary of that corporation or related corporation.

”.

### Section 75E amended

32. (1) Section 75E (1) of the principal Act is amended —

- (a) by deleting “and (5)” and substituting the following —

“ , (5) and (6) ”;

- (b) by deleting “, or made by a trustee of a person at the direction of that person” and substituting the following —

“

(in this section and in section 75HA referred to as “**the transferor**”), or made by a trustee on behalf of, and at the direction of, a person (in this section and in section 75HA the person is referred to as “**the transferor**”)

”;

- (c) by deleting “that person” where it appears in paragraphs (a) and (b) and substituting the following —

“ the transferor ”;

- (d) in paragraph (c) by deleting “that person; and” and substituting the following —

“ the transferor; ”;

- (e) in paragraph (d) by deleting “that person.” and substituting the following —

“ the transferor; and ”; and

- (f) by inserting after paragraph (d) the following paragraph —

“

(e) of —

(i) farming property;

(ii) an interest in a farming partnership;  
or

(iii) a share in a farming company,

to a discretionary trustee of a discretionary trust, where —

(iv) all the persons who have a share or interest in the trust property, whether vested or contingent, or who may benefit from the discretionary trust are family members of the transferor; and

(v) the transferor does not control the discretionary trust.

”.

(2) Section 75E (2) of the principal Act is amended —

(a) in paragraph (a) by deleting “person to a combination of a family member or a trustee” and substituting the following —

“ transferor to any combination of the persons ”;

and

(b) in paragraph (b) by deleting “neither a family member nor a trustee” and substituting the following —

“ not one of the persons ”.

(3) Section 75E (3) of the principal Act is amended by deleting “or trustee,” and substituting the following —

“ , trustee or discretionary trustee, ”.

(4) Section 75E of the principal Act is amended by inserting after subsection (5) the following subsection —

“

(6) Where —

(a) an exemption or refund has been allowed under this Part in relation to an instrument of conveyance to a discretionary trustee of a discretionary trust referred to in subsection (1) (e) (“**the initial transfer**”); and

(b) part or all of the farming property, interest in the farming partnership or share in the farming company the subject of that instrument is subsequently conveyed or transferred to a beneficiary of that discretionary trust and duty in accordance with item 6 of the Second Schedule

is charged on the relevant conveyance or transfer,

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

”.

(5) Section 75E of the principal Act as amended by this Act applies to an instrument executed on or after the commencement of the *Revenue Laws Amendment (Assessment) Act 1996*.

### **Section 75G amended**

**33.** Section 75G (1) of the principal Act is amended —

(a) in paragraph (a) by deleting “or (d) (i)” and substituting the following —

“ , (d) (i) or (e) (i) ”;

(b) in paragraph (b) by deleting “or (d) (ii)” and substituting the following —

“ , (d) (ii) or (e) (ii) ”; and

(c) in paragraph (c) by deleting “or (d) (iii)” and substituting the following —

“ , (d) (iii) or (e) (iii) ”.

**Section 75HA inserted**

**34.** After section 75H of the principal Act the following section is inserted —

“

**Subsequent liability for duty in certain circumstances**

**75HA.** (1) In this section —

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

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

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

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

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

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

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

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

(3) Where a farming exemption has been allowed in relation to an instrument of conveyance referred to in section 75E (1) (e) and during the life of the transferor a taxable event occurs, the discretionary trustee of the relevant discretionary trust shall, unless subsection (4) applies, within a period of one month after the date of the taxable event, prepare and lodge with the Commissioner a statement in a form approved by the Commissioner.

(4) A discretionary trustee is not required to lodge a statement under subsection (3) if —

- (a) a statement under that subsection has previously been lodged in respect of the farming exemption; or
- (b) there is no current exempted property.

(5) If a statement under subsection (3) is lodged in respect of a farming exemption for an instrument of conveyance referred to in —

- (a) section 75E (1) (e) (i); or
- (b) section 75E (1) (e) (ii),

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

(6) If —

- (a) a statement under subsection (3) is lodged in respect of a farming exemption for an instrument of conveyance referred to in section 75E (1) (e) (iii);
- (b) a statement under Division 2 of Part IIIBA was prepared in respect of the acquisition the subject of that instrument; and
- (c) at the date of the taxable event the relevant farming company is beneficially entitled to the farming land to which the statement referred to in paragraph (b) related, or any part of that farming land,

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

(7) If —

- (a) a statement under subsection (3) is lodged in respect of a farming exemption for an instrument of conveyance referred to in section 75E (1) (e) (iii); and
- (b) a statement under Division 2 of Part IIIBA —
  - (i) was not prepared in respect of the acquisition the subject of that instrument; or
  - (ii) was prepared in respect of the acquisition the subject of that instrument, but at the date of the taxable event the relevant farming company is not beneficially entitled to any part of the farming land to which the statement lodged under Division 2 of Part IIIBA related,

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

(8) The amount of duty payable in respect of a statement under subsection (3) referred to in subsection (5) (b) or (7) (a) is reduced (up to the amount of duty payable in respect of the statement) by the amount of any duty previously paid on the instrument of conveyance referred to in subsection (5) (b) or (7) (a), as the case requires.

(9) The discretionary trustee lodging a statement under subsection (3) is liable to pay the duty with which it is chargeable.



(10) A person who —

- (a) contravenes subsection (3); or
- (b) lodges under subsection (3) a statement which is false in any material particular,

commits an offence under this Act.

”.

### **Section 75I amended**

**35.** Section 75I (1) of the principal Act is amended in paragraph (a) by deleting “or (d) (iii)” and substituting the following —

“ , (d) (iii) or (e) (iii) ”.

### **Section 76AA amended**

**36.** (1) After section 76AA (1) of the principal Act the following subsections are inserted —

“

(1a) A person who fails to comply with a requirement made under subsection (1) commits an offence against this Act.

(1b) Whether or not evidence of value has been required or furnished under subsection (1), the Commissioner may cause the land concerned to be valued and may assess the duty chargeable in accordance with that valuation.

”.

(2) Section 76AA (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) Section 75A (3) and (4) apply for the purposes of subsection (1b).

”.

### **Section 79 amended**

37. After section 79 (5) of the principal Act the following subsections are inserted —

“

(6) In this Act, for the purposes of determining the rent reserved or payable under a Homeswest lease entered into on or after 1 September 1992, the rent is to be taken to be, and since that date is to be taken always to have been, the rent payable after taking into account any subsidization of the rent by The State Housing Commission.

(7) In subsection (6) —

“**Homeswest lease**” means a lease, or an agreement for a lease, of any lands or tenements for use as a dwellinghouse from The State Housing Commission.

”.

### **Section 112A amended**

38. Section 112A of the principal Act is amended by inserting after the definition of “error transaction” the following definition —

“

“**exchange traded option**” means an option to purchase or sell a marketable security if the marketable

security is listed for quotation on the stock market of, or permission to deal in the shares on a stock market has been granted by, a prescribed stock exchange but does not include any such option prescribed as not being an exchange traded option within the meaning of this Act;

”.

**Section 112BA inserted**

**39.** After section 112B of the principal Act the following section is inserted —

“

**Valuing unlisted marketable securities**

**112BA.** (1) In this Act, for the purposes of valuing an unlisted marketable security —

- (a) it is to be assumed that the memorandum and articles of association or rules of the body issuing the marketable security satisfy those requirements of the Australian Stock Exchange Limited that must be satisfied before the marketable security can be listed on the Australian Stock Exchange Limited; and
- (b) a provision in the memorandum or articles of association or rules of the body issuing the marketable security providing for the valuation of the marketable security held by any deceased or other member is to be disregarded.

(2) Notwithstanding subsection (1), the Commissioner may determine the value of an unlisted marketable security to be the amount that, in the opinion of the Commissioner, would be received by the holder of the marketable security in respect of it if the body issuing the marketable security

were to be voluntarily wound up on the day on which the marketable security is to be valued for the purposes of this Act.

(3) In this section —

“**unlisted marketable security**” means a marketable security that is not listed on a prescribed stock exchange (as defined in section 112A (1)).

”.

### **Section 112FA repealed and a section substituted**

**40.** Section 112FA of the principal Act is repealed and the following section is substituted —

“

#### **Application of Division 3**

**112FA.** (1) This Division, and the duty payable as calculated on the return referred to in section 112FC, in accordance with item 4A (2) of the Second Schedule, apply to —

- (a) the sale and purchase of a marketable security or a right in respect of shares only if —
  - (i) the consideration for the sale and purchase is in money or money’s worth of not less than the unencumbered value of the security or the right; and
  - (ii) the security or the right is listed for quotation on the stock market of, or permission to deal in the shares on a stock market has been granted by, a prescribed stock exchange;

and

- (b) the sale and purchase of a marketable security pursuant to the exercise of an exchange traded option as if a reference in section 112FB (1) to an order lodged were a reference to the issue or receipt by a broker of a notice to exercise an exchange traded option.

(2) Duty payable on a sale and purchase referred to in subsection (1) (b) is to be calculated on the premium paid for the exchange traded option or the consideration for the sale and purchase, whichever is the greater amount.

”.

### **Section 112I amended**

**41.** Section 112I (1) of the principal Act is amended by deleting the definition of “bank”.

### **Section 112P amended**

**42.** Section 112P (6) of the principal Act is amended in paragraph (e) by deleting “, other than as a bank,”.

### **Section 119 repealed and a section substituted**

**43.** Section 119 of the principal Act is repealed and the following section is substituted —

“

#### **Certain exemptions where the State etc. is a party**

**119.** (1) In this section —

“**exempt body**” means —

- (a) the State of Western Australia or the Crown in right of Western Australia;

- (b) an agent or instrumentality of the Crown, or a government authority, declared to be an exempt body by the Minister by notice published in the *Gazette*; or
- (c) a local authority, except when it acts in its capacity as the trustee of a superannuation fund.

(2) If an exempt body is the only party that would be liable to pay the duty that would, but for this subsection, be chargeable on an instrument, the instrument is exempt from duty.

(3) If an exempt body is not the only party liable to pay the duty on an instrument the Commissioner shall apportion the duty chargeable on the instrument between those parties in accordance with subsection (4) or (5) (as the case requires).

(4) If the instrument is chargeable with duty under item 4 or 4A of the Second Schedule, the portion of the duty payable by a party shall bear the same proportion to the whole of the duty chargeable as the interest in the property acquired by the party bears to the whole of the interest acquired by the parties liable to pay the duty on the instrument.

(5) If the instrument is chargeable with duty under an item of the Second Schedule other than item 4 or 4A, the portion of the duty payable by a party shall be as determined by the Commissioner.

(6) An instrument referred to in subsection (3) is exempt from that portion of the duty chargeable on it that would, but for this subsection, be payable by an exempt body.

(7) The Commissioner shall endorse on an instrument referred to in subsection (3) the amount of duty from which the instrument has been exempted under this section.

(8) An exempt body is not liable to pay the duty charged on an instrument referred to in subsection (3).

(9) This section does not apply to an instrument to which section 83 (2) applies if an exempt body is a mortgagee or obligee of the instrument.

”.

### **Second Schedule amended**

**44.** The Second Schedule to the principal Act is amended in item 4A (2) —

(a) by inserting after “calculated on the consideration” the following —

“ or premium paid, as the case requires, ”; and

(b) in paragraph (a) by deleting “or the purchase price” and substituting the following —

“ , the purchase price or the premium, ”.

### **Third Schedule amended**

**45.** (1) The Third Schedule to the principal Act is amended in item 3 by inserting after subitem (3) the following subitem —

“

(4) An instrument described in item 8 (1) of the Second Schedule to which an exempt body (as defined in section 119) is a party.

”.

(2) The Third Schedule to the principal Act is amended by deleting item 4 and substituting the following item —

“

4. DUPLICATE OR COUNTERPART:

Duplicates or counterparts of insurance policies.

”.

(3) The Third Schedule to the principal Act is amended in item 8 (3a) by deleting the passage beginning “by — ” and ending “authority,” and substituting the following —

“ by an exempt body (as defined in section 119) ”.