

WESTERN AUSTRALIA

**STAMP AMENDMENT ACT
(No. 2) 1994**

No. 79 of 1994

AN ACT to amend the *Stamp Act 1921*.

[Assented to 22 December 1994.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Stamp Amendment Act (No. 2) 1994*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act

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

[* *Reprinted as at 21 March 1989.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 196-98 and Acts Nos. 6 and 39 of 1994.]

Part IIIBAA inserted and application

4. (1) After Part IIIB of the principal Act the following Part is inserted —

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PART IIIBAA — CERTAIN TRANSFERS OF FARMING PROPERTY

Interpretation

75D. (1) In this Part —

“**discretionary trustee**” has the same meaning as it has in section 63;

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

(a) a child or remoter lineal descendant of the person;

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

or more than one of them;

“farming company” means a corporation —

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

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

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

“farming property” means —

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

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

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

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

“land” includes an estate or interest in —

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

“primary production” means —

- (a) the growing or rearing of plants (including trees, fungi or any crop) for the purpose of selling them, parts of them or their produce;

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

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

(2) For the purposes of this Part —

- (a) an illegitimate person shall be treated as the legitimate child of that person’s mother and reputed father; and
- (b) a child includes a step-child.

Application of this Part

75E. (1) Subject to subsections (2), (3), (4) and (5), this Part applies in respect of an instrument of conveyance made by a person, or made by a trustee of a person at the direction of that person —

- (a) of farming property to a family member of that person;

- (b) of an interest in a farming partnership to a family member of that person;
- (c) of a share in a farming company to a family member of that person; and
- (d) of —
 - (i) farming property;
 - (ii) an interest in a farming partnership; or
 - (iii) a share in a farming company,

to a trustee where after the transfer or conveyance the subject of the instrument, the beneficial owner of the trust property will be a family member of that person.

(2) This Part —

- (a) applies if the transfer or conveyance the subject of the instrument of conveyance referred to in subsection (1) is made by a person to a combination of a family member or a trustee referred to in that subsection; and
- (b) does not apply to a transfer or conveyance the subject of the instrument of conveyance referred to in subsection (1) if the transferees include a person who is neither a family member nor a trustee referred to in that subsection.

(3) This Part applies only where the family member, partnership, company or trustee, referred to in subsection (1), to whom the farming property is conveyed or in which an interest or share is conveyed,

as the case requires, intends to continue to use the farming property in the business of primary production.

(4) In relation to an instrument of conveyance referred to in subsection (1) (a), (b) or (c), this Part applies only where the relevant family member does not intend to hold the farming property, interest or share, as the case requires, as agent, trustee or otherwise on behalf of any other person.

(5) Where an exemption or refund has been allowed under this Part in relation to an instrument of conveyance of farming property, an interest in a farming partnership or a share in a farming company, to a person (or to a trustee on behalf of a person) ("**the initial instrument**"), this Part does not apply to a subsequent instrument of conveyance by that person or trustee made within 5 years of the initial instrument if the Commissioner is of the opinion that the subsequent instrument of conveyance relates to the same farming property, interest in partnership or share which was the subject of the exemption or refund.

Exemption or refund of duty for farming property

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

- (a) exempt that instrument from duty;
- (b) refund duty paid on that instrument; or

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

Partial exemption or partial refund of duty

75G. (1) Where the Commissioner is satisfied that an instrument of conveyance is an instrument to which this Part applies but —

- (a) in relation to an instrument referred to in section 75E (1) (a) or (d) (i), the instrument does not relate only to farming property;
- (b) in relation to an instrument referred to in section 75E (1) (b) or (d) (ii), the assets of the farming partnership do not only comprise farming property; or
- (c) in relation to an instrument referred to in section 75E (1) (c) or (d) (iii), the assets of the farming company do not only comprise farming property,

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

- (d) the Commissioner shall assess duty on the unencumbered value of the farming property, interest in the partnership or share in the company as determined in accordance with section 75A;
- (e) the farming property shall be deemed to have no value; and

- (f) in making the valuation referred to in paragraph (d) the Commissioner shall only have regard to an apportioned liability.

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

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

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

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

where —

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

B is the total value of the assets of the partnership or company, as the case requires;

C is the amount of the total liabilities of the partnership or company, as the case requires; and

L is the apportioned liability.

Application for exemption or refund

75H. (1) An application to the Commissioner under section 75F shall be —

- (a) made in writing in a form approved by the Commissioner by the person acquiring the farming property, interest or share (or every such person if there is more than one); and
- (b) accompanied by such further information as the Commissioner may require.

(2) An application to the Commissioner under section 75F for a refund or partial refund shall be made within a period of 12 months after the day on which the instrument of conveyance was stamped.

(3) A person who, in an application to the Commissioner under section 75F or in furnishing information to the Commissioner under subsection (4), makes a statement which is false in any material particular commits an offence under this Act.

(4) For the purpose of ascertaining whether an exemption or partial exemption is to be allowed or a refund or partial refund is payable under section 75F or section 75I, or for the purpose of determining the amount of the exemption, refund, partial exemption or partial refund, the Commissioner may by notice in writing require any person to furnish him, within such reasonable time as may be specified in that notice, with such information specified in the notice as that person may be able to give.

Part IIIA companies

75I. (1) Where —

- (a) the Commissioner is satisfied that an instrument of conveyance of a share in a farming company referred to in section 75E (1) (c) or (d) (iii) is an instrument to which this Part applies; and
- (b) the transaction to which that instrument relates gives rise to a liability to prepare and lodge a statement under Division 2 of Part IIIA (“**Part IIIA statement**”),

the Commissioner may —

- (c) if the land to which the Part IIIA statement relates comprises only farming land in the State —
 - (i) exempt that statement from duty; or
 - (ii) refund the duty paid on that statement;

or

- (d) if the land to which the Part IIIA statement relates does not only comprise farming land in the State, in accordance with subsection (2) —
 - (i) partially exempt that statement from duty; or
 - (ii) partially refund the duty paid on that statement.

(2) The amount of a partial exemption or partial refund of duty on the Part IIIBA statement referred to in subsection (1) (d) shall be determined by the Commissioner as follows —

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

where —

A is the value of the farming land in the State;

B is the value of all the land the subject of the Part IIIBA statement;

C is the duty which would be chargeable on the Part IIIBA statement if this Part did not apply to it; and

R is the amount of the partial exemption or partial refund.

(3) A refund or partial refund of duty under subsection (1) shall only be paid within a period of 12 months after the day on which the relevant Part IIIBA statement was stamped.

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(2) An exemption or refund may be allowed under Part IIIBAA of the principal Act as inserted by this section in respect of an instrument executed on or after the day on which this Act comes into operation.

Third Schedule amended and transitional provisions

5. (1) The Third Schedule to the principal Act is amended in item 3 by inserting after subitem (2) the following subitem —

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(3) Any instrument executed on or after 1 July 1992
granting a power of attorney.

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(2) If before the commencement of this Act, duty has been paid under item 8 (1) of the Second Schedule to the principal Act in respect of an instrument that is exempt from duty because of the amendment to the Third Schedule made by subsection (1), the person by or on whose behalf the duty was paid may make written application to the Commissioner for the refund of the duty.

(3) On receipt of an application under subsection (1) and on being satisfied that the applicant is the person by or on whose behalf the duty was paid, the Commissioner is to refund the duty to the applicant.