

WESTERN AUSTRALIA

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# FINANCIAL INSTITUTIONS DUTY AMENDMENT ACT 1991

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No. 30 of 1991

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AN ACT to amend the *Financial Institutions Duty Act 1983*

[Assented to 23 November 1991]

The Parliament of Western Australia enacts as follows:

## Short title

1. This Act may be cited as the *Financial Institutions Duty Amendment Act 1991*.

## Commencement

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

**Principal Act**

3. In this Act the *Financial Institutions Duty Act 1983\** is referred to as the principal Act.

[\*Act No. 65 of 1983.

*For subsequent amendments, see 1990 Index to Legislation of Western Australia, p. 56.]*

**Section 3 amended**

4. Section 3 of the principal Act is amended in subsection (1) by deleting—

- (a) “(W.A.)” in paragraph (b) (viii) of the definition of “financial institution” and substituting the following—

“ (Australia) ”; and

- (b) the definitions of “paragraph”, “savings bank”, “section”, “State”, “subsection” and “Territory”.

**Section 13 amended**

5. Section 13 of the principal Act is amended in the definition of “eligible person” in subsection (14) by—

- (a) inserting after the semi-colon at the end of paragraph (a) the following—

“ and ”; and

- (b) deleting paragraphs (c), (d), (e), (f) and (g) (including “and” after the semi-colon at the end of paragraph (g)).

**Section 26 amended**

6. Section 26 of the principal Act is amended in subsection (4) (a) by deleting “savings bank,”.

**Section 42 repealed and section 42 substituted**

7. Section 42 of the principal Act is repealed and the following section is substituted—

**Refunds or deductions of duty overpaid**

“ 42. (1) If—

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

and

(b) the Commissioner finds that duty was overpaid by the applicant within the period referred to in paragraph (a),

the Commissioner shall—

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

(d) give the applicant notice in writing that the applicant is entitled to deduct the amount of duty found to have been overpaid from—

(i) a single amount of duty payable by the applicant after the giving of that notice; or

(ii) if the amount of duty found to have been overpaid exceeds a single amount of duty referred to in subparagraph (i), successive amounts of duty payable within the meaning of that subparagraph.

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

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

as the case requires.

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

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

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

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

- (a) is liable to repay to the Commissioner the amount which the registered financial institution or

certified short term dealer has failed to pay to the client in accordance with that subsection; and

- (b) if repayment to the Commissioner is not effected under this subsection within a period of 90 days, or such longer period as the Commissioner allows in writing, after that contravention, commits an offence and is liable to a penalty of \$2 000.

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

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