

## STAMP (No. 6).

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No. 112 of 1982.

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### AN ACT to amend the Stamp Act 1921-1982.

[Assented to 8 December 1982.]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Stamp Amendment Act (No. 6) 1982*. Short title and citation.

(2) In this Act the Stamp Act 1921-1982 is referred to as the principal Act. Reprinted as approved 25 March 1980 and amended by Acts Nos. 47 of 1979, 63 of 1980, 81 and 106 of 1981 and 1, 10, 15 and 45 of 1982.

(3) The principal Act as amended by this Act may be cited as the Stamp Act 1921-1982.

Commence-  
ment.

2. This Act shall be deemed to have come into operation on 26 October 1982.

Section 16  
amended.

3. Section 16 of the principal Act is amended by inserting after subsection (2) the following subsection—

“ (3) Where an instrument which relates to property situate in Western Australia or to any matter or thing done or to be done in Western Australia—

(a) is executed in Western Australia and held in some place outside Western Australia; or

(b) is executed and held in some place outside Western Australia,

the provisions of this Act shall extend and apply to the instrument, notwithstanding that the instrument is not in Western Australia, in all respects as if the instrument were executed and held in Western Australia. ” .

Section 31A  
inserted.

4. After section 31 of the principal Act, the following section is inserted—

Default  
assessments.

“ 31A. (1) Where—

(a) any person fails or neglects to furnish to or lodge with the Commissioner any statement, return or other document as and when he is required to do so by or under this Act;

(b) the Commissioner is not satisfied with any statement, return or other document furnished to or lodged with the Commissioner; or

(c) the Commissioner has reason to believe or suspect that any person is liable to pay any duty under this Act,

the Commissioner may create a memorandum of the statement, return or other document and cause an assessment to be made of the amount which, in his judgment, ought to be levied and that person shall be liable to pay that amount.

(2) As soon as conveniently may be after an assessment is made under this section, the Commissioner shall cause notice in writing of the assessment and of the amount to be paid to be served on the person liable to pay it.

(3) The amount specified in the assessment shall be payable on or before the date specified in the notice (being a date not less than one month after the date of service of the notice).

(4) The memorandum created under subsection (1) of this section shall be deemed to be an instrument for the purposes of this Act. ” .

5. Section 63 of the principal Act is amended by deleting the full stop at the end, substituting a semi-colon and inserting the following definitions—

Section 63  
amended.

“ “discretionary trustee” means a trustee of any property over which any person has a power of appointment which was not created by will;

“trustee” means a trustee who is not a discretionary trustee or a unit trustee;

“unit trustee” means a trustee of a unit trust scheme; and

“unit trust scheme” means a unit trust scheme in respect of which there is not an approved deed for the purposes of Division 6 of Part IV of the Companies (Western Australia) Code or the corresponding provisions of the Companies Code or Companies Act of any other State or Territory. ” .

Section 66  
amended.

6. Section 66 of the principal Act is amended by inserting after “conveyed” the following—

“ , whether by way of sale or otherwise, ” .

Section 73  
amended.

7. Section 73 of the principal Act is amended—

(a) in subsection (1), by deleting paragraphs (b) and (c) of the proviso and substituting the following paragraphs—

“ (b) a conveyance or transfer made to a beneficiary by a trustee or by another person in a fiduciary capacity, except a discretionary trustee or a unit trustee, under any trust whether express or implied;

(c) a conveyance or transfer made to a beneficiary by a discretionary trustee under any trust whether express or implied otherwise than in exercise of any power of appointment;

(d) a conveyance or transfer made by a discretionary trustee, in exercise of a power of appointment over the property conveyed or transferred, to a beneficiary who is a natural person for his own use and benefit, if—

(i) at the time when the discretionary trustee acquired the property conveyed or transferred the beneficiary was named or described in the instrument which created the power of appointment as a beneficiary or as a member of a class of beneficiaries in whose favour the discretionary trustee was empowered by that instrument to appoint the property; and

- (ii) the discretionary trustee, as such trustee, acquired the property conveyed or transferred under an instrument which is produced to the Commissioner with that conveyance or transfer;
- (e) a conveyance or transfer made to the holder of a unit in a unit trust scheme by a unit trustee if—
- (i) the unit trustee, as trustee of that unit trust scheme, acquired the property conveyed or transferred under an instrument which is produced to the Commissioner with that conveyance or transfer; and
  - (ii) the Commissioner is satisfied that—
    - (A) the conveyance or transfer has the effect of reducing the rights of the holder of the unit in respect of the property held by the unit trustee to the extent of the property, or the value of the property, conveyed or transferred;
    - and
    - (B) the conveyance or transfer does not have the effect of varying, abrogating or altering the rights of the holder or hold-

ers of other units under the unit trust scheme in respect of the remaining property held by the unit trustee; or

- (f) any other conveyance or transfer under which no beneficial interest passes in the property conveyed or transferred, not being a conveyance or transfer which, in the opinion of the Commissioner, is made in contemplation of the passing of a beneficial interest in that property or is part of or made pursuant to a scheme whereby any beneficial interest in that property, whether vested or contingent, has passed or will or may pass to any person, ” ; and

- (b) in subsection (2), by deleting “paragraph (c)” and substituting the following—

“ paragraph (f) ” .

Sections  
73D and 73E  
inserted.

8. Before section 74 of the principal Act, the following sections are inserted—

Disposition  
of units in  
unit trust  
schemes.

“ 73D. (1) In this section—

“disposition”, in relation to a unit, includes—

- (a) a transfer or other disposition of the unit;
- (b) the allotment or issue of the unit;
- (c) the redemption, surrender or cancellation of the unit; and

- (d) the variation, abrogation or alteration of a right pertaining to the unit with respect to capital of the unit trust scheme;

“transfer” means a conveyance, transfer, or instrument chargeable as a conveyance; and

“unit” means any right or interest, whether described as a unit or sub-unit or otherwise, of a beneficiary under a unit trust scheme and includes an interest in a unit.

(2) A unit trustee, whether a sole trustee or not, who is resident or domiciled in Western Australia or who carries on business in Western Australia as trustee of the unit trust scheme, shall not make, accept, give effect to, recognize, or register, record, or enter in the books or records of the unit trust scheme a disposition in relation to a unit unless—

- (a) a transfer or an instrument effecting or evidencing the disposition is executed and delivered to him; and
- (b) the transfer or the instrument, as the case may be, is duly stamped under this Act.

(3) A person who contravenes or fails to comply with a provision of subsection (2) of this section commits an offence and is liable to a penalty equal to double the amount of duty that would have been payable if an appropriate transfer or instrument had been executed and duly stamped under this Act.

(4) Subject to subsections (5) and (6) of this section, a transfer of a unit and an instrument effecting or evidencing a

disposition in relation to a unit shall each be chargeable with duty as if it were a conveyance free of encumbrances of an undivided share, equivalent to the proportion of the total issued units under the unit trust scheme represented by the unit, in the property held by the unit trustee as trustee of the unit trust scheme.

(5) Where—

- (a) disposition in relation to a unit involves a variation, abrogation or alteration of a right or rights pertaining to the unit; and
- (b) the Commissioner is satisfied, having regard to the rights pertaining to the other issued units under the unit trust scheme, that the disposition does not significantly affect the right or rights pertaining to the unit,

the instrument effecting or evidencing the disposition shall be chargeable with duty under item 6 of the Second Schedule to this Act.

(6) The Commissioner shall, where it is necessary to determine, for the purposes of subsection (4) of this section, the proportion of the total issued units under a unit trust scheme represented by a unit, take into account, in such manner as he considers appropriate, the respective rights and obligations pertaining to the unit and the other units under the unit trust scheme.

(7) Each of the holders of a unit under a unit trust scheme is liable to pay the duty with which a transfer of the unit or an instrument effecting or evidencing a disposition in relation to the unit is chargeable.



(8) A unit trustee shall, where a transfer of a unit or an instrument effecting or evidencing a disposition in relation to a unit has been delivered to him, retain the transfer or instrument, as the case may be, for not less than 2 years after the day on which it is delivered to him.

(9) A unit trustee who contravenes or fails to comply with subsection (8) of this section commits an offence against this Act.

(10) A right or obligation arising out of a disposition in relation to a unit shall not be invalidated by reason only that the unit trustee made, accepted, gave effect to, or recognized the disposition or registered, recorded or entered the disposition in the books or records of the unit trust scheme in contravention of subsection (2) of this section.

73E. (1) In this section—

Disposition  
of shares in  
discretionary  
trustee  
companies.

“company” means a corporation which is a discretionary trustee;

“corporation” has the same meaning as in the Companies (Western Australia) Code;

“disposition”, in relation to a share, includes—

- (a) a transfer or other disposition of the share;
- (b) the allotment or issue of the share;
- (c) the redemption, surrender or cancellation of the share; and

- (d) the variation, abrogation or alteration of a right pertaining to the share with respect to voting, whether at meetings of the company or the directors or otherwise,

but does not include a disposition by which the personal representative of a deceased person disposes of a share to a beneficiary in the administration of the estate of the deceased;

“officer” in relation to a corporation, has the same meaning as in the Companies (Western Australia) Code;

“share” means a share or stock of a company that is not listed on a stock exchange and includes an interest in a share; and

“stock exchange” has the same meaning as in the Securities Industry (Western Australia) Code.

(2) A company which is resident or domiciled in Western Australia or which carries on business in Western Australia as discretionary trustee and an officer of such a company shall not make, accept, give effect to, recognize, or register, record or enter in the books or records of the company a disposition in relation to a share unless—

- (a) a transfer or an instrument effecting or evidencing the disposition is executed and delivered to the company; and
- (b) the transfer or the instrument, as the case may be, is duly stamped under this Act.

(3) A company and an officer of the company who contravenes or fails to comply with a provision of subsection (2) of this section commits an offence and is liable to a penalty equal to double the amount of duty that would have been payable if an appropriate transfer or instrument had been executed and duly stamped under this Act.

(4) Subject to subsections (5) and (6) of this section, a transfer of a share and an instrument effecting or evidencing a disposition in relation to a share shall each be chargeable with duty as if it were a conveyance free of encumbrances of an undivided share, equivalent to the proportion of the total issued capital of the company represented by the share, in the property held by the discretionary trustee as trustee of the discretionary trust.

(5) Subsection (4) of this section shall not apply to a transfer or instrument if the Commissioner is satisfied that it is not made in contemplation of the passing of a beneficial interest in any property held by the company as discretionary trustee and is not part of, or made pursuant to, a scheme whereby any beneficial interest, vested or contingent, in any property held by the company as discretionary trustee has passed or will or may pass to any person.

(6) Where—

- (a) a disposition in relation to a share involves a variation, abrogation or alteration of a right or rights pertaining to the share; and
- (b) the Commissioner is satisfied, having regard to the rights pertaining to the other issued shares in the capital of the company, that the disposition does not significantly affect the right or rights pertaining to the share,

the instrument effecting or evidencing the disposition shall be chargeable with duty under item 6 of the Second Schedule to this Act.

(7) The Commissioner shall, where it is necessary to determine, for the purposes of subsection (4) of this section, the proportion of the total issued capital of a company represented by a share, take into account, in such manner as he considers appropriate, the respective rights and obligations pertaining to the share and the other shares in the capital of the company.

(8) Each of the holders of a share in a company is liable to pay the duty with which a transfer of the share or an instrument effecting or evidencing a disposition in relation to the share is chargeable.

(9) A company shall, where a transfer of a share or an instrument effecting or evidencing a disposition in relation to a share has been delivered to it, retain the transfer or instrument, as the case may be, for not less than 2 years after the day on which the transfer or instrument is delivered to it.

(10) A company that contravenes or fails to comply with subsection (9) of this section commits an offence against this Act.

(11) A right or obligation arising out of a disposition in relation to a share shall not be invalidated by reason only that the company or an officer of the company made, accepted, gave effect to or recognized the disposition or registered, recorded or entered the disposition in the books or records of the company in contravention of subsection (2) of this section. " .

9. Section 75 of the principal Act is amended— Section 75 amended.

- (a) in subsection (6), by deleting paragraphs (b) and (c) and substituting the following paragraphs—

“ (b) made to a beneficiary by a trustee or by another person in a fiduciary capacity, except a discretionary trustee or a unit trustee, under any trust whether express or implied;

(c) made to a beneficiary by a discretionary trustee under any trust, whether express or implied, otherwise than in exercise of any power of appointment;

(d) made by a discretionary trustee, in exercise of a power of appointment over the property conveyed or transferred, to a beneficiary who is a natural person for his own use and benefit, if—

(i) at the time when the discretionary trustee acquired the property conveyed or transferred the beneficiary was named or described in the instrument which created the power of appointment as a beneficiary or as a member of a class of beneficiaries in whose favour the discretionary trustee was empowered by that instrument to appoint the property; and

(ii) the discretionary trustee, as such trustee, acquired the property conveyed or trans-

ferred under an instrument which is produced to the Commissioner with that conveyance or transfer;

(e) made to the holder of a unit in a unit trust scheme by a unit trustee if—

(i) the unit trustee, as trustee of that unit trust scheme, acquired the property conveyed or transferred under an instrument which is produced to the Commissioner with that conveyance or transfer; and

(ii) the Commissioner is satisfied that—

(A) the conveyance or transfer has the effect of reducing the rights of the holder of the unit in respect of the property held by the unit trustee to the extent of the property, or the value of the property, conveyed or transferred; and

(B) the conveyance or transfer does not have the effect of varying, abrogating, or altering the rights of the holder or holders of other units under the unit trust scheme in respect of the remaining property held by the unit trustee; or

- (f) under which no beneficial interest passes in the property conveyed or transferred, not being a conveyance or transfer which, in the opinion of the Commissioner, is made in contemplation of the passing of a beneficial interest in that property or is part of or made pursuant to a scheme whereby any beneficial interest in that property, whether vested or contingent, has passed or will or may pass to any person, ” ; and
- (b) in subsection (8), by deleting “paragraph (c)” and substituting the following—
- “ paragraph (f) ” .

10. Section 112I of the principal Act is amended— Section 112I amended.

- (a) in the definition of “loan” in subsection (1)—
- (i) by deleting paragraph (e);
- (ii) by deleting “at the declared rate,” at the end of paragraph (f) and substituting the following—
- “ at the declared rate; and ” ;
- (iii) by inserting after paragraph (f) the following paragraph—
- “ (g) a loan in respect of which duty has not been paid under the provisions of section 112K of this Act, where the terms or conditions of such loan are varied, to the extent of the amount outstanding in respect of the loan as varied, ” ; and

(iv) by deleting “include any loan, advance, payment, forbearance or transaction referred to in paragraph (a), (b), (c) or (d)” and substituting the following—

“ , except for the purposes of subsections (3b), (3c), (3d) and (3e) of this section, include any loan, advance, payment, forbearance or transaction referred to in paragraph (a), (b), (c), (d) or (g) ” ; and

(b) by repealing subsection (3b) and substituting the following subsections—

“ (3b) A loan to which paragraph (g) of the definition of “loan” in subsection (1) of this section refers shall be deemed to have been made as a new loan by the lender to the borrower on the date of the variation to which that paragraph refers.

(3c) Notwithstanding any other provision of this section, where in a series of transactions—

(a) 2 or more lenders make separate loans to the same borrower;

(b) those loans are made by those lenders pursuant to a contract, agreement or arrangement made between those lenders and the borrower; and

(c) the applicable rate of interest in relation to any one or more of those loans exceeds the declared rate,



then each of those loans shall be deemed to have been made at a rate of interest exceeding the declared rate.

(3d) Notwithstanding any other provision in this section, where in a series of transactions—

- (a) 2 or more loans are made during any period of 30 days by a lender to a borrower pursuant to a contract between that lender and that borrower or pursuant to contracts between that lender and that borrower which were made during any period of 30 days; and
- (b) the applicable rate of interest in relation to any one or more of those loans exceeds the declared rate,

then each of those loans shall be deemed to have been made at a rate of interest exceeding the declared rate.

(3e) Notwithstanding any other provision of this section, the Commissioner may, if he is satisfied that 2 or more loans in a series of transactions of the kind referred to in subsection (3c) or (3d) of this section have been made in good faith as separate and distinct loans, direct in writing that those loans shall for the purposes of this Part be deemed to be separate and distinct loans. " .