



Western Australia

Stamp Act 1921

Compare between:

[24 Jan 2006, 15-i0-02] and [01 Mar 2006, 15-j0-03]

Western Australia

Stamp Act 1921

An Act to amend and consolidate the law relating to stamp duties upon instruments and to impose certain stamp duties, and for other relative purposes.

Part I — Preliminary

1. Short title and commencement

This Act may be cited as the *Stamp Act 1921*, and shall come into operation on a day to be fixed by proclamation¹.

[2. Repealed by No. 37 of 1979 s. 3.]

[2A, 3. Repealed by No. 2 of 2003 s. 4.]

4. Interpretation

(1aa) The *Taxation Administration Act 2003* is to be read with this Act as if they formed a single Act.

(1ab) The Glossary at the end of the *Taxation Administration Act 2003* defines or affects the meaning of some of the words and expressions used in this Act and also affects the operation of other provisions.

(1) In this Act, except so far as the context otherwise requires —
“**corporation**” has the same definition as in section 9 of the Corporations Act;

“**Corporations Act**” means the *Corporations Act 2001* of the Commonwealth;

“**de facto partner of 2 years**”, in relation to a person, means a person who is living in a de facto relationship with the person and has lived on that basis with the person for at least 2 years;

“**de facto partners of 2 years**” means 2 de facto partners of 2 years who are living in a de facto relationship with each other;

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

“dutiable statement” means a statement required to be lodged under section 31B, 31C, 63AE, 63AJ, 73DAA(1), 73DE, 75HA, 76AG, 76AN, 76AT, 76ATG, 77A, or 92A;

“duty” means duty payable under this Act;

“dwellinghouse” includes flat, apartment or other residential unit;

“eligible conditional contract” has the definition it is given in section 6;

“endorse” has a meaning affected by section 17C(7);

“farming land conditional contract” has the definition it is given in section 9;

“financial institution” means —

- (a) an institution that is a “financial institution” for the purposes of the *Cheques Act 1986* of the Commonwealth; or
- (b) any other person who is, or who is in a class of persons that is, prescribed for the purposes of this definition;

“financial market” has the same definition as in Chapter 7 of the Corporations Act;

“foreign company” has the same definition as in section 9 of the Corporations Act;

“former de facto partner of 2 years”, in relation to a person, means a person who has lived in a de facto relationship with that person for at least 2 years, but no longer lives with that person on that basis;

“general conditional contract” has the definition it is given in section 8(1) as modified by section 8(2);

“government body” means an agent or instrumentality of the State, or an SES organisation as defined in the *Public Sector Management Act 1994*;

“GST” has the same meaning as it has in the Commonwealth *New Tax System (Goods and Services Tax) Act 1999* except

that it includes notional GST of the kind for which payments may be made under the *State Entities (Payments) Act 1999* by a person that is a State entity as defined in that Act;

“instrument” does not include a return;

“interstate duty” means duty of a similar nature to the duty payable under this Act that is payable in another State or Territory;

“local government” means a local government or one of the associations constituted under section 9.58 of the *Local Government Act 1995*;

“marketable security” means —

- (a) any stock or share of any corporation or local government or company or society;
- (b) any debenture, debenture stock, bond, note or other security of a Government or of any corporation or local government or company or society, whether or not constituting a charge on the assets of the Government, local government, corporation, company or society;
- (c) any right or interest, whether described as a unit or otherwise, of a beneficiary under a unit trust scheme —
 - (i) any of the units of which is quoted on a recognised financial market; or
 - (ii) that is not a private unit trust scheme within the meaning in section 63(2) or that is a unit trust scheme registered under section 63AA(2) or granted interim registration under section 63AC(2) or registered as a provisional public trust under section 63ADA(2);

“mining tenement conditional contract” has the definition it is given in section 11;

“money” includes a bill of exchange, a promissory note and all sums expressed in the currency of Australia or in any other currency;

“mortgage” has the definition it is given in section 82;

“off-the-plan conditional contract” has the definition it is given in section 10;

“Part IIIBA statement” means —

- (a) a section 76AG statement;
- (b) a section 76AN statement;
- (c) a section 76AT statement; or
- (d) a section 76ATG statement;

“payment” includes payment in money or by bill of exchange or promissory note;

“primary produce contract” has the definition it is given in section 9(2);

“recognised financial market” means a financial market prescribed for the purposes of this definition;

“related”, in relation to a general conditional contract, has the definition it is given in section 7;

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

“right in respect of shares” means a security, however described, that is or represents a right, whether actual, prospective or contingent, to be allotted or issued with an unissued marketable security, whether or not any money or other consideration is to be payable for the issue;

“section 76AG statement” means a dutiable statement lodged under section 76AG in relation to which the Commissioner has not made a determination under section 76AG(5a);

“section 76AN statement” means a dutiable statement lodged under section 76AN in relation to which the Commissioner has not made a determination under section 76AN(4a);

“**section 76AT statement**” means a dutiable statement lodged under section 76AT in relation to which the Commissioner has not made a determination under section 76AT(12);

“**section 76ATG statement**” means a dutiable statement lodged under section 76ATG in relation to which the Commissioner has not made a determination under section 76ATG(11);

“**stamp**”, when used as a verb in relation to an instrument, means to endorse the instrument in accordance with section 17C;

“**stamp Act**” means this Act or the *Taxation Administration Act 2003*;

“**subdivision conditional contract**” has the meaning it is given in section 12;

“**supply**”, in relation to an amount of GST, has the same meaning as it has in the Commonwealth *A New Tax System (Goods and Services Tax) Act 1999*;

“**surviving de facto partner of 2 years**”, in relation to a person who has died, means a person who, immediately before the person’s death was living in a de facto relationship with that person and had lived with the person on that basis for at least 2 years;

“**terminated on relevant grounds**”, in relation to a general conditional contract, has the definition it is given in section 14;

“**unconditional**”, in relation to a general conditional contract, has a meaning affected by section 13;

“**unencumbered value**” has a meaning affected by section 33;

“**unit**”, in Parts II and IIIB, has the definition it is given in section 63(1);

“**WA company**” means a company within the meaning of the Corporations Act that is taken, for the purposes of the Corporations Act, to be registered in Western Australia.

- (2) Whenever a word or expression is defined in any Part, so that the word or expression bears the defined meaning when used in that Part, the word or expression shall, when used in the Second Schedule or the Third Schedule, be given the same meaning as it bears in that Part unless the context in which it is used in that Schedule otherwise requires.

[Section 4 inserted by No. 37 of 1979 s. 4; amended by No. 10 of 1982 s. 28; No. 81 of 1984 s. 3; No. 84 of 1985 s. 3; No. 33 of 1987 s. 5; No. 3 of 1989 s. 4; No. 41 of 1989 s. 4; No. 52 of 1991 s. 7; No. 39 of 1994 s. 15 and 21; No. 14 of 1996 s. 4; No. 48 of 1996 s. 31(1); No. 57 of 1996 s. 4; No. 13 of 1997 s. 21 and 35; No. 22 of 1998 s. 50; No. 53 of 1999 s. 17; No. 10 of 2001 s. 166; No. 36 of 2001 s. 24; No. 2 of 2003 s. 5; No. 21 of 2003 s. 25; No. 28 of 2003 s. 187; No. 66 of 2003 s. 4 and 107(2); No. 11 of 2004 s. 9; No. 12 of 2004 s. 14 and 21².]

4A. Treatment of amounts payable for GST

- (1) In ascertaining the value of anything or the consideration for anything, there is to be no discount for the amount of GST (if any) payable on the supply of that thing.
- (2) A reference in Part IIIC to purchase price means the purchase price without any discount for the amount of GST (if any) payable on the supply of the vehicle.

[Section 4A inserted by No. 53 of 1999 s. 33; amended by No. 2 of 2003 s. 6; No. 66 of 2003 s. 5.]

- [5. Repealed by No. 2 of 2003 s. 7.]*

Part II — Conditional contracts (interpretation)

[Heading inserted by No. 12 of 2004 s. 15.]

6. Meaning of “eligible conditional contract”

- (1) An “**eligible conditional contract**” is a contract for the sale of property where —
 - (a) completion of the contract is conditional on the happening of an event;
 - (b) the parties to the contract do not have control over the happening of the event, except to the extent that they are required under the contract to use their best endeavours to secure the happening of the event; and
 - (c) no other person who is related to a party to the contract has control over the happening of the event.
- (2) However, none of the following is an eligible conditional contract —
 - (a) a put option and a call option (as defined in section 74B(1)) to which section 74B(6) applies;
 - (b) a contract for the sale of a unit in a unit trust scheme as defined in section 63(1);
 - (c) a contract that is subject to a condition which, in the opinion of the Commissioner, constitutes an arrangement or part of an arrangement to avoid or defer the payment of duty.

[Section 6 inserted by No. 12 of 2004 s. 15.]

7. Persons who are “related” for the purposes of this Part

- (1) For the purposes of sections 6(1)(c), 14(a) and 17BA(3), persons are “**related**” if they are —
 - (a) joint owners of property;
 - (b) individuals who are in partnership with each other;
 - (c) participants in the same joint venture;

- (d) family members;
 - (e) related corporations;
 - (f) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (g) an individual and a corporation, if the individual is a majority shareholder, director or secretary of the corporation or a related corporation;
 - (h) an individual and a trustee, if the individual is a beneficiary under the trust of which the trustee is a trustee, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (i) a corporation and a trustee, if —
 - (i) the corporation, or a majority shareholder, director or secretary of the corporation, is a beneficiary of the trust of which the trustee is a trustee; or
 - (ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,
whether (in either case) the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust.
- (2) For the purposes of subsection (1) —
- (a) an illegitimate person shall be treated as the legitimate child of that person's parents;
 - (b) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by a written law; and
 - (c) a majority shareholder in relation to a corporation is a person who would have a substantial holding in the

corporation under the definition of “substantial holding” in section 9 of the Corporations Act even if the reference in that definition to 5% were a reference to 50%.

- (3) For the purposes of subsection (1)(d), 2 persons are “**family members**” if, in relation to one person, the other person is —
- (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;
 - (e) the spouse, former spouse, de facto partner or former de facto partner of the person;
 - (f) a family member referred to in paragraph (a), (b), (c) or (d) of a person referred to in paragraph (e); or
 - (g) the spouse or de facto partner of a person referred to in paragraph (a), (b), (c) or (d).

[Section 7 inserted by No. 12 of 2004 s. 15; amended by No. 11 of 2005 s. 6.]

8. Meaning of “general conditional contract”

- (1) A “**general conditional contract**” is an eligible conditional contract, completion of which is conditional on the happening of one or more of the following events, as specified in the contract —
- (a) the obtaining by the purchaser of a satisfactory private taxation ruling by the Commissioner of Taxation of the Commonwealth as to the consequences of the contract with respect to taxation under a law of the Commonwealth;
 - (b) the obtaining to the satisfaction of a purchaser under the contract of funds or of approval to obtain funds to finance the purchase;

- (c) the obtaining by the purchaser of a satisfactory building inspection, geotechnical or environmental report from a third party in relation to the property to be sold or conveyed under the contract;
 - (d) the obtaining by a vendor of the consent of the Minister responsible for administering the *Land Administration Act 1997* to transfer a lease of leasehold land to a purchaser;
 - (e) the authorisation of the payment to the purchaser of a first home owner grant under the *First Home Owner Grant Act 2000*;
 - (f) the obtaining by the purchaser of a licence to trade or the grant of a franchise;
 - (g) the obtaining by the vendor of a commercial property of the renewal of an existing lease of the property;
 - (h) the obtaining from the landlord of a leasehold business by the vendor of the business of a new lease, or of an assignment of the lease to a purchaser;
 - (i) the sale of another property by the purchaser;
 - (j) the obtaining by the vendor of the registration of a plan of subdivision, or of a strata plan or survey strata plan;
 - (k) the obtaining by the purchaser of approval from a regulatory body;
 - (l) the results of the making of due diligence inquiries by the purchaser where the results are to be measured against objective criteria set out in the contract;
 - (m) the issue of a certificate of title (however described) for the property that is the subject of the contract;
 - (n) a prescribed event.
- (2) Except for the purposes of the definitions in sections 9, 10, 11 and 12, a reference in this Act to a general conditional contract is to be read as excluding a reference to a farming land conditional contract, an off-the-plan conditional contract, a

s. 9

mining tenement conditional contract or a subdivision conditional contract.

[Section 8 inserted by No. 12 of 2004 s. 15.]

9. Meaning of “farming land conditional contract”

(1) A **“farming land conditional contract”** is —

- (a) a general conditional contract that is solely or principally for the sale of farming land as defined in section 75D(1); or
- (b) a primary produce contract.

(2) A contract is a **“primary produce contract”** if —

- (a) it is solely or principally for the sale of farming land as defined in section 75D(1); and
- (b) completion of the contract is affected by or subject to an activity that constitutes primary production as defined in section 75D(1).

[Section 9 inserted by No. 12 of 2004 s. 15.]

10. Meaning of “off-the-plan conditional contract”

An **“off-the-plan conditional contract”** is a general conditional contract that includes provision for —

- (a) the sale of a strata lot; and
- (b) the construction on the strata lot, after the contract is executed, of a building for commercial, residential or mixed-use purposes.

[Section 10 inserted by No. 12 of 2004 s. 15.]

11. Meaning of “mining tenement conditional contract”

A **“mining tenement conditional contract”** is a general conditional contract for the sale of —

- (a) a mining tenement held under the *Mining Act 1978*, being a mining tenement within the meaning of that Act or the *Mining Act 1904*³;
- (b) a right under a mining tenement in force under section 5 of the *Mining Act 1978*;
- (c) a right of occupancy in force under section 5 of the *Mining Act 1978*; or
- (d) a tenement, right or interest that is —
 - (i) similar to a tenement or right described in paragraph (a), (b) or (c); and
 - (ii) held under the law of the Commonwealth or of another State or a Territory, or under the law of another country.

[Section 11 inserted by No. 12 of 2004 s. 15.]

12. Meaning of “subdivision conditional contract”

A “**subdivision conditional contract**” is a general conditional contract for the sale of land, completion of which is conditional on the obtaining by the purchaser of approval from the relevant authorities to subdivide the land or part of the land.

[Section 12 inserted by No. 12 of 2004 s. 15.]

13. When a conditional contract becomes unconditional

A general conditional contract becomes unconditional when the condition to which its completion was subject is fulfilled.

[Section 13 inserted by No. 12 of 2004 s. 15.]

14. Termination of conditional contracts on relevant grounds

A general conditional contract is “**terminated on relevant grounds**” if —

- (a) it is not carried into effect because the condition to which it is or was subject cannot be fulfilled for reasons

s. 14

that are not within the control of a party to the contract or a person who is related to a party to the contract; and

- (b) none of the parties has received or will receive a benefit under the contract.

[Section 14 inserted by No. 12 of 2004 s. 15.]

[15-15B. Repealed by No. 2 of 2003 s. 7.]

Part III — General provisions

16. Charge of duties on instruments

- (1) From and after the commencement of this Act¹ and subject to subsection (2), the duties to be charged for the use of the Crown on or in respect of the instruments specified in the Second Schedule shall be the duties specified opposite to those instruments in that Schedule, which duties shall be in substitution for the duties chargeable under the enactments repealed by this Act.
- (2) The duties specified in the Second Schedule shall be subject to the exemptions specified in the Third Schedule or otherwise by or under this Act and in any other Act for the time being in force.
- (3) Where an instrument which relates to property situate in, or deemed to be 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 in some place outside Western Australia and held in that place or another place outside Western Australia,the provisions of a stamp 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.
- (4) Despite anything else in this Part or in the Second Schedule, duty is not chargeable on a general conditional contract if the contract is not required to be lodged with the Commissioner because of the operation of section 17BA(4).

s. 17

[Section 16 amended by No. 21 of 1961 s. 2; No. 3 of 1971 s. 2; No. 37 of 1979 s. 14; No. 112 of 1982 s. 3; No. 98 of 1986 s. 4; No. 33 of 1987 s. 6; No. 41 of 1989 s. 7; No. 2 of 2003 s. 8; No. 12 of 2004 s. 16.]

17. Liability to pay duty

- (1) The person liable to pay duty on an instrument is —
 - (a) if a person is specified in the Second Schedule as the person liable to pay the duty on the instrument — that person;
 - (b) if another person is expressly liable under any other provision of a stamp Act to pay the duty — that other person;
 - (c) if the instrument is a dutiable statement — the person required to lodge the dutiable statement; or
 - (d) in any other case — the party to the instrument by whom or on whose behalf it is held.
- (2) Nothing in this section is to be taken —
 - (a) to exonerate any other person from any liability imposed on the person under a stamp Act; or
 - (b) to exempt any instrument or matter from any duty to which it is liable under a stamp Act.
- (3) A person who is liable to pay duty is also liable to pay any penalty tax, interest or other amount payable under a stamp Act in connection with the duty.

[Section 17 inserted by No. 2 of 2003 s. 9; amended by No. 66 of 2003 s. 6.]

17A. Time for payment of duty

- (1) The liability to pay duty on an instrument arises —
 - (a) when the instrument is first executed; or

- (b) if the instrument is a dutiable statement, on the occurrence of the transaction or event to which the statement relates.
- (2) The duty is payable within one month after the date of the assessment notice.
- (3) Subsection (2) does not apply in a particular case if a provision of a stamp Act specifies that in that particular case duty is payable at, or within, a different time or period.
- (4) A taxpayer must pay the duty within the time required by subsection (2) or that other provision.

Penalty: \$5 000.

[Section 17A inserted by No. 2 of 2003 s. 9.]

17AA. Time for payment on certain conditional contracts

- (1) The duty on a farming land conditional contract or a mining tenement conditional contract is payable within 12 months after the date on which the contract was first executed or one month after the date of the assessment notice, whichever is the later.
- (2) The duty on an off-the-plan conditional contract or a subdivision conditional contract is payable within 2 years after the date on which the contract was first executed or one month after the date of the assessment notice, whichever is the later.

[Section 17AA inserted by No. 12 of 2004 s. 17.]

17B. Requirement to lodge instrument

- (1) A person who is, or may be, liable to pay duty on an instrument except a mortgage must lodge the instrument with the Commissioner within 2 months after the date on which the instrument was first executed.
Penalty: \$5 000.
- (1a) The person who is, or may be, liable to pay duty on a mortgage must lodge the mortgage with the Commissioner each time a

s. 17BA

liability arises under section 87, and must lodge it within 2 months after the respective liability date as defined in section 81.

- (2) Subsection (1) does not apply in a particular case if a provision of a stamp Act specifies that in that particular case the instrument must be lodged at or within a different time or period.

[Section 17B inserted by No. 2 of 2003 s. 9; amended by No. 66 of 2003 s. 7; No. 12 of 2004 s. 22.]

17BA. Time for lodging certain conditional contracts

- (1) If a general conditional contract becomes unconditional within one month after the date on which it was first executed, then the person who is, or may be, liable to pay duty on the contract must lodge the contract with the Commissioner within 2 months after the date on which it was first executed.

Penalty: \$5 000.

- (2) If a general conditional contract is not required to be lodged under subsection (1), then the person who is, or may be, liable to pay duty on the contract must lodge the contract —

- (a) within one month after the date on which the contract becomes unconditional; or
(b) within 12 months after the date on which the contract was first executed,

whichever is earlier.

Penalty: \$5 000.

- (3) Despite subsection (2), if a vendor is related to a purchaser then the person who is, or may be, liable to pay the duty on the contract must lodge the contract with the Commissioner within 2 months after the day on which the contract was first executed.

Penalty: \$5 000.

- (4) Despite subsections (1), (2) and (3), a person is not required to lodge a general conditional contract with the Commissioner if the contract is terminated on relevant grounds before it is required to be lodged under this section.
- (5) The person who is or may be liable to pay duty on a contract of any of the following kinds must lodge the contract with the Commissioner within 2 months after the day on which the contract was first executed —
- (a) a farming land conditional contract;
 - (b) a mining tenement conditional contract;
 - (c) an off-the-plan conditional contract;
 - (d) a subdivision conditional contract.

Penalty: \$5 000.

[Section 17BA inserted by No. 12 of 2004 s. 18.]

17C. Instrument to be endorsed when duty paid etc.

- (1) When —
- (a) duty is paid on an instrument;
 - (b) penalty tax or any other amount payable under a stamp Act in respect of an instrument is paid;
 - (c) the payment of duty payable on, or penalty tax or any other amount payable under a stamp Act in respect of, an instrument is waived;
 - (d) the Commissioner assesses an instrument as being not chargeable with duty;
 - (e) the Commissioner exempts an instrument from duty; or
 - (f) the Commissioner allows a reduction of the duty payable on an instrument,
- then the Commissioner must —
- (g) endorse the instrument accordingly; or

s. 18

- (h) if the instrument is dealt with under a special tax return arrangement — issue a stamp duty certificate in accordance with the arrangement.
- (2) An endorsement under subsection (1) must be made in a prescribed manner.
- (3) An instrument is taken to be endorsed in accordance with subsection (1) if the Commissioner endorses, in a prescribed manner, a copy or memorandum of the instrument under section 20 of the *Taxation Administration Act 2003*.
- (3a) An instrument is taken to be endorsed in accordance with subsection (1) if the Commissioner endorses it under section 31B(15), 63A(2), 72(4), 74(4), 77(2) or 77A(11).
- (4) The grant or transfer of a licence (as defined in section 76B) is taken to be endorsed in accordance with subsection (1) when it is granted or transferred.
- (5) An endorsement of an instrument, or on a copy or memorandum of an instrument, in a prescribed manner is *prima facie* evidence of the matters noted in the endorsement.
- (6) The Commissioner may, at the request of a party to an instrument specified in the Third Schedule, endorse the instrument as exempt from duty.
- (7) In this Act, a reference to endorsing an instrument is to be read as including a reference to issuing a stamp duty certificate in relation to the instrument under subsection (1)(h).

[Section 17C inserted by No. 2 of 2003 s. 9; amended by No. 66 of 2003 s. 8; No. 12 of 2004 s. 23.]

18. How instruments to be written

Every instrument shall be written in such a manner as to leave a blank space at least 40 millimetres deep at the top of the first page or face of that instrument as a place for stamping thereon the amount of duty paid in respect of that instrument.

[Section 18 inserted by No. 37 of 1979 s. 16; amended by No. 2 of 2003 s. 10.]

19. Instruments to be separately charged with duty in certain cases

Except where express provision to the contrary is made by this or any other Act —

- (a) an instrument containing or relating to 2 or more distinct matters is to be separately and distinctly charged, as if it were a separate instrument with duty in respect of each of the matters;
- (b) an instrument made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration, is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect to each of the considerations.

[Section 19 amended by No. 2 of 2003 s. 11.]

20. Reduction of duty if matter not carried into effect

- (1) The amount of duty payable on an instrument is reduced by the amount of the full duty payable in respect of a matter included in the instrument if the Commissioner is satisfied that —
 - (a) the matter has not been, and will not be, carried into effect;
 - (b) the taxpayer has not received, and will not receive, a benefit in respect of the matter; and
 - (c) the reason the matter was not, and will not be, carried into effect is not merely to enable a replacement transaction to be entered into.
- (2) The amount of duty payable on an instrument is reduced in accordance with subsection (3) if the Commissioner is satisfied that —

s. 20

- (a) a matter included in an instrument has not been, and will not be, carried into effect;
 - (b) the taxpayer has received, or will receive, a benefit in respect of the matter;
 - (c) the value of the benefit is less than the full duty payable in respect of the matter; and
 - (d) the reason the matter was not, and will not be, carried into effect is not merely to enable a replacement transaction to be entered into.
- (3) The amount of duty payable on the instrument is reduced by the amount of the difference between the value of the benefit referred to in subsection (2)(b) and the amount of the full duty payable in respect of the matter.
- (4) A taxpayer receives a benefit in respect of a matter included in an instrument if, as a result of the matter not being carried into effect, an amount of money, or a right, property or service, is received —
- (a) by the taxpayer; or
 - (b) with the consent, or at the direction of, the taxpayer, by an independent person.
- (5) A taxpayer receives a benefit in respect of a matter contained in an instrument chargeable as a conveyance or transfer of property if —
- (a) the instrument provides for or contemplates the conveyance or transfer of the property to an independent person;
 - (b) under an agreement, arrangement or understanding between the taxpayer and another party, the property has been or is to be conveyed or transferred to that other party or to another person; or
 - (c) the taxpayer obtains exclusive use or control of the property under a term contract (however described),

whether or not the contract is for any reason not fully carried into effect.

- (6) Where a taxpayer receives a benefit of the kind described in subsection (5) the value of the benefit is the amount of the full duty payable in respect of the matter.
- (7) For the purpose of calculating the value of a benefit received by a taxpayer in respect of a matter (other than a benefit of the kind described in subsection (5)), an amount equal to the amount (if any) required to restore the taxpayer to the position the taxpayer would have been in if the matter had not been included in the instrument, is not to be taken into account.
- (8) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.
- (9) In this section —
- “**full duty**”, in relation to a matter, means the amount of duty that would, but for this section, be payable in respect of the matter;
- “**independent person**”, in relation to a matter, means a person who is not a party to the instrument that includes the matter;
- “**party**”, in relation to a matter, means a person who is a party to the instrument that includes the matter;
- “**replacement transaction**”, in relation to a matter, means a transaction between the taxpayer and an independent person that is substantially similar in effect to the transaction that was to have been effected by the instrument that includes the matter.

[Section 20 inserted by No. 2 of 2003 s. 12.]

[21. Repealed by No. 2 of 2003 s. 12.]

[22. Repealed by No. 37 of 1979 s. 18.]

s. 26

[23. Repealed by No. 2 of 2003 s. 12.]

[24, 25. Repealed by No. 37 of 1979 s. 20.]

26. Facts and circumstances affecting duty to be set forth in instrument

- (1) All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument; and a person must not, with intent to defraud the Crown —
- (a) execute any instrument in which all the said facts and circumstances are not fully and truly set forth; or
 - (b) being employed or concerned in or about the preparation of any instrument, neglect or omit fully and truly to set forth therein all the said facts and circumstances.

Penalty: \$20 000.

- (1a) For the purposes of subsection (1) the suppression from an instrument of any fact or circumstance referred to in subsection (1) or the inclusion therein of any matter that is known to be false in a material particular is *prima facie* evidence of intent to defraud the Crown.
- (2) The Commissioner may, in a case in which he considers that the circumstances so require, permit any error in an instrument to be corrected before the instrument is stamped.
- (3) A person who, after an instrument has been stamped, alters the instrument in any manner which may increase its liability to duty shall produce the altered instrument, within one calendar month after the making of the alteration, to enable the Commissioner to reassess the amount of duty payable on the instrument.

Penalty: \$20 000.

- (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 26 amended by No. 113 of 1965 s. 4(1); No. 37 of 1979 s. 21; No. 81 of 1984 s. 8; No. 33 of 1987 s. 8; No. 20 of 1996 s. 18; No. 2 of 2003 s. 13.]

27. Instruments not stamped inadmissible except in criminal proceedings

- (1) Except as otherwise provided by a stamp Act no instrument chargeable with duty and executed in Western Australia, or relating, wheresoever executed, to any property situate or deemed to be situate or to any matter or thing done or to be done in Western Australia, shall, except in criminal proceedings, be pleaded or given in evidence or admitted to be good, useful, or available in law or equity, unless it is stamped in accordance with the law in force at the time when it was first executed.
- (2) Any document executed in Western Australia, or relating, wheresoever executed, to any property situate or to any matter or thing done or to be done in Western Australia, which —
- (a) affords any evidence of —
 - (i) an acquisition to which section 31B applies;
 - (ii) a transfer to which section 31C applies;
 - (iii) a disposition to which section 73DAA(1) applies; or
 - (iv) a transaction referred to in section 77A(1);and
 - (b) is a document —
 - (i) relating to an acquisition, transaction, disposition or transfer for which a dutiable statement is required to be lodged under section 31B, 31C, 73DAA(1) or 77A; but

- (ii) which is not itself chargeable with duty,
- shall not, except in criminal proceedings, be pleaded or given in evidence or admitted to be good, useful, or available in law or equity, unless a dutiable statement has been lodged under section 31B, 31C, 73DAA(1) or 77A in respect of the acquisition, transaction, disposition or transfer to which that document relates and the duty with which the dutiable statement is chargeable has been paid.
- (3) Sections 29 and 30 and this section do not apply to an instrument or a document relating to an acquisition, transaction or transfer for which a dutiable statement is required to be lodged under section 31B, 31C or 77A, and this section does not apply to an instrument or a document relating to a disposition for which a dutiable statement is required to be lodged under section 73DAA(1), where the instrument or document is 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 dutiable 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 dutiable 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 dutiable 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.

[Section 27 amended by No. 67 of 1966 s. 3; No. 102 of 1970 s. 4; No. 98 of 1986 s. 6; No. 33 of 1987 s. 9; No. 41 of 1989 s. 8; No. 39 of 1994 s. 18; No. 41 of 1995 s. 4(1); No. 20 of 1996 s. 19; No. 13 of 1997 s. 36(1); No. 22 of 1998 s. 31; No. 36 of 2001 s. 14; No. 2 of 2003 s. 14; No. 66 of 2003 s. 9; No. 11 of 2005 s. 7.]

28. No instrument to be registered, etc. unless stamped

- (1) A person whose duty it is to receive, register, enrol, enter or record —
 - (a) any original instrument or duplicate or counterpart instrument or any copy of an instrument shall not, if the original instrument is chargeable with duty or is exempt from duty or would, if it were in Western Australia, be so chargeable or exempt, receive, register, enrol, enter or record the original instrument, duplicate or counterpart instrument or copy unless he is satisfied that the original instrument has been stamped or is exempt from duty or that the duplicate or counterpart instrument or copy has been stamped under subsection (3), as the case requires; or
 - (b) any document referred to in section 27(2) shall not receive, register, enrol, enter or record that document

s. 28

unless he is satisfied that a dutiable statement has been lodged under section 31B, 31C, 73DAA(1) or 77A in respect of the acquisition, transaction, disposition or transfer to which that document relates and that the duty with which the dutiable statement is chargeable has been paid.

Penalty: \$20 000.

- (2) A person referred to in subsection (1) may refer any question concerning the liability to duty of an original instrument, duplicate or counterpart instrument or copy of an instrument to the Commissioner for determination.
- (3) When an original instrument has not been stamped and the Commissioner is satisfied that it is not reasonably practicable to present the original instrument for stamping, he may, at the request of any person and on payment of the duty which is chargeable on the original instrument, stamp the duplicate or counterpart or copy thereof as if it were the original instrument.
- (4) If a caveat relates to an instrument which is liable to duty or a document referred to in section 27(2) the registrar must reject the caveat unless —
 - (a) the instrument or the dutiable statement relating to the document has been stamped; or
 - (b) the registrar is satisfied, on evidence provided by the person lodging the caveat, that the instrument or the dutiable statement relating to the document, has been lodged with the Commissioner for assessment.

Penalty: \$20 000.

- (5) If a caveat relates to an instrument that is not liable to duty the registrar may reject it unless when it is lodged it is accompanied by a statutory declaration —
 - (a) stating that the instrument is not liable to duty; and

- (b) setting out why the instrument is not liable to duty (including reference to any relevant provisions of a stamp Act).
- (6) In subsections (4) and (5) —
- “**caveat**” means a caveat lodged under —
- (a) Part V of the *Transfer of Land Act 1893*; or
- (b) the *Mining Act 1978*;

“**registrar**” means the Registrar of Titles or a mining registrar within the meaning of the *Mining Act 1978* (as the case requires).

[Section 28 inserted by No. 37 of 1979 s. 22; amended by No. 93 of 1982 s. 4; No. 81 of 1984 s. 9; No. 98 of 1986 s. 7; No. 33 of 1987 s. 10; No. 41 of 1989 s. 9; No. 36 of 2001 s. 15; No. 2 of 2003 s. 15; No. 66 of 2003 s. 10.]

29. Production of instruments as evidence

- (1) Upon production of an instrument chargeable with any duty or a document referred to in section 27(2) (other than a document relating to a disposition to which section 73DAA(1) applies) as evidence in any court of civil judicature, or before any arbitrator or referee, notice shall be taken by the court, arbitrator or referee of whether, and to what amount, the instrument has been stamped or of any failure to comply with section 31B(1), 31C(1) or 77A(1) in respect of the acquisition, transaction or transfer to which that document relates, or to pay the duty with which the dutiable statement required to be lodged under section 31B, 31C or 77A in respect of that acquisition, transaction or transfer is chargeable, as the case requires.
- (2) If an instrument referred to in subsection (1) is one which may legally be stamped at the time of production, it may, on payment to an officer of the relevant court or to the arbitrator or referee concerned of the amount of unpaid duty and of any penalty tax payable in respect of the instrument, be received in evidence, saving all just exceptions on other grounds.

s. 30

- (2a) If a document referred to in subsection (1) relates to an acquisition, transaction or transfer in respect of which a dutiable statement is required to be lodged under section 31B, 31C or 77A and either the dutiable statement has not been lodged or the duty with which the dutiable statement is chargeable has not been paid, the document may, on production to an officer of the relevant court or to the arbitrator or referee concerned of the dutiable statement and payment to him of the amount of duty and of any penalty tax payable in respect of the dutiable statement, be received in evidence, saving all just exceptions on other grounds.
- (3) On receiving payment under subsection (2) or (2a) the officer of the court, arbitrator or referee concerned shall forthwith transmit to the Commissioner the instrument or dutiable statement concerned, together with the duty and any penalty tax paid in respect of the instrument or dutiable statement.
- (4) On receiving the instrument or dutiable statement the Commissioner is to make an assessment of the duty payable on it, issue an assessment notice, stamp the instrument or dutiable statement and return it to the officer of the court, arbitrator or referee with the assessment notice.
- (5) Section 23(3) of the *Taxation Administration Act 2003* does not apply to an assessment notice referred to in subsection (4).

[Section 29 amended by No. 9 of 1974 s. 10; No. 37 of 1979 s. 23; No. 98 of 1986 s. 8; No. 33 of 1987 s. 11; No. 57 of 1997 s. 113(1); No. 36 of 2001 s. 16; No. 2 of 2003 s. 16; No. 66 of 2003 s. 11.]

30. Secondary evidence

- (1) In proceedings in any court of civil judicature or before any arbitrator or referee, secondary evidence of —
- (a) an instrument may, if the instrument is one which may then legally be stamped, be admitted, saving all just exceptions on other grounds, notwithstanding that the

instrument is chargeable with duty and has not been stamped, if the duty and any penalty tax payable in respect of the instrument are paid to an officer of that court or to the arbitrator or referee, as the case requires; or

- (b) a document referred to in section 27(2) (other than a document relating to a disposition to which section 73DAA(1) applies) may be admitted, saving all just exceptions on other grounds, on production to an officer of that court or to the arbitrator or referee of a dutiable statement lodged under section 31B, 31C or 77A and payment to him of the amount of duty and of any penalty tax payable in respect of the dutiable statement.
- (2) On receiving payment under subsection (1) the officer of the court, arbitrator or referee is to deliver the instrument or dutiable statement to the Commissioner together with the duty and any penalty tax paid in respect of the instrument or dutiable statement.
- (3) On receiving the instrument or dutiable statement the Commissioner is to make an assessment of the duty payable on it, issue an assessment notice, stamp the instrument or dutiable statement and return it to the officer of the court, arbitrator or referee with the assessment notice.
- (4) Section 23(3) of the *Taxation Administration Act 2003* does not apply to an assessment notice referred to in subsection (3).

[Section 30 inserted by No. 98 of 1986 s. 9; amended by No. 33 of 1987 s. 12; No. 36 of 2001 s. 17; No. 2 of 2003 s. 17; No. 66 of 2003 s. 12.]

31. Stamped instruments as evidence

An instrument that has been stamped or is taken to have been stamped —

- (a) is admissible in evidence; and

s. 31B

- (b) except in proceedings under Part 4 of the *Taxation Administration Act 2003*, the endorsement of the instrument is conclusive evidence that the assessment is correct.

[Section 31 inserted by No. 12 of 2004 s. 24.]

[31AA-31AC, 31A. Repealed by No. 2 of 2003 s. 18.]

31B. Payment of duty on statements in absence of dutiable instrument

- (1) A person who acquires an interest by way of an acquisition to which this section applies shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of the acquisition.

Penalty: \$20 000.

- (2) A dutiable statement must be prepared in an approved form.

- (3) Subject to subsection (8), this section applies to any of the following —

- (a) the acquisition of beneficial ownership of an estate or interest in —

- (i) freehold land, whether or not registered under the *Transfer of Land Act 1893*;
- (ii) a Crown lease registered under the *Transfer of Land Act 1893*; or
- (iii) a mining tenement registered under the *Mining Act 1978*,

or any buildings on, or fixtures annexed to, or to buildings on, any such land, lease or tenement if the land, lease or tenement is situated in Western Australia;

- (b) the acquisition of beneficial ownership of chattels (as defined in section 70) and other property (as defined in section 70);

- (c) the acquisition of beneficial ownership of chattels (as defined in section 70) acquired as part of a series of acquisitions or transactions relating to chattels and to other property (as defined in section 70) at least one of which changes, or is or includes an agreement to change, the beneficial ownership of the other property;
 - (d) the acquisition of a business asset (as defined in section 74C) of a business in circumstances in which section 74C applies.
- (4) A merger of a corporation (“**Company A**”) with and into another corporation (“**Company B**”) in circumstances where neither subsection (5) nor subsection (6) applies is taken to effect an acquisition by Company B of the beneficial ownership of the property of Company A, and this section applies to that acquisition.
- (5) A merger of corporations (the “**merging corporations**”) in circumstances where another corporation (“**Company C**”) results as a consequence of the merger is taken to effect an acquisition by Company C of the beneficial ownership of the property of the merging corporations, and this section applies to that acquisition.
- (6) A merger of corporations (the “**merging corporations**”) with and into each other in circumstances where each of the merging corporations continues in existence is taken to effect an acquisition by the merging corporations, jointly, of the beneficial ownership of 50% (in value) of the property of the merging corporations, and this section applies to that acquisition.
- (7) Where —
 - (a) section 73F applies to a transaction relating to a business licence; and
 - (b) the business licence is of a kind prescribed for the purposes of this section,

s. 31B

the transaction is taken to be an acquisition to which this section applies.

- (8) This section does not apply to —
- (a) an acquisition effected by an instrument that is —
 - (i) chargeable with duty under item 4 or 6 of the Second Schedule; or
 - (ii) exempt from duty;
 - (b) an acquisition evidenced by an instrument if the instrument is chargeable with duty under item 4 of the Second Schedule;
 - (c) an acquisition evidenced by an instrument which, if the acquisition were effected by that instrument (irrespective of whether it is practicable or possible to do so), would be an acquisition effected by an instrument that is —
 - (i) exempt from duty; or
 - (ii) chargeable with duty under item 6 of the Second Schedule;
 - (d) an acquisition which, if it were effected by an instrument (irrespective of whether it is practicable or possible to do so), would be effected by an instrument that is —
 - (i) exempt from duty; or
 - (ii) chargeable with duty under item 6 of the Second Schedule;
 - (e) an acquisition relating to chattels and other property as referred to in subsection (3)(b) unless this section would have applied to the acquisition if it had only related to the other property; or
 - (f) a transaction relating to chattels as referred to in subsection (3)(c) unless at least one of the transactions in the series relates to other property (as defined in section 70) and is —

- (i) dutiable (as defined in section 70); or
 - (ii) a transaction to which subsection (1) applies.
- (9) A dutiable statement lodged under subsection (1) is taken to be an instrument of conveyance of property and is chargeable with duty accordingly.
- (10) Each person from whom another person has made an acquisition to which this section applies shall, within 2 months after the acquisition is made, notify the Commissioner in an approved form that the acquisition has been made.
Penalty: \$20 000.
- (11) Nothing in this section prevents the joint making of a notification under subsection (10) in respect of an acquisition by any 2 or more parties to the acquisition who are required to make the notification.
- (12) The requirement to lodge a dutiable statement under subsection (1) or give notification under subsection (10) ceases to apply if an instrument that evidences the acquisition and is chargeable with *ad valorem* duty is executed at any time after the acquisition was made, but nothing in this subsection affects the liability of a person for an offence against subsection (1) or (10) committed before the instrument was executed.
- (13) Where subsection (12) has effect, the instrument referred to in that subsection is to be regarded, for the purposes of section 17A, as having been first executed on the day on which the acquisition was made.
- (14) If an instrument is executed as referred to in subsection (12) after a dutiable statement has been lodged under subsection (1), subsection (9) ceases to apply to the dutiable statement unless duty has already been paid in respect of it.
- (15) If duty has already been paid as mentioned in subsection (14), the instrument is not chargeable with *ad valorem* duty but the

s. 31C

Commissioner, on being requested to do so, is to endorse on the instrument the duty paid.

[Section 31B inserted by No. 66 of 2003 s. 13.]

31C. Preparation of dutiable statement about voluntary transfers under the *Financial Sector (Transfers of Business) Act 1999* of the Commonwealth

- (1) If assets of a body (the “**transferring body**”) are transferred to another body (the “**receiving body**”) under Part 3 of the *Financial Sector (Transfers of Business) Act 1999* of the Commonwealth, the receiving body must, within 2 months after the transfer, lodge a statement with the Commissioner in respect of the transfer, but only if the assets are property of a kind that, if there was an instrument effecting or evidencing the transfer, duty would be chargeable on the instrument.

Penalty: \$20 000.

- (2) A dutiable statement must be prepared in an approved form.
- (2a) A dutiable statement lodged under subsection (1) is taken to be an instrument of transfer of the assets and is chargeable with duty accordingly.
- (2b) Duty is payable by the receiving body.
- (3) Section 31B does not apply to, or in relation to, the transfer.

[Section 31C inserted by No. 36 of 2001 s. 18; amended by No. 2 of 2003 s. 20; No. 66 of 2003 s. 14.]

[31D. Repealed by No. 2 of 2003 s. 21.]

[32. Repealed by No. 2 of 2003 s. 22.]

33. Valuation of land or other property

- (1) When determining the value of any land or other property for the purpose of a stamp Act —

- (a) the existence of any overriding power of revocation or reconveyance is to be disregarded;
 - (b) the value of an undivided share in the land or other property, whether held jointly or in common, is to be ascertained by multiplying the total value of the land or other property by the share expressed as a fraction; and
 - (c) when applying the ordinary principles of valuation —
 - (i) it is to be assumed that a hypothetical purchaser would, when negotiating the price of the land or other property, have knowledge of all existing information relating to the land or other property; and
 - (ii) no account is to be taken of any amount that a hypothetical purchaser would have to expend to reproduce, or otherwise acquire a permanent right of access to and use of, existing information relating to the land or other property.
- (2) When determining the unencumbered value of any land or other property for the purposes of a stamp Act —
- (a) an encumbrance on the land or other property is to be disregarded; and
 - (b) an interest, agreement or arrangement (not being an encumbrance) that —
 - (i) has the effect of reducing the value of the land or other property; and
 - (ii) was granted or made on or after 27 December 1996,is, subject to subsection (3), to be disregarded.
- (3) An interest, agreement or arrangement is not to be disregarded if, in the Commissioner's opinion —
- (a) it was not granted or made for the purpose of reducing the value of the land or other property; and

s. 33

- (b) it was not granted to or made in favour of —
- (i) the taxpayer;
 - (ii) in the case of an instrument chargeable under item 19 of the Second Schedule — the person on whom the land or other property is settled or agreed to be settled, or to whom the land or other property is given or agreed to be given, or for whom it is declared to be held in trust;
 - (iii) in the case of a relevant acquisition to which Division 3 of Part IIIBA applies — the person who acquired the majority interest or further interest;
 - (iiia) in the case of a relevant acquisition to which Division 3b of Part IIIBA applies — the person who acquired the controlling interest or additional interest; or
 - (iv) a person who is associated with, or related to (within the meaning of section 76), a person referred to in subparagraph (i), (ii), (iii) or (iiia).
- (4) In this section —
- “land”** includes an estate or interest in —
- (a) freehold land, whether or not registered under the *Transfer of Land Act 1893*;
 - (b) a Crown lease registered under the *Transfer of Land Act 1893*; or
 - (c) a mining tenement registered under the *Mining Act 1978*,
- or any buildings on, or fixtures annexed to, or to buildings on, any such land, Crown lease or mining tenement.

[Section 33 inserted by No. 2 of 2003 s. 22; amended by No. 11 of 2004 s. 10; 36 of 2005 s. 4.]

[33A.] *Repealed by No. 2 of 2003 s. 22.]*

34. Duplicates and counterparts

A duplicate or counterpart of a stamped instrument is chargeable with duty under item 9 of the Second Schedule.

[Section 34 inserted by No. 2 of 2003 s. 22.]

[34A-34C. Repealed by No. 2 of 2003 s. 22.]

35. Unlodged transfers — independent person's obligations

(1) This section applies in relation to a transfer of property if the instrument of transfer has not been lodged before the end of the period within which it is required under a stamp Act to be lodged.

(2) Where a person who is not a party to the transfer —

- (a) has custody or control of the instrument of transfer; or
- (b) in dealing with the property, acts on the authority of, in reliance on or in pursuance of the instrument of transfer,

the person must lodge the instrument, or notify the Commissioner about the instrument, as soon as practicable after the person becomes aware, or ought reasonably to have become aware, that the instrument has not been lodged before the end of the period within which it is required to be lodged under a stamp Act.

Penalty: \$20 000.

(3) A notification under subsection (2) must set out, to the extent that the information can be ascertained from the transfer or is otherwise known to the person —

- (a) the nature of the transfer;
- (b) the names of the parties to the transfer;
- (c) the date on which the transfer was first executed;

s. 36

- (d) a summary of the principal terms of the transfer (such as the property to which it relates and the consideration paid or payable); and
- (e) any prescribed information.

(4) In this section —

“instrument of transfer” means an instrument of transfer, or a dutiable statement, on which duty is payable under item 4 of the Second Schedule;

“transfer” includes conveyance.

[Section 35 inserted by No. 2 of 2003 s. 22; amended by No. 66 of 2003 s. 107(3).]

36. Mode of calculating *ad valorem* duty in certain cases

Where an instrument is chargeable with *ad valorem* duty in respect of —

- (a) any money in any currency other than the currency of Australia; or
- (b) any marketable security or right in respect of shares,

the duty shall be calculated on the value of the money in the currency of Australia according to the current rate of exchange in Western Australia on the date of the instrument, or of the marketable security or right in respect of shares according to the average price thereof on that date.

[Section 36 amended by No. 93 of 1966 s. 5; No. 37 of 1979 s. 27; No. 2 of 2003 s. 23.]

[37. Repealed by No. 2 of 2003 s. 24.]

38. Instruments held in escrow

For the purposes of a stamp Act an escrow is taken to be an instrument duly executed and delivered and is liable to duty accordingly.

[Section 38 inserted by No. 2 of 2003 s. 24.]

39. Determining whether securities are situated in Western Australia

- (1) A marketable security or right in respect of shares of a WA company is, for the purposes of a stamp Act, taken to be situated in Western Australia, irrespective of where the register on which it is registered by the company is situated and despite section 1070A(4) of the Corporations Act or any other law.
- (2) A marketable security or right in respect of shares of a foreign company is, for the purposes of a stamp Act, taken to be situated in Western Australia if it is registered on a register kept by the company in Western Australia.
- (3) A unit in a unit trust scheme is, for the purposes of a stamp Act, taken to be situated in Western Australia if —
 - (a) the scheme's principal register is kept in Western Australia; or
 - (b) where the scheme's principal register is not kept in Western Australia, the scheme's manager, or if the scheme does not have a manager, the trustee, is —
 - (i) an individual, resident in Western Australia;
 - (ii) a WA company; or
 - (iii) a foreign company with a registered office under the Corporations Act in Western Australia.
- (4) A marketable security or right in respect of shares of a company that is taken under the Corporations Act to be registered in another State or Territory is, for the purposes of a stamp Act, taken not to be situated in Western Australia even if it is registered on a register in Western Australia.
- (5) Subsection (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to section 1070A(4) of that Act.

s. 40

[Section 39 inserted by No. 66 of 2003 s. 15.]

[39A. Repealed by No. 2 of 2003 s. 24.]

40. Valuing a marketable security or right in respect of shares

- (1) The value of a marketable security or right in respect of shares is to be determined —
 - (a) as if the constitution or governing rules of the issuer satisfied any requirements of the Australian Stock Exchange Limited that must be satisfied before the security or right could be quoted on the Australian Stock Exchange Limited; and
 - (b) disregarding any provision in the constitution or governing rules of the issuer providing for the valuation of the security or right.
- (2) Despite subsection (1), the Commissioner may determine the value of a marketable security or right in respect of shares to be the amount the Commissioner considers would be received by the holder of the security or right if the issuer were to be voluntarily wound up on the day of the transfer.

[Section 40 inserted by No. 66 of 2003 s. 15.]

[41-44. Repealed by No. 37 of 1979 s. 30.]

—[Headings before section 45 deleted by No. 37 of 1979 s. 31.]

[45. Repealed by No. 37 of 1979 s. 32.]

[46-48. Repealed by No. 72 of 1965 s. 6(b)-(d).]

[Part IIIA (s. 49-50D) repealed by No. 66 of 2003 s. 16(1).]

[50E. Repealed by No. 42 of 1993 s. 4.]

[51. Repealed by No. 37 of 1979 s. 37.]

[52. —Repealed by No. 2 of 2003 s. 30.]

[53-60. Repealed by No. 37 of 1979 s. 39.]

[61 and heading. Repealed by No. 96 of 1976 s. 4.]

[62 and heading. Repealed by No. 96 of 1976 s. 5.]

Part IIIB — Conveyances and transfers

[Part heading inserted by No. 37 of 1979 s. 40.]

~~—~~[Heading deleted by No. 2 of 2003 s. 31.]

63. Interpretation in Part IIIB

(1) In this Part —

“conveyance on sale” includes —

- (a) every instrument and decree or order of any court or of the Commissioner of Titles, whereby any property or any estate or interest in any property on the sale thereof is transferred to or vested in the purchaser or any other person on his behalf or by his direction;
- (b) every transfer or assignment of a lease of any lands; and
- (c) every decree or order of any court or of the Commissioner of Titles for, or having the effect of an order for, foreclosure;

“custodian trustee” has the same meaning as it has in section 15 of the *Trustees Act 1962*;

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

“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;
- (d) the variation, abrogation or alteration of a right pertaining to the unit with respect to the capital of the unit trust scheme; and
- (e) any means by which a unit is disposed of or the rights of its holder are diminished;

“provisional public trust” means a unit trust scheme that is registered under section 63ADA(2);

“start up period” means —

- (a) in relation to a unit trust scheme except a provisional public trust to which paragraph (b) applies — the period of one year beginning on the day on which the first units under the scheme are issued; or
- (b) in relation to a provisional public trust for which the prospectus or information memorandum has been, or is to be, lodged with the Australian Securities and Investments Commission — the period of one year beginning on —
 - (i) the day on which the first units under the scheme are issued; or
 - (ii) the day of lodgement,whichever period is the later to expire;

“transfer”, in relation to a unit, means a conveyance, transfer, or instrument chargeable as a conveyance;

“trustee” means, unless the contrary intention appears, a trustee who is not a discretionary trustee or a unit trustee;

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

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

“unit trust scheme” means, unless the contrary intention appears, a private unit trust scheme within the meaning in subsection (2).

- (1aa) For the purposes of sections 63AA(2a)(a) and 63AB(2)(g), the Commissioner may treat 2 or more parcels of land as a single parcel of land if the Commissioner is satisfied that it is appropriate to do so having regard to —
- (a) the ownership of the parcels of land;
 - (b) the proximity of the parcels of land;

s. 63

- (c) the use of the parcels of land; and
 - (d) any other matter the Commissioner considers to be relevant.
- (2) A unit trust scheme is a private unit trust scheme if at the time of any conveyance, transfer or other disposition of a unit —
- (a) the unit trust scheme is not —
 - (i) one to which Division 11 (sections 1451 to 1465) of Part 11.2 of the Corporations Law applied by reason of section 1452 of that Law; or
 - (ii) a managed investment scheme registered under section 601EB of the Corporations Act,
or is a scheme referred to in subparagraph (i) or (ii) but no units have been issued to the public or an insufficient number of persons is beneficially entitled to units under the scheme; and
 - (b) the unit trust scheme —
 - (i) is not an approved deposit fund or a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
 - (ii) is an approved deposit fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth but no units have been issued to the public or an insufficient number of persons is beneficially entitled to units under the scheme.
- (3) An insufficient number of persons is beneficially entitled to units under a unit trust scheme if —
- (a) fewer than 50 persons are so entitled; or
 - (b) 20 or fewer persons are so entitled to 75% or more of the total issued units under the scheme.
- (4) For the purposes of subsection (2)(a) and (b)(ii) —

- (a) each partner in a partnership that holds units under a unit trust scheme is to be treated as beneficially entitled to the same proportion of the units as the proportion of the partnership assets to which the partner would be entitled on the dissolution of the partnership and after all the debts and liabilities of the partnership had been discharged; and
 - (b) a person is to be treated as beneficially entitled to a unit held by the person or by a related person.
- (5) For the purposes of subsection (4), the following persons are related —
- (a) individuals who are spouses or de facto partners of each other or between whom the relationship is that of parent and child;
 - (b) related corporations;
 - (c) a trustee and a trustee of another trust if —
 - (i) there is any beneficiary common to the trusts, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust; and
 - (ii) the beneficiary's share or interest in each trust constitutes more than 50% of the trust property or of the issued units in the unit trust scheme;
 - (d) an individual and a corporation if the individual is a majority shareholder, director or secretary of the corporation or a related corporation;
 - (e) an individual and a trustee if —
 - (i) the individual is a beneficiary under the trust, whether the individual has a vested share or is contingently entitled or may benefit from a discretionary trust; and

- (ii) the individual's share or interest in the trust constitutes more than 50% of the trust property or of the issued units in the unit trust scheme;
- (f) a corporation and a trustee if —
 - (i) the corporation or a majority shareholder, director or secretary of the corporation is a beneficiary of the trust; or
 - (ii) a related corporation to the corporation is a beneficiary of the trust,
and that beneficiary's share or interest in the trust constitutes more than 50% of the trust property or of the issued units in the unit trust scheme.
- (6) For the purposes of subsection (5) —
 - (a) an illegitimate person is to be treated as the legitimate child of that person's parents;
 - (b) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by a written law;
 - (c) a **“majority shareholder”**, in relation to a corporation, is a person who would have a substantial holding in the corporation under the definition of “substantial holding” in section 9 of the Corporations Act even if the reference in that definition to 5% were a reference to 50%; and
 - (d) a **“trustee”** includes a discretionary trustee and a unit trustee.
- (7) For the purposes of subsection (5), the share or interest of a person in a trust is to be determined as the greatest share or interest that the person could derive at any time from the trust whether by the fulfilment of any condition, the outcome of any contingency or the exercise of any power or discretion or otherwise, and in particular a person that may benefit from a discretionary trust is to be deemed to be entitled to —

- (a) the property subject to the discretionary trust, unless the Commissioner determines otherwise; or
- (b) such part of that property as the Commissioner determines.

[Section 63 inserted by No. 37 of 1979 s. 41; amended by No. 112 of 1982 s. 5; No. 33 of 1987 s. 15; No. 39 of 1994 s. 21; No. 48 of 1996 s. 44; No. 24 of 1999 s. 4; No. 3 of 2001 s. 18; No. 10 of 2001 s. 167; No. 36 of 2001 s. 26; No. 2 of 2003 s. 32; No. 66 of 2003 s. 17.]

63AA. Registered unit trust schemes

- (1) In this section —
 - “**land**” has the same meaning as in section 76;
 - “**scheme land**” means land held by a unit trustee in the unit trustee’s capacity as trustee of a unit trust scheme.
- (1a) A unit trustee may apply to the Commissioner in an approved form for registration of a unit trust scheme.
- (1b) An application may be made whether or not the unit trust scheme has previously been registered under subsection (2).
- (1c) An application for registration of a unit trust scheme as a pooled investment trust is to be accompanied by a statement by the unit trustee in an approved form of the unencumbered value of the interests in scheme land referred to in section 63AB(2)(f) and, if applicable, (g)(i).
- (2) The Commissioner may register the unit trust scheme as a pooled investment trust or an equity trust with effect from the date of the application if —
 - (a) the Commissioner is satisfied that the unit trust scheme is eligible for registration under section 63AB(2) as a pooled investment trust or section 63AB(3) as an equity trust;

s. 63AA

- (ab) in the case of an application for registration of a unit trust scheme as a pooled investment trust — the unit trust scheme is not to be treated as a sub-trust under subsection (2a); and
 - (b) the Commissioner is satisfied that registration is not being used and is not likely to be used as part of a scheme or arrangement with the collateral purpose of avoiding or reducing the duty that otherwise would be or might become payable.
- (2a) For the purposes of subsection (2)(ab) and sections 63AC(2)(ab) and 63AD(8), a unit trust scheme is to be treated as a sub-trust if —
- (a) the scheme land comprises only one parcel of land;
 - (b) a unit holder in the scheme participated directly or indirectly (otherwise than by means of the unit holder's subscription under the scheme) in the unit trustee's acquisition of the scheme land;
 - (c) a unit holder in the scheme states in a financial report, or other document, provided to its members that the unit holder has an interest in the scheme land;
 - (d) a unit holder in the scheme beneficially owns an interest in any land otherwise than as a unit holder in a unit trust scheme; or
 - (e) a unit holder in the scheme makes an offer to the public for subscriptions principally by reference to the scheme land and not to units in a unit trust scheme,

unless the Commissioner is satisfied that in the circumstances of a particular case it is not reasonable to treat the scheme as a sub-trust.

- (3) For the purpose of being satisfied as to a matter referred to in subsection (2)(b), the Commissioner may take into account any matter that the Commissioner considers to be relevant.

- (3a) Subject to this Part, registration of a unit trust scheme under subsection (2) has effect for a period of 3 years.
- (4) The Commissioner shall advise the unit trustee whether or not he has registered the unit trust scheme as a pooled investment trust or an equity trust.
- (4a) Subject to section 17 of the *Taxation Administration Act 2003*, if the Commissioner registers a unit trust scheme as a pooled investment trust or an equity trust the Commissioner shall make any reassessment necessary to give effect to that registration.
- (5) If the Commissioner decides not to register a unit trust scheme as a pooled investment trust or an equity trust he must give the unit trustee reasons for his decision.
- (6) If the Commissioner decides not to register a unit trust scheme as a pooled investment trust or an equity trust, the unit trustee may challenge the validity or correctness of that decision in accordance with Part 4 of the *Taxation Administration Act 2003* as if the unit trustee were a taxpayer and the decision were a decision affecting the trustee's liability to pay duty.

[Section 63AA inserted by No. 36 of 2001 s. 27; amended by No. 2 of 2003 s. 33; No. 66 of 2003 s. 18.]

63AB. Criteria for registration of a unit trust scheme

- (1) In this section —
“**land**” has the same definition as in section 76.
- (1a) For the purposes of this section, a person and another person are related if they are related as provided in section 63(5).
- (2) For the purposes of section 63AA(2), a unit trust scheme is eligible for registration as a pooled investment trust if it meets all of the following criteria —
- (a) the scheme is established and managed by a funds manager solely or principally for the investment and management of subscriptions by unit holders of the kind

s. 63AB

described in paragraph (c) and is not established or managed for a particular person;

- (b) at least 2 persons who are not related are unit holders in the scheme;
- (c) each unit holder in the scheme —
 - (i) holds the unit in the unit holder's capacity as a trustee of a complying superannuation fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;
 - (ii) holds the unit in the unit holder's capacity as a trustee of a complying approved deposit fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;
 - (iii) holds the unit in the unit holder's capacity as a trustee or manager of a fund that is part of a public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;
 - (iv) is a life company that holds the unit solely for the purpose of an investment of its statutory funds maintained by it under the *Life Insurance Act 1995* of the Commonwealth;
 - (v) holds the unit in the unit holder's capacity as a trustee of a unit trust that is not a unit trust scheme;
 - (vi) holds the unit in the unit holder's capacity as a trustee of a master trust, being a trust by means of which the public may invest in managed funds;
 - (vii) holds the unit in the unit holder's capacity as a trustee of a unit trust scheme registered under section 63AA(2) as a pooled investment trust;

- (viii) holds the unit in the unit holder's capacity as a trustee of a unit trust scheme each unit holder in which is of a kind described in another subparagraph of this paragraph;
- (ix) holds the unit in the unit holder's capacity as a trustee or manager of a fund or trust that the Commissioner is satisfied corresponds to a fund or trust referred to in subparagraph (i), (ii), (iii), (v) or (vi) under the law of an external Territory or a country other than Australia;
- (x) is a body corporate that the Commissioner is satisfied —
 - (I) corresponds to a company referred to in subparagraph (iv) under the law of an external Territory or a country other than Australia; and
 - (II) holds the unit for a purpose that corresponds to the purpose referred to in that subparagraph;
- (xi) holds not more than 5% of the total issued units under the scheme; or
- (xii) is a person who, the Commissioner is satisfied, is, or is in a class of persons that is, prescribed for the purposes of this paragraph;
- (d) if paragraph (c)(xi) applies to 2 or more unit holders in the scheme to which no other subparagraph of paragraph (c) applies, those unit holders do not together hold more than 10% of the total issued units under the scheme;
- (e) at least 2 unit holders in the scheme who are not related each have a subscription under the scheme of not less than \$3 000 000;
- (f) the unit trustee, in the unit trustee's capacity as trustee of the scheme, holds interests in land (whether or not

s. 63AB

situated in Western Australia) that together have an unencumbered value of not less than \$50 000 000;

- (g) either —
 - (i) the interests in land referred to in paragraph (f) include interests in at least 3 parcels of land, and at least 2 of those interests each have an unencumbered value of not less than \$10 000 000; or
 - (ii) at least 6 unit holders who are not related each have a subscription under the scheme of not less than \$3 000 000;
- (h) the scheme provides for offers of initial subscriptions only to persons to whom an offer of securities does not need disclosure under section 708(8) or (11) of the Corporations Act.

(2a) In subsection (2)(a) —

“funds manager” means —

- (a) a body corporate that, as its principal business, provides funds management and investment services to persons of the kind described in subsection (2)(c) if —
 - (i) that business is not conducted to provide those services only to particular persons; and
 - (ii) the body corporate manages funds invested with it of not less than \$500 000 000;
- or
- (b) a body corporate that is a member of a group of related corporations that, as the group’s principal business, provides funds management and investment services to persons of the kind described in subsection (2)(c) if —
 - (i) that business is not conducted to provide those services only to particular persons; and

- (ii) the body corporate or the group manages funds invested with it of not less than \$500 000 000.
- (2b) For the purposes of subsection (2)(c), a unit held by a unit holder in the unit holder's capacity as a custodian trustee is taken to be held by each of the persons on whose behalf the custodian trustee holds the unit.
- (3) For the purposes of section 63AA(2), a unit trust scheme is eligible for registration as an equity trust if it meets all of the following criteria —
 - (a) the unit trustee, as trustee of the scheme, does not hold, and is not empowered or able to hold, any thing other than —
 - (i) shares, or an option to acquire shares, in a company or corporation that is not a company to which section 76AI or 76ATB or a corporation to which section 76AP or 76ATI applies;
 - (ii) units in a unit trust that are marketable securities;
 - (iii) property that the Commissioner is satisfied is necessary for the administration of the scheme but which is not and cannot be used for the purpose of investment;
 - (iv) cash or money in an account at call;
 - (v) negotiable instruments, and money on deposit with any person;
 - (vi) any thing prescribed for the purposes of this paragraph;
 - (b) not less than 5 persons are holders of units under the scheme;
 - (c) no person beneficially entitled to units under the scheme, other than the Government of the

s. 63AC

Commonwealth, a State or a Territory or a corporation of which such a Government is a majority shareholder, is entitled to more than 40% of the total issued units under the scheme.

- (4) For the purpose of determining whether the criteria referred to in subsection (3)(c) have been satisfied, one person shall be treated as being beneficially entitled to all units held by the person and all units held by another person if those persons are related as provided in section 63(5).

[Section 63AB inserted by No. 36 of 2001 s. 27; amended by No. 2 of 2003 s. 34; No. 28 of 2003 s. 188; No. 66 of 2003 s. 19; No. 11 of 2004 s. 11; No. 12 of 2004 s. 25.]

63AC. Interim registration

- (1) A unit trustee may apply to the Commissioner in an approved form for interim registration of a unit trust scheme if the application is made before the end of the start up period.
- (2) The Commissioner may grant the unit trust scheme interim registration as a pooled investment trust or an equity trust, as the case may be, for the start up period if —
- (a) the Commissioner is satisfied that, subject to subsection (2a), the scheme satisfies the criteria for registration set out in section 63AB(2)(a), (c) (other than subparagraph (xi)) and (h) or (3)(a), as the case requires;
 - (ab) in the case of an application for interim registration of a unit trust scheme as a pooled investment trust — the scheme is not to be treated as a sub-trust under section 63AA(2a); and
 - (b) the trustee gives the Commissioner an undertaking that units in the scheme will be issued so that at the end of the start up period the scheme will also comply with the criteria referred to in section 63AB(2)(b), (c), (d), (e), (f) and (g) or (3)(b) and (c), as the case requires, and the

Commissioner is satisfied that those criteria will be fulfilled by the end of the start up period.

(2a) If —

- (a) at the beginning of the start up period the body corporate that established and manages a unit trust scheme is not a funds manager (as defined in section 63AB(2a)); and
- (b) the Commissioner is satisfied that —
 - (i) the scheme otherwise satisfies the criteria for registration referred to in subsection (2)(a); and
 - (ii) the body corporate will be a funds manager by the end of the start up period,

the Commissioner may grant the scheme interim registration as a pooled investment trust under subsection (2).

- (3) The Commissioner shall advise the unit trustee whether or not he has granted the unit trust scheme interim registration as a pooled investment trust or an equity trust.
- (3a) Subject to section 17 of the *Taxation Administration Act 2003*, if the Commissioner grants a unit trust scheme interim registration as a pooled investment trust or an equity trust, then the Commissioner shall make any reassessment necessary to give effect to that registration.
- (4) If the Commissioner decides not to grant the unit trust scheme interim registration as a pooled investment trust or an equity trust he must give the unit trustee reasons for his decision.
- (5) If the Commissioner decides not to grant the unit trust scheme interim registration as a pooled investment trust or an equity trust, the unit trustee may challenge the validity or correctness of that decision in accordance with Part 4 of the *Taxation Administration Act 2003* as if the unit trustee were a taxpayer and the decision were a decision affecting the trustee's liability to pay duty.

s. 63AD

[Section 63AC inserted by No. 36 of 2001 s. 27; amended by No. 2 of 2003 s. 35; No. 66 of 2003 s. 20.]

63AD. Cancellation of registration or interim registration

- (1) For the purposes of this section and section 63AE, a disqualifying event occurs —
 - (a) in the case of a unit trust scheme that has been registered under section 63AA(2) — if the scheme ceases to comply with a criterion that is applicable to it referred to in section 63AB(2) or (3);
 - (b) in the case of a unit trust scheme that has been granted interim registration — if, during the start up period, the scheme ceases to comply with a criterion that is applicable to it referred to in section 63AB(2)(a), (c) (other than subparagraph (xi)) or (h), or (3)(a);
 - (c) in the case of a unit trust scheme that has been granted interim registration — if, on the last day of the start up period, the scheme does not comply with a criterion that is applicable to it referred to in section 63AB(2)(b), (c), (d), (e), (f) or (g), or (3)(b) or (c); or
 - (d) in the case of a unit trust scheme that was established and is managed by a body corporate and that has been granted interim registration as a pooled investment trust by virtue of section 63AC(2a) — if, on the last day of the start up period, the body corporate is not a funds manager (as defined in section 63AB(2a)).
- (2) If a disqualifying event occurs, the unit trustee shall, within 14 days after the day on which the disqualifying event occurs, give the Commissioner notice about the disqualifying event, unless it is taken to have occurred under subsection (4) or (6).
- (3) When the Commissioner receives a notice under subsection (2) —
 - (a) in the case of a unit trust scheme registered under section 63AA(2), the registration is cancelled and the

- cancellation is taken to have had effect on and from immediately before the occurrence of the event; and
- (b) in the case of a unit trust scheme granted interim registration under section 63AC(2), the interim registration is cancelled and the cancellation is taken to have had effect on and from immediately before the start up period.
- (4) If the Commissioner has not been notified of the occurrence of a disqualifying event but he is satisfied that a disqualifying event has occurred, a disqualifying event is taken to have occurred and the Commissioner shall —
- (a) in the case of a unit trust scheme registered under section 63AA(2), cancel the registration;
 - (b) in the case of a unit trust scheme granted interim registration under section 63AC(2), cancel the interim registration; and
 - (c) notify the unit trustee of —
 - (i) the cancellation;
 - (ii) from when the cancellation takes effect;
 - (iii) the reasons for the cancellation; and
 - (iv) when the Commissioner is satisfied that the disqualifying event occurred.
- (5) Cancellation under subsection (4) is taken to have had effect —
- (a) in the case of a unit trust scheme registered under section 63AA(2), on and from immediately before the occurrence of the disqualifying event; or
 - (b) in the case of a unit trust scheme granted interim registration under section 63AC(2), on and from immediately before the start up period.
- (6) If the Commissioner is satisfied that a unit trust scheme registered under section 63AA(2) or granted interim registration under section 63AC(2) is being used as part of a scheme or

s. 63ADA

arrangement with the collateral purpose of avoiding or reducing the duty that otherwise would be or might become payable, a disqualifying event is taken to have occurred and the Commissioner shall —

- (a) cancel the registration or interim registration; and
 - (b) notify the unit trustee of the matters referred to in subsection (4)(c).
- (7) For the purpose of being satisfied as to a matter referred to in subsection (6), the Commissioner may take into account any matter that the Commissioner considers to be relevant.
- (8) If a unit trust scheme registered under section 63AA(2) or granted interim registration under section 63AC(2) is to be treated as a sub-trust under section 63AA(2a), a disqualifying event is taken to have occurred and the Commissioner shall —
- (a) cancel the registration or interim registration; and
 - (b) notify the unit trustee of the matters referred to in subsection (4)(c).

[Section 63AD inserted by No. 36 of 2001 s. 27; amended by No. 2 of 2003 s. 36; No. 66 of 2003 s. 21.]

63ADA. Registration of private unit trust scheme as provisional public trust

- (1) A unit trustee may apply to the Commissioner in an approved form for registration of a unit trust scheme as a provisional public trust if the application is made before the end of the start up period.
- (2) The Commissioner may register the unit trust scheme as a provisional public trust for the start up period if satisfied that —
 - (a) it is intended that, by the end of the start up period, the unit trust scheme will no longer be a private unit trust scheme within the meaning in section 63(2); and

- (b) registration is not being used and is not likely to be used as part of a scheme or arrangement with the collateral purpose of avoiding or reducing the duty that otherwise would be or might become payable on the conveyance or transfer of trust property.
- (3) For the purpose of being satisfied as to a matter referred to in subsection (2)(b), the Commissioner may take into account any matter that the Commissioner considers to be relevant.
- (4) The Commissioner —
 - (a) must advise the unit trustee as to whether or not the Commissioner has registered the unit trust scheme as a provisional public trust; and
 - (b) if the Commissioner decides not to register a unit trust scheme as a provisional public trust, must give the unit trustee reasons for that decision.
- (5) Subject to section 17 of the *Taxation Administration Act 2003*, if the Commissioner registers a unit trust scheme as a provisional public trust, then the Commissioner must make any reassessment necessary to give effect to that registration.
- (6) If the Commissioner decides not to register a unit trust scheme as a provisional public trust, the unit trustee may challenge the validity or correctness of that decision in accordance with Part 4 of the *Taxation Administration Act 2003* as if the unit trustee were a taxpayer and the decision were a decision affecting the trustee's liability to pay duty.

[Section 63ADA inserted by No. 66 of 2003 s. 22.]

63ADB. Cancellation of registration of provisional public trust

- (1) For the purposes of this section and section 63AE a disqualifying event occurs in relation to a unit trust scheme that has been registered as a provisional public trust —

s. 63ADB

- (a) if, on the last day of the start up period, the scheme is a private unit trust scheme within the meaning in section 63(2); or
 - (b) without limiting paragraph (a), if —
 - (i) the start up period begins on the day on which the prospectus or information memorandum for the scheme is lodged with the Australian Securities and Investments Commission; and
 - (ii) during the start up period, there is a disposition of a unit that was held in the scheme on the first day of that period.
- (2) A disposition referred to in subsection (1)(b)(ii) is to be disregarded if the Commissioner is satisfied that in the circumstances of a particular case it is reasonable to do so.
- (3) If a disqualifying event occurs —
- (a) the Commissioner must cancel the registration of the unit trust scheme as a provisional public trust;
 - (b) the cancellation is taken to have had effect on and from immediately before the start up period; and
 - (c) the unit trustee must, within 14 days after the day on which the disqualifying event occurs, give the Commissioner notice about the disqualifying event, unless it is taken to have occurred under subsection (4) or (5).
- (4) If the Commissioner has not been notified of the occurrence of a disqualifying event but is satisfied that a disqualifying event has occurred —
- (a) a disqualifying event is taken to have occurred and subsection (3)(a) and (b) apply; and
 - (b) the Commissioner must notify the unit trustee of —
 - (i) the cancellation under subsection (3)(a) of the registration of the unit trust scheme as a provisional public trust;

- (ii) the reasons for the cancellation; and
 - (iii) when the Commissioner is satisfied that the disqualifying event occurred.
- (5) If the Commissioner is satisfied that a provisional public trust is being used as part of a scheme or arrangement with the collateral purpose of avoiding or reducing the duty that otherwise would be or might become payable on the conveyance or transfer of trust property —
 - (a) a disqualifying event is taken to have occurred and subsection (3)(a) and (b) apply; and
 - (b) the Commissioner must notify the unit trustee of the matters referred to in subsection (4)(b).
- (6) For the purposes of subsection (5), if a conveyance or transfer of the trust property of a provisional public trust —
 - (a) is taken to be made for the purposes of section 73D(4); and
 - (b) results solely from the allotment or issue of units in the provisional public trust during the start up period,the conveyance or transfer is to be disregarded in relation to a unit held in the provisional public trust on the first day of the start up period.
- (7) For the purpose of being satisfied as to a matter referred to in subsection (5), the Commissioner may take into account any matter that the Commissioner considers to be relevant.

[Section 63ADB inserted by No. 66 of 2003 s. 22.]

63AE. Dutiable statement about disqualifying event and subsequent transfers or dispositions

- (1) If a disqualifying event occurs in relation to a unit trust scheme, the unit trustee of the scheme shall within 2 months after the day on which the disqualifying event occurred lodge a statement with the Commissioner in relation to the event.

s. 63AE

Penalty: \$20 000.

- (2) The dutiable statement must —
- (a) be prepared in an approved form;
 - (b) in relation to the occurrence of a disqualifying event, contain details of the disqualifying event;
 - (c) in the case of the cancellation of the registration under section 63AA(2) of a unit trust scheme, contain details of transfers and dispositions in relation to the scheme that occurred in the period commencing immediately before the occurrence of the disqualifying event and ending on the day on which the Commissioner is given notice of the event or the day on which the Commissioner is satisfied that the event occurred and which would have been chargeable with duty under section 73D had the scheme not been registered;
 - (d) in the case of the cancellation of the interim registration of a unit trust scheme, contain details of transfers and dispositions in relation to the scheme that occurred in the period commencing immediately before the start up period and ending on the day on which the Commissioner is given notice of the event or the day on which the Commissioner is satisfied that the event occurred and which would have been chargeable with duty under section 73D had the scheme not been granted interim registration; and
 - (e) in the case of the cancellation of the registration of a unit trust scheme as a provisional public trust, contain details of transfers and dispositions in relation to the scheme that occurred in the period commencing immediately before the start up period and ending on the day on which the Commissioner is given notice of the event or the day on which the Commissioner is satisfied that the event occurred and which would have been chargeable with duty under section 73D had the scheme not been registered as a provisional public trust.

[Section 63AE inserted by No. 36 of 2001 s. 27; amended by No. 2 of 2003 s. 37; No. 66 of 2003 s. 23.]

63AF. Duty chargeable on the dutiable statement

- (1) A dutiable statement lodged under section 63AE is taken to be an instrument effecting or evidencing the transfers and dispositions details of which are included in the dutiable statement under section 63AE(2)(c), (d) or (e) and is chargeable with duty accordingly.

[(2) repealed]

- (3) Duty is payable by the unit trustee.

[Section 63AF inserted by No. 37 of 2001 s. 15; amended by No. 2 of 2003 s. 38; No. 66 of 2003⁴ s. 24.]

63AG. When unit trust scheme becomes private unit trust scheme

- (1) In this section and sections 63AH, 63AI and 63AJ —

“aggregated dispositions” means dispositions that —

- (a) include a disposition referred to in subsection (3)(a) (the **“transitional disposition”**); and
- (b) under this section together form substantially one disposition;

“private unit trust scheme” has the meaning given in section 63(2).

- (2) Subject to subsection (3), if, as a result of the disposition of a unit, a unit trust scheme becomes a private unit trust scheme, the unit trust scheme is taken to have become a private unit trust scheme immediately before that disposition.
- (3) If —
- (a) as a result of the disposition of a unit, a unit trust scheme becomes a private unit trust scheme; and

s. 63AG

- (b) that disposition is one of 2 or more dispositions of units in the unit trust scheme that together form substantially one disposition,

the unit trust scheme is taken to have become a private unit trust scheme immediately before the first of those dispositions.

- (4) For the purposes of subsection (3), dispositions of units in a unit trust scheme are together taken to form substantially one disposition if those dispositions are made in response to —
 - (a) one offer made or one arrangement entered into; or
 - (b) offers made or arrangements entered into within 12 months of each other by a person or by a person and a related person.

- (5) For the purposes of subsection (4), a person and another person are related if they are related as provided in section 63(5).

- (6) If —
 - (a) the aggregated dispositions are made in response to 2 or more offers made or arrangements entered into; and
 - (b) the Commissioner is satisfied that a disposition that would otherwise form part of the aggregated dispositions is not made for a common purpose,

the Commissioner is to treat that disposition as not forming part of the aggregated dispositions.

- (7) Subject to subsection (10), duty is chargeable under section 73D in respect of the dispositions that comprise —
 - (a) the transitional disposition; and
 - (b) any of the aggregated dispositions made before the transitional disposition is made,

as if those dispositions together formed one disposition made at the time the transitional disposition is made.

- (8) If any disposition forming part of the aggregated dispositions is made after the transitional disposition is made, duty is chargeable under section 73D in respect of all the aggregated dispositions as if they together formed one disposition made at the time the last of the aggregated dispositions is made.
- (9) The amount of duty payable under subsection (8) is to be reduced by the amount of any duty paid under subsection (7).
- (10) A unit trustee liable to pay duty under both subsections (7) and (8) may elect to pay duty solely under subsection (8) by lodging with the Commissioner a notice, in an approved form, within 2 months after the transitional disposition is made.
- (11) For the purposes of this section, if the disposition of a unit is not made within the period of 3 months after the unit holder ceases to be the beneficial owner of the unit, the disposition of the unit is taken to have been made on the expiry of that period, and the Commissioner may create a memorandum of the disposition for the purposes of section 20 of the *Taxation Administration Act 2003*.

[Section 63AG inserted by No. 66 of 2003 s. 25(1)⁴.]

63AH. Liability for duty on aggregated dispositions

- (1) Despite section 73D(7), the unit trustee is liable to pay the duty that is chargeable under section 73D because of section 63AG in respect of the aggregated dispositions.
- (2) If —
- (a) a person other than the unit trustee has paid duty under section 73D in respect of a disposition that forms part of the aggregated dispositions; and
 - (b) the unit trustee has paid the duty referred to in subsection (1) in respect of those dispositions,

the person referred to in paragraph (a) is entitled to a refund of the amount of duty paid by that person.

s. 63AI

- (3) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.

[Section 63AH inserted by No. 66 of 2003 s. 25(1).]

63AI. Interstate security duty

- (1) If interstate security duty has been paid in respect of any disposition forming part of the aggregated dispositions, the amount of the aggregated duty that is attributable to that disposition is to be reduced by the same proportion of the interstate security duty as the value of the trust property situated in Western Australia bears to the aggregate value of all the trust property.

- (2) In subsection (1) —

“**aggregated duty**” means the duty that is chargeable under section 73D because of section 63AG in respect of the aggregated dispositions;

“**interstate security duty**” means duty chargeable in another State or a Territory on a conveyance or transfer of any marketable security or right in respect of shares.

[Section 63AI inserted by No. 66 of 2003 s. 25(1).]

63AJ. Dutiable statement to be lodged

- (1) If duty is chargeable under section 73D because of section 63AG in respect of the aggregated dispositions, the unit trustee of the unit trust scheme concerned must lodge with the Commissioner —

- (a) if no election is made under section 63AG(10) — within 2 months after the transitional disposition is made, a statement in respect of that disposition and any disposition forming part of the aggregated dispositions that is made before the transitional disposition is made; and

- (b) if any disposition forming part of the aggregated dispositions is made after the transitional disposition is made — within 2 months after the last of the aggregated dispositions is made, a statement in respect of all the aggregated dispositions.

Penalty: \$20 000.

- (2) A dutiable statement must be prepared in an approved form.
- (3) A dutiable statement lodged under subsection (1) is taken to be an instrument evidencing the dispositions in respect of which it is lodged and is chargeable with duty to the extent that duty chargeable on those dispositions under section 73D because of section 63AG has not been paid.
- (4) The amount of duty payable in respect of a dutiable statement lodged under paragraph (b) of subsection (1) is to be reduced by the amount of any duty paid in respect of a dutiable statement lodged under paragraph (a) of that subsection.

[Section 63AJ inserted by No. 66 of 2003 s. 25(1).]

63A. Duty on certain decrees and orders

- (1) *Ad valorem* duty on a decree or order referred to in the definition of “conveyance on sale” in section 63 shall not exceed the duty on a sum equal to the value of the property to which that decree or order relates and, when that decree or order states that value, then despite section 33 and sections 21 and 22 of the *Taxation Administration Act 2003*, that statement shall be conclusive for the purpose of determining the amount of duty.
- (2) When *ad valorem* duty has been paid on a decree or order referred to in subsection (1), any conveyance or transfer following on that decree or order shall not be chargeable with duty but the Commissioner, on being requested to do so, is to endorse on the conveyance or transfer the duty paid.

[Section 63A inserted by No. 37 of 1979 s. 41; amended by No. 2 of 2003 s. 39; No. 66 of 2003 s. 26.]

s. 64

64. How *ad valorem* duty to be calculated in respect of stock and securities

- (1) Where the consideration or any part of the consideration for a conveyance on sale consists of any marketable security or right in respect of shares, such conveyance is to be charged with *ad valorem* duty in respect of the value of such security or right.
- (2) Where the consideration or any part of the consideration for a conveyance on sale consists of any security not being a marketable security or right in respect of shares, such conveyance is to be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon such security.

[Section 64 amended by No. 93 of 1966 s. 6; No. 48 of 1996 s. 32.]

65. How *ad valorem* duty to be calculated in respect of securities and periodical payments

- (1) When the consideration or any part of the consideration for a conveyance on sale consists of money payable periodically —
 - (a) for a definite period so that the total amount to be paid can be ascertained prior to the commencement of that period;
 - (b) in perpetuity or for any indefinite period not terminable with life; or
 - (c) during any life or lives,

the conveyance on sale is to be charged with *ad valorem* duty on the value of the ascertainable consideration or on the value of the property concerned, whichever is the greater.

- (2) Notwithstanding anything in subsection (1), a conveyance on sale chargeable with *ad valorem* duty in respect of, and containing provision for securing, any periodical payments is not to be charged with any duty whatsoever in respect of that provision.

[Section 65 inserted by No. 37 of 1979 s. 42; amended by No. 2 of 2003 s. 40.]

66. How conveyances in consideration of a debt or subject to future payment, etc., to be charged

Where any property is conveyed, whether by way of sale or otherwise, to any person in consideration, wholly or in part, of any debt due to him or subject either certainly or contingently to the payment or transfer of any money, marketable security or right in respect of shares, whether being or constituting a charge or encumbrance upon the property or not, such debt, money, marketable security or right in respect of shares is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty and such conveyance shall be deemed to be a conveyance on sale of the property and to be chargeable with *ad valorem* duty accordingly.

[Section 66 amended by No. 93 of 1966 s. 7; No. 112 of 1982 s. 6; No. 33 of 1987 s. 16; No. 48 of 1996 s. 33; No. 2 of 2003 s. 41.]

67. Duty where conveyance is partly in consideration of improvements made or to be made on property

A conveyance on sale made for any consideration in respect whereof it is chargeable with *ad valorem* duty and in further consideration of a covenant by the purchaser to make, or of his having previously made, any substantial improvement of or addition to the property conveyed or transferred to him or of any covenant relating to the subject matter of the conveyance, is not chargeable, and shall be deemed not to have been chargeable, with any duty in respect of such further consideration.

[Section 67 amended by No. 37 of 1979 s. 43; No. 81 of 1984 s. 14; No. 2 of 2003 s. 42.]

[68. Repealed by No. 37 of 1979 s. 44.]

69. Conveyance duty in cases where conveyance made at request or by direction of intermediary

- (1) Subject to sections 73 and 74, where —
- (a) property is conveyed or transferred by one person (“**the transferor**”) to another person (“**the transferee**”) or is agreed to be so conveyed or transferred; and
 - (b) another person (“**the intermediary**”) obtained the beneficial ownership of the property after the transferor acquired the beneficial ownership thereof but before he conveyed or transferred, or agreed to convey or transfer, the property to the transferee,

the instrument of conveyance or the agreement shall be subject to duty, as if it were both a conveyance of the property by the transferor to the intermediary, and also a conveyance of the property by the intermediary to the transferee; and if there are 2 or more intermediaries, as if it were a conveyance of the property from the transferor to the first intermediary and a conveyance from each intermediary to the other in succession, and from the last intermediary to the transferee.

- (2) Subsection (1) does not apply to the extent that duty under item 4 of the Second Schedule has been paid on a conveyance or transfer to any intermediary.

[Section 69 inserted by No. 33 of 1987 s. 17; amended by No. 39 of 1994 s. 14; No. 2 of 2003 s. 43; No. 66 of 2003 s. 27(1)⁴.]

70. Certain transfers of chattels dutiable

- (1) In this section, unless the contrary intention appears —
- “**arrangement**” means an instrument or an unwritten arrangement;
 - “**chattels**” means goods, wares or merchandise, other than exempt chattels, and includes an estate or interest in them;
 - “**dutiable**” means chargeable with duty under —

- (a) item 4, 10, 14A, 15, 17 or 19 of the Second Schedule;
or
- (b) item 12(1) or (3) of the Second Schedule if —
 - (i) the term of the lease, including any period for which the lease may be renewed, exceeds, or is to exceed, 20 years; and
 - (ii) any option to renew the lease is, or is to be, exercisable by the lessor;

“exempt chattels” means —

- (a) goods, wares or merchandise referred to in item 2(7), (7a) or (7b) of the Third Schedule;
- (aa) goods, wares or merchandise used solely or principally in connection with the business of primary production (as defined in section 75D); or
- (b) a vehicle the transfer of the licence of which is chargeable with duty under Part IIIC and item 14 or 6 of the Second Schedule or is exempt under item 9 of the Third Schedule;

“other property” means property other than goods, wares or merchandise, and includes an estate or interest in such property;

“transfer” includes convey, exchange, partition, settle, give, vest, grant, release and renounce.

- (1a) For the purposes of this section a mining tenement (as defined in section 76) is an estate or interest in property.
- (2) If an instrument —
 - (a) transfers, or is or includes an agreement to transfer, or evidences the transfer of, a chattel and other property; and
 - (b) is dutiable in respect of the other property,

s. 70

the instrument is chargeable with duty in respect of the unencumbered value of the other property plus the unencumbered value of the chattel.

(3) If —

(a) an instrument —

(i) transfers, or is or includes an agreement to transfer, or evidences the transfer of, a chattel; and

(ii) is one of 2 or more arrangements that together form, or arise from, substantially one transaction, or one series of transactions, relating to chattels and to other property;

and

(b) at least one of the other arrangements mentioned in paragraph (a)(ii) transfers, or is or includes an agreement to transfer, or evidences the transfer of, other property and is dutiable,

the instrument mentioned in paragraph (a) is chargeable with duty in respect of the unencumbered value of the other property plus the unencumbered value of the chattel.

(4) The duty payable on an instrument referred to in subsection (3)(a) is to be reduced by any duty paid in respect of the arrangement referred to in subsection (3)(b).

(5) For the purposes of subsection (3)(a)(ii), if a person enters into arrangements —

(a) within, or apparently within, 12 months of each other; and

- (b) with the same person (whether that person enters the arrangements alone or with the same person or different persons),

it shall be presumed, unless the Commissioner is satisfied to the contrary, that the arrangements arose out of one transaction or one series of transactions.

[Section 70 inserted by No. 22 of 1998 s. 33; amended by No. 28 of 2000 s. 4; No. 2 of 2003 s. 44; No. 66 of 2003 s. 28.]

71. Duty charged for 2 or more instruments of conveyance

Where there are 2 or more instruments of conveyance for completing the purchaser's title to the property sold, the principal instrument of conveyance only is to be charged with *ad valorem* duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but such last-mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument.

[Section 71 amended by No. 37 of 1979 s. 46; No. 2 of 2003 s. 45.]

~~—~~ *[Heading deleted by No. 2 of 2003 s. 46.]*

72. Transfer or assignment of mortgages for value

- (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 2 or more 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.

s. 73

- (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, but the Commissioner, on being requested to do so, is to endorse the duty on the instrument.
- (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 72 inserted by No. 20 of 1996 s. 23; amended by No. 2 of 2003 s. 47; No. 66 of 2003 s. 29.]

~~—~~ *[Heading deleted by No. 2 of 2003 s. 48.]*

73. As to conveyances on any occasion except sale or mortgage

Except as otherwise provided by a stamp Act, every instrument, and every decree or order of any court or of the Commissioner of Titles, whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person and every instrument which is or is intended to be a record or acknowledgement of any verbal promise or agreement previously made (whether voluntary or upon any good or valuable consideration other than a *bona fide* pecuniary consideration) to give or settle any property in any manner whatsoever is chargeable with duty as a conveyance or transfer of property.

[Section 73 amended by No. 35 of 1941 s. 2; No. 113 of 1965 s. 8(1); No. 63 of 1977 s. 2; No. 37 of 1979 s. 47; No. 112 of 1982 s. 7; No. 81 of 1984 s. 15; No. 2 of 2003 s. 49.]

73A. Conveyance subject to an option

- (1) Where any property or estate or interest therein (“**the property**”) is agreed to be conveyed or transferred, or is conveyed or transferred, to any person subject to the exercise of an option to purchase the property, whether the option is exercisable in writing or otherwise, the agreement or the conveyance or transfer, as the case may be, is chargeable with duty as a conveyance or transfer of the property and the consideration for such conveyance or transfer shall be deemed to be an amount equal to the sum of —
 - (a) the amount paid by way of consideration for the granting of the option; and
 - (b) the amount payable in the event of the option being exercised.
- (2) Each of the parties to an agreement, conveyance or transfer referred to in subsection (1) is liable to pay the duty with which it is chargeable.
- (3) Section 73AA does not apply to a conveyance or transfer referred to in subsection (1).
- (4) Where *ad valorem* duty has been duly paid in conformity with subsection (1) on an agreement the conveyance or transfer made in conformity with the agreement shall be chargeable with duty under item 6 of the Second Schedule.
- (5) Where, after *ad valorem* duty has been paid in conformity with subsection (1), the Commissioner is satisfied —
 - (a) that the option referred to in that subsection has not been exercised and that the time within which that option may be exercised has expired; and
 - (b) where the property was conveyed or transferred to the person to whom the option was granted —
 - (i) that the property has been reconveyed or retransferred to the person from whom it was conveyed or transferred or to a person to whom

s. 73A

his rights have been transmitted on death or bankruptcy; and

- (ii) that the person to whom the option was granted did not, prior to the reconveyance or retransfer of the property, exercise or receive any right or benefit in respect of the property being a right or benefit of a kind normally exercisable or receivable only by the beneficial owner of property,

then —

- (c) the duty chargeable on the agreement or the conveyance or transfer (as the case may be) is reduced to the amount of duty that would have been payable if the consideration had been the amount referred to in subsection (1)(a) only; and
 - (d) any reconveyance or retransfer referred to in paragraph (b) is chargeable with duty under item 6 of the Second Schedule.
- (5a) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.
- (5b) For the purposes of subsection (5a), section 17 of the *Taxation Administration Act 2003* applies as if the original assessment had been made —
- (a) when the reconveyance or retransfer referred to in subsection (5)(b)(i) occurred; or
 - (b) on the expiry, referred to in subsection (5)(a), of the time within which the option could have been exercised,
- whichever is later.
- (6) Where *ad valorem* duty has been duly paid in conformity with subsection (1) any agreement made in pursuance of and by the

exercise of the option referred to in that subsection shall not be chargeable with any further duty.

[Section 73A inserted by No. 63 of 1977 s. 3; amended by No. 37 of 1979 s. 48; No. 81 of 1984 s. 16; No. 2 of 2003 s. 50.]

73AA. Duty on conveyance not passing a beneficial interest

- (1) A conveyance or transfer —
- (a) made for effectuating the appointment of a new trustee, or the retirement of a trustee, whether the trust is expressed or implied;
 - (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 the exercise of any power of appointment;
 - (d) made by a discretionary trustee, in the exercise of a power of appointment over the property conveyed or transferred, to a beneficiary who is an individual 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) 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;

s. 73AA

- (e) made to the holder of a unit in a unit trust scheme by a unit trustee if —
 - (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
 - (ii) the Commissioner is satisfied that —
 - (I) 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
 - (II) 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) not otherwise coming within this section but which the Commissioner is satisfied —
 - (i) does not pass a beneficial interest in the property conveyed or transferred;
 - (ii) is not made in contemplation of the passing of a beneficial interest therein; and
 - (iii) is not part of, or made pursuant to, a scheme whereby any beneficial interest in the property conveyed or transferred, whether vested or contingent, has passed or will or may pass,

shall be charged with duty in accordance with item 6 of the Second Schedule.

- (2) A conveyance or transfer that is —
- (a) made by any trustee or other person in a fiduciary capacity to a beneficiary; or
 - (b) made by a unit trustee to the holder of a unit in a unit trust scheme,

and that does not conform to subsection (1)(b), (c), (d) or (e), and a conveyance or transfer in respect of which the Commissioner is not satisfied as mentioned in subsection (1)(f), shall be deemed to operate as a voluntary disposition and is chargeable with duty under section 75(1).

[Section 73AA inserted by No. 81 of 1984 s. 17; amended by No. 33 of 1987 s. 18; No. 20 of 1996 s. 24; No. 2 of 2003 s. 51.]

73AB. Duty on conveyance to correct error

If the Commissioner is satisfied that —

- (a) a conveyance or transfer of property (the “**correcting transfer**”) is solely for the purpose of correcting the effect of an error in respect of —
 - (i) the contract or agreement for the sale of that property; or
 - (ii) a previous conveyance or transfer of that or other property;
- (b) no additional consideration is paid or payable in respect of the correcting transfer; and
- (c) the correcting transfer passes an interest in the property only to the extent necessary to correct the effect of the error,

the correcting transfer shall be charged with duty in accordance with item 6 of the Second Schedule.

[Section 73AB inserted by No. 66 of 2003 s. 30.]

s. 73B

73B. Conveyance agreement subject to unilateral determination

- (1) When any property or estate or interest therein (“**the property**”) is agreed to be conveyed or transferred to any person —
- (a) wholly or partly in consideration of the making by that person of 2 or more payments at intervals specified in that agreement; and
 - (b) subject to the right of that person to determine that agreement at any time on making such of the payments referred to in paragraph (a) as may have become due and payable under that agreement at the time of that determination,

that agreement is chargeable with duty as a conveyance or transfer of the property and the consideration for that agreement shall be deemed to be an amount equal to the sum of both or all, as the case may be, of the payments referred to in paragraph (a).

- (2) The person to whom property is to be conveyed or transferred under an agreement referred to in subsection (1) is liable to pay the duty with which the agreement is chargeable.
- (3) When, after *ad valorem* duty has been duly paid in conformity with subsection (1), the Commissioner is satisfied that the person referred to in that subsection (“**the determiner**”) determined the agreement concerned before the final payment had become due and payable under that agreement, the amount of duty payable on the agreement is reduced to the amount of duty that would have been payable if the consideration had been equal to the amount of the payment or payments paid or due and payable by the determiner when the determination was made.
- (4) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.

- (5) For the purposes of subsection (4), section 17 of the *Taxation Administration Act 2003* applies as if the original assessment had been made when the determination was made.

[Section 73B inserted by No. 37 of 1979 s. 49; amended by No. 81 of 1984 s. 18; No. 2 of 2003 s. 52.]

73C. Option to purchase with right to renew

- (1) Where an instrument confers on any person the right of an option to purchase any property or an estate or interest in property and provides for the renewal of that right on such occasion or occasions as is or are specified therein the instrument is chargeable with *ad valorem* duty on the sum of the amounts paid by way of consideration for the right of the option and the amount or amounts, as the case may be, payable for the renewal or renewals of the option.
- (2) The person on whom the right of the option is conferred by an instrument referred to in subsection (1) is liable to pay the duty with which it is chargeable.
- (3) When, after *ad valorem* duty has been duly paid in conformity with subsection (1), the Commissioner is satisfied that the person on whom the right of the option was conferred by the instrument —
- (a) exercised the option; or
 - (b) failed to renew the right of option,

before the occurrence of the final occasion referred to in the instrument the amount of duty payable on the instrument is reduced to the amount of duty that would have been payable if the consideration had been equal to the amount paid or payable in respect of any occasion or occasions referred to in the instrument that have occurred before the person exercised the option or failed to renew the right of option.

s. 73D

- (4) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.
- (5) For the purposes of subsection (4), section 17 of the *Taxation Administration Act 2003* applies as if the original assessment had been made when the person exercised the option or failed to renew the right of option.

[Section 73C inserted by No. 93 of 1982 s. 5; amended by No. 81 of 1984 s. 19; No. 2 of 2003 s. 53.]

73D. Disposition of units in unit trust schemes

- (1) In this section —
 - “**chattels**” has the same definition as in section 76;
 - “**land**” has the same definition as in section 76.
- (1a) This section applies to a disposition in relation to a unit in a unit trust scheme if the trust property of the scheme comprises or includes —
 - (a) property situated, or taken to be situated, in Western Australia; or
 - (b) any interest, including any beneficial interest, in such property.
- (2) A person shall not give effect to, recognise, or register, record, or enter in the books or records of a 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 (unless the person executed the transfer or the instrument) delivered to the person and the duty with which the transfer or the instrument is chargeable has been paid; or
 - (b) the person is satisfied that a dutiable statement has been lodged under section 63AJ or 73DAA in respect of the

disposition and that the duty with which the dutiable statement is chargeable has been paid.

Penalty: \$20 000.

- (3) For the purposes of assessing duty under this section, the exemption in item 2(1) of the Third Schedule does not apply.
- (4) Subject to subsections (4a), (4b), (5), (5a) and (6), 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 separately —
 - (a) a conveyance or transfer 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 land and chattels situated in Western Australia or any interest, including any beneficial interest, in any such land and chattels held by the unit trustee as trustee of the unit trust scheme; and
 - (b) a conveyance of the unit.
- (4a) The value of the unit, for the purpose of assessing duty under subsection (4)(b), shall be the value of the unit reduced by the value of the land and chattels or interest in land and chattels (if any) determined for the purpose of assessing duty under paragraph (a) of that subsection.
- (4b) Subject to subsections (5) and (5a), the duty chargeable on a transfer of a unit or an instrument effecting or evidencing a disposition in relation to a unit shall not in any event be less than the amount of duty determined under item 4(1) of the Second Schedule on the amount or value of the consideration for the transfer or the disposition.
- (5) Where a disposition does not significantly affect any right or rights pertaining to any unit, having regard to the rights pertaining to the other issued units under the unit trust scheme, the instrument effecting or evidencing the disposition shall be chargeable with duty under item 6 of the Second Schedule.

s. 73D

- (5a) Where a disposition, or a series of dispositions —
- (a) has effect in relation to the number of units held by all holders of units in proportion to the number of units respectively held by them immediately prior to the disposition or dispositions taking effect; and
 - (b) does not have the effect of varying, abrogating or altering the rights of any holder of units as against the rights of any other holder of units with respect to the capital of the unit trust scheme,
- the instrument effecting or evidencing the disposition, and each instrument effecting or evidencing a disposition in a series of dispositions, shall be chargeable with duty under item 6 of the Second Schedule.
- (6) The Commissioner shall, where it is necessary to determine, for the purposes of subsection (4), 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.
- (6a) Subject to subsection (6c), in addition to the duty chargeable on a transfer or an instrument under subsection (4), the transfer or instrument shall each be chargeable with duty at the rate provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of any ascribed chattels, but duty shall not be charged in respect of —
- (a) any of the chattels in respect of which duty has been paid under section 31B or 70 by a person liable under subsection (7) to pay the duty with which the transfer or instrument is chargeable under subsection (4);
 - (b) any of the chattels in respect of which interstate duty has been paid by such a person; or
 - (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in Western Australia.

- (6b) Chattels are ascribed chattels for the purpose of subsection (6a) if, within the 12 months preceding the date of the disposition evidenced by the transfer or instrument —
- (a) the unit trustee, as trustee of the unit trust scheme, held them or any interest (including any beneficial interest) in them; and
 - (b) a person liable under subsection (7) to pay the duty with which the transfer or instrument is chargeable under subsection (4) acquired them, directly or indirectly, from the unit trustee.
- (6c) The transfer or instrument is not chargeable with duty under subsection (6a) if the Commissioner is satisfied that no transaction by means of which the ascribed chattels were transferred from the unit trustee to the person referred to in subsection (6b)(b) was effected for the collateral purpose of reducing the duty that otherwise would be chargeable on the transfer or instrument.
- (7) Subject to sections 63AH and 73DC(6), 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, in accordance with section 87 of the *Taxation Administration Act 2003*.
- [(9) *repealed*]
- (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 gave effect to or recognised the disposition or registered, recorded or entered the disposition in the books or records of the unit trust scheme in contravention of subsection (2).

s. 73DAA

- (11) Subject to subsection (12) and section 73DC, this section does not apply to a disposition of a unit in a unit trust scheme during any period that the unit trust scheme is —
- (a) registered under section 63AA(2);
 - (b) granted interim registration under section 63AC(2); or
 - (c) registered as a provisional public trust under section 63ADA(2).
- (12) If —
- (a) the registration or interim registration of a unit trust scheme; or
 - (b) the registration of a unit trust scheme as a provisional public trust,

is cancelled, this section is taken to have applied to the unit trust scheme from the time the cancellation was taken to have effect unless duty is chargeable under section 63AF.

[Section 73D inserted by No. 112 of 1982 s. 8; amended by No. 81 of 1984 s. 20; No. 109 of 1984 s. 5; No. 33 of 1987 s. 19; No. 22 of 1998 s. 34; No. 36 of 2001 s. 28; No. 2 of 2003 s. 54; No. 66 of 2003 s. 31; No. 11 of 2005 s. 8.]

73DAA. Dutiable statement required if transfer or instrument not lodged

- (1) Subject to subsection (3) if, for a disposition in relation to a unit —
- (a) a transfer; or
 - (b) an instrument effecting or evidencing the disposition,

is not lodged with the Commissioner, each liable person must, within 2 months after the disposition is made, lodge a statement with the Commissioner in respect of the disposition.

Penalty: \$20 000.

- (2) In subsection (1) —
- “liable person”** means —
- (a) if a transfer or instrument has been executed — a person who is liable to pay duty in respect of the disposition; or
 - (b) if a transfer or instrument has not been executed — a person who would be liable to pay duty in respect of the disposition if a transfer or instrument were executed.
- (3) Subsection (1) does not apply in relation to a disposition that is included in a dutiable statement under section 63AJ.
- (4) A dutiable statement must be prepared in an approved form.
- (5) A dutiable statement lodged under subsection (1) is taken to be an instrument evidencing the disposition in respect of which it is lodged and is chargeable with duty accordingly.
- (6) The requirement to lodge a dutiable statement under subsection (1) in respect of a disposition ceases to apply if a transfer or an instrument effecting or evidencing the disposition is lodged with the Commissioner at any time after the disposition was made, but nothing in this subsection affects the liability of a person for an offence against subsection (1) committed before the transfer or the instrument is lodged.
- (7) If subsection (6) has effect, the transfer or instrument referred to in that subsection is to be regarded, for the purposes of section 17A, as having been first executed on the day on which the disposition was made.
- (8) Section 31B does not apply to, or in relation to, a disposition referred to in subsection (1).

[Section 73DAA inserted by No. 66 of 2003 s. 32.]

s. 73DA

73DA. Holdings of majority interest unit trustee

- (1) For the purposes of section 73D(4), a unit trustee who has a majority interest in a company that is beneficially entitled to land and chattels (as defined in section 76) situated in Western Australia is taken to hold an undivided share in the land and chattels to the extent provided in subsection (2).
- (2) The extent of the undivided share in land and chattels referred to in subsection (1) is the same proportion of the value of the land and chattels situated in Western Australia to which the company is beneficially entitled as the proportion of the property of the company which the trustee would be entitled to claim in a distribution of property, as provided in section 76(5), if the company were to be wound up at the time of the disposition effected or evidenced by the relevant transfer or instrument.
- (3) For the purposes of this section —
 - (a) **“company”** means a company to which Division 2 or 3a of Part IIIBA applies or a corporation to which Division 3 or 3b of that Part applies; and
 - (b) a unit trustee has a majority interest in a company if he would be entitled, if the company were to be wound up at the time of the disposition effected or evidenced by the relevant transfer or instrument, to participate (otherwise than as a creditor, or other person to whom the company is liable) in a distribution of the property of the company, as provided in section 76(5), to an extent greater than 50% of the value of the property distributable otherwise than to creditors, or other persons to whom the company is liable.

[Section 73DA inserted by No. 33 of 1987 s. 20; amended by No. 22 of 1998 s. 35; No. 60 of 2000 s. 20(2); No. 2 of 2003 s. 55; No. 11 of 2004 s. 12.]

73DB. Interpretation for sections 73DC, 73DD and 73DE

- (1) In sections 73DC, 73DD and 73DE —
- “**acquire**”, in relation to an interest in a registered unit trust scheme, means acquire beneficially in any manner or by any means and includes the increasing of an existing interest;
- “**registered unit trust scheme**” means a unit trust scheme registered as a pooled investment trust under section 63AA(2).
- (2) For the purposes of sections 73DC, 73DD and 73DE, an interest acquired or held by a custodian trustee on behalf of a person is taken to have been acquired, or to be held, by the person.
- (3) For the purposes of section 73DC, 73DD and 73DE, a person and another person are related if —
- (a) they are related as provided in section 63(5); or
 - (b) they acquire interests in a registered unit trust scheme by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions.

[Section 73DB inserted by No. 66 of 2003 s. 33.]

73DC. Acquisition of majority interest or further interest in pooled investment trust

- (1) Despite section 73D(11) and subject to this section, duty is chargeable under section 73D in respect of a disposition of a unit in a registered unit trust scheme if, as a result of the disposition, a person acquires, or a person and a related person acquire, a majority interest or a further interest in the scheme.
- (2) If paragraph (b) of section 73DD(1) applies in relation to the acquisition of a majority interest in a registered unit trust scheme, duty is chargeable under section 73D in respect of the dispositions of units in the scheme (the “**aggregated**”

s. 73DC

dispositions”) that result in a person, or a person and a related person, acquiring the interests referred to in that paragraph as if the aggregated dispositions formed one disposition made at the time the majority interest was acquired.

- (3) If the aggregated dispositions include one or more dispositions (“**relevant aggregated dispositions**”) made when the unit trust scheme was not —

- (a) registered under section 63AA(2); or
- (b) granted interim registration under section 63AC(2),

duty chargeable under section 73D, as referred to in subsection (2), is to be reduced by the amount of duty that would be chargeable under that section in respect of the relevant aggregated dispositions if those dispositions together formed one disposition made immediately before the majority interest was acquired.

- (4) Duty is chargeable under section 73D in respect of a disposition of a unit in a registered unit trust scheme that results in a person, or a person and a related person, acquiring a further interest in the scheme as if —

- (a) that disposition; and
- (b) each of the dispositions that resulted in the person, or the person and the related person, acquiring an interest in the scheme held by the person, or by the person and the related person, immediately before the further interest was acquired,

together formed one disposition made at the time the further interest was acquired.

- (5) Duty chargeable under section 73D, as referred to in subsection (4), is to be reduced by the amount of duty that would be chargeable under that section in respect of the dispositions referred to in subsection (4)(b) if those dispositions together formed one disposition made immediately before the further interest was acquired.

- (6) Despite section 73D(7), the person liable to pay the duty chargeable under section 73D because of this section in respect of a disposition is the person who acquires the majority interest or further interest in the registered unit trust scheme.
- (7) If a majority interest or a further interest in a registered unit trust scheme is acquired by virtue of acquisitions of interests in the scheme by a person and a related person, those persons are jointly and severally liable to pay the duty referred to in subsection (6).
- (8) If interstate security duty has been paid in respect of a disposition in respect of which duty is chargeable under section 73D because of this section, the duty chargeable under that section is to be reduced by the same proportion of the interstate security duty as the value of the trust property situated in Western Australia bears to the aggregate value of all the trust property.
- (9) In subsection (8) —
“**interstate security duty**” means duty chargeable in another State or a Territory on a conveyance or transfer of any marketable security or right in respect of shares.

[Section 73DC inserted by No. 66 of 2003 s. 33.]

73DD. Meaning of majority interest and further interest

- (1) For the purposes of section 73DC, a person acquires a majority interest in a registered unit trust scheme if a disposition of a unit in the scheme results in the person, or the person and a related person, acquiring an interest in the scheme (the “**relevant interest**”) such that having acquired —
- (a) the relevant interest itself; or
 - (b) the relevant interest when taken with each interest in the scheme that —

s. 73DD

- (i) is held by the person or by a related person immediately before the relevant interest was acquired; and
- (ii) was acquired within 3 years before the relevant interest was acquired (whether or not the scheme was a registered unit trust scheme at the time of the acquisition),

the person, or the person and the related person, would be beneficially entitled, if the property of the scheme were to be distributed, to participate in a distribution of the property of the scheme to an extent of 50% or more of the value of the distributable property.

- (2) The acquisition of the relevant interest or another interest referred to in paragraph (b) of subsection (1) is to be taken into account for the purposes of that subsection only if, at the time of the acquisition, the property of the registered unit trust scheme included land (as defined in section 76) situated in Western Australia.
- (3) If on the first day on which a unit trust scheme is registered under section 63AA(2) a majority interest is held in the scheme, an interest acquired in the scheme as a result of one or more dispositions made during a period that the scheme was granted interim registration under section 63AC(2) is taken to have been acquired as a result of a disposition made on that day.
- (4) For the purposes of section 73DC, a person acquires a further interest in a registered unit trust scheme if —
 - (a) the person holds, or the person and a related person hold, a majority interest in the scheme;
 - (b) the acquisition of that majority interest gave rise to a liability for duty under section 73D because of section 73DC; and
 - (c) a disposition of a unit in the scheme results in the person acquiring, or the person and a related person acquiring, an interest in the scheme such that having acquired that

interest the person, or the person and the related person, would be beneficially entitled, if the property of the scheme were distributed, to participate further in a distribution of the property of the scheme.

- (5) For the purposes of this section, if —
- (a) the registration of a unit trust scheme is cancelled under section 63AD; and
 - (b) a disposition of a unit in the scheme (the “**relevant disposition**”) is made within 12 months after that registration is cancelled,

the scheme is to be treated as if it is still a registered unit trust scheme when the relevant disposition is made.

- (6) Subsection (5) does not apply if the Commissioner is satisfied that the relevant disposition is not made with the collateral purpose of avoiding or reducing the duty that otherwise would be or might become payable if the registration of the unit trust scheme had not been cancelled.
- (7) For the purpose of being satisfied as to a matter referred to in subsection (6), the Commissioner may take into account any matter that the Commissioner considers to be relevant.
- (8) For the purposes of this section, a reference to the entitlement to participate in a distribution of the property of a unit trust scheme is a reference to that entitlement otherwise than as a creditor or other person to whom the scheme is liable, and a reference to distributable property is a reference to property distributable to persons otherwise than as creditors or other persons to whom the scheme is liable.
- (9) For the purposes of this section, the entitlement of a person on the distribution of the property of a unit trust scheme is to be determined as the greatest entitlement that the person could derive at any time from the scheme whether by the fulfilment of any condition, the outcome of any contingency or the exercise of any power or discretion or otherwise, and in particular a

s. 73DE

person that may benefit from a discretionary trust is to be deemed to be entitled to —

- (a) the property subject to the discretionary trust, unless the Commissioner determines otherwise; or
- (b) such part of that property as the Commissioner determines.

[Section 73DD inserted by No. 66 of 2003 s. 33.]

73DE. Dutiable statement to be lodged

- (1) Subject to subsection (3), a person who acquires a majority interest or a further interest in a registered unit trust scheme must, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of the disposition or dispositions that resulted in the acquisition of that interest and in respect of which duty is chargeable under section 73D because of section 73DC.

Penalty: \$20 000.

- (2) A dutiable statement must be prepared in an approved form.
- (3) If a majority interest or a further interest in a registered unit trust scheme is acquired by a person and one or more related persons, subsection (1) is taken to be complied with if one of those persons lodges a dutiable statement under that subsection on behalf of all those persons.
- (4) A dutiable statement lodged under subsection (1) is taken to be an instrument evidencing the disposition or dispositions in respect of which it is lodged and is chargeable with duty to the extent that duty chargeable on that disposition or those dispositions under section 73D because of section 73DC has not been paid.

[Section 73DE inserted by No. 66 of 2003 s. 33.]

73E. Disposition of shares in discretionary trustee companies

- (1) In this section —

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

“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 definition as in section 9 of the Corporations Act;

“share” means a share or stock of a company that is not listed on a recognised financial market and includes an interest in a share.

- (2) A company which is resident or domiciled in Western Australia or which carries on business in Western Australia as a discretionary trustee and an officer of such a company shall not make, accept, give effect to, recognise, 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 stamped.

Penalty: \$20 000.

[(3) repealed]

s. 73E

- (4) Subject to subsections (5) and (6), 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) 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.
- (7) The Commissioner shall, where it is necessary to determine, for the purposes of subsection (4), 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, in accordance with section 87 of the *Taxation Administration Act 2003*.

[(10) repealed]

- (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 recognised the disposition or registered, recorded or entered the disposition in the books or records of the company in contravention of subsection (2).

[Section 73E inserted by No. 112 of 1982 s. 8; amended by No. 39 of 1994 s. 21; No. 53 of 1999 s. 20; No. 10 of 2001 s. 168; No. 2 of 2003 s. 56; No. 21 of 2003 s. 26.]

73F. Acquisition of a licence to carry on a business activity

- (1) In this section —

“**business licence**” means —

- (a) a licence, permit or authority which is issued, granted or given under a written law and which is required by a written law to be held by a person carrying out an activity for gain or reward; or
- (b) a licence, permit or authority which is issued, granted or given under a law of the Commonwealth and which is required by a law of the Commonwealth to be held by a person carrying out an activity in Western Australia for gain or reward.

s. 73G

- (2) This section applies to a transaction by which a person (“**the licensee**”) who holds a business licence —
- (a) disposes of the business licence to another person;
 - (b) agrees to the business licence being transferred to another person; or
 - (c) agrees to relinquish the business licence, or agrees not to apply for a renewal of the business licence, so that it, or another business licence in respect of the same kind of activity, can be issued, granted or given to another person.
- (3) Where this section applies to a transaction the business licence to which the transaction relates is property situated in Western Australia and the transaction is a transaction by which that property is transferred by the licensee and becomes the property of the other person referred to in subsection (2).
- (4) Where this section applies to a transaction relating to a business licence issued, granted or given under a law of the Commonwealth, duty can only be charged to the extent of —
- (a) the value of the business licence so far as it authorises the carrying out of an activity in Western Australia; or
 - (b) the portion of the consideration for the transaction that relates to the carrying out of an activity in Western Australia under the authority of the business licence,
- whichever is the greater amount.

[Section 73F inserted by No. 41 of 1995 s. 6; amended by No. 2 of 2003 s. 57.]

73G. Farm-in agreements relating to mining tenements

- (1) In this section —
- “**exploration amount**”, in relation to a farm-in agreement, means an amount to be expended, after the agreement is made, on exploration or development of the mining tenement carried out after the agreement is made;

“farm-in agreement” means an agreement between the owner of a mining tenement and another person that, after the other person expends the exploration amount specified in the agreement, that other person will have a right to acquire an interest in the mining tenement that is —

- (a) specified in the agreement; and
- (b) to be held with the owner of the mining tenement;

“mining tenement” means —

- (a) a mining tenement held under the *Mining Act 1978*, being a mining tenement within the meaning of that Act or the *Mining Act 1904*³; and
- (b) a mining tenement or right of occupancy continued in force by section 5 of the *Mining Act 1978*;

“payment” does not include payment of an exploration amount.

- (2) An instrument evidencing or effecting a farm-in agreement is —
 - (a) to the extent that —
 - (i) the instrument evidences or effects a farm-in agreement; and
 - (ii) no payment has been made or is payable in respect of the right to acquire the interest, or the acquisition of the interest, specified in the farm-in agreement, chargeable with duty at the rate set out under item 8 of the Second Schedule; and
 - (b) to the extent that —
 - (i) the instrument provides for the acquisition of an interest in a mining tenement otherwise than pursuant to a farm-in agreement; or
 - (ii) payment has been made or is payable in respect of the right to acquire the interest, or the acquisition of the interest, specified in the farm-in agreement,

s. 73G

chargeable with duty at the rate set out in item 4 or 19 of the Second Schedule, as the case requires.

- (3) If the Commissioner is satisfied that —
- (a) a conveyance or transfer evidences or effects the acquisition of an interest in a mining tenement pursuant to a farm-in agreement;
 - (b) the amount specified in the farm-in agreement to be expended on exploration or development of the mining tenement has been expended accordingly; and
 - (c) any duty chargeable under subsection (2) in respect of the instrument has been paid,

then —

- (d) to the extent that —
 - (i) the conveyance or transfer evidences or effects the acquisition of the interest; and
 - (ii) no payment has been made or is payable in respect of the acquisition,

the conveyance or transfer is chargeable with duty under item 6 of the Second Schedule; and

- (e) to the extent that —
 - (i) the conveyance or transfer provides for the acquisition of an interest in a mining tenement otherwise than pursuant to the farm-in agreement; or
 - (ii) payment has been made or is payable in respect of the acquisition of the interest specified in the farm-in agreement and duty in respect of that acquisition was not paid under subsection (2)(b),

the conveyance or transfer is chargeable with duty under item 4 or 19 of the Second Schedule, as the case requires.

[Section 73G inserted by No. 66 of 2003 s. 34.]

74. Certain contracts to be chargeable as conveyances on sale

(1aa) In this section —

“dormant” has the meaning given by section 75JAA;

“dormant corporation” means a corporation that has been dormant from when it was incorporated;

“interest”, in relation to a managed investment scheme, has the same meaning as it has in section 9 of the Corporations Act;

“managed investment scheme” has the same meaning as it has in section 9 of the Corporations Act;

“member” means a person who holds an interest in a managed investment scheme;

“scheme property”, in relation to a managed investment scheme, has the same meaning as it has in the Corporations Act in relation to a managed investment scheme that is registered under section 601EB of that Act.

- (1) Every contract or agreement, howsoever executed, for the sale of any estate or interest in any property shall be charged with the same *ad valorem* duty to be paid by the purchaser as if it were an actual conveyance on sale of the estate, interest or property contracted or agreed to be sold.
- (2) Subject to this section, when the name of the purchaser as set out in a contract or agreement referred to in subsection (1) differs from the name of the transferee as set out in the subsequent conveyance or transfer, that conveyance or transfer shall be deemed to be a separate and distinct transaction and shall be subject to *ad valorem* duty.
- (3) Notwithstanding anything in subsection (2), if —
 - (a) the Commissioner is satisfied that the person named in the contract or agreement concerned as the purchaser was acting as the agent of the person named in the

s. 74

subsequent conveyance or transfer as the transferee at the time when that contract or agreement was executed;

- (b) the Commissioner endorses on the subsequent conveyance or transfer concerned that the Commissioner is satisfied in relation to the matters referred to in paragraph (a); and

- (c) the contract or agreement of sale concerned is stamped,

the same duty as is payable under item 6 of the Second Schedule shall be payable on the subsequent conveyance or transfer.

- (3a) Notwithstanding subsection (2), if —

- (a) the person named as purchaser in a contract or agreement referred to in subsection (1) entered into the contract or agreement with the intention that the property concerned would be transferred to —

- (i) a corporation that the person intended to be incorporated; or

- (ii) a dormant corporation, the shares in which the person intended to be acquired;

- (b) at the time the contract or agreement was entered into action was being taken to incorporate the corporation or acquire the shares in the dormant corporation; and

- (c) duty has been paid on the contract or agreement under subsection (1),

a conveyance or transfer of the property by the vendor under the contract or agreement to the corporation after it has been incorporated or after the shares in it have been acquired, as the case requires, shall be charged with duty under item 6 of the Second Schedule.

- (3b) Notwithstanding subsection (2), if —

- (a) the Commissioner is satisfied that a managed investment scheme has been, or is to be, established by means of an offer to subscribe to the scheme made to the public;
- (b) the Commissioner is satisfied that before the establishment of the scheme —
 - (i) the person named as purchaser in a contract or agreement referred to in subsection (1) entered into the contract or agreement; or
 - (ii) the person promoting the scheme arranged for that contract or agreement to be entered into, with the intention that the property concerned would become scheme property;
- (c) the contract or agreement provides to the effect that, if the scheme is not established, the contract or agreement is terminated;
- (d) the Commissioner endorses on the subsequent conveyance or transfer that the Commissioner is satisfied in relation to the matters referred to in paragraphs (a) and (b); and
- (e) duty has been paid on the contract or agreement under subsection (1),

a conveyance or transfer of the property by the vendor under the contract or agreement that results in the property becoming scheme property shall be charged with duty under item 6 of the Second Schedule.

- (3c) Notwithstanding subsection (2), if —
 - (a) a contract or agreement referred to in subsection (1) is entered into; and
 - (b) duty has been paid on the contract or agreement under subsection (1),

a conveyance or transfer of the property concerned by the vendor under the contract or agreement —

s. 74

- (c) to the extent of the whole or any part of the interest that the purchaser would have acquired in the property if the contract or agreement had been completed; and
- (d) to a person who at the time the contract or agreement was entered into was related to that purchaser,

shall be charged with duty under item 6 of the Second Schedule.

(3d) For the purposes of subsection (3c), the following persons are related to a purchaser who is an individual —

- (a) the purchaser's spouse or de facto partner;
- (b) a parent or remoter lineal ancestor of the purchaser or the purchaser's spouse or de facto partner;
- (c) a child or remoter lineal descendant of the purchaser or the purchaser's spouse or de facto partner;
- (d) a brother or sister of the purchaser or the purchaser's spouse or de facto partner;
- (e) a corporation if —
 - (i) the purchaser is the sole shareholder of the corporation; or
 - (ii) the purchaser is a shareholder of the corporation and is related (within the meaning of this section) to each of the other shareholders;
- (f) a unit trustee in the unit trustee's capacity as trustee of a unit trust if —
 - (i) the purchaser is the sole unit holder in the unit trust; or
 - (ii) the purchaser is a unit holder in the unit trust and is related (within the meaning of this section) to each of the other unit holders.

(3e) For the purposes of subsection (3c), a person is related to a purchaser that is a corporation if —

- (a) the person is the sole shareholder of the purchaser; or

- (b) the person is a shareholder of the purchaser and, if the person were a purchaser, would be related (within the meaning of this section) to each of the other shareholders.
- (3f) For the purposes of subsection (3c), a person is related to a purchaser that is a unit trustee if —
 - (a) the person is the sole unit holder in the unit trust; or
 - (b) the person is a unit holder in the unit trust and, if the person were a purchaser, would be related (within the meaning of this section) to each of the other unit holders.
- (3g) For the purposes of subsections (3d), (3e) and (3f), a person cannot be related to a purchaser in relation to the conveyance or transfer to the person of property that the person intends to hold on behalf of another person (the “**beneficiary**”) —
 - (a) as the trustee of a discretionary trust (as defined in section 76);
 - (b) subject to subsection (3d)(f), as a unit trustee; or
 - (c) as a trustee other than a trustee referred to in paragraph (a) or (b), unless the beneficiary is also related (within the meaning of this section) to the purchaser.
- (3h) For the purposes of subsections (3d), (3e) and (3f) —
 - (a) an illegitimate person is to be treated as the legitimate child of that person’s parents; and
 - (b) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by a written law.
- (4) When duty has been paid in accordance with subsection (1), the conveyance or transfer concerned made to the purchaser shall not be chargeable with duty but the Commissioner, on being

s. 74A

requested to do so, is to endorse on the conveyance or transfer the duty paid.

[Section 74 inserted by No. 37 of 1979 s. 50; amended by No. 81 of 1984 s. 21; No. 2 of 2003 s. 58; No. 66 of 2003 s. 35.]

74A. Duty chargeable on certain conveyances of corporation property

- (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 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; or
 - (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 person who has a substantial holding (as defined in the Corporations Act) in 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;
and
 - (f) any other matters he or she considers relevant.
- (4) The deduction to be made under subsection (2) shall be calculated as follows:

s. 74B

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

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

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; and
 - 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 74A inserted by No. 13 of 1997 s. 37; amended by No. 10 of 2001 s. 169; No. 2 of 2003 s. 59; No. 66 of 2003 s. 36.]

74B. Transactions involving a call option and a put option

- (1) In this section —
- “call option”** means the right referred to in subsection (2)(a);
- “option property”** means —
- (a) the property to which the call option applies; or
 - (b) if the put option applies to only a part of the property to which the call option applies, that part of the property;
- “property”** includes an estate or interest in property;
- “put option”** means the right referred to in subsection (2)(b).
- (2) Subject to subsection (4), this subsection applies if, at the same time —
- (a) a person (“A”) has a right to require another person (“B”) to sell property to A, or to a person who has an agreement, arrangement or understanding with A relating to the property; and
 - (b) B has a right to require A, or a person referred to in paragraph (a), to purchase —
 - (i) the property;
 - (ii) a part of the property; or
 - (iii) property that includes the property, from B.
- (3) Subsection (2) applies regardless of when the call option or the put option is exercisable.
- (4) The Commissioner may determine that subsection (2) does not apply if the Commissioner is satisfied —
- (a) that the call option and the put option are for, and only for, the purpose of obtaining finance or making other financial arrangements; or

s. 74B

- (b) that the call option and the put option form part of a scheme of call options and put options given by the proprietors of a business that —
 - (i) are for, and only for, the purpose of facilitating the continuation of the business by one or some of the proprietors (the “**continuing proprietor or proprietors**”); and
 - (ii) are not exercisable except on the occurrence of an event specified in them that would cause the continuing proprietor or proprietors to seek to acquire the interest of another of the proprietors.

- (5) In subsection (4)(b) —
 - “**proprietor**” means —
 - (a) in the case of a partnership, a partner;
 - (b) in the case of a company, a shareholder;
 - (c) in the case of a unit trust scheme, a unit holder; or
 - (d) in any other case, a person the Commissioner determines to be a proprietor of the business.

- (6) From the time when subsection (2) applies the call option is to be regarded as —
 - (a) a contract for the sale of the option property to A for the purposes of section 74(1); or
 - (b) an acquisition by A of beneficial ownership of the option property for the purposes of section 31B,whichever is applicable in the circumstances.

- (7) The consideration for the contract or acquisition mentioned in subsection (6) is taken to be —
 - (a) the sum of —
 - (i) the amount paid by way of consideration for the granting of the call option in respect of the option property; and

- (ii) the amount payable in the event of the call option being exercised in respect of the option property;
 - or
 - (b) if the unencumbered value of the option property is ascertainable and it is greater than the sum mentioned in paragraph (a), that unencumbered value.
- (8) If as a result of the call option or the put option being exercised —
- (a) a contract or agreement for the sale of the option property is executed; or
 - (b) there is an acquisition of beneficial ownership of the option property for the purposes of section 31B,
- the duty payable in respect of the contract or agreement or because of the acquisition is to be reduced by the amount of any duty paid because of subsections (6) and (7).
- (9) This subsection applies if —
- (a) A has assigned the call option to another person (“C”) so that C has a right to require B to sell the option property to C, or to a person who has an agreement, arrangement or understanding with C relating to the property; and
 - (b) B has a right to require C, or a person referred to in paragraph (a), to purchase the option property from B.
- (10) If subsection (9) applies, subsection (2) does not apply in relation to the rights of C and B referred to in subsection (9)(a) and (b).
- (11) From the time when subsection (9) applies the assignment of the call option is to be regarded as —
- (a) a contract for the sale of the option property to C for the purposes of section 74(1); or
 - (b) an acquisition by C of beneficial ownership of the option property for the purposes of section 31B,

s. 74B

whichever is applicable in the circumstances.

- (12) The consideration for the contract or acquisition mentioned in subsection (11) is taken to be —
- (a) the sum of —
 - (i) the amount paid by way of consideration for the assignment of the right referred to in subsection (9)(a); and
 - (ii) the amount payable in the event of the right referred to in subsection (9)(a) being exercised;
 - or
 - (b) if the unencumbered value of the option property is ascertainable and it is greater than the sum mentioned in paragraph (a), that unencumbered value.
- (13) If as a result of the right referred to in subsection (9)(a) or the right referred to in subsection (9)(b) being exercised —
- (a) a contract or agreement for the sale of the option property is executed; or
 - (b) there is an acquisition of beneficial ownership of the option property for the purposes of section 31B,
- the duty payable in respect of the contract or agreement or because of the acquisition is to be reduced by the amount of any duty paid because of subsections (11) and (12).
- (14) If —
- (a) the call option and the put option both expire without being exercised; or
 - (b) after either of those options is rescinded or cancelled by agreement, the other expires without being exercised,
- and subsection (9) has never applied, the duty chargeable on the call option is reduced to the amount of duty that would have been payable but for subsections (6) and (7).
- (15) If —

- (a) the rights referred to in subsection (9)(a) and (b) both expire without being exercised; or
- (b) after either of those rights is rescinded, withdrawn, surrendered or cancelled by agreement, the other expires without being exercised,

the duty chargeable on the assignment of the call option is reduced to the amount of duty that would have been payable but for subsections (11) and (12).

- (16) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to subsection (14) or (15).
- (17) For the purposes of subsection (16), section 17 of the *Taxation Administration Act 2003* applies as if the original assessment had been made —
 - (a) in the case of subsection (14), as soon as the call option and the put option had both expired; or
 - (b) in the case of subsection (15), as soon as the rights referred to in subsection (9)(a) and (b) had both expired.
- (18) In relation to duty paid because of subsections (6) and (7) —
 - (a) the matter is not carried into effect for the purposes of section 20(1)(a) or (2)(a) if —
 - (i) the call option and the put option are rescinded or cancelled by agreement; or
 - (ii) after either of those options expires without being exercised, the other is rescinded or cancelled by agreement;
 - and
 - (b) if section 20(1) or (2) applies, the amount of duty is not to be reduced to less than the amount that would have been payable but for subsections (6) and (7).
- (19) In relation to duty paid because of subsections (11) and (12) —

s. 74C

- (a) the matter is not carried into effect for the purposes of section 20(1)(a) or (2)(a) if —
 - (i) the rights referred to in subsection (9)(a) or (b) are rescinded, withdrawn, surrendered or cancelled by agreement; or
 - (ii) after either of those rights expires without being exercised, the other is rescinded, withdrawn, surrendered or cancelled by agreement;

and

- (b) if section 20(1) or (2) applies, the amount of duty is not to be reduced to less than the amount that would have been payable but for subsections (11) and (12).

[Section 74B inserted by No. 66 of 2003 s. 37.]

74C. Acquisition of certain business assets

- (1) In this section —

“business asset” means —

- (a) goodwill of a business;
- (b) a restraint of trade arrangement for a business;
- (c) a business identity;
- (d) a business licence as defined in paragraph (b) of the definition of that term in section 73F(1) if it authorises the carrying out of an activity in Western Australia and elsewhere;
- (e) a right of a business under an uncompleted contract to supply commodities or provide services;
- (f) intellectual property of a business; or
- (g) things that a business has that are in the nature of rent rolls and client lists;

“business identity” means a business name, trading name or Internet domain name, or a right to use a business name, trading name or Internet domain name;

“circuit layout right” means an exclusive right under the *Circuit Layouts Act 1989* of the Commonwealth for an eligible layout under that Act;

“commodities” includes land, money, credit and goods and any interest in them;

“franchise arrangement” means an agreement or other arrangement under which a person (the **“franchisor”**) who carries on a business authorises or permits another person (the **“franchisee”**) —

- (a) to engage in the business of producing, supplying or providing commodities or services, or both, at a place other than the place of business of the franchisor as long as the franchisee does so under —
 - (i) a stated marketing, business or technical plan or system; and
 - (ii) a common format or common procedure, or both;

and

- (b) to use a mark or common trade name in such a way that the business carried on by the franchisee is or is capable of being identified by the public as being substantially associated with the mark or name identifying, commonly connected with or controlled by the franchisor or a person who would be related to the franchisor for the purposes of Part IIIBA;

“intellectual property” means —

- (a) a patent, trademark, industrial design, copyright, registered design, plant breeder right or circuit layout right;
- (b) anything else that has the following characteristics —

s. 74C

- (i) it is in the nature of a strategy, process, procedure, mode of operation or way of working that enables a commodity or service to be produced, supplied or provided or that enhances the production, supply, provision or quality of a commodity or service;
- (ii) it was created, devised or developed to be used for business purposes or, having been created, devised or developed for other purposes, has been applied, adapted or modified for use for business purposes;

or

- (c) a right to use or exploit —
 - (i) anything mentioned in paragraph (a) or (b); or
 - (ii) an adaptation or modification of anything mentioned in paragraph (a) or (b);

“plant breeder right” means —

- (a) a plant breeder’s right under the *Plant Breeder’s Rights Act 1994* of the Commonwealth; or
- (b) a plant breeder’s right corresponding to a right mentioned in paragraph (a);

“restraint of trade arrangement” for a business means a restraint of trade arrangement which, in the opinion of the Commissioner, enhances or is likely to enhance the value of the business.

- (2) This section applies if a business asset of a business is acquired by a person and, at any time in the year preceding the acquisition, the business has —
 - (a) been carried on in or from Western Australia; or
 - (b) supplied commodities or provided services to customers in Western Australia.
- (3) This section does not apply to the acquisition of a business asset by the franchisee from the franchisor in accordance with a

franchise arrangement unless another person has relinquished, or agreed not to extend, that business asset or a business asset of the same kind so that the franchisee could acquire that business asset.

- (4) This section does not apply to the acquisition of intellectual property unless the acquisition is the subject of an arrangement that includes the acquisition of a business asset other than intellectual property.
- (5) If a person —
- (a) carries on, or has carried on, a business (the “**first business**”); and
 - (b) creates intellectual property, a restraint of trade arrangement or a business identity related to the first business for the purpose of the carrying on of the first business or another business by another person,

the creation of the intellectual property, restraint of trade arrangement or business identity is to be regarded for the purposes of this section as the acquisition by that other person of a business asset of the first business.

- (6) If this section applies —
- (a) the business asset is to be regarded for the purposes of this Act as property; and
 - (b) the acquisition of the business asset is to be regarded for the purposes of this Act as a transaction that transfers property and is chargeable with duty,

whether or not the business asset would otherwise be regarded under this Act as property and despite item 2(7) of the Third Schedule.

- (7) Subject to subsection (10), duty on the acquisition of the business asset is to be assessed in accordance with whichever of subsection (8) or (9) is applicable.

s. 74C

- (8) If the principal place of business or head office of the business is in Western Australia, duty is to be assessed on the amount determined using the following formula —

$$A = \frac{CUV \times (TS - IS)}{TS}$$

where —

- A is the dutiable amount;
- CUV is the consideration for the acquisition of the business asset, or the unencumbered value of the business asset, whichever is the greater;
- TS is the gross amount (in Australian dollars) of all the commodities supplied and services provided by the business in the last 3 completed financial years preceding the acquisition; and
- IS is the gross amount (in Australian dollars) of the commodities supplied and services provided by the business to customers elsewhere in Australia in the last 3 completed financial years preceding the acquisition.

- (9) If neither the principal place of business nor the head office of the business is in Western Australia, duty is to be assessed on the amount determined using the following formula —

$$A = \frac{CUV \times WAS}{TS}$$

where —

- A is the dutiable amount;
- CUV is the consideration for the acquisition of the business asset, or the unencumbered value of the business asset, whichever is the greater;
- TS is the gross amount (in Australian dollars) of all the commodities supplied and services provided by the business in the last 3 completed financial years preceding the acquisition; and

WAS is the gross amount (in Australian dollars) of the commodities delivered and services provided by the business to customers in Western Australia in the last 3 completed financial years preceding the acquisition.

- (10) Despite whichever of subsection (8) or (9) is applicable, the Commissioner may determine the dutiable amount on another basis if the Commissioner is satisfied that the other basis would be more appropriate in the circumstances.
- (11) If this section applies to the acquisition of a business asset as defined in paragraph (d) of the definition of that term in subsection (1), section 73F does not apply to the acquisition.
- (12) Section 74 applies to a contract or agreement for the acquisition of a business asset to which this section would apply.

[Section 74C inserted by No. 66 of 2003 s. 37.]

75. Duty chargeable on conveyance for less than full consideration

- (1) Subject to subsection (2), every conveyance or transfer or instrument chargeable as a conveyance operating as a voluntary disposition *inter vivos* shall be chargeable with duty under item 19 of the Second Schedule in respect of the unencumbered value of the property disposed of.
- (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 of the Second Schedule as if that unencumbered value were the consideration paid.

s. 75

- (3) A conveyance or transfer —
- (a) for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied;
 - (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 the exercise of any power of appointment;
 - (d) made by a discretionary trustee, in the exercise of a power of appointment over the property conveyed or transferred, to a beneficiary who is an individual 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) 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;
 - (e) made to the holder of a unit in a unit trust scheme by a unit trustee if —
 - (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

- (ii) the Commissioner is satisfied that —
 - (I) 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
 - (II) 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) not otherwise coming within this subsection but which the Commissioner is satisfied —
 - (i) does not pass a beneficial interest in the property conveyed or transferred;
 - (ii) is not made in contemplation of the passing of a beneficial interest therein; and
 - (iii) is not part of, or made pursuant to, a scheme whereby any beneficial interest in the property conveyed or transferred, whether vested or contingent, has passed or will or may pass,

shall not be charged with duty under this section.

[Section 75 inserted by No. 81 of 1984 s. 22; amended by No. 33 of 1987 s. 21; No. 100 of 1987 s. 4; No. 39 of 1994 s. 14 and 21; No. 20 of 1996 s. 25; No. 13 of 1997 s. 42; No. 2 of 2003 s. 60; No. 66 of 2003 s. 38.]

75A. Power to exempt instruments made for charitable or similar purposes

The Commissioner may exempt from *ad valorem* duty any deed of gift, conveyance, transfer, settlement or other instrument

s. 75AB

operating as a voluntary disposition of property, or any conveyance on the purchase of property, if the Commissioner is satisfied that it has been made for the purposes of a university or for charitable or similar public purposes.

[Section 75A inserted by No. 2 of 2003 s. 61.]

[75AA. Repealed by No. 2 of 2003 s. 61.]

75AB. Power to exempt instruments made in respect of certain funds or schemes

The Commissioner may exempt from *ad valorem* duty any instrument that the Commissioner is satisfied is an instrument —

- (a) by which money or property is given or agreed to be given to; or
- (b) which establishes or regulates or relates to the establishment or regulation of,

any fund or scheme established for the principal purpose of making provision by way of superannuation payments, annuities, pensions, gratuities, allowances, lump sum payments, benefits, assistance or the like for the directors, officers, servants or employees of any employer or employers on the termination of their office or service, whether by death or otherwise, or on their withdrawal from membership of that fund or scheme or during their incapacity for work attributable to illness or accident or for the widows, widowers, surviving de facto partners of 2 years or children or dependants or legal personal representatives of any of those directors, officers, servants or employees or for any persons duly selected or nominated for that purpose pursuant to the provisions of that fund or scheme.

[Section 75AB inserted by No. 37 of 1979 s. 51; amended by No. 81 of 1984 s. 25; No. 2 of 2003 s. 62; No. 28 of 2003 s. 189.]

75ABA. Power to exempt transfers by bankruptcy trustee to bankrupt

- (1) When the Commissioner is satisfied that an instrument is an instrument by which property that vested in a bankruptcy trustee on the bankruptcy of a person is conveyed from the bankruptcy trustee back to that person, the Commissioner may exempt the instrument from duty.
- (2) In this section —
“**bankruptcy trustee**” means —
 - (a) the Official Trustee in Bankruptcy; or
 - (b) a registered trustee,
under the *Bankruptcy Act 1966* of the Commonwealth.

[Section 75ABA inserted by No. 28 of 2000 s. 5; amended by No. 2 of 2003 s. 63.]

75AC. Exchange of property

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 75AC inserted by No. 20 of 1996 s. 27.]

75AD. Duty chargeable on partition of property

- (1) Any instruments effecting the partition of any property shall be chargeable with duty under item 15 of the Second Schedule and any amount paid or other consideration given to achieve equality is also to be charged with *ad valorem* duty on that

s. 75AE

amount or on the value of that consideration under item 4 of the Second Schedule.

- (2) Notwithstanding anything in subsection (1), when there is no amount or consideration referred to in that subsection or any amount or consideration referred to in that subsection is insufficient to achieve equality, duty shall be chargeable on the amount of that insufficiency under item 19 of the Second Schedule.

[Section 75AD inserted by No. 37 of 1979 s. 51; amended by No. 39 of 1994 s. 14; No. 66 of 2003 s. 39.]

75AE. Concessional rates for certain residential or business property

- (1) A conveyance or transfer of residential property or business property is chargeable with duty under item 4(5) of the Second Schedule if —
- (a) duty on the conveyance or transfer would, but for this section, be chargeable under item 4(1) of the Second Schedule;
 - (b) the value of the property does not exceed \$200 000; and
 - (c) the property is conveyed or transferred to —
 - (i) one person who is an eligible purchaser;
 - (ii) in the case of business property — 2 or more purchasers all of whom are eligible purchasers; or
 - (iii) in the case of residential property — 2 or more purchasers —
 - (I) at least one of whom is an eligible purchaser; and
 - (II) all of whom are either eligible purchasers or government bodies.

- (2) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.
- (3) In this section —
- “**business property**” means property that is or includes a business undertaking;
- “**eligible purchaser**”, in relation to a business property, means a person who —
- (a) is not a government body;
 - (b) after purchasing the property will carry on the business undertaking that is or is part of the property; and
 - (c) intends to carry on that business for an indefinite period;
- “**eligible purchaser**”, in relation to a residential property, means —
- (a) an individual who —
 - (i) occupies, or after purchasing the property will occupy, the dwellinghouse on the property as his or her principal place of residence;
 - (ii) intends to so occupy the dwellinghouse for an indefinite period; and
 - (iii) is not acquiring, and does not intend to hold, the property as agent, trustee or otherwise on behalf of another person;
 - or
 - (b) a trustee who is acquiring, and intends to hold, the property in trust for one or more disabled beneficiaries, if at least one disabled beneficiary of the trust uses, or after the property is purchased will use, the property as his or her principal place of residence;

s. 75AF

“residential property” means property that includes a dwellinghouse.

- (4) In paragraph (b) of the definition of “eligible purchaser”, as defined in relation to residential property —

“disabled beneficiary” has the meaning given to that term in clause 1 of the Glossary at the end of the *Land Tax Assessment Act 2002*;

“trustee” has the meaning given to that term in clause 1 of the Glossary at the end of the *Land Tax Assessment Act 2002*.

- (5) In the case of the definition of “trustee”, subsection (4) has effect despite section 63.

[Section 75AE inserted by No. 2 of 2003 s. 64; amended by No. 12 of 2004 s. 26; No. 11 of 2005 s. 9.]

75AF. Computation of duty for 2 or more instruments

- (1) Where 2 or more instruments to which this section applies together form, or arise from, substantially one transaction, or one series of transactions, those instruments shall be chargeable with *ad valorem* duty calculated upon the sum of the amounts by reference to which *ad valorem* duty on each of those instruments would, but for this subsection, have been calculated, and that duty shall be apportioned to the various instruments as determined by the Commissioner.
- (2) Where, by instruments to which this section applies that have been, or appear to have been, executed within 12 months of each other, a person conveys or transfers, or agrees to convey or transfer, property or properties to the same person (whether that person takes alone or with the same or different persons), it shall be presumed, unless the Commissioner is satisfied to the contrary, that the instruments arose out of one transaction or one series of transactions.
- (3) This section does not operate to reduce the duty payable on any instrument.

- (4) This section applies to conveyances or transfers of property and other instruments chargeable with duty under item 4(1), item 17 or item 19 of the Second Schedule.

[Section 75AF inserted by No. 81 of 1984 s. 26; amended by No. 41 of 1989 s. 12; No. 2 of 2003 s. 65.]

75AG. Reduction of duty or refund for first home owner

- (1) Duty on an instrument of transfer of property referred to in the Second Schedule item 4(2) or (3) becomes chargeable at the rate set out in the respective subitem when the transferee, or each transferee, if there are more than one —
- (a) is paid a first home owner grant in relation to the property or becomes a person to whom a first home owner grant is or will be payable, in relation to the property; or
 - (b) becomes a person to whom a first home owner grant would be, or would have been, payable in relation to the property if consideration had been given for the transfer of the property.
- (1a) Subsection (1) does not apply to an instrument of transfer of property referred to in the Second Schedule item 4(2) or (3) if —
- (a) the unencumbered value of the land and home (in the case of property referred to in item 4(2)) exceeds \$350 000; or
 - (b) the unencumbered value of the land (in the case of property referred to in item 4(3)) exceeds \$200 000.
- (2) The transferee may apply to the Commissioner for the amount of duty chargeable on the instrument to be assessed under this section.
- (3) If there is more than one transferee, the application must be made jointly by each transferee.

s. 75AG

- (4) The application may only be made within the period —
 - (a) beginning on the commencement date of the eligible transaction to which the application relates; and
 - (b) ending 12 months after the completion of the eligible transaction.
- (5) The application must —
 - (a) be in an approved form; and
 - (b) include the information necessary to enable the Commissioner to decide whether duty on the instrument is chargeable under this section.
- (6) For the purposes of this section and for the purposes of applying the Administration Act in relation to the operation of this section —
 - (a) the FHOG Act is to be treated as if it were a taxation Act;
 - (b) the FHOG Act applies to and in relation to an application under this section, to the extent that it can be applied for those purposes, as if a reference in the FHOG Act to an application or an applicant were a reference to the application or applicant under this section; and
 - (c) this Act and the Administration Act apply in relation to any information given to the Commissioner for the purposes of the FHOG Act by a person who is an applicant under this section as if the information had been given to the Commissioner for the purposes of this section.
- (7) Information provided by an applicant in or in connection with an application under this section must, if the Commissioner so requires, be verified by statutory declaration or supported by other evidence required by the Commissioner.

- (8) If the instrument of transfer is or was chargeable under the Second Schedule Item 19, this section does not apply unless the Commissioner is satisfied that the duty was or will be (as the case requires) paid by a transferee.
- (9) If a transferee is required to repay an amount under section 51 of the FHOG Act, or would be required to repay an amount if a first home owner grant had been paid to the transferee, duty on the instrument of transfer is not, or is no longer (as the case requires) chargeable under this section.
- (10) Despite section 17 of the Administration Act, the Commissioner must make any reassessment necessary to give effect to this section.
- (11) An expression used in this section that is defined in the FHOG Act has the same meaning in this section as it has in that Act.
- (12) In this section, unless the contrary intention appears —
- “Administration Act”** means the *Taxation Administration Act 2003*;
- “FHOG Act”** means the *First Home Owner Grant Act 2000*;
- “instrument of transfer”** includes —
- (a) an instrument of conveyance;
 - (b) an instrument on which duty is chargeable under the Second Schedule Item 19; and
 - (c) any other instrument that is chargeable as a conveyance or transfer;
- “transferee”**, in relation to property, means a person to whom the property is conveyed or transferred, except —
- (a) a person who, under the FHOG Act, would not be required to join in making an application for a first home owner grant; or
 - (b) a prescribed person.

s. 75C

[Section 75AG inserted by No. 12 of 2004 s. 20; amended by No. 11 of 2005 s. 10.]

[75B. Repealed by No. 48 of 1996 s. 41.]

75C. Power to exempt for certain conveyances between spouses

- (1) Upon application made in the manner provided in subsection (3), the Commissioner may exempt from duty any instrument chargeable with duty under item 4(1) or 19 of the Second Schedule where —
 - (a) the person from whom, and the person to whom, the property is conveyed or transferred, or agreed to be conveyed or transferred, are married to each other or are de facto partners of 2 years;
 - (b) the property conveyed or transferred, or agreed to be conveyed or transferred, by the instrument includes a dwellinghouse which, at the time of the execution of the instrument was used solely or principally as the ordinary place of residence of the persons referred to in paragraph (a);
 - (c) the lot on which the dwellinghouse referred to in paragraph (b) is erected is used principally or solely for residential purposes associated with that dwellinghouse;
 - (d) the person from whom the property is conveyed or transferred, or agreed to be conveyed or transferred, is the sole owner of the property; and
 - (e) the result of the conveyance or transfer is or will be that the property is owned solely by the persons referred to in paragraph (a) as joint tenants.
- (2) Where an instrument referred to in subsection (1) does not relate only to a dwellinghouse and lot described in that subsection the exemption provided by that subsection extends only to the amount of the aggregate value of all property to which the

instrument relates that the Commissioner is satisfied is the amount of the value of the dwellinghouse and lot.

- (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 an approved form.
- (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.
- (4) In this section —
- “**lot**” means —
- (a) a lot as defined in the *Land Tax Assessment Act 2002*; and
 - (b) 2 or more such lots in the same ownership —
 - (i) on which is constructed a dwellinghouse, parts of which stand on each of the lots; and
 - (ii) which have common boundaries and which in the opinion of the Commissioner should be treated as a single lot for the purpose of this section.

[Section 75C inserted by No. 100 of 1987 s. 5; amended by No. 3 of 1989 s. 7; No. 52 of 1991 s. 15; No. 20 of 1996 s. 30; No. 2 of 2003 s. 67; No. 28 of 2003 s. 190.]

75CA. Refund where contingent consideration is not paid

- (1) If payment of any part of the consideration (the “**contingent consideration**”) in respect of which a contract or agreement for the sale of any estate or interest in any property (the “**contract**”) was charged with *ad valorem* duty was dependent on the happening of a future event, then if, on an application under subsection (2), it is shown to the satisfaction of the Commissioner that —

s. 75CA

- (a) the contract was executed on or after the day on which this section came into operation;
- (b) the contingent consideration has not been paid;
- (c) the event did not happen, or did not happen within the time specified in the contract for the happening of the event; and
- (d) either —
 - (i) the event cannot happen in the future; or
 - (ii) the time specified in the contract for the happening of the event has passed or expired,

then the contingent consideration is taken not to be, and never to have been, part of the consideration in respect of which the contract is chargeable and the Commissioner must reassess the duty payable on the contract accordingly.

- (2) An application for the purposes of this section —
 - (a) is to be made in an approved form by the person liable to pay the duty; and
 - (b) cannot be made more than 5 years after the contract was executed.
- (3) In this section, a reference to the happening of an event includes a reference to an event not happening.

[Section 75CA inserted by No. 66 of 2003 s. 41.]

Part IIIBAA — Certain transfers of farming property⁵

[Heading inserted by No. 79 of 1994 s. 4(1).]

75D. Interpretation in Part IIIBAA

(1) In this Part —

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

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

“**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;
- (e) the spouse, former spouse, de facto partner of 2 years or former de facto partner of 2 years of the person; or
- (f) the spouse or de facto partner of 2 years 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 quoted on a financial market; and
- (b) which has assets which include —
 - (i) farming property; or
 - (ii) a share in a corporation —
 - (I) the shares of which are not quoted on a financial market; and
 - (II) the assets of which include farming property;

s. 75D

“farming land” means —

- (a) land that is used solely or principally for the purpose of primary production; or
- (b) land that is used solely or principally for the purpose of silviculture or reforestation;

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

but does not include a Part IIIBA statement;

“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.

- (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.
- (2) For the purposes of this Part —
- (a) an illegitimate person shall be treated as the legitimate child of that person’s parents; and
 - (b) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by a written law.

[Section 75D inserted by No. 79 of 1994 s. 4(1); amended by No. 20 of 1996 s. 31; No. 57 of 1996 s. 6; No. 13 of 1997 s. 42; No. 53 of 1999 s. 21; No. 21 of 2003 s. 27; No. 2 of 2003 s. 68; No. 28 of 2003 s. 191; No. 66 of 2003 s. 42; No. 12 of 2004 s. 27.]

s. 75E

75E. Application of this Part

(1) Subject to subsections (2), (3), (4), (5) and (6), this Part applies in respect of an instrument of conveyance made by a person (“**the transferor**”), or made by a trustee on behalf of, and at the direction of, a person (“**the transferor**”) —

(a) of farming property to a family member of the transferor;

(b) of an interest in a farming partnership to a family member of the transferor;

[(c) deleted]

(d) of —

(i) farming property; or

(ii) an interest in a farming partnership,

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 the transferor; or

(e) of —

(i) farming property; or

(ii) an interest in a farming partnership,

[(iii) deleted]

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) 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 transferor to any combination of the persons 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 not one of the persons referred to in that subsection.
- (3) This Part applies only where —
- (a) the family member, trustee or discretionary trustee to whom the farming property is conveyed or transferred intends to continue to use the farming property in the business of primary production;
 - (b) the farming partnership in which an interest is conveyed or transferred to a family member, trustee or discretionary trustee intends to continue to use the farming property in the business of primary production; or
 - (c) section 75I applies and the farming company in which an interest is conveyed or transferred to the family member, trustee or discretionary trustee intends to continue to use the farming property in the business of primary production.
- (3a) However, if —
- (a) part of the farming property consists of farming land;
 - (b) some (but not all) of the farming land is leased to another person; and
 - (c) under the lease, the lessee is using the leased land solely or principally for the purposes of silviculture or reforestation,

then this Part applies under subsection (3) as if the family member, trustee or discretionary trustee, or the farming partnership or farming company, intends to use or continue to use the leased portion of the land in the business of primary production.

s. 75E

- (4) In relation to an instrument of conveyance referred to in subsection (1)(a) or (b), this Part applies only where the relevant family member does not intend to hold the farming property or partnership interest, as the case requires, as agent, trustee or otherwise on behalf of any other person.
- (5) Where an exemption has been granted under this Part in relation to an instrument of conveyance of farming property or an interest in a farming partnership, 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 or partnership interest which was the subject of the exemption.
- (6) Where —
- (a) an exemption has been granted 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 or partnership interest 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 or partnership interest that was the subject of the exemption.

[Section 75E inserted by No. 79 of 1994 s. 4(1); amended by No. 20 of 1996 s. 32; No. 2 of 2003 s. 69; No. 66 of 2003 s. 43; No. 12 of 2004 s. 28.]

75F. Power to exempt for farming property

If the Commissioner is satisfied that this Part applies to an instrument of conveyance, the Commissioner may, on receiving an application under section 75H —

- (a) exempt the instrument from duty; or
- (b) in the circumstances referred to in section 75G, partially exempt the instrument from duty.

[Section 75F inserted by No. 2 of 2003 s. 70.]

75G. Partial exemption of duty

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

[(c) deleted]

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

- (d) the Commissioner shall assess duty on the unencumbered value of the farming property or partnership interest as determined in accordance with section 33 and sections 21 and 22 of the *Taxation Administration Act 2003*;
- (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.

s. 75H

- (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 of the Second Schedule; 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 referred to in subsection (1)(b), 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 33 and sections 21 and 22 of the *Taxation Administration Act 2003*) comprised in the assets of the partnership;
- B is the total value of the assets of the partnership;
- C is the amount of the total liabilities of the partnership; and
- L is the apportioned liability.

[Section 75G inserted by No. 79 of 1994 s. 4(1); amended by No. 20 of 1996 s. 33; No. 2 of 2003 s. 71; No. 66 of 2003 s. 44.]

75H. Application for exemption

- (1) An application for an exemption under section 75F is to be made in an approved form by the person acquiring the farming property or partnership interest or, if there is more than one such person, by all of them.
- (2) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on an instrument to which this Part applies on the basis that an

exemption under section 75F should have been, but was not, granted in relation to the instrument cannot be made more than 12 months after the day on which the instrument was stamped.

[Section 75H inserted by No. 2 of 2003 s. 72; amended by No. 66 of 2003 s. 45.]

75HA. Subsequent liability for duty in certain circumstances

(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 partial exemption granted 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;

“the transferor” has the meaning given in section 75E(1).

s. 75HA

- (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 granted in relation to an instrument of conveyance to a discretionary trustee of a discretionary trust and during the life of the transferor a taxable event occurs, the discretionary trustee of the relevant discretionary trust shall, unless subsection (4) or (4a) applies, within a period of one month after the date of the taxable event, lodge a statement with the Commissioner in respect of the taxable event.
- Penalty: \$20 000.
- (3a) A dutiable statement is to be prepared in an approved form.
- (4) A discretionary trustee is not required to lodge a dutiable statement if —
- (a) a dutiable statement in respect of the farming exemption has previously been lodged with the Commissioner;
 - (b) there is no current exempted property.
- (4a) If the property conveyed by an instrument of conveyance was a share in a farming company, the discretionary trustee is not required to lodge a dutiable statement unless subsection (6) will apply if such a statement is lodged.

- (5) If a dutiable statement is lodged in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(i) or (ii), the dutiable statement is taken to be an instrument operating as a voluntary disposition under section 75(1) of the current exempted property and is chargeable with duty accordingly.
- (6) If —
- (a) a dutiable statement is required to be lodged under this section in respect of a farming exemption for an instrument of conveyance that conveyed a share in a farming company;
 - (b) a section 76AG statement is required to be lodged in respect of the acquisition that is the subject of the instrument of conveyance; and
 - (c) at the date of the taxable event the relevant farming company is still beneficially entitled to farming land to which it was beneficially entitled when the acquisition referred to in paragraph (b) occurred,

then the dutiable statement lodged under this section is taken to be an instrument operating as a voluntary disposition under section 75(1) of the relevant proportion of the farming land or of that part of the farming land and is chargeable with duty accordingly.

[(7) repealed]

- (8) The amount of duty payable in respect of a dutiable statement lodged in respect of a farming exemption for an instrument of conveyance that conveyed an interest in a farming partnership or a share in a farming company is reduced (up to the amount of duty payable in respect of the dutiable statement) by the amount of any duty previously paid on the instrument of conveyance.

[Section 75HA inserted by No. 20 of 1996 s. 34; amended by No. 60 of 2000 s. 20(3), (4) and (5); No. 2 of 2003 s. 73; No. 66 of 2003 s. 46 and 107(4).]

s. 75I

75I. Part IIIBA companies

(1) Where —

(a) the Commissioner is satisfied that, if the amendments made to this Part by the *Business Tax Review (Assessment) Act (No. 2) 2003* had not been made, an instrument of conveyance of a share in a farming company would have been —

(i) an instrument referred to in section 75E(1)(c), (d)(iii) or (e)(iii); and

(ii) an instrument to which this Part applied;

and

(b) the transaction to which that instrument relates gives rise to a liability to lodge a section 76AG statement,

the Commissioner may —

(c) if the land to which the section 76AG statement relates comprises only farming land in Western Australia — exempt the section 76AG statement from duty; or

(d) if the land to which the section 76AG statement relates does not only comprise farming land in Western Australia — partially exempt the section 76AG statement from duty.

(2) The amount of a partial exemption is the amount equal to R in the formula —

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

where —

A is the value of the farming land in Western Australia;

B is the value of all the land and chattels the subject of the section 76AG statement; and

C is the amount of the duty —

- (a) that would be chargeable on the section 76AG statement; or
- (b) where section 76AH(3) applies, that would ultimately be chargeable on the section 76AG statement,

if this Part did not apply to it.

- (3) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on a section 76AG statement on the basis that an exemption under section 75I should have been, but was not, granted in relation to the section 76AG statement cannot be made more than 12 months after the day on which the section 76AG statement was stamped.

[Section 75I inserted by No. 2 of 2003 s. 74; amended by No. 66 of 2003 s. 47; No. 12 of 2004 s. 29.]

Part IIIBAAA — Exemptions for corporate reconstructions

[Heading inserted by No. 48 of 1996 s. 42.]

75J. Interpretation in Part IIIBAAA

- (1) In this Part, unless the contrary intention appears —
 - “**body corporate**” does not include a corporation sole;
 - “**dormant**”, in relation to a body corporate, has the meaning given by section 75JAA;
 - “**licence**” has the meaning given to that term in section 76B;
 - “**section 31B or 31C statement**” means a dutiable statement lodged under section 31B or 31C;
 - “**shares**” includes stock;
 - “**vehicle**” has the meaning given to that term in section 76B.
- (1a) For the purposes of this Part a section 31B or 31C statement is taken to have been executed on the day on which the conveyance, transfer or assignment to which it relates occurred.
- (2) In this Part, unless the contrary intention appears —
 - (a) 2 bodies corporate are associated if —
 - (i) one of them beneficially owns (directly or indirectly) at least 90% of the issued share capital of, and has voting control over, the other; or
 - (ii) a third body corporate beneficially owns (directly or indirectly) at least 90% of the issued share capital of each body corporate and has voting control over each body corporate;
 - (b) a body corporate (“A”) has voting control over another body corporate (“B”) if A is in a position to cast or control the casting of at least 90% of the maximum number of votes that might be cast at a general meeting of B (excluding any power to vote by any person by

- virtue of the provisions of any debentures or a trust deed securing the issue of such debentures);
- (c) if the claw-back applies —
 - (i) in the case of an instrument, section 75JE applies; or
 - (ii) in the case of a Part IIIBA statement, section 75JF applies.
- (3) In this Part, other than section 75JA, unless the contrary intention appears —
- “issued share capital”** means issued share capital that carries the right to unlimited participation in the distribution of income and capital of a body corporate or issued share capital to which subsection (4) applies.
- (4) This subsection applies to issued share capital of a body corporate if the Commissioner is satisfied —
- (a) that the body corporate is not carried on for the purposes of profit or gain to its members;
 - (b) that the issued share capital of the body corporate carries no right, or a limited right, for its members to participate in the distribution of income and capital of the body corporate; and
 - (c) that the non-existence or limitation of that right is not part of an arrangement having as its purpose, or one of its purposes, the reduction of duty that might otherwise become payable.

[Section 75J inserted by No. 48 of 1996 s. 42; amended by No. 51 of 1997 s. 5; No. 29 of 2000 s. 5; No. 60 of 2000 s. 20(6); No. 10 of 2001 s. 170; No. 36 of 2001 s. 19; No. 2 of 2003 s. 75; No. 66 of 2003 s. 48; No. 11 of 2005 s. 11.]

75JAA. Meaning of dormant body corporate

A body corporate is dormant throughout a particular period if, and only if, throughout that period the body —

s. 75JAA

- (a) did not receive or become entitled to any income or incur or become liable for any expenditure;
- (b) did not purchase, sell or supply any goods or other property, or any services, or enter into any agreement or pass any resolution in relation to the purchase, sale or supply of goods or other property, or services;
- (c) did not issue, sell, purchase or make available any securities, or enter into any agreement or pass any resolution in relation to the issue, sale, purchase or making available of securities;
- (d) did not issue a prospectus or statement, or enter into any agreement or pass any resolution in relation to the issue of a prospectus or statement, in connection with the issue, sale, purchase or making available, or the proposed issue, sale, purchase or making available, of any securities;
- (e) did not take part in any research, development or exploration activities, or enter into any agreement or pass any resolution in relation to taking part in research, development or exploration activities;
- (f) was not, and did not become, a party to any lease, franchise, joint venture or partnership arrangement, and did not take part in any lease, franchise, joint venture or partnership arrangement, or enter into any agreement or pass any resolution in relation to becoming a party to, or taking part in, any lease, franchise, joint venture or partnership arrangement;
- (g) did not make, receive or guarantee any loan, or enter into any agreement or pass any resolution in relation to making, receiving or guaranteeing a loan;
- (h) was not, and did not become, a party to any underwriting agreement and did not enter into any agreement or pass any resolution in relation to becoming a party to any underwriting agreement;

- (i) did not obtain or receive a grant of any licence or other authority, or make any application or pass any resolution in relation to obtaining a licence or other authority; and
- (j) was not, and did not become, a party to any litigation or negotiations with any other person or body.

[Section 75JAA inserted by No. 10 of 2001 s. 171.]

75JA. Corporate reconstructions: exemptions

- (1) This section applies if in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate —
 - (a) a body corporate (“**the transferee**”) acquires at least 90% of the issued share capital of —
 - (i) a body corporate; or
 - (ii) each of 2 or more bodies corporate that were associated with one another immediately prior to the acquisition,
(“the target”);
 - (b) the transferee is incorporated in Australia and has been dormant from when it was incorporated until it resolves to make the acquisition;
 - (c) at least 90% of the consideration for the acquisition of the target, or if there are 2 or more targets, each target, consists of the issue of shares in the transferee to the holders of shares in the target or targets in exchange for those shares;
 - (d) each holder of shares in the target or targets whose shares are acquired receives consideration equal in value to the value of those shares; and
 - (e) immediately after the acquisition at least 90% of the issued share capital of the transferee consists of shares issued in consideration for the acquisition of shares in

s. 75JA

the target or, if there are 2 or more targets, for the acquisition of shares in all the targets.

- (2) If, on an application under section 75JD, it is shown to the satisfaction of the Commissioner that this section applies because of subsection (1) and the acquisition is a relevant acquisition under Division 2 or 3 of Part IIIBA, the Commissioner shall exempt a Part IIIBA statement lodged in respect of the acquisition from duty chargeable under section 76AH or 76AO.
- (3) If a Part IIIBA statement is exempted under subsection (2) and within 5 years after the date of the occurrence of the relevant acquisition to which the Part IIIBA statement relates —
- (a) the transferee issues or cancels any shares or varies the rights of any of its shares; or
 - (b) the beneficial interest in any share in the transferee issued in the circumstances described in subsection (1)(c) is transferred from the person to whom the share was issued,
- then —
- (c) the transferee shall notify the Commissioner in an approved form within one month after the relevant event; and
 - (d) the claw-back applies unless, in a case where paragraph (b) applies, the Commissioner is satisfied that the transfer is in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate.

[(4)-(6) repealed]

[Section 75JA inserted by No. 48 of 1996 s. 42; amended by No. 51 of 1997 s. 6; No. 53 of 1999 s. 22; No. 2 of 2003 s. 76; No. 21 of 2003 s. 28(1); No. 66 of 2003 s. 49; No. 11 of 2004 s. 13; No. 12 of 2004 s. 30; No. 11 of 2005 s. 12.]

75JB. Corporate reorganisations: exemption from duty on conveyances between associated bodies corporate

- (1) This section applies if —
- (a) an instrument conveys, transfers or assigns a beneficial interest in property from one body corporate (“A”) to another body corporate (“B”);
 - (b) the instrument does not convey, transfer or assign any other interest or property which if separately conveyed, transferred or assigned would not be exempt from duty;
 - (c) A and B are associated bodies corporate;
 - (d) at the date of execution of the instrument, A and B have been associated bodies corporate for at least the qualifying period unless —
 - (i) A and B became associated in the circumstances of an acquisition described in subsection (1) of section 75JA (B being “the transferee” referred to in that subsection), a Part IIIBA statement in respect of that acquisition was exempted under section 75JA(2) and section 75JF has not become applicable to that statement;
 - (ii) A and B have been associated since A acquired at least 90% of the issued share capital —
 - (A) of B on its incorporation in Australia; or
 - (B) of B as a body corporate incorporated in Australia that had been dormant since it was incorporated,and B has been dormant from when A and B became associated until B resolved to acquire the beneficial interest;
 - (iii) A and B became associated because B acquired at least 90% of the issued share capital of A, a Part IIIBA statement was lodged in respect of

s. 75JB

that acquisition, and *ad valorem* duty was paid on that Part IIIBA statement;

or

- (iv) A and B are associated in the circumstances described in section 75J(2)(a)(ii), the third body corporate referred to in section 75J(2)(a)(ii) (“C”) has owned the issued share capital of B in those circumstances since B was incorporated in Australia, B has been dormant from when it was incorporated until it resolved to acquire the property from A, and A has been associated with C for at least the qualifying period;
 - (e) B does not hold the beneficial interest on trust for another person; and
 - (f) the instrument was not made pursuant to or in connection with an arrangement under which —
 - (i) the consideration, or any part of it, for the conveyance, transfer or assignment was to be provided or received, directly or indirectly, by a person other than A or B or a body corporate that at the time the instrument was executed was associated with either A or B; or
 - (ii) A or B or a body corporate associated with either of them is to be enabled to provide any of the consideration or is to dispose of any of the consideration by or in consequence (wholly or partially) of the carrying out of a transaction involving a payment or other disposition by a person other than A or B or a body corporate associated with either of them at the time the instrument was executed.
- (1a) If, in relation to an instrument executed on or after 18 May 2005 (other than one executed in reliance on a determination made under section 75JC(4) before that day), C’s ownership of the

issued share capital of B referred to in subparagraph (iv) of subsection (1)(d) is indirect, this section does not apply by virtue of that subparagraph unless this section would have applied if the beneficial interest had been conveyed, transferred or assigned —

- (a) from A to C; and
 - (b) from C to B.
- (2) In subsection (1)(d) the qualifying period is the shorter of 3 years or —
- (a) if prior to A acquiring the beneficial interest, the interest was owned by bodies corporate associated with A — the period while the interest was continuously owned by A and those associated bodies corporate;
 - (b) if the beneficial interest came into the ownership of A or of a body corporate associated with A by means of an instrument on which *ad valorem* duty or interstate duty has been paid — the period since that instrument was executed; or
 - (c) in any other case — the period since A acquired the beneficial interest.
- (2a) This section also applies if —
- (a) an instrument executed on or after the day on which section 50 of the *Business Tax Review (Assessment) Act (No. 2) 2003* comes into operation evidences an agreement to transfer or assign an interest in a vehicle and includes the following information —
 - (i) the make and model of the vehicle;
 - (ii) the licence plate number of the vehicle;
 - (iii) the market value of the vehicle;
 - (iv) the purchase price (if applicable) of the vehicle;and

s. 75JB

- (b) subsection (1)(b) to (f) are met (with any necessary modifications).
- (3) If on an application under section 75JD in respect of an instrument to which subsection (1)(a) refers it is shown to the satisfaction of the Commissioner that this section applies, then —
 - (a) the Commissioner shall exempt an instrument executed on or after 1 October 1996 to which this section applies from duty under item 4, 13(3) or 19 of the Second Schedule; and
 - (b) if the conveyance, transfer or assignment effected by an instrument to which this section applies is a relevant acquisition under Part IIIBA that occurs on or after 1 October 1996 — the Commissioner shall exempt a Part IIIBA statement lodged in respect of the relevant acquisition from duty chargeable under section 76AH, 76AO, 76ATA or 76ATH.
- (3aa) In determining whether this section applies for the purposes of subsection (3)(b), the reference in subsection (1)(d) to the date of execution of the instrument is taken to be a reference to the date of the relevant acquisition.
- (3a) If, on an application under section 75JD in respect of an instrument to which subsection (2a) refers, it is shown to the satisfaction of the Commissioner that this section applies, then the Commissioner shall issue to the applicant an exemption certificate in the approved form.
- (4) If —
 - (aa) an instrument is exempted under subsection (3); or
 - (ab) an exemption certificate is issued under subsection (3a) in relation to an instrument,and within 5 years after the execution of the instrument or the date of the relevant acquisition —

- (a) A and B cease to be associated;
- (b) B, being a body corporate that became associated with A in the circumstances described in section 75JA(1)(a) to (e), issues or cancels any shares or varies the rights of any of its shares;
- (ba) section 75J(4) having applied to the issued share capital of A or B, a change is made to the purpose for which that body corporate is carried on;
- (c) the beneficial interest in any share in B issued in the circumstances described in section 75JA(1)(c) is transferred from the person to whom the share was issued;
- (ca) on or after 18 May 2005 there is a transfer of A's beneficial interest in shares in B (the "**share transfer**") such that, if the conveyance, transfer or assignment referred to in subsection (1)(a) had occurred after the share transfer, this section would not have applied to the instrument effecting the conveyance, transfer or assignment; or
- (d) B's assets are distributed on a liquidation,

A and B, or A or B, or the person (as the case requires) shall notify the Commissioner in an approved form within one month after the relevant event.

- (5) If —
 - (aa) an instrument is exempted under subsection (3); or
 - (ab) an exemption certificate is issued under subsection (3a) in relation to an instrument,

and within 5 years after the execution of the instrument or the date of the relevant acquisition A and B cease to be associated then the claw-back applies.

- (5a) The claw-back under subsection (5) does not apply if A and B cease to be associated in circumstances where A has no assets or

s. 75JB

no assets other than cash or money in an account at call or on deposit with any person or a negotiable instrument.

(5b) If A is liquidated a reference in subsection (5a) to its assets is a reference to them at the time of the appointment of the liquidator and at all subsequent times until they are distributed to the shareholders.

(5c) In subsections (5c) to (5j) —

“controlling body” means —

- (a) in a case to which subsection (5e)(a) applies, a body corporate which, at the time of the execution of the instrument or the date of the relevant acquisition, owned and controlled the parent body;
- (b) in a case to which subsection (5e)(b) applies, a body corporate which, at the time the association referred to in subsection (5e)(b) arose, owned and controlled the parent body;

“own and control” a body corporate means to beneficially own (directly or indirectly) at least 90% of the issued share capital of, and have control (within the meaning of section 75J(2)(b)) over, the body corporate;

“parent body” means the other body corporate referred to in subsection (5d) or, if there is more than one of them, whichever of them did not, at the relevant time or date mentioned in the definition of “controlling body”, own and control any of the others;

“qualifying period” has the same meaning as it has in subsection (1)(d).

(5d) An association is a **“prescribed relationship”** for the purposes of subsection (5e) if A and B are associated because another body corporate owns and controls each of them.

(5e) For the purposes of subsection (5f), the **“relevant circumstances”** have occurred if —

- (a) the association between A and B which satisfied the requirement of subsection (1)(c) was a prescribed relationship for the whole or a part of the qualifying period; or
 - (b) the association between A and B which prevents the claw-back under subsection (5) from applying is a prescribed relationship.
- (5f) If —
- (aa) an instrument is exempted under subsection (3) or an exemption certificate is issued under subsection (3a) in relation to an instrument; and
 - (ab) the relevant circumstances have occurred,
- and within 5 years after the execution of the instrument or the date of the relevant acquisition the parent body —
- (a) ceases to beneficially own (directly or indirectly) at least 90% of the issued share capital of B; or
 - (b) ceases to have voting control (within the meaning of section 75J(2)(b)) over B,
- then —
- (c) the parent body and B shall notify the Commissioner in an approved form within one month after the relevant event; and
 - (d) the claw-back applies.
- (5g) Despite subsection (5f)(d), the Commissioner may, on an application under this subsection, waive the claw-back if —
- (a) a body corporate approved by the Commissioner (being a controlling body) continues to own and control B; and
 - (b) the Commissioner is satisfied that waiving the claw-back would not be inconsistent with the objects of this section.
- (5h) The application shall be in an approved form.

s. 75JB

[(5i) repealed]

- (5j) If the claw-back is waived under subsection (5g) —
- (a) subsection (5f) then applies as if references in it to the parent body were references to the body corporate approved under subsection (5g); and
 - (b) a reference in this Part to subsection (5f)(c) is to be read as a reference to that provision as applied by paragraph (a).

- (6) If —
- (aa) an instrument is exempted under subsection (3); or
 - (ab) an exemption certificate is issued under subsection (3a) in relation to an instrument,

and within 5 years after the execution of the instrument or the date of the relevant acquisition B's assets are distributed to its shareholders on a liquidation, then the claw-back applies.

- (7) If —
- (aa) an instrument is exempted under subsection (3); or
 - (ab) an exemption certificate is issued under subsection (3a) in relation to an instrument,

and A and B became associated in the circumstances described in section 75JA(1)(a) to (e) and within 5 years after the execution of the instrument or the date of the relevant acquisition A and B cease to be associated in circumstances where the claw-back does not apply under subsection (5) and —

- (a) B issues or cancels any shares or varies the rights of any of its shares;
- (b) the beneficial interest in any share in B issued in the circumstances described in section 75JA(1)(c) is transferred from the person to whom the share was issued; or

- (c) B's assets are distributed to its shareholders on a liquidation,

then the claw-back applies unless, in a case where paragraph (b) applies, the Commissioner is satisfied that the transfer is in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate.

- (8) If the claw-back applies under subsection (7), A shall not be liable to pay any duty or penalty tax under section 75JE or 75JF.
- (9) Subject to subsection (10), if —
- (aa) an instrument is exempted under subsection (3); or
 - (ab) an exemption certificate is issued under subsection (3a) in relation to an instrument,

and section 75J(4) applied to the issued share capital of A or B, the claw-back applies if the Commissioner is satisfied that within 5 years after the execution of the instrument or the date of the relevant acquisition that body corporate has been carried on for the purposes of profit or gain to its members.

- (10) The claw-back under subsection (9) does not apply if the constitution or governing rules of the body corporate have been changed so that its issued share capital carries the right to unlimited participation in the distribution of its income and capital.
- (11) If —
- (aa) an instrument is exempted under subsection (3); or
 - (ab) an exemption certificate is issued under subsection (3a) in relation to an instrument,

the claw-back applies if there is a transfer of the kind referred to in subsection (4)(ca) on or after 18 May 2005 and within 5 years after the execution of the instrument or the date of the relevant acquisition.

s. 75JBA

[Section 75JB inserted by No. 48 of 1996 s. 42; amended by No. 51 of 1997 s. 7; No. 29 of 2000 s. 6(1); No. 3 of 2001 s. 19; No. 2 of 2003 s. 77; No. 66 of 2003 s. 50⁴; No. 11 of 2004 s. 14; No. 12 of 2004 s. 31; No. 11 of 2005 s. 13.]

75JBA. Operation of claw-back: application for pre-determination in certain cases

- (1) Terms used in this section have the same meanings as they have in section 75JB.
- (2) If a cessation of ownership or voting control referred to in section 75JB(5f)(a) or (b) is proposed or contemplated in circumstances where a controlling body will continue to own and have voting control of B, a person acting on behalf of B, the parent body or the controlling body, may request the Commissioner to determine whether in those circumstances the Commissioner would, under section 75JB(5g), approve the controlling body and waive the claw-back.
- (3) The request shall be in an approved form.
- [(4) repealed]*
- (5) If the Commissioner is given sufficient information to do so the Commissioner shall make the requested determination.
- (6) If the Commissioner determines that the controlling body would be approved and the claw-back waived then, on an application under section 75JB(5g), the Commissioner shall approve the controlling body and waive the claw-back unless the Commissioner is of the opinion that in relation to the request for a determination there was not a full and true disclosure of relevant information and evidence.

[Section 75JBA inserted by No. 29 of 2000 s. 7; amended by No. 2 of 2003 s. 78; No. 66 of 2003 s. 51.]

75JC. Corporate reorganisations: application for pre-determination

(1) A person acting on behalf of a body corporate that proposes to be party to an acquisition, transaction or transfer that would give rise to —

- (a) an instrument which, if executed; or
- (b) an obligation to lodge a section 31B or 31C statement or a Part IIIBA statement which, if finalised,

might be exempt from duty under section 75JA or 75JB, may request the Commissioner to determine whether a draft of that instrument or statement, if executed or finalised, would be so exempt.

(2) The request shall be in an approved form.

(3) The Commissioner may require the person making the request to provide a copy of the draft instrument or statement and any information and evidence that the Commissioner needs to make the determination.

(4) If the Commissioner is given sufficient information to do so the Commissioner shall make the requested determination.

(5) If the Commissioner determines that an exemption would be granted then, on an application under section 75JD for an exemption, the Commissioner shall grant the exemption unless —

- (a) the executed instrument or the finalised section 31B or 31C statement or Part IIIBA statement, differs in a material particular from a draft provided;
- (b) circumstances relating to the executed instrument, the section 31B or 31C statement or the Part IIIBA statement and relevant for the purposes of sections 75JA and 75JB differ materially from those that related to a draft provided or were described in information or evidence provided; or

s. 75JD

- (c) the Commissioner is of the opinion that in relation to the request for a determination there was not a full and true disclosure of relevant information and evidence.

[Section 75JC inserted by No. 48 of 1996 s. 42; amended by No. 36 of 2001 s. 20; No. 2 of 2003 s. 79; No. 66 of 2003 s. 52; No. 11 of 2005 s. 14.]

75JD. Corporate reorganisations: application for exemption

- (1) An application for an exemption under section 75JA or 75JB must be made in an approved form.
- (2) An application for an exemption under section 75JA or 75JB as to an instrument or Part IIIBA statement cannot be made more than 12 months after the date of execution of the instrument or the occurrence of the relevant acquisition.
 - (2a) An application for an exemption under section 75JA or 75JB as to an instrument (other than an instrument referred to in section 75JB(2a)) or Part IIIBA statement cannot be made if duty payable on the instrument or statement has been assessed.
 - (2b) An application for an exemption under section 75JB for an instrument referred to in section 75JB(2a) cannot be made if, because of the agreement evidenced by the instrument, an application has been made for the transfer of a licence.
 - (2c) Subsection (2d) applies to an application for the reassessment of duty payable on an instrument or Part IIIBA statement to be made on the basis that, if an application for an exemption under section 75JA or 75JB (as the case requires) had been made before the duty was assessed, an exemption would have been granted.
 - (2d) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for reassessment to which this subsection applies cannot be made more than 12 months after the date of execution of the instrument or the occurrence of the relevant acquisition.

- (2e) Subsection (2f) applies to an application for the reassessment of duty payable on the transfer of a licence to be made on the basis that, if an application for an exemption under section 75JB as to an instrument referred to in section 75JB(2a) had been made before the application for the transfer was made, an exemption certificate would have been issued under section 75JB(3a).
- (2f) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for reassessment to which this subsection applies cannot be made more than 12 months after the date of execution of the instrument.
- (3) Subject to section 17(2), (3) and (4) of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to sections 75JA and 75JB.
- (4) If any information given to the Commissioner in relation to an exempted instrument or Part IIIBA statement is false in a material particular or any material information is not given to the Commissioner the claw-back applies and the penalty tax under section 75JE(b) or 75JF(b) is to be calculated to the date an assessment notice is issued by the Commissioner.
- (5) In subsection (4) —
 “exempted instrument” includes an instrument in relation to which an exemption certificate has been issued under section 75JB(3a).
- (6) Despite an exemption under section 75JA or 75JB being granted in relation to an instrument or Part IIIBA statement, the Commissioner must make an assessment of any penalty tax payable under section 26 of the *Taxation Administration Act 2003* on the instrument or statement as if the exemption had not been granted.

[Section 75JD inserted by No. 48 of 1996 s. 42; amended by No. 2 of 2003 s. 80; No. 66 of 2003 s. 53; No. 11 of 2005 s. 15; No. 12 of 2005 s. 7.]

s. 75JDA

75JDA. Exemption may be withheld in certain cases

- (1) In this section —
“duty avoidance arrangement” means an arrangement —
 - (a) avoiding or circumventing the operation of the provisions of this Part so far as they make the availability and continued effect of an exemption under section 75JB dependent on bodies corporate having been associated for a particular period or remaining associated for a particular period; or
 - (b) having as its purpose, or one of its purposes, the reduction of duty that might otherwise become payable.
- (2) Without limiting section 75JC, the Commissioner may determine under that section that an exemption under section 75JB would not be granted in respect of an instrument or a Part IIIBA statement if the Commissioner considers that the instrument or Part IIIBA statement would, if executed or finalised, relate or be likely to relate to a duty avoidance arrangement.
- (3) Even if on an application under section 75JD it is shown to the satisfaction of the Commissioner that section 75JB applies, the Commissioner may refuse to grant an exemption under section 75JB(3) or to issue an exemption certificate under section 75JB(3a) in respect of an instrument or to grant an exemption under section 75JB(3) in respect of a Part IIIBA statement if the Commissioner considers that the instrument or Part IIIBA statement relates or is likely to relate to a duty avoidance arrangement.
- (4) Despite subsection (3), if the Commissioner is required under section 75JC(5) to grant an exemption in respect of an instrument or a Part IIIBA statement, the exemption is to be granted even if the Commissioner considers that the instrument or Part IIIBA statement relates or is likely to relate to a duty avoidance arrangement.

[Section 75JDA inserted by No. 29 of 2000 s. 8(1); amended by No. 2 of 2003 s. 81; No. 66 of 2003 s. 54.]

75JE. Claw-back (instruments)

- (1) If this section applies to an instrument that has been exempted from duty under section 75JB(3) —
- (a) the instrument shall be deemed not to have been exempted;
 - (b) the instrument shall be charged with penalty tax equal to 20% per annum of the duty chargeable on the instrument calculated from the date of the execution of the instrument to the date the Commissioner is notified under section 75JB(4) or (5f)(c), or if the Commissioner is not so notified, to the date an assessment notice is issued by the Commissioner;
 - (c) the duty and penalty tax shall be paid within one month after an assessment notice is issued by the Commissioner;
 - (d) the parties to the instrument or, in the case of a section 31B or 31C statement, the parties to the acquisition, transaction or transfer, are jointly and severally liable to pay the duty and penalty tax;
- [(da) deleted]*
- (e) if a body corporate that is liable to pay the duty and penalty tax has been wound up voluntarily, its directors at the time of the resolution to wind-up shall be jointly and severally liable to pay the duty and penalty tax unless the Commissioner is satisfied that —
 - (i) the winding-up was a creditors' voluntary winding-up (as defined in the Corporations Act); and
 - (ii) no creditor was an associate (as defined in the Corporations Act) of the body corporate;and

s. 75JE

- (f) on payment of the duty and penalty tax the instrument shall be deemed to be, and always to have been, stamped.
- (2) If this section applies to an instrument in relation to which an exemption certificate has been issued under section 75JB(3a), the exemption certificate is revoked by force of this subsection and if, under section 76D(3)(c), the licence for a vehicle has been transferred without duty being payable —
 - (a) the Commissioner shall assess the amount of duty payable on the transfer under Part IIIC;
 - (b) the transfer shall be charged with penalty tax equal to 20% per annum of the duty chargeable on the transfer calculated from the date of the application for the transfer to the date the Commissioner is notified under section 75JB(4) or (5f)(c), or if the Commissioner is not so notified, to the date an assessment notice is issued by the Commissioner;
 - (c) the duty and penalty tax shall be paid within one month after an assessment notice is issued by the Commissioner;
 - (d) if a body corporate that is liable to pay the duty and penalty tax has been wound up voluntarily, its directors at the time of the resolution to wind-up shall be jointly and severally liable to pay the duty and penalty tax unless the Commissioner is satisfied that —
 - (i) the winding-up was a creditors' voluntary winding-up (as defined in the Corporations Act); and
 - (ii) no creditor was an associate (as defined in the Corporations Act) of the body corporate;and
 - (e) on payment of the duty and penalty tax the transfer shall be deemed to be, and always to have been, stamped.
- (3) For the purposes of subsection (2)(a) —

- (a) the amount to be assessed is the amount of duty that would have been payable when the licence was transferred if the exemption certificate had not been in existence; and
- (b) section 76E(2) and (3) apply to the assessment as if the Commissioner were the Director General as defined in section 76B.

[Section 75JE inserted by No. 48 of 1996 s. 42; amended by No. 51 of 1997 s. 8; No. 29 of 2000 s. 9; No. 10 of 2001 s. 172; No. 36 of 2001 s. 21; No. 2 of 2003 s. 82; No. 66 of 2003 s. 55; No. 11 of 2005 s. 16.]

75JF. Claw-back (Part IIIBA statements)

If this section applies to a Part IIIBA statement —

- (a) the Part IIIBA statement shall be deemed not to have been exempted;
- (b) the Part IIIBA statement shall be charged with penalty tax equal to 20% per annum of the duty chargeable on the Part IIIBA statement calculated from the date of the relevant acquisition to the date the Commissioner is notified under section 75JA(3)(c) or 75JB(4) or (5f)(c), or if the Commissioner is not so notified, to the date an assessment notice is issued by the Commissioner;
- (c) the duty and penalty tax shall be paid within one month after an assessment notice is issued by the Commissioner;
- (d) these persons are jointly and severally liable to pay the duty and penalty tax —
 - (i) in the case of a section 76AG statement or section 76AT statement — the parties to the instrument that gave rise to the relevant acquisition;
 - (ii) in the case of a section 76AN statement or section 76ATG statement — the parties to the

s. 75JG

instrument that gave rise to the relevant acquisition and the corporation that is required to lodge the section 76AN statement or section 76ATG statement;

- (e) if a body corporate that is liable to pay the duty and penalty tax has been wound up voluntarily, its directors at the time of the resolution to wind-up shall be jointly and severally liable to pay the duty and penalty tax unless the Commissioner is satisfied that —
 - (i) the winding-up was a creditors' voluntary winding-up (as defined in the Corporations Act); and
 - (ii) no creditor was an associate (as defined in the Corporations Act) of the body corporate;and
- (f) on payment of the duty and penalty tax the Part IIIBA statement shall be deemed to be, and always to have been, stamped.

[Section 75JF inserted by No. 48 of 1996 s. 42; amended by No. 29 of 2000 s. 9; No. 10 of 2001 s. 172; No. 2 of 2003 s. 83; No. 66 of 2003 s. 56; No. 11 of 2004 s. 15.]

75JG. Offences and recovery of duty etc.

- (1) If a person contravenes section 75JA(3)(c) or 75JB(4) or (5f)(c) —
 - (a) the person commits an offence; and
 - (b) if the offence is committed by a body corporate, an officer (as defined in section 9 of the Corporations Act) of the body corporate who is knowingly a party to the contravention commits an offence.

Penalty:

- (a) \$20 000; and

- (b) an amount equal to the duty chargeable on the instrument or Part IIIBA statement had it not been exempted under section 75JA or 75JB.
- (2) If a body corporate contravenes section 75JA(3)(c) or 75JB(4) or (5f)(c) and the Commissioner is for any reason unable to recover the duty or penalty tax referred to in section 75JE or 75JF, each officer (as defined in section 9 of the Corporations Act) of the body corporate at the time of the contravention who is knowingly a party to the contravention shall be liable for the duty or penalty tax, as the case may be.
- (3) If in connection with a request under section 75JBA or 75JC or an application under section 75JB(5g) or 75JD, a person gives the Commissioner information knowing that it is false in a material particular or knowingly does not give the Commissioner all material information, the person commits an offence.

Penalty:

- (a) \$20 000; and
- (b) an amount equal to the duty that would have been chargeable on —
 - (i) if a draft instrument or statement, or information or evidence about a draft instrument or statement, has been provided to the Commissioner under section 75JC — the instrument or statement had it been executed or finalised; or
 - (ii) if a request has been made under section 75JBA or an application has been made under section 75JB(5g) or 75JD — the instrument or statement concerned.

[Section 75JG inserted by No. 48 of 1996 s. 42; amended by No. 29 of 2000 s. 10; No. 10 of 2001 s. 173; No. 2 of 2003 s. 84; No. 11 of 2005 s. 17.]

Part IIIBA — Duty on change of control of certain land-owning corporations

[Heading inserted by No. 33 of 1987 s. 22.]

Division 1 — Provisions applicable to this Part

[Heading inserted by No. 33 of 1987 s. 22; amended by No. 11 of 2004 s. 16.]

76. Interpretation in Part IIIBA

(1) In this Part, unless the contrary intention appears —

“acquire”, in relation to an interest in a WA company or a corporation, means to acquire beneficially in any manner or by any means and includes the increasing of an existing interest, but does not include an acquisition —

(a) that is chargeable with duty under section 73E(4);

(b) that occurs solely as the result of —

(i) the appointment of a receiver or trustee in bankruptcy;

(ii) the appointment of a liquidator;

(iii) the making of a compromise or arrangement under Part 5.1 of the Corporations Act —

(I) which has been made with the corporation’s creditors or a class of them;

(II) which has been approved by the court; and

[(III) deleted]

(IV) in respect of which the Commissioner is satisfied that it is not an arrangement having as its purpose, or one of its purposes, the defeat of the object of this Part;

or

- (iv) the distribution of the estate of a deceased person, including an acquisition that occurs as the result of —
 - (I) a will, a codicil or an order of a court varying or modifying the provisions of a will or codicil; or
 - (II) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of the provisions of a law relating to the distribution of the assets of persons who die intestate;

or

- (c) that is effected or evidenced by an instrument on which duty is chargeable under item 6 of the Second Schedule;

“chattels” means goods, wares or merchandise other than —

- (a) goods, wares or merchandise referred to in item 2(7), (7a) or (7b) of the Third Schedule;
- (b) a vehicle the transfer of the licence of which is exempt under item 9 of the Third Schedule; or
- (c) goods, wares or merchandise used solely or principally in connection with the business of primary production (as defined in section 75D(1)),

and includes an estate or interest in them;

“discretionary trust” means —

- (a) a trust under which the vesting of the whole or any part of the capital of the trust property, or the whole or any part of the income from that capital, or both —
 - (i) is required to be determined by a person either in respect of the identity of the beneficiaries,

or the quantum of interest to be taken, or both;
or

- (ii) will occur in the event that a discretion conferred under the trust is not exercised;

or

- (b) a trust which is, by regulation, declared to be a discretionary trust for the purposes of this Part,

but does not include —

- (c) a trust that is solely a charitable trust; or
- (d) a trust that is, by regulation, declared not to be a discretionary trust for the purposes of this Part;

“distributable property” has the meaning given by subsection (4a);

“entitled” means beneficially entitled, and **“entitlement”** has a corresponding meaning;

“land” includes a mining tenement, and also includes —

- (a) any estate or interest in land; and
- (b) anything fixed to the land including anything that is, or purports to be, the subject of ownership separate from the ownership of the land;

“minerals” means naturally occurring substances obtained or obtainable from the earth;

“mining tenement” means —

- (a) a mining tenement held under the *Mining Act 1978* being a mining tenement within the meaning of that Act or the *Mining Act 1904*³;
- (b) a mining tenement or right of occupancy continued in force by section 5 of the *Mining Act 1978*; and
- (c) a tenement, right or interest that is —
 - (i) similar to a tenement or right referred to in paragraph (a) or (b); and

- (ii) held under the law of another State, a Territory, the Commonwealth or another jurisdiction;

“primary products” has a meaning corresponding with the definition of “primary production” in section 75D(1) except that in relation to plants the term extends to plants that have not been grown or reared and to parts of them and their produce;

“rules” of a corporation means one or more of the following —

- (a) the corporation’s constitution;
- (b) replaceable rules applying to the corporation under the Corporations Act;
- (c) internal management rules applying to the corporation under the Corporations Act;

“share” means a share or stock of a corporation and includes an interest in a share, and **“shareholding”** has a corresponding meaning;

“trust” includes a unit trust scheme, but, except in section 76A, does not include a unit trust scheme referred to in paragraph (c) of the definition of “marketable security” in section 4(1).

- (1a) For the purpose of this Division a reference to the acquisition of an interest includes a reference to the acquisition of a majority interest or a further interest within the meaning of section 76AK or 76AR or the acquisition of a controlling interest or an additional interest within the meaning of section 76ATD or 76ATK.
- (1b) In the definition of “acquire” in subsection (1) a reference to the increase of an interest includes a reference to an increase that occurs by the cancellation of any shares or the variation of the rights of any shares.
- (2) For the purposes of sections 76AI(3)(c), 76AP(3)(c), 76ATB(4)(d) and 76ATI(4)(d) the following —

- (a) are associated persons in relation to a corporation —
 - (i) a related corporation;
 - (ii) a related person within the meaning in subsection (3)(a) to (g);
 - (iii) a director or secretary of the corporation or a related corporation;
 - (iv) a person who is entitled to any shareholding in the corporation or a related corporation;
 - (v) a relative of any individual referred to in subparagraph (ii), (iii), or (iv);
 - (vi) a corporation in which the corporation or any person referred to in subparagraph (iii), (iv) or (v) is entitled to any shareholding;
- (b) are relatives of an individual for the purposes of paragraph (a)(v) —
 - (i) a child or remoter lineal descendant of the individual or his spouse or de facto partner;
 - (ii) a parent or remoter lineal ancestor of the individual or his spouse or de facto partner;
 - (iii) a brother or a sister of the individual or his spouse or de facto partner;
 - (iv) the spouse or de facto partner of the individual;
 - (v) the spouse or de facto partner of an individual referred to in subparagraph (i), (ii), or (iii).
- (3) For the purposes of this Part the following persons are related —
 - (a) individuals who are spouses, or de facto partners, of each other or between whom the relationship is that of parent and child;
 - (b) related corporations;
 - (c) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether

- the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
- (d) an individual and a corporation if the individual is a majority shareholder, director or secretary of the corporation or a related corporation;
 - (e) an individual and a trustee if the individual is a beneficiary under the trust of which the trustee is a trustee, whether the person has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (f) a corporation and a trustee if —
 - (i) the corporation, a majority shareholder, director or secretary of the corporation is a beneficiary of the trust of which the trustee is a trustee; or
 - (ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (g) persons who acquire interests in a corporation by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions;
 - (h) persons who acquire interests in a corporation by virtue of acquisitions that arise from those persons acting in concert with each other.
- (4) For the purposes of subsections (2) and (3) —
- (a) an illegitimate person shall be treated as the legitimate child of that person's parents;
 - (b) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by a written law; and

- (c) a majority shareholder in relation to a corporation is a person who would have a substantial holding in the corporation under the definition of “substantial holding” in section 9 of the Corporations Act even if the reference in that definition to 5% were a reference to 50%.
- (4a) For the purposes of this Part, a reference to entitlement to property of a corporation or trust, or to participate in a distribution of property of a corporation or trust, is a reference to entitlement otherwise than as a creditor or other person to whom the corporation or trust is liable, and a reference to distributable property is a reference to property distributable to persons otherwise than as creditors or other persons to whom the corporation or trust is liable.
- (5) For the purposes of this Part, the entitlement that a person would have at a particular time to participate in the distribution of the property of a corporation on a winding up of the corporation is an entitlement to an amount calculated —
 - (a) as if the winding up were carried out at that time in accordance with the rules of the corporation and any law relevant to the winding up, as the rules and law then exist; or
 - (b) as if the person had, immediately prior to the winding up, exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the corporation —
 - (i) to effect or compel an alteration to the rules;
 - (ii) to vary the rights conferred by shares in the corporation; or
 - (iii) to effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation,in such manner as to maximise that amount,

whichever of the amounts under paragraph (a) or (b) results in the greater amount, unless the Commissioner determines, after consideration of the circumstances of the case, and where the calculation under paragraph (b) results in the greater amount, that the amount of the entitlement should be calculated under paragraph (a).

- (5a) If the extent of a person's entitlement to participate in a distribution of the property of a corporation is unascertainable or uncertain, that entitlement shall be determined for the purposes of this Part as being the greatest entitlement that the person could derive from the distribution.
- (6) For the purposes of this Part, the entitlement of a person on the distribution of a trust shall be determined as the greatest entitlement that the person could derive at any time from the trust whether by the fulfilment of any condition, the outcome of any contingency or the exercise of any power or discretion or otherwise, and in particular a person that may benefit from, or the trust property of another trust that may comprise or be augmented by a benefit from, a discretionary trust shall be deemed to be entitled to or comprise or be augmented by —
- (a) the property subject to the discretionary trust unless the Commissioner determines otherwise; or
 - (b) such part of that property as the Commissioner determines.
- (7) For the purposes of sections 76AI(4), 76AP(4), 76AR(4), 76ATB(6), 76ATI(6) and 76ATK(4) reference to a trust includes any other trust if the property of the first-mentioned trust —
- (a) includes a share or interest, whether vested or contingent, or direct or indirect, in that other trust; or
 - (b) in the case of a discretionary trust, may comprise or be augmented by a benefit from that other trust.

[Section 76 inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 57 of 1996 s. 7; No. 13 of 1997 s. 32 and 42; No. 22 of 1998 s. 36; No. 60 of 2000 s. 4; No. 10 of 2001 s. 174; No. 2 of 2003 s. 85; No. 28 of 2003 s. 192; No. 66 of 2003 s. 57; No. 11 of 2004 s. 17.]

76A. Relevant acquisitions by trustees

- (1) Subject to subsection (2) if by a relevant acquisition a person, in the person's capacity as a trustee, acquires a majority interest, a further interest, a controlling interest or an additional interest in a WA company or a corporation, this Part applies as if the person had acquired the interest beneficially.
- (2) If the combined interest in the WA company or corporation of a beneficiary and any person related to the beneficiary is greater than the combined interest of the trustee and any person related to the trustee —
 - (a) the relevant acquisition is taken to have been made by the beneficiary;
 - (b) the section 76AG statement, section 76AN statement, section 76AT statement or section 76ATG statement lodged by the trustee in relation to the relevant acquisition is taken to have been lodged by the beneficiary; and
 - (c) the section 76AG statement, section 76AN statement, section 76AT statement or section 76ATG statement is chargeable with duty accordingly.
- (3) In this section —

“beneficiary” means a person beneficially entitled to the interest in the WA company or corporation acquired by the trustee, whether the person's interest is vested, contingent or discretionary;

“interest”, “controlling interest” and “additional interest” —

- (a) in relation to a section 76AT statement, have the meanings given by section 76ATD; and
- (b) in relation to a section 76ATG statement, have the meanings given by section 76ATK;

“interest”, “majority interest” and “further interest” —

- (a) in relation to a section 76AG statement, have the meanings given by section 76AK; and
- (b) in relation to a section 76AN statement, have the meanings given by section 76AR;

“relevant acquisition” has the meaning given by section 76AJ, 76AQ, 76ATC or 76ATJ (as the case requires).

[Section 76A inserted by No. 2 of 2003 s. 86; amended by No. 66 of 2003 s. 58; No. 11 of 2004 s. 18.]

76AA. Assessment in the absence of a dutiable statement

If the Commissioner suspects that a corporation is required by section 76AN or 76ATG to lodge a dutiable statement in respect of a relevant acquisition but no such statement has been lodged, the Commissioner may exercise the Commissioner’s powers under sections 19 and 20 of the *Taxation Administration Act 2003* as if —

- (a) the corporation were a corporation to which Division 3 or 3b applies;
- (b) an acquisition had occurred; and
- (c) the acquisition resulted in a person having an entitlement referred to in section 76AR(1) or 76ATK(1) to such an extent as the Commissioner may determine.

[Section 76AA inserted by No. 2 of 2003 s. 86; amended by No. 66 of 2003 s. 59; No. 11 of 2004 s. 19.]

76AB. Request that Commissioner determine whether dutiable statement is required to be lodged

- (1) A person may, within 2 months after the making of an acquisition, request the Commissioner to determine whether a dutiable statement is required to be lodged by that person under section 76AG, 76AN, 76AT or 76ATG in respect of the acquisition.
- (2) A request under subsection (1) must be made in an approved form and must include —
 - (a) the information that would be required under —
 - (i) section 76AG(4)(a) to (f);
 - (ii) section 76AN(3)(a) to (f);
 - (iii) section 76AT(8)(a) to (h), (9)(a) to (c) or (10)(a) to (c); or
 - (iv) section 76ATG(7)(a) to (h), (8)(a) to (c) or (9)(a) to (c),if the request were a dutiable statement; and
 - (b) any prescribed information.
- (3) If a request is made by a person under subsection (1) as to whether a dutiable statement is required to be lodged by that person and that request complies with subsection (2) —
 - (a) the Commissioner shall make the requested determination; and
 - (b) any requirement to lodge a dutiable statement under section 76AG, 76AN, 76AT or 76ATG in respect of the acquisition does not apply in relation to that person.
- (4) Despite subsection (3)(a) if the Commissioner needs any further information and evidence to make the determination, the Commissioner may defer the determination and require the person making the request to provide that information and evidence to the Commissioner within such reasonable period

(the “**specified period**”) as the Commissioner specifies in the requirement.

- (5) If at the end of the specified period the Commissioner does not have sufficient information and evidence to make the requested determination —
- (a) the Commissioner is no longer required to make the determination; and
 - (b) any requirement that the person making the request lodge a dutiable statement under section 76AG, 76AN, 76AT or 76ATG in respect of the acquisition is revived as if the request had never been made.
- (6) If the Commissioner determines that the person making the request is not required to lodge a dutiable statement under section 76AG, 76AN, 76AT or 76ATG, the Commissioner shall notify that person accordingly.
- (7) If the Commissioner determines that the person making the request is required to lodge a dutiable statement under section 76AG, 76AN, 76AT or 76ATG, the request under subsection (1) and any information and evidence provided with the request or under subsection (4) are taken to be the dutiable statement lodged by the person.

[Section 76AB inserted by No. 66 of 2003 s. 60; amended by No. 11 of 2004 s. 20.]

[76AC-76AF. Repealed by No. 2 of 2003 s. 86.]

Division 2 — Companies taken to be registered in Western Australia

[Heading inserted by No. 33 of 1987 s. 22; amended by No. 10 of 2001 s. 175; No. 2 of 2003 s. 87.]

76AG. Preparation of dutiable statement

- (1) Where by a relevant acquisition a person acquires a majority interest or a further interest in —
- (a) a WA company to which this Division applies; or
 - (b) a WA company to which this Division would apply if the reference to the value of land in section 76AI(2)(b) were a reference to the value of land, goods, wares and merchandise,

the person shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.

Penalty: \$20 000.

- (2) If a requirement under subsection (1) arises in circumstances where a person acquires a majority interest or a further interest by reason of acquisitions by him and a related person or related persons being aggregated, one of such persons shall lodge a dutiable statement under that subsection of all acquisitions on behalf of all such persons.
- (3) A dutiable statement must be prepared in an approved form.
- (4) The dutiable statement shall include the following information —
- (a) the name and address of the person who has acquired a majority interest or a further interest and of any related person referred to in subsection (2);
 - (b) the date of the acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the WA company;
 - (d) the person's estimate of the unencumbered value of all land and chattels in Western Australia to which the WA company is entitled as at the date of the acquisition;
 - (da) particulars of any chattels, whether situated in Western Australia or not, to which the WA company was entitled

- in the 12 months preceding the date of the acquisition and acquired, directly or indirectly, by the person or a related person in that period;
- (db) the person's estimate of the unencumbered value of those chattels;
 - (e) the person's estimate of the unencumbered value of the property of the WA company as at the date of the acquisition; and
 - (f) if the dutiable statement is lodged because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.
- (5) A dutiable statement lodged under subsection (1) is taken to be an instrument evidencing the relevant acquisition and is chargeable with duty accordingly.
- (5a) If, in the case of a dutiable statement lodged because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the Commissioner may determine that subsection (5) does not apply to the dutiable statement.
- (5b) In deciding whether or not to make a determination under subsection (5a) the Commissioner may have regard to —
- (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;
 - (b) their nature and their relevance to any business carried on by the WA company or any subsidiary;
 - (c) the period for which they have been and are likely to remain the property of the WA company or any subsidiary; and

- (d) any other matter that the Commissioner considers relevant.
- (5c) A determination made under subsection (5a) has effect according to its terms and the Commissioner is to give notice of it to the person who lodged the dutiable statement.
- (5d) If the person who lodged the dutiable statement requests the Commissioner to give reasons why the Commissioner has not made a determination under subsection (5a), the Commissioner is to give reasons to the person.

[Section 76AG inserted by No. 33 of 1987 s. 22; amended by No. 41 of 1989 s. 15; No. 39 of 1994 s. 21; No. 22 of 1998 s. 38 and 39; No. 60 of 2000 s. 7; No. 3 of 2001 s. 20; No. 2 of 2003 s. 88; No. 66 of 2003 s. 61.]

76AH. Statement chargeable with duty

- (1) A section 76AG statement is chargeable, in accordance with section 76AL, with duty at the rate provided for in item 4(1) of the Second Schedule calculated as follows —
 - (a) where the section 76AG statement relates to a relevant acquisition within section 76AJ(1)(a)(i), the duty shall be calculated on the dutiable value determined under section 76AL(2);
 - (aa) where the section 76AG statement relates to a relevant acquisition within section 76AJ(1)(a)(ii), the duty —
 - (i) shall be calculated on the dutiable value determined under section 76AL(2a)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76AL(2a)(b);

and

- (b) where the section 76AG statement relates to a relevant acquisition within section 76AJ(1)(b), the duty —

- (i) shall be calculated on the dutiable value determined under section 76AL(3)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76AL(3)(b).
- (2) Notwithstanding item 4(1) of the Second Schedule, where the value of the land and chattels under section 76AL(4) does not exceed \$1 500 000 the duty chargeable under this section shall be calculated as follows, and where paragraph (aa) or (b) of subsection (1) applies shall be so calculated in terms of subparagraphs (i) and (ii) of that paragraph —

$$\frac{A - \$1\,000\,000}{\$500\,000} \times B$$

where —

- A is the value of the land and chattels situated in Western Australia to which the WA company is entitled as provided in section 76AL(4) at the time of the relevant acquisition; and
 - B is the duty calculated under item 4(1) of the Second Schedule on the dutiable value determined under section 76AL.
- (3) There shall be deducted from the duty chargeable on a section 76AG statement, any duty paid under item 4A(1) of the Second Schedule in respect of any instrument effecting or evidencing the acquisition of any interest which is taken into account in determining liability under section 76AG to lodge that statement, except any duty previously deducted under this subsection in respect of a section 76AG statement previously lodged in relation to the acquisition.
- (4) Subject to subsection (5), if a section 76AG statement contains particulars of any chattels as required by section 76AG(4)(da), then, in addition to the duty chargeable under subsection (1), the section 76AG statement is chargeable with duty at the rate

provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of the chattels, but duty shall not be charged in respect of —

- (a) any of the chattels in respect of which duty has been paid under section 31B, 31C or 70 by the person who made the relevant acquisition to which the section 76AG statement relates or by a related person;
 - (b) any of the chattels in respect of which *ad valorem* duty has been paid by that person, or a related person, in another jurisdiction; or
 - (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in Western Australia.
- (5) The section 76AG statement is not chargeable with duty under subsection (4) if the Commissioner is satisfied that no transaction by means of which the chattels were transferred from the WA company to the person who made the relevant acquisition, or a related person, was effected for the collateral purpose of reducing the duty that otherwise would be chargeable in respect of the relevant acquisition.

[Section 76AH inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 14 and 21; No. 22 of 1998 s. 38 and 40; No. 60 of 2000 s. 8; No. 36 of 2001 s. 22; No. 2 of 2003 s. 89; No. 66 of 2003 s. 62; No. 11 of 2004 s. 21.]

76AI. Companies to which this Division applies

- (1) This Division applies to a WA company if it is a land-holder within the meaning in subsection (2) unless —
- (a) it is listed on a recognised financial market; and
 - (b) the Commissioner is satisfied that its listing was not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Part.

- (1a) For the purposes of subsection (1)(b) the Commissioner may take into account any matter that the Commissioner considers is relevant but must take into account —
- (a) how long the WA company has been listed on a recognised financial market;
 - (b) any conditions or exemptions that apply to the approval of the listing of the company;
 - (c) who owns the company's shares;
 - (d) what proportion of the company's shares are available to be traded on the market; and
 - (e) the turnover of the company's shares on the market.
- (2) A WA company is a land-holder for the purposes of this Division if at the time of a relevant acquisition —
- (a) it is entitled to land situated in Western Australia and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in Western Australia as a co-owner of the freehold or of a lesser estate in the land and the value of the whole of the freehold or lesser estate is not less than \$1 000 000; and
 - (b) the value of all land to which the WA company is entitled, whether situated in Western Australia or elsewhere, is 60% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (3),
- or if the Commissioner determines that paragraphs (a) and (b) would have applied to the WA company at the time of the relevant acquisition but for a transaction, or series of transactions, which in the Commissioner's opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.
- (2a) If the Commissioner makes a determination under subsection (2) —

Stamp Act 1921

Part III BA

Duty on change of control of certain land-owning corporations

Division 2

Companies taken to be registered in Western Australia

s. 76AI

- (a) the Commissioner is to give notice of it to the person who made the relevant acquisition;
 - (b) the notice is to contain reasons for the determination;
 - (c) for the purposes of section 76AG(1) the relevant acquisition is taken to have occurred when the notice is given; and
 - (d) a reference in another provision of this Division to land and chattels situated in Western Australia to which the WA company is entitled includes a reference to property so situated to which it would have been entitled but for the transaction, or series of transactions, to which the determination relates.
- (3) The following property of a WA company, or of any subsidiary within the meaning in subsection (4), shall not be included for the purpose of calculating the value of property under subsection (2)(b) —
- (a) cash or money in an account at call;
 - (b) negotiable instruments, and money on deposit with any person;
 - (ba) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;
 - (bb) an amount paid or payable to the WA company or a subsidiary under a contract or agreement referred to in subsection (5)(b);
 - (c) money lent by the WA company or a subsidiary to —
 - (i) any person who in relation to the WA company is an associated person; or
 - (ii) any person at call or in terms that require or allow full repayment to the WA company within 12 months after the money is lent;
 - (d) where a corporation is a subsidiary of the WA company by virtue of Division 6 of Part 1.2 of the Corporations

- Act, or would be a subsidiary of it by virtue of that Division if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead, the shareholding of the WA company in the corporation, but without limiting subsection (4);
- (e) in the case of the WA company, property consisting of a share or interest in a trust referred to in subsection (4);
 - (ea) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —
 - (i) locate, extract, process, transport or market minerals; or
 - (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
 - (eb) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the WA company or a related person;
 - (ec) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
 - (ed) any property prescribed for the purposes of this subsection; and
 - (f) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner’s satisfaction that a reason for ownership by the WA company or the subsidiary within the meaning in subsection (4) is not for the purpose of defeating the object of this Division.
- (3a) In forming an opinion for the purposes of subsection (3)(f) the Commissioner may have regard to —

- (a) the source of the property and the source of funding for its acquisition;
 - (b) its nature and its relevance to any business carried on by the WA company or the subsidiary;
 - (c) the period for which it has been and is likely to remain the property of the WA company or the subsidiary; and
 - (d) any other matter that the Commissioner considers relevant.
- (4) Without limiting the meaning of “entitled”, a WA company is deemed to be entitled to land or property to the extent that a subsidiary is entitled to that land or property, and for the purposes of this subsection a subsidiary is —
- (a) a subsidiary corporation by virtue of Division 6 of Part 1.2 of the Corporations Act, or a corporation that would be a subsidiary corporation by virtue of that Division if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead, or any other corporation where the WA company would be entitled if the corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the corporation to an extent not less than 50% of the value of the distributable property;
 - (b) the trustee of any trust where the WA company or a subsidiary corporation of the WA company, as defined in paragraph (a) —
 - (i) is entitled to a share or interest in the trust, whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust;
 - (c) any corporation, where the trustee of a trust in which the WA company or a subsidiary corporation —
 - (i) is entitled to a share or interest, whether vested or contingent; or

- (ii) in the case of a discretionary trust, may benefit from that trust,
would be entitled if the corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the corporation to an extent not less than 50% of the value of the distributable property; or
 - (d) any other corporation or the trustee of any other trust that would by an application of this subsection be a subsidiary of a corporation that is a subsidiary of the WA company.
- (5) In determining the entitlement of an entity to land for the purposes of this section or section 76AL —
 - (a) if the entity has contracted or agreed to acquire an interest in land, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to dispose of an interest in land but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.
- (6) In determining the entitlement of an entity to property other than land for the purposes of this section —
 - (a) if the entity has contracted or agreed to dispose of an interest in such property, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to acquire an interest in such property but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.

[Section 76AI inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 57 of 1997 s. 113(2); No. 53 of 1999 s. 23; No. 60 of 2000 s. 9; No. 3 of 2001 s. 25; No. 10 of 2001 s. 176; No. 2 of 2003 s. 90; No. 21 of 2003 s. 28; No. 66 of 2003 s. 63; No. 11 of 2004 s. 22; No. 11 of 2005 s. 18, 19 and 22.]

76AJ. Meaning of “relevant acquisition”

- (1) An acquisition is a relevant acquisition for the purposes of this Division —
 - (a) if by that acquisition a person acquires a majority interest in a WA company by acquiring an interest —
 - (i) that is itself a majority interest in the WA company; or
 - (ii) that is, when taken with each previous acquisition of an interest in the WA company made by the person on or after the relevant day for that acquisition, a majority interest in the WA company;
 - or
 - (b) if by that acquisition a person acquires a further interest in the WA company.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.
- (2a) A previous acquisition of an interest in the WA company is not to be taken into consideration under subsection (1)(a)(ii) if, at the time of that acquisition, the WA company was not a land-holder for the purposes of this Division as enacted at that time.
- (2b) Subject to subsection (2a), a previous acquisition of an interest in the WA company is to be taken into consideration under subsection (1)(a)(ii) even if, at the time of that acquisition, this Division did not apply to the WA company because of section 76AI(1)(a) and (b).

- (3) For the purposes of subsection (1)(a)(ii) and section 76AL(2a)(b), if a person acquires an interest in a WA company (the “**earlier acquisition**”) and, after that acquisition, that person acquires another interest in the WA company (the “**later acquisition**”) because of an arrangement that was entered into during the relevant period, the earlier acquisition is to be regarded as having been made on or after the relevant day for the later acquisition even if it was not so made.
- (4) In this section —
“**relevant day**” for an acquisition means —
- (a) if the acquisition was or is made on or after 10 August 2000 but before 11 August 2002 — 10 August 1999; or
 - (b) if the acquisition is made on or after 11 August 2002 — the day that is 3 years before the day of the acquisition.
- (5) In subsection (3) —
“**relevant period**” means —
- (a) if the earlier acquisition was made before 10 August 1999 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is one year after the day of that acquisition;
 - (b) if the earlier acquisition was made on or after 10 August 1999 but before 10 August 2000 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is 3 years after the day of that acquisition; or
 - (c) if the earlier acquisition was or is made on or after 10 August 2000 — the period beginning on the relevant day for that acquisition and ending on the day that is 3 years after the day of that acquisition.

- (6) Subsection (3) does not apply in relation to an arrangement entered into before 10 August 2000 unless, because of the arrangement, the person referred to in that subsection had the right to acquire the other interest referred to in that subsection.

[Section 76AJ inserted by No. 60 of 2000 s. 10; amended by No. 66 of 2003 s. 64; No. 11 of 2004 s. 23.]

76AK. Meaning of “interest”, “majority interest” or “further interest”

- (1) For the purposes of this Division, a person acquires an interest in a WA company if the person acquires, or the person and any related person acquire, an entitlement such that the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate in a distribution of the property of the WA company.
- (2) For the purposes of this Division, a person acquires a majority interest in a WA company if the person acquires, or the person and any related person acquire, an interest in the WA company such that having acquired that interest the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate in a distribution of the property of the WA company to an extent greater than 50% of the value of the distributable property and, in section 76AJ(1)(a)(i) and (ii) and subsection (3), “**majority interest**” has a corresponding meaning.
- (3) For the purposes of this Division, a person acquires a further interest in a WA company if —
- (a) the person has, or the person and any related person have, a majority interest in the WA company;
 - (b) the acquisition of that majority interest gave rise to a liability for duty under this Part; and
 - (c) the person acquires, or the person and any related person acquire, an interest in the WA company such that having

acquired that interest the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate further in a distribution of the property of the WA company.

[Section 76AK inserted by No. 60 of 2000 s. 10.]

76AL. How dutiable value is determined

- (1) Where section 76AH(1) applies, duty is chargeable in accordance with this section on the basis of the value free of encumbrances (“**the dutiable value**”) of the land and chattels situated in Western Australia to which the WA company is entitled.
 - (1a) The method of determining the dutiable value depends on the nature of a relevant acquisition by which a person acquires an interest in a WA company.
- (2) Where the relevant acquisition is within section 76AJ(1)(a)(i) the dutiable value is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and any related person, would be entitled, as provided in subsection (5), after the acquisition.
 - (2a) Where the relevant acquisition is within section 76AJ(1)(a)(ii) the dutiable value —
 - (a) for the purposes of section 76AH(1)(aa)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and a related person, would be entitled, as provided in subsection (5), after the acquisition of the majority interest;

- (b) for the purposes of section 76AH(1)(aa)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and a related person, would have been entitled, as provided in subsection (5), before the relevant day as defined in section 76AJ(4).
- (3) Where the relevant acquisition is within section 76AJ(1)(b) the dutiable value —
 - (a) for the purposes of section 76AH(1)(b)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and a related person, would be entitled, as provided in subsection (5), after the acquisition of the further interest;
 - (b) for the purposes of section 76AH(1)(b)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and a related person, would have been entitled, as provided in subsection (5), at the time of the immediately preceding relevant acquisition by that person, or a related person.
- (4) For the purposes of subsections (2), (2a) and (3), the unencumbered value of the land and chattels to which a WA company is entitled at any time is the sum of —
 - (a) in the case of land and chattels to which the WA company is entitled without reference to subsection (4)

of section 76AI, the unencumbered value of the land and chattels at that time; and

- (b) in the case of land and chattels to which a subsidiary is entitled as mentioned in that subsection, the amount to which, if the property of a subsidiary or of all subsidiaries in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same, the WA company would be entitled in respect of the unencumbered value at that time of land and chattels to which the subsidiary is, or all subsidiaries are, entitled.
- (5) For the purposes of subsections (2), (2a) and (3), the property of a WA company to which a person, or the person and any related person, would be entitled is the property to which the person, or the person and any related person, would be entitled if the WA company were to be wound up after the acquisition.

[Section 76AL inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 22 of 1998 s. 38; No. 60 of 2000 s. 11; No. 2 of 2003 s. 91; No. 11 of 2004 s. 24.]

76AM. Liability for duty

Without limiting section 17(1)(c), where an acquisition is a relevant acquisition by virtue of a person and any related person acquiring an interest in a WA company all such persons are jointly and severally liable for the duty chargeable under this Division on the section 76AG statement lodged in relation to the acquisition.

[Section 76AM inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 60 of 2000 s. 12; No. 2 of 2003 s. 92; No. 66 of 2003 s. 65.]

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3 Corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 2

s. 76AN

Division 3 — Corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 2

[Heading inserted by No. 10 of 2001 s. 177; amended by No. 2 of 2003 s. 93.]

76AN. Preparation of dutiable statement

- (1) Where by a relevant acquisition a person acquires a majority interest or a further interest in —
- (a) a corporation to which this Division applies; or
 - (b) a corporation to which this Division would apply if the reference to the value of land in section 76AP(2)(b) were a reference to the value of land, goods, wares and merchandise,

the corporation shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.

Penalty: \$20 000.

- (2) A dutiable statement must be prepared in an approved form.
- (3) The dutiable statement shall include the following information —
- (a) the name and address of the person who has acquired a majority interest or a further interest, and of any related person if the acquisition is required to be aggregated with an acquisition by such person;
 - (b) the date of the acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the corporation;

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- (d) the corporation's estimate of the unencumbered value of all land and chattels in Western Australia to which the corporation is entitled as at the date of the acquisition;
 - (da) particulars of any chattels, whether situated in Western Australia or not, to which the corporation was entitled in the 12 months preceding the date of the acquisition and acquired, directly or indirectly, by the person or a related person in that period;
 - (db) the corporation's estimate of the unencumbered value of those chattels;
 - (e) the corporation's estimate of the unencumbered value of the property of the corporation as at the date of the acquisition; and
 - (f) if the dutiable statement is lodged because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.
- (4) A dutiable statement lodged under subsection (1) is taken to be an instrument evidencing the relevant acquisition and is chargeable with duty accordingly.
- (4a) If, in the case of a dutiable statement lodged because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the Commissioner may determine that subsection (4) does not apply to the dutiable statement.
- (4b) In deciding whether or not to make a determination under subsection (4a) the Commissioner may have regard to —

Stamp Act 1921

Part III BA

Duty on change of control of certain land-owning corporations

Division 3

Corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 2

s. 76AO

- (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;
 - (b) their nature and their relevance to any business carried on by the corporation, trustee or related corporation;
 - (c) the period for which they have been and are likely to remain the property of the corporation, trustee or related corporation; and
 - (d) any other matter that the Commissioner considers relevant.
- (4c) A determination made under subsection (4a) has effect according to its terms and the Commissioner is to give notice of it to the corporation.
- (4d) If the corporation requests the Commissioner to give reasons why the Commissioner has not made a determination under subsection (4a), the Commissioner is to give reasons to the corporation.

[Section 76AN inserted by No. 33 of 1987 s. 22; amended by No. 41 of 1989 s. 16; No. 22 of 1998 s. 38 and 41; No. 60 of 2000 s. 13; No. 3 of 2001 s. 21; No. 2 of 2003 s. 94; No. 66 of 2003 s. 66.]

76AO. Statement chargeable with duty

- (1) A section 76AN statement is chargeable, in accordance with section 76AS, with duty at the rate provided for in item 4(1) of the Second Schedule calculated as follows —
- (a) where the section 76AN statement relates to a relevant acquisition within section 76AQ(1)(a)(i), the duty shall be calculated on the dutiable value determined under section 76AS(2);
 - (aa) where the section 76AN statement relates to a relevant acquisition within section 76AQ(1)(a)(ii), the duty —

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- (i) shall be calculated on the dutiable value determined under section 76AS(2a)(a); but
- (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76AS(2a)(b);
- and
- (b) where the section 76AN statement relates to a relevant acquisition within section 76AQ(1)(b), the duty —
- (i) shall be calculated on the dutiable value determined under section 76AS(3)(a); but
- (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76AS(3)(b).
- (2) Notwithstanding item 4(1) of the Second Schedule, where the value of the land and chattels under section 76AS(4) does not exceed \$1 500 000 the duty chargeable under this section shall be calculated as follows, and where paragraph (aa) or (b) of subsection (1) applies, shall be so calculated in terms of subparagraphs (i) and (ii) of that paragraph —
- $$\frac{A - \$1\,000\,000}{\$500\,000} \times B$$
- where —
- A is the value of the land and chattels situated in Western Australia to which the corporation is entitled as provided in section 76AS(4) at the time of the relevant acquisition; and
- B is the duty calculated under item 4(1) of the Second Schedule on the dutiable value determined under section 76AS.
- (3) There shall be deducted from the duty chargeable on a section 76AN statement, any duty paid under item 4A(1) of the Second Schedule in respect of any instrument effecting or

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3 Corporations incorporated, or taken to be registered, outside
Western Australia, and certain other companies not within
Division 2

s. 76AP

evidencing the acquisition of any interest which is taken into account in determining liability under section 76AN to lodge that statement, except any duty previously deducted under this subsection in respect of a section 76AN statement previously lodged in relation to the acquisition.

- (4) Subject to subsection (5), if a section 76AN statement contains particulars of any chattels as required by section 76AN(3)(da), then, in addition to the duty chargeable under subsection (1), the section 76AN statement is chargeable with duty at the rate provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of the chattels, but duty shall not be charged in respect of —
- (a) any of the chattels in respect of which duty has been paid under section 31B, 31C or 70 by the person who made the relevant acquisition to which the section 76AN statement relates or by a related person;
 - (b) any of the chattels in respect of which *ad valorem* duty has been paid by that person, or a related person, in another jurisdiction; or
 - (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in Western Australia.
- (5) The section 76AN statement is not chargeable with duty under subsection (4) if the Commissioner is satisfied that no transaction by means of which the chattels were transferred from the corporation to the person who made the relevant acquisition, or a related person, was effected for the collateral purpose of reducing the duty that otherwise would be chargeable in respect of the relevant acquisition.

[Section 76AO inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 14; No. 22 of 1998 s. 38 and 42; No. 60 of 2000 s. 14; No. 36 of 2001 s. 22; No. 2 of 2003 s. 95; No. 66 of 2003 s. 67; No. 11 of 2004 s. 25.]

76AP. Corporations to which this Division applies

(1) This Division applies to a corporation if —

(a) it is —

(i) a body corporate that is taken to be registered outside Western Australia (for the purposes of the Corporations Act) or that is otherwise formed or incorporated outside Western Australia, not being a body corporate that is —

(A) within paragraphs (a) to (d) of section 66A(4) of the Corporations Law; or

(B) a subsidiary, within the meaning in section 76AI(4), of a WA company to which Division 2 applies;

or

(ii) a WA company that would be a subsidiary, within the meaning in section 76AI(4), of a body corporate referred to in subparagraph (i) if that body corporate were a WA company;

and

[(b) deleted]

(c) it is a land-holder within the meaning in subsection (2),

unless —

(d) it is listed on a recognised financial market; and

(e) the Commissioner is satisfied that its listing was not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Part.

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3 Corporations incorporated, or taken to be registered, outside
Western Australia, and certain other companies not within
Division 2

s. 76AP

- (1a) For the purposes of subsection (1)(e) the Commissioner may take into account any matter that the Commissioner considers is relevant but must take into account —
- (a) how long the corporation has been listed on a recognised financial market;
 - (b) any conditions or exemptions that apply to the approval of the listing of the corporation;
 - (c) who owns the corporation's shares;
 - (d) what proportion of the corporation's shares are available to be traded on the market; and
 - (e) the turnover of the corporation's shares on the market.
- (2) A corporation is a land-holder for the purposes of this Division if at the time of a relevant acquisition —
- (a) it is entitled to land situated in Western Australia and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in Western Australia as a co-owner of the freehold or of a lesser estate in the land and the value of the whole of the freehold or lesser estate is not less than \$1 000 000; and
 - (b) the value of all land to which the corporation is entitled, whether situated in Western Australia or elsewhere, is 60% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (3),
- or if the Commissioner determines that paragraphs (a) and (b) would have applied to the corporation at the time of the relevant acquisition but for a transaction, or series of transactions, which in the Commissioner's opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.

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- (2a) If the Commissioner makes a determination under subsection (2) —
- (a) the Commissioner is to give notice of it to the corporation;
 - (b) the notice is to contain reasons for the determination;
 - (c) for the purposes of section 76AN(1) the relevant acquisition is taken to have occurred when the notice is given; and
 - (d) a reference in another provision of this Division to land and chattels situated in Western Australia to which the corporation is entitled includes a reference to property so situated to which it would have been entitled but for the transaction, or series of transactions, to which the determination relates.
- (3) The following property of a corporation, or of a trustee or another corporation referred to in subsection (4), shall not be included for the purpose of calculating the value of property under subsection (2)(b) —
- (a) cash or money in an account at call;
 - (b) negotiable instruments, and money on deposit with any person;
 - (ba) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;
 - (bb) an amount paid or payable to the corporation or the trustee or other corporation referred to in subsection (4) under a contract or agreement referred to in subsection (5)(b);
 - (c) money lent by the corporation or a trustee or a related corporation referred to in subsection (4) to —
 - (i) any person who in relation to the corporation is an associated person; or

Stamp Act 1921

Part III BA

Duty on change of control of certain land-owning corporations

Division 3

Corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 2

s. 76AP

- (ii) any person at call or in terms that require or allow full repayment to the corporation within 12 months after the money is lent;
- (d) in the case of the corporation, property consisting of a shareholding in another corporation referred to in subsection (4) or of a share or interest or entitlement under a trust referred to in that subsection;
- (da) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —
 - (i) locate, extract, process, transport or market minerals; or
 - (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
- (db) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the corporation or a related person;
- (dc) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
- (dd) any property prescribed for the purposes of this subsection; and
- (e) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner's satisfaction that a reason for ownership by the corporation or the trustee or other corporation referred to in subsection (4) is not for the purpose of defeating the object of this Division.

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- (3a) In forming an opinion for the purposes of subsection (3)(e) the Commissioner may have regard to —
- (a) the source of the property and the source of funding for its acquisition;
 - (b) its nature and its relevance to any business carried on by the corporation or the trustee or other corporation;
 - (c) the period for which it has been and is likely to remain the property of the corporation or the trustee or other corporation; and
 - (d) any other matter that the Commissioner considers relevant.
- (4) Without limiting the meaning of “entitled”, a corporation is deemed to be entitled to land or property where —
- (a) the trustee of a trust is entitled to that land or property and the corporation —
 - (i) has a share or interest in the trust whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust,but an entitlement under subparagraph (i) is limited to the extent of that share or interest;
 - (b) in a case where the entitlement to participate referred to in section 76AR(2) or (3), (whichever is applicable to the relevant acquisition) relates to the corporation itself, any of the following corporations is entitled to that land or property —
 - (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the corporation, or that would be a subsidiary (as so defined) of the corporation if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead;

Stamp Act 1921

Part III BA

Duty on change of control of certain land-owning corporations

Division 3

Corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 2

s. 76AP

- (ii) any other corporation where the corporation would be entitled if the other corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the other corporation to an extent not less than 50% of the value of the distributable property;

or

 - (c) in a case where the entitlement to participate referred to in section 76AR(2) or (3), (whichever is applicable to the relevant acquisition) relates to a holding corporation (as defined in section 76AR(4)(a)) of the corporation, any of the following corporations is entitled to that land or property —
 - (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the holding corporation, or that would be a subsidiary (as so defined) of the holding corporation if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead;
 - (ii) any other corporation where the holding corporation would be entitled if the other corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the other corporation to an extent not less than 50% of the value of the distributable property.
- (5) In determining the entitlement of an entity to land for the purposes of this section or section 76AS —
- (a) if the entity has contracted or agreed to acquire an interest in land, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and

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- (b) if the entity has contracted or agreed to dispose of an interest in land but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.
 - (6) In determining the entitlement of an entity to property other than land for the purposes of this section —
 - (a) if the entity has contracted or agreed to dispose of an interest in such property, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to acquire an interest in such property but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.

[Section 76AP inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 53 of 1999 s. 24; No. 60 of 2000 s. 15; No. 3 of 2001 s. 26; No. 10 of 2001 s. 178; No. 2 of 2003 s. 96; No. 21 of 2003 s. 28; No. 66 of 2003 s. 68; No. 11 of 2004 s. 26; No. 11 of 2005 s. 18, 20 and 23.]

76AQ. Meaning of “relevant acquisition”

- (1) An acquisition is a relevant acquisition for the purposes of this Division —
 - (a) if by that acquisition a person acquires a majority interest in a corporation by acquiring an interest —
 - (i) that is itself a majority interest in the corporation;
or
 - (ii) that is, when taken with each previous acquisition of an interest in the corporation made by the person on or after the relevant day for that acquisition, a majority interest in the corporation;
- or

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3 Corporations incorporated, or taken to be registered, outside
Western Australia, and certain other companies not within
Division 2

s. 76AQ

- (b) if by that acquisition a person acquires a further interest in the corporation.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.
- (2a) A previous acquisition of an interest in the corporation is not to be taken into consideration under subsection (1)(a)(ii) if, at the time of that acquisition, the corporation was not a land-holder for the purposes of this Division as enacted at that time.
- (2b) Subject to subsection (2a), a previous acquisition of an interest in the corporation is to be taken into consideration under subsection (1)(a)(ii) even if, at the time of that acquisition, this Division did not apply to the corporation because of section 76AP(1)(d) and (e).
- (3) For the purposes of subsection (1)(a)(ii) and section 76AS(2a)(b), if a person acquires an interest in a corporation (the “**earlier acquisition**”) and, after that acquisition, that person acquires another interest in the corporation (the “**later acquisition**”) because of an arrangement that was entered into during the relevant period, the earlier acquisition is to be regarded as having been made on or after the relevant day for the later acquisition even if it was not so made.
- (4) In this section —
“**relevant day**” for an acquisition means —
 - (a) if the acquisition was or is made on or after 10 August 2000 but before 11 August 2002 — 10 August 1999; or
 - (b) if the acquisition is made on or after 11 August 2002 — the day that is 3 years before the day of the acquisition.

(5) In subsection (3) —

“relevant period” means —

- (a) if the earlier acquisition was made before 10 August 1999 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is one year after the day of that acquisition;
 - (b) if the earlier acquisition was made on or after 10 August 1999 but before 10 August 2000 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is 3 years after the day of that acquisition; or
 - (c) if the earlier acquisition was or is made on or after 10 August 2000 — the period beginning on the relevant day for that acquisition and ending on the day that is 3 years after the day of that acquisition.
- (6) Subsection (3) does not apply in relation to an arrangement entered into before 10 August 2000 unless, because of the arrangement, the person referred to in that subsection had the right to acquire the other interest referred to in that subsection.

[Section 76AQ inserted by No. 60 of 2000 s. 16; amended by No. 66 of 2003 s. 69; No. 11 of 2004 s. 27.]

76AR. Meaning of “interest”, “majority interest” or “further interest”

- (1) For the purposes of this Division, a person acquires an interest in a corporation if the person acquires, or the person and any related person acquire, an entitlement such that the person, or the person and any related person, would be entitled if the property of the corporation or the holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate in a distribution of the property of the corporation or holding corporation.

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3 Corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 2

s. 76AR

- (2) For the purposes of this Division, a person acquires a majority interest in a corporation if the person acquires, or the person and any related person acquire, an interest in the corporation such that having acquired that interest the person, or the person and any related person, would be entitled if the property of the corporation or a holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate in a distribution of the property of the corporation or holding corporation to an extent greater than 50% of the value of the distributable property and, in section 76AQ(1)(a)(i) and (ii) and subsection (3), “**majority interest**” has a corresponding meaning.
- (3) For the purposes of this Division, a person acquires a further interest in a corporation if —
- (a) the person has, or the person and any related person have, a majority interest in the corporation;
 - (b) the acquisition of that majority interest gave rise to a liability for duty under this Part; and
 - (c) the person acquires, or the person and any related person acquire, an interest in the corporation such that having acquired that interest the person, or the person and any related person, would be entitled if the property of the corporation or a holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate further in a distribution of the property of the corporation or holding corporation.
- (4) In this section “**holding corporation**” in relation to a corporation —
- (a) means a corporation —
 - (i) that is an ultimate holding company as defined in section 9 of the Corporations Act;
 - (ii) of which a corporation is a subsidiary by virtue of Division 6 of Part 1.2 of the Corporations Act or would be a subsidiary by virtue of that

Division if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead; or

- (iii) which would be entitled if a corporation were to be wound up to participate in a distribution of the property of that corporation to an extent not less than 50% of the value of the distributable property;

and

(b) is deemed to include —

- (i) any trust if the trustee of the trust would be entitled if the corporation or a holding corporation (as defined in paragraph (a)) were to be wound up to participate in a distribution of the property of the corporation or holding corporation to an extent not less than 50% of the value of the distributable property;

(ii) a corporation, if in respect of any trust referred to in subparagraph (i) that corporation —

- (I) is entitled to a share or interest in the trust whether vested or contingent; or
- (II) in the case of a discretionary trust, may benefit from that trust;

and

- (iii) any other corporation, or the trustee of any other trust that would by an application of this subsection be a holding corporation of a corporation that is a holding corporation of the corporation.

[Section 76AR inserted by No. 60 of 2000 s. 16; amended by No. 10 of 2001 s. 179; No. 11 of 2005 s. 18 and 21.]

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3 Corporations incorporated, or taken to be registered, outside
Western Australia, and certain other companies not within
Division 2

s. 76AS

76AS. How dutiable value is determined

- (1) Where section 76AO(1) applies, duty is chargeable in accordance with this section on the basis of the value free of encumbrances (“**the dutiable value**”) of the land and chattels situated in Western Australia to which the corporation is entitled.
- (1a) The method of determining the dutiable value depends on the nature of a relevant acquisition by which a person acquires an interest in a corporation.
- (2) Where the relevant acquisition is within section 76AQ(1)(a)(i) the dutiable value is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and any related person, would be entitled, as provided in subsection (5), after the acquisition.
- (2a) Where the relevant acquisition is within section 76AQ(1)(a)(ii) the dutiable value —
 - (a) for the purposes of section 76AO(1)(aa)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would be entitled, as provided in subsection (5), after the acquisition of the majority interest;
 - (b) for the purposes of section 76AO(1)(aa)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a

related person, would have been entitled, as provided in subsection (5), before the relevant day as defined in section 76AQ(4).

- (3) Where the relevant acquisition is within section 76AQ(1)(b) the dutiable value —
- (a) for the purposes of section 76AO(1)(b)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would be entitled, as provided in subsection (5), after the acquisition of the further interest;
 - (b) for the purposes of section 76AO(1)(b)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would have been entitled, as provided in subsection (5), at the time of the immediately preceding relevant acquisition by that person, or a related person.
- (4) For the purposes of subsections (2), (2a) and (3), the unencumbered value of the land and chattels to which a corporation is entitled at any time is the sum of —
- (a) in the case of land and chattels to which the corporation is entitled without reference to subsection (4) of section 76AP, the unencumbered value of the land and chattels at that time; and
 - (b) in the case of land and chattels to which a trustee or a corporation is entitled as mentioned in that subsection, the amount to which, if the property of a trust or corporation referred to in that subsection or all such

trusts and corporations in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same, the corporation would be entitled in respect of the unencumbered value at that time of land and chattels to which all such trusts and corporations are entitled.

- (5) For the purposes of subsections (2), (2a) and (3), the property of a corporation to which a person, or the person and any related person, would be entitled is the property to which the person, or the person and any related person, would be entitled if the property of the corporation and all holding corporations, as defined in section 76AR(4), in the chain of relationships were to be distributed after the acquisition (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same.

[Section 76AS inserted by No. 33 of 1987 s. 22; amended by No. 22 of 1998 s. 38; No. 60 of 2000 s. 17; No. 2 of 2003 s. 97; No. 11 of 2004 s. 28.]

Division 3a — Listed companies taken to be registered in Western Australia

[Heading inserted by No. 11 of 2004 s. 29.]

76AT. Preparation of dutiable statement

- (1) Where by a relevant acquisition a person acquires a controlling interest in —
- (a) a listed land-holder WA company; or
 - (b) a WA company that would be a listed land-holder WA company if the reference to the value of land in section 76ATB(2)(b) were a reference to the value of land, goods, wares and merchandise,

the person shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.

- (2) Subject to subsections (4)(d) and (5)(c), where by a relevant acquisition a person acquires an additional interest in a WA company the person shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.
- (3) Within 2 months after a relevant acquisition referred to in subsection (2) (“**acquisition A**”) the person referred to in subsection (2) may apply to the Commissioner in an approved form for approval to lodge periodical statements for the purposes of this section in respect of periods approved by the Commissioner (each of which is referred to in this Division as a “**relevant period**”).
- (4) If the Commissioner approves the application —
- (a) the Commissioner is to notify the person accordingly specifying —
 - (i) the day on which each relevant period ends; and
 - (ii) any conditions to which the approval is subject;
 - (b) the first relevant period is taken to have begun on the day of acquisition A and a subsequent relevant period begins on the day after the day on which the immediately preceding relevant period ends;
 - (c) the person shall —
 - (i) within 14 days after the first relevant period ends, lodge a statement with the Commissioner in respect of acquisition A and any other relevant acquisitions by which the person acquired additional interests in the WA company during that relevant period; and
 - (ii) within 14 days after each subsequent relevant period ends, lodge a statement with the Commissioner in respect of any relevant acquisitions by which the person acquired additional interests in the WA company during that relevant period;

and

- (d) subsection (2) does not apply to acquisition A or any other relevant acquisition referred to in paragraph (c).
- (5) If the Commissioner does not approve the application —
- (a) the Commissioner is to notify the person accordingly giving reasons for the decision;
 - (b) the person shall, within 2 months after the notification is given, lodge statements with the Commissioner in respect of acquisition A and each other relevant acquisition (if any) by which the person acquired an additional interest in the WA company after acquisition A and before the notification is given; and
 - (c) subsection (2) does not apply to acquisition A or any other relevant acquisition referred to in paragraph (b).
- (6) If a requirement under this section arises in circumstances where a person acquires a controlling interest or an additional interest by reason of acquisitions by the person and a related person or related persons being aggregated, one of such persons shall comply with this section on behalf of all such persons by including all the acquisitions in a dutiable statement lodged under this section.
- (7) A dutiable statement must be prepared in an approved form.
- (8) A dutiable statement under subsection (1) shall include the following information —
- (a) the name and address of the person who has acquired the controlling interest and of any related person referred to in subsection (6);
 - (b) the date of the acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the WA company;

- (d) the person's estimate of the unencumbered value of all land and chattels in Western Australia to which the WA company is entitled as at the date of the acquisition;
 - (e) particulars of any chattels, whether situated in Western Australia or not, to which the WA company was entitled in the 12 months preceding the date of the acquisition and acquired, directly or indirectly, by the person or a related person in that period;
 - (f) the person's estimate of the unencumbered value of those chattels;
 - (g) the person's estimate of the unencumbered value of the property of the WA company as at the date of the acquisition;
 - (h) if the dutiable statement is lodged because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.
- (9) A dutiable statement under subsection (2) or (5)(b) shall include the following information —
- (a) the name and address of the person who has acquired the additional interest and of any related person referred to in subsection (6);
 - (b) the date of the acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the WA company.
- (10) A dutiable statement under subsection (4)(c) in respect of a relevant period shall include the following information —
- (a) the name and address of the person who acquired the additional interest or additional interests during the

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3a Listed companies taken to be registered in Western Australia

s. 76AT

- relevant period and of any related person referred to in subsection (6);
- (b) in relation to each additional interest acquired during the relevant period —
 - (i) the date of the acquisition; and
 - (ii) particulars of the interest;
 - (c) particulars of all interests acquired by the person or a related person in the WA company before the relevant period.
- (11) A dutiable statement lodged under this section is taken to be an instrument evidencing the relevant acquisition or relevant acquisitions and is chargeable with duty accordingly.
- (12) If, in the case of a dutiable statement lodged because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the Commissioner may determine that subsection (11) does not apply to the dutiable statement.
- (13) In deciding whether or not to make a determination under subsection (12) the Commissioner may have regard to —
- (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;
 - (b) their nature and their relevance to any business carried on by the WA company or any subsidiary;
 - (c) the period for which they have been and are likely to remain the property of the WA company or any subsidiary; and
 - (d) any other matter that the Commissioner considers relevant.

- (14) A determination made under subsection (12) has effect according to its terms and the Commissioner is to give notice of it to the person who lodged the dutiable statement.
- (15) If the person who lodged the dutiable statement requests the Commissioner to give reasons why the Commissioner has not made a determination under subsection (12), the Commissioner is to give reasons to the person.
- (16) A person who fails to comply with subsection (1), (2), (4)(c) or (5)(b) commits an offence.

Penalty: \$20 000.

[Section 76AT inserted by No. 11 of 2004 s. 29.]

76ATA. Statement chargeable with duty

- (1) A section 76AT statement is chargeable, in accordance with section 76ATE, with duty at the rate provided for in item 4(1) of the Second Schedule calculated as follows —
- (a) where the section 76AT statement relates to a relevant acquisition within section 76ATC(1)(a)(i), the duty shall be calculated on the dutiable value determined under section 76ATE(3);
 - (b) where the section 76AT statement relates to a relevant acquisition within section 76ATC(1)(a)(ii), the duty —
 - (i) shall be calculated on the dutiable value determined under section 76ATE(4)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATE(4)(b);
 - (c) unless paragraph (d) applies, where the section 76AT statement relates to a relevant acquisition within section 76ATC(1)(b), the duty —
 - (i) shall be calculated on the dutiable value determined under section 76ATE(5)(a); but

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3a Listed companies taken to be registered in Western Australia

s. 76ATA

- (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATE(5)(b);
 - (d) where approval has been granted under section 76AT(4), the duty —
 - (i) shall be calculated on the dutiable value determined under section 76ATE(6)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATE(6)(b).
- (2) Notwithstanding item 4(1) of the Second Schedule, where the value of the land and chattels under section 76ATE(7) does not exceed \$1 500 000 the duty chargeable under this section shall be calculated as follows, and where paragraph (b), (c) or (d) of subsection (1) applies shall be so calculated in terms of subparagraphs (i) and (ii) of that paragraph —

$$\frac{A - \$1\,000\,000}{\$500\,000} \times B$$

where —

- A is the value of the land and chattels situated in Western Australia to which the WA company is entitled as provided in section 76ATE(7); and
 - B is the duty calculated under item 4(1) of the Second Schedule on the dutiable value determined under section 76ATE.
- (3) Subject to subsection (4), if a section 76AT statement contains particulars of any chattels as required by section 76AT(8)(e), then, in addition to the duty chargeable under subsection (1), the section 76AT statement is chargeable with duty at the rate provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of the chattels, but duty shall not be charged in respect of —
- (a) any of the chattels in respect of which duty has been paid under section 31B, 31C or 70 by the person who

- made the relevant acquisition to which the section 76AT statement relates or by a related person;
- (b) any of the chattels in respect of which *ad valorem* duty has been paid by that person, or a related person, in another jurisdiction; or
 - (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in Western Australia.
- (4) The section 76AT statement is not chargeable with duty under subsection (3) if the Commissioner is satisfied that no transaction by means of which the chattels were transferred from the WA company to the person who made the relevant acquisition, or a related person, was effected for the collateral purpose of reducing the duty that otherwise would be chargeable in respect of the relevant acquisition.
- (5) If —
- (a) a section 76AT statement relates to a relevant acquisition within section 76ATC(1)(a)(ii); and
 - (b) duty charged under Division 2 or 3 (the “**previous duty**”) has been paid in respect of a previous acquisition of an interest in the WA company that is taken into consideration under section 76ATC(1)(a)(ii),

there shall be deducted from the duty payable on the section 76AT statement the amount that the previous duty would have been if the previous acquisition had occurred immediately before the relevant acquisition occurred.

[Section 76ATA inserted by No. 11 of 2004 s. 29.]

76ATB. Meaning of “listed land-holder WA company”

- (1) In this Division a WA company is a “**listed land-holder WA company**” if it is a land-holder within the meaning in subsection (2) and is listed on a recognised financial market.

- (2) A WA company is a land-holder for the purposes of this Division if at the time of an acquisition of a controlling interest —
- (a) it is entitled to land situated in Western Australia and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in Western Australia as a co-owner of the freehold or of a lesser estate in the land and the value of the whole of the freehold or lesser estate is not less than \$1 000 000; and
 - (b) the value of all land to which the WA company is entitled, whether situated in Western Australia or elsewhere, is 60% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (4),

or if the Commissioner determines that paragraphs (a) and (b) would have applied to the WA company at the time of the acquisition of the controlling interest but for a transaction, or series of transactions, which in the Commissioner's opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.

- (3) If the Commissioner makes a determination under subsection (2) —
- (a) the Commissioner is to give notice of it to the person who acquired the controlling interest;
 - (b) the notice is to contain reasons for the determination;
 - (c) for the purposes of section 76AT(1) the acquisition of the controlling interest is taken to have occurred when the notice is given; and
 - (d) a reference in another provision of this Division to land and chattels situated in Western Australia to which the WA company is entitled includes a reference to property so situated to which it would have been entitled but for the transaction, or series of transactions, to which the determination relates.

-
- (4) The following property of a WA company, or of any subsidiary within the meaning in subsection (6), shall not be included for the purpose of calculating the value of property under subsection (2)(b) —
- (a) cash or money in an account at call;
 - (b) negotiable instruments, and money on deposit with any person;
 - (c) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;
 - (ca) an amount paid or payable to the WA company or a subsidiary under a contract or agreement referred to in subsection (7)(b);
 - (d) money lent by the WA company or a subsidiary to —
 - (i) any person who in relation to the WA company is an associated person; or
 - (ii) any person at call or in terms that require or allow full repayment to the WA company within 12 months after the money is lent;
 - (e) where by a corporation is a subsidiary of the WA company by virtue of Division 6 of Part 1.2 of the Corporations Act, or would be a subsidiary of it by virtue of that Division if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead, the shareholding of the WA company in the corporation, but without limiting subsection (6);
 - (f) in the case of the WA company, property consisting of a share or interest in a trust referred to in subsection (6);
 - (g) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3a Listed companies taken to be registered in Western Australia

s. 76ATB

- (i) locate, extract, process, transport or market minerals; or
 - (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
 - (h) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the WA company or a related person;
 - (i) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
 - (j) any property prescribed for the purposes of this subsection;
 - (k) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner's satisfaction that a reason for ownership by the WA company or the subsidiary within the meaning in subsection (6) is not for the purpose of defeating the object of this Division.
- (5) In forming an opinion for the purposes of subsection (4)(k) the Commissioner may have regard to —
- (a) the source of the property and the source of funding for its acquisition;
 - (b) its nature and its relevance to any business carried on by the WA company or the subsidiary;
 - (c) the period for which it has been and is likely to remain the property of the WA company or the subsidiary; and
 - (d) any other matter that the Commissioner considers relevant.
- (6) Without limiting the meaning of “entitled”, a WA company is deemed to be entitled to land or property to the extent that a

subsidiary is entitled to that land or property, and for the purposes of this subsection a subsidiary is —

- (a) a subsidiary corporation by virtue of Division 6 of Part 1.2 of the Corporations Act, or a corporation that would be a subsidiary corporation by virtue of that Division if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead, or any other corporation where the WA company would be entitled if the corporation were to be wound up, after the time of the acquisition of the controlling interest, to participate in a distribution of the property of the corporation to an extent not less than 50% of the value of the distributable property;
- (b) the trustee of any trust where the WA company or a subsidiary corporation of the WA company, as defined in paragraph (a) —
 - (i) is entitled to a share or interest in the trust, whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust;
- (c) any corporation, where the trustee of a trust in which the WA company or a subsidiary corporation —
 - (i) is entitled to a share or interest, whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust,would be entitled if the corporation were to be wound up, after the time of the acquisition of the controlling interest, to participate in a distribution of the property of the corporation to an extent not less than 50% of the value of the distributable property; or
- (d) any other corporation or the trustee of any other trust that would by an application of this subsection be a

subsidiary of a corporation that is a subsidiary of the WA company.

- (7) In determining the entitlement of an entity to land for the purposes of this section or section 76ATE —
- (a) if the entity has contracted or agreed to acquire an interest in land, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to dispose of an interest in land but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.
- (8) In determining the entitlement of an entity to property other than land for the purposes of this section —
- (a) if the entity has contracted or agreed to dispose of an interest in such property, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to acquire an interest in such property but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.

[Section 76ATB inserted by No. 11 of 2004 s. 29; amended by No. 11 of 2005 s. 18, 19 and 24.]

76ATC. Meaning of “relevant acquisition”

- (1) An acquisition is a “**relevant acquisition**” for the purposes of this Division —
- (a) if by that acquisition a person acquires a controlling interest in a WA company by acquiring an interest —
 - (i) that is itself a controlling interest in the WA company; or

- (ii) that is, when taken with each previous acquisition of an interest in the WA company made by the person, a controlling interest in the WA company;
 - or
 - (b) if by that acquisition a person acquires an additional interest in the WA company.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.
 - (3) A previous acquisition of an interest in the WA company is to be taken into consideration under subsection (1)(a)(ii) even if, at the time of that acquisition, the WA company was not a land-holder within the meaning in section 76ATB(2) or was not listed on a recognised financial market.
- [Section 76ATC inserted by No. 11 of 2004 s. 29.]*

76ATD. Meaning of “interest”, “controlling interest” or “additional interest”

- (1) For the purposes of this Division, a person acquires an **“interest”** in a WA company if the person acquires, or the person and any related person acquire, an entitlement such that the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate in a distribution of the property of the WA company.
- (2) For the purposes of this Division, a person acquires a controlling interest in a WA company if the person acquires, or the person and any related person acquire, an interest in the WA company such that having acquired that interest the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate in a distribution of the property of the WA company to an extent not less than 90% of the value of the distributable property and, in section 76ATC(1)(a)(i) and (ii) and subsection (3), **“controlling interest”** has a corresponding meaning.

- (3) For the purposes of this Division, a person acquires an “**additional interest**” in a WA company if —
- (a) the person has, or the person and any related person have, a controlling interest in the WA company;
 - (b) the acquisition of that controlling interest gave rise to a liability for duty under this Part; and
 - (c) the person acquires, or the person and any related person acquire, an interest in the WA company such that having acquired that interest the person, or the person and any related person, would be entitled if the WA company were to be wound up to participate further in a distribution of the property of the WA company.

[Section 76ATD inserted by No. 11 of 2004 s. 29.]

76ATE. How dutiable value is determined

- (1) Where section 76ATA(1) applies, duty is chargeable in accordance with this section on the basis of the value free of encumbrances (the “**dutiable value**”) of the land and chattels situated in Western Australia to which the WA company is entitled.
- (2) The method of determining the dutiable value depends on the nature of a relevant acquisition by which a person acquires an interest in a WA company.
- (3) Where the relevant acquisition is within section 76ATC(1)(a)(i) the dutiable value is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and any related person, would be entitled, as provided in subsection (8), after the acquisition.

- (4) Where the relevant acquisition is within section 76ATC(1)(a)(ii) the dutiable value —
- (a) for the purposes of section 76ATA(1)(b)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and a related person, would be entitled, as provided in subsection (8), after the acquisition of the controlling interest;
 - (b) for the purposes of section 76ATA(1)(b)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the WA company to which the person, or the person and a related person, would have been entitled, as provided in subsection (8), before the day that is 3 years before the day of the acquisition of the controlling interest.
- (5) Unless subsection (6) applies, where the relevant acquisition is within section 76ATC(1)(b) the dutiable value —
- (a) for the purposes of section 76ATA(1)(c)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the WA company to which the person, or the person and a related person, would be entitled, as provided in subsection (8), after the acquisition of the additional interest;
 - (b) for the purposes of section 76ATA(1)(c)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company was entitled, as provided by subsection (7), at the time the

controlling interest was acquired, as the proportion of the property of the WA company to which the person, or the person and a related person, would have been entitled, as provided in subsection (8), at the time of the immediately preceding relevant acquisition by that person, or a related person.

- (6) Where approval has been granted under section 76AT(4) the dutiable value —
- (a) for the purposes of section 76ATA(1)(d)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the WA company to which the person, or the person and a related person, would be entitled, as provided in subsection (8), at the end of the relevant period to which the section 76AT statement relates;
 - (b) for the purposes of section 76ATA(1)(d)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the WA company was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the WA company to which the person, or the person and a related person, would have been entitled, as provided in subsection (8), before the beginning of the relevant period to which the section 76AT statement relates.
- (7) For the purposes of subsections (3), (4), (5) and (6), the unencumbered value of the land and chattels to which a WA company is entitled at any time is the sum of —
- (a) in the case of land and chattels to which the WA company is entitled without reference to subsection (6) of section 76ATB, the unencumbered value of the land and chattels at that time; and

- (b) in the case of land and chattels to which a subsidiary is entitled as mentioned in that subsection, the amount to which, if the property of a subsidiary or of all subsidiaries in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same, the WA company would be entitled in respect of the unencumbered value at that time of land and chattels to which the subsidiary is, or all subsidiaries are, entitled.
- (8) For the purposes of subsections (3), (4), (5) and (6), the property of a WA company to which a person, or the person and any related person, would be entitled is the property to which the person, or the person and any related person, would be entitled if the WA company were to be wound up after the acquisition.
- (9) If the day of the acquisition of the controlling interest is 30 June 2007 or earlier, the reference in subsection (4)(b) to the day that is 3 years before the day of the acquisition of the controlling interest is taken to be a reference to 1 July 2004.

[Section 76ATE inserted by No. 11 of 2004 s. 29.]

76ATF. Liability for duty

Without limiting section 17(1)(c), where an acquisition is a relevant acquisition by virtue of a person and any related person acquiring an interest in a WA company all such persons are jointly and severally liable for the duty chargeable under this Division on the section 76AT statement lodged in relation to the acquisition.

[Section 76ATF inserted by No. 11 of 2004 s. 29.]

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3b Listed corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 3a

s. 76ATG

Division 3b — Listed corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 3a

[Heading inserted by No. 11 of 2004 s. 29.]

76ATG. Preparation of dutiable statement

- (1) Where by a relevant acquisition a person acquires a controlling interest in —
 - (a) a listed land-holder corporation; or
 - (b) a corporation that would be a listed land-holder corporation if the reference to the value of land in section 76ATI(2)(b) were a reference to the value of land, goods, wares and merchandise,

the corporation shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.
- (2) Subject to subsections (4)(d) and (5)(c), where by a relevant acquisition a person acquires an additional interest in a corporation the corporation shall, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of that acquisition.
- (3) Within 2 months after a relevant acquisition referred to in subsection (2) (“**acquisition A**”) the corporation may apply to the Commissioner in an approved form for approval to lodge periodical statements for the purposes of this section in respect of the person referred to in subsection (2) (the “**bidder**”) in respect of periods approved by the Commissioner (each of which is referred to in this Division as a “**relevant period**”).
- (4) If the Commissioner approves the application —
 - (a) the Commissioner is to notify the corporation accordingly specifying —

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- (i) the day on which each relevant period ends; and
 - (ii) any conditions to which the approval is subject;
 - (b) the first relevant period is taken to have begun on the day of acquisition A and a subsequent relevant period begins on the day after the day on which the immediately preceding relevant period ends;
 - (c) the corporation shall —
 - (i) within 14 days after the first relevant period ends, lodge a statement with the Commissioner in respect of acquisition A and any other relevant acquisitions by which the bidder acquired additional interests in the corporation during that relevant period; and
 - (ii) within 14 days after each subsequent relevant period ends, lodge a statement with the Commissioner in respect of any relevant acquisitions by which the bidder acquired additional interests in the corporation during that relevant period;
- and
- (d) subsection (2) does not apply to acquisition A or any other relevant acquisition referred to in paragraph (c).
- (5) If the Commissioner does not approve the application —
- (a) the Commissioner is to notify the corporation accordingly giving reasons for the decision;
 - (b) the corporation shall, within 2 months after the notification is given, lodge statements with the Commissioner in respect of acquisition A and each other relevant acquisition (if any) by which the bidder acquired an additional interest in the corporation after acquisition A and before the notification is given; and

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3b Listed corporations incorporated, or taken to be registered,
outside Western Australia, and certain other companies not
within Division 3a

s. 76ATG

- (c) subsection (2) does not apply to acquisition A or any other relevant acquisition referred to in paragraph (b).
- (6) A dutiable statement must be prepared in an approved form.
- (7) A dutiable statement under subsection (1) shall include the following information —
 - (a) the name and address of the person who has acquired the controlling interest, and of any related person if the acquisition is required to be aggregated with an acquisition by such person;
 - (b) the date of the acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the corporation;
 - (d) the corporation's estimate of the unencumbered value of all land and chattels in Western Australia to which the corporation is entitled as at the date of the acquisition;
 - (e) particulars of any chattels, whether situated in Western Australia or not, to which the corporation was entitled in the 12 months preceding the date of the acquisition and acquired, directly or indirectly, by the person or a related person in that period;
 - (f) the corporation's estimate of the unencumbered value of those chattels;
 - (g) the corporation's estimate of the unencumbered value of the property of the corporation as at the date of the acquisition; and
 - (h) if the dutiable statement is lodged because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.

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- (8) A dutiable statement under subsection (2) or (5)(b) shall include the following information —
- (a) the name and address of the person who has acquired the additional interest, and of any related person if the acquisition is required to be aggregated with an acquisition by such person;
 - (b) the date of the acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the corporation.
- (9) A dutiable statement under subsection (4)(c) in respect of a relevant period shall include the following information —
- (a) the name and address of the bidder, and of any related person if any acquisition is required to be aggregated with an acquisition by such person;
 - (b) in relation to each additional interest acquired during the relevant period —
 - (i) the date of the acquisition; and
 - (ii) particulars of the interest;
 - (c) particulars of all interests acquired by the bidder or a related person in the corporation before the relevant period.
- (10) A dutiable statement lodged under this section is taken to be an instrument evidencing the relevant acquisition or relevant acquisitions and is chargeable with duty accordingly.
- (11) If, in the case of a dutiable statement lodged because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the Commissioner may determine that subsection (10) does not apply to the dutiable statement.

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3b Listed corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 3a

s. 76ATH

- (12) In deciding whether or not to make a determination under subsection (11) the Commissioner may have regard to —
- (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;
 - (b) their nature and their relevance to any business carried on by the corporation, trustee or related corporation;
 - (c) the period for which they have been and are likely to remain the property of the corporation, trustee or related corporation; and
 - (d) any other matter that the Commissioner considers relevant.
- (13) A determination made under subsection (11) has effect according to its terms and the Commissioner is to give notice of it to the corporation.
- (14) If the corporation requests the Commissioner to give reasons why the Commissioner has not made a determination under subsection (11), the Commissioner is to give reasons to the corporation.
- (15) A person who fails to comply with subsection (1), (2), (4)(c) or (5)(b) commits an offence.
Penalty: \$20 000.

[Section 76ATG inserted by No. 11 of 2004 s. 29.]

76ATH. Statement chargeable with duty

- (1) A section 76ATG statement is chargeable, in accordance with section 76ATL, with duty at the rate provided for in item 4(1) of the Second Schedule calculated as follows —
- (a) where the section 76ATG statement relates to a relevant acquisition within section 76ATJ(1)(a)(i), the duty shall be calculated on the dutiable value determined under section 76ATL(3);

- (b) where the section 76ATG statement relates to a relevant acquisition within section 76ATJ(1)(a)(ii), the duty —
- (i) shall be calculated on the dutiable value determined under section 76ATL(4)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATL(4)(b);
- (c) unless paragraph (d) applies, where the section 76ATG statement relates to a relevant acquisition within section 76ATJ(1)(b), the duty —
- (i) shall be calculated on the dutiable value determined under section 76ATL(5)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATL(5)(b);
- (d) where approval has been granted under section 76ATG(4) the duty —
- (i) shall be calculated on the dutiable value determined under section 76ATL(6)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76ATL(6)(b).
- (2) Notwithstanding item 4(1) of the Second Schedule, where the value of the land and chattels under section 76ATL(7) does not exceed \$1 500 000 the duty chargeable under this section shall be calculated as follows, and where paragraph (b), (c) or (d) of subsection (1) applies, shall be so calculated in terms of subparagraphs (i) and (ii) of that paragraph —

$$\frac{A - \$1\,000\,000}{\$500\,000} \times B$$

where —

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3b Listed corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 3a

s. 76ATH

- A is the value of the land and chattels situated in Western Australia to which the corporation is entitled as provided in section 76ATL(7); and
- B is the duty calculated under item 4(1) of the Second Schedule on the dutiable value determined under section 76ATL.
- (3) Subject to subsection (4), if a section 76ATG statement contains particulars of any chattels as required by section 76ATG(7)(e), then, in addition to the duty chargeable under subsection (1), the section 76ATG statement is chargeable with duty at the rate provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of the chattels, but duty shall not be charged in respect of —
- (a) any of the chattels in respect of which duty has been paid under section 31B, 31C or 70 by the person who made the relevant acquisition to which the section 76ATG statement relates or by a related person;
 - (b) any of the chattels in respect of which *ad valorem* duty has been paid by that person, or a related person, in another jurisdiction; or
 - (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in Western Australia.
- (4) The section 76ATG statement is not chargeable with duty under subsection (3) if the Commissioner is satisfied that no transaction by means of which the chattels were transferred from the corporation to the person who made the relevant acquisition, or a related person, was effected for the collateral purpose of reducing the duty that otherwise would be chargeable in respect of the relevant acquisition.
- (5) If —
- (a) a section 76ATG statement relates to a relevant acquisition within section 76ATJ(1)(a)(ii); and

- (b) duty charged under Division 2 or 3 (the “**previous duty**”) has been paid in respect of a previous acquisition of an interest in the corporation that is taken into consideration under section 76ATJ(1)(a)(ii),

there shall be deducted from the duty payable on the section 76ATG statement the amount that the previous duty would have been if the previous acquisition had occurred immediately before the relevant acquisition occurred.

[Section 76ATH inserted by No. 11 of 2004 s. 29.]

76ATI. Meaning of “listed land-holder corporation”

- (1) In this Division a corporation is a “**listed land-holder corporation**” if —
- (a) it is —
- (i) a body corporate that is taken to be registered outside Western Australia (for the purposes of the Corporations Act) or that is otherwise formed or incorporated outside Western Australia, not being a body corporate that is —
- (I) within paragraphs (a) to (d) of section 66A(4) of the Corporations Law; or
- (II) a subsidiary, within the meaning in section 76ATB(6), of a WA company to which Division 3a applies;
- or
- (ii) a WA company that would be a subsidiary, within the meaning in section 76ATB(6), of a body corporate referred to in subparagraph (i) if that body corporate were a WA company;
- and

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3b Listed corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 3a

s. 76ATI

- (b) it is a land-holder within the meaning in subsection (2) and is listed on a recognised financial market.
- (2) A corporation is a land-holder for the purposes of this Division if at the time of an acquisition of a controlling interest —
- (a) it is entitled to land situated in Western Australia and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in Western Australia as a co-owner of the freehold or of a lesser estate in the land and the value of the whole of the freehold or lesser estate is not less than \$1 000 000; and
 - (b) the value of all land to which the corporation is entitled, whether situated in Western Australia or elsewhere, is 60% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (4),
- or if the Commissioner determines that paragraphs (a) and (b) would have applied to the corporation at the time of the acquisition of the controlling interest but for a transaction, or series of transactions, which in the Commissioner's opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.
- (3) If the Commissioner makes a determination under subsection (2) —
- (a) the Commissioner is to give notice of it to the corporation;
 - (b) the notice is to contain reasons for the determination;
 - (c) for the purposes of section 76ATG(1) the acquisition of the controlling interest is taken to have occurred when the notice is given; and
 - (d) a reference in another provision of this Division to land and chattels situated in Western Australia to which the corporation is entitled includes a reference to property

so situated to which it would have been entitled but for the transaction, or series of transactions, to which the determination relates.

- (4) The following property of a corporation, or of a trustee or another corporation referred to in subsection (6), shall not be included for the purpose of calculating the value of property under subsection (2)(b) —
- (a) cash or money in an account at call;
 - (b) negotiable instruments, and money on deposit with any person;
 - (c) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;
 - (ca) an amount paid or payable to the corporation or the trustee or other corporation referred to in subsection (6) under a contract or agreement referred to in subsection (7)(b);
 - (d) money lent by the corporation or a trustee or a related corporation referred to in subsection (6) to —
 - (i) any person who in relation to the corporation is an associated person; or
 - (ii) any person at call or in terms that require or allow full repayment to the corporation within 12 months after the money is lent;
 - (e) in the case of the corporation, property consisting of a shareholding in another corporation referred to in subsection (6) or of a share or interest or entitlement under a trust referred to in that subsection;
 - (f) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —

Stamp Act 1921

Part III BA

Duty on change of control of certain land-owning corporations

Division 3b

Listed corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 3a

s. 76ATI

- (i) locate, extract, process, transport or market minerals; or
 - (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
 - (g) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the corporation or a related person;
 - (h) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
 - (i) any property prescribed for the purposes of this subsection; and
 - (j) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner's satisfaction that a reason for ownership by the corporation or the trustee or other corporation referred to in subsection (6) is not for the purpose of defeating the object of this Division.
- (5) In forming an opinion for the purposes of subsection (4)(j) the Commissioner may have regard to —
- (a) the source of the property and the source of funding for its acquisition;
 - (b) its nature and its relevance to any business carried on by the corporation or the trustee or other corporation;
 - (c) the period for which it has been and is likely to remain the property of the corporation or the trustee or other corporation; and
 - (d) any other matter that the Commissioner considers relevant.

-
- (6) Without limiting the meaning of “entitled”, a corporation is deemed to be entitled to land or property where —
- (a) the trustee of a trust is entitled to that land or property and the corporation —
 - (i) has a share or interest in the trust whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust,but an entitlement under subparagraph (i) is limited to the extent of that share or interest;
 - (b) in a case where the entitlement to participate referred to in section 76ATK(2) relates to the corporation itself, any of the following corporations is entitled to that land or property —
 - (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the corporation, or that would be a subsidiary (as so defined) of the corporation if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead;
 - (ii) any other corporation where the corporation would be entitled if the other corporation were to be wound up, after the time of the acquisition of the controlling interest, to participate in a distribution of the property of the other corporation to an extent not less than 50% of the value of the distributable property;or
 - (c) in a case where the entitlement to participate referred to in section 76ATK(2) relates to a holding corporation (as defined in section 76ATK(4)(a)) of the corporation, any of the following corporations is entitled to that land or property —

Stamp Act 1921

Part III BA

Duty on change of control of certain land-owning corporations

Division 3b

Listed corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 3a

s. 76ATI

- (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the holding corporation, or that would be a subsidiary (as so defined) of the holding corporation if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead;
 - (ii) any other corporation where the holding corporation would be entitled if the other corporation were to be wound up, after the time of the acquisition of the controlling interest, to participate in a distribution of the property of the other corporation to an extent not less than 50% of the value of the distributable property.
- (7) In determining the entitlement of an entity to land for the purposes of this section or section 76ATL —
 - (a) if the entity has contracted or agreed to acquire an interest in land, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to dispose of an interest in land but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.
- (8) In determining the entitlement of an entity to property other than land for the purposes of this section —
 - (a) if the entity has contracted or agreed to dispose of an interest in such property, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to acquire an interest in such property but that contract or agreement

has not yet been completed, that contract or agreement is to be disregarded.

[Section 76ATI inserted by No. 11 of 2004 s. 29; amended by No. 11 of 2005 s. 18, 20 and 25.]

76ATJ. Meaning of “relevant acquisition”

- (1) An acquisition is a **“relevant acquisition”** for the purposes of this Division —
 - (a) if by that acquisition a person acquires a controlling interest in a corporation by acquiring an interest —
 - (i) that is itself a controlling interest in the corporation; or
 - (ii) that is, when taken with each previous acquisition of an interest in the corporation made by the person, a controlling interest in the corporation;
 - or
 - (b) if by that acquisition a person acquires an additional interest in the corporation.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.
- (3) A previous acquisition of an interest in the corporation is to be taken into consideration under subsection (1)(a)(ii) even if, at the time of that acquisition, the corporation was not a land-holder within the meaning in section 76ATI(2) or was not listed on a recognised financial market.

[Section 76ATJ inserted by No. 11 of 2004 s. 29.]

76ATK. Meaning of “interest”, “controlling interest” or “additional interest”

- (1) For the purposes of this Division, a person acquires an **“interest”** in a corporation if the person acquires, or the person

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3b Listed corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 3a

s. 76ATK

and any related person acquire, an entitlement such that the person, or the person and any related person, would be entitled if the property of the corporation or the holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate in a distribution of the property of the corporation or holding corporation.

- (2) For the purposes of this Division, a person acquires a controlling interest in a corporation if the person acquires, or the person and any related person acquire, an interest in the corporation such that having acquired that interest the person, or the person and any related person, would be entitled if the property of the corporation or a holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate in a distribution of the property of the corporation or holding corporation to an extent not less than 90% of the value of the distributable property and, in section 76ATJ(1)(a)(i) and (ii) and subsection (3), “**controlling interest**” has a corresponding meaning.
- (3) For the purposes of this Division, a person acquires an “**additional interest**” in a corporation if —
 - (a) the person has, or the person and any related person have, a controlling interest in the corporation;
 - (b) the acquisition of that controlling interest gave rise to a liability for duty under this Part; and
 - (c) the person acquires, or the person and any related person acquire, an interest in the corporation such that having acquired that interest the person, or the person and any related person, would be entitled if the property of the corporation or a holding corporation were to be distributed (in the case of a corporation on the basis of a winding up) to participate further in a distribution of the property of the corporation or holding corporation.
- (4) In this section —

“holding corporation” in relation to a corporation —

(a) means a corporation —

- (i) that is an ultimate holding company as defined in section 9 of the Corporations Act;
- (ii) of which a corporation is a subsidiary by virtue of Division 6 of Part 1.2 of the Corporations Act or would be a subsidiary by virtue of that Division if “more” in section 46(a)(ii) and (iii) of the Corporations Act were deleted and “not less” were inserted instead; or
- (iii) which would be entitled if a corporation were to be wound up to participate in a distribution of the property of that corporation to an extent not less than 50% of the value of the distributable property;

and

(b) is deemed to include —

- (i) any trust if the trustee of the trust would be entitled if the corporation or a holding corporation (as defined in paragraph (a)) were to be wound up to participate in a distribution of the property of the corporation or holding corporation to an extent not less than 50% of the value of the distributable property;
- (ii) a corporation, if in respect of any trust referred to in subparagraph (i) that corporation —
 - (I) is entitled to a share or interest in the trust whether vested or contingent; or
 - (II) in the case of a discretionary trust, may benefit from that trust;

and

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3b Listed corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 3a

s. 76ATL

- (iii) any other corporation, or the trustee of any other trust that would by an application of this subsection be a holding corporation of a corporation that is a holding corporation of the corporation.

[Section 76ATK inserted by No. 11 of 2004 s. 29; amended by No. 11 of 2005 s. 18 and 21.]

76ATL. How dutiable value is determined

- (1) Where section 76ATH(1) applies, duty is chargeable in accordance with this section on the basis of the value free of encumbrances (the “**dutiable value**”) of the land and chattels situated in Western Australia to which the corporation is entitled.
- (2) The method of determining the dutiable value depends on the nature of a relevant acquisition by which a person acquires an interest in a corporation.
- (3) Where the relevant acquisition is within section 76ATJ(1)(a)(i) the dutiable value is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and any related person, would be entitled, as provided in subsection (8), after the acquisition.
- (4) Where the relevant acquisition is within section 76ATJ(1)(a)(ii) the dutiable value —
 - (a) for the purposes of section 76ATH(1)(b)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a

- related person, would be entitled, as provided in subsection (8), after the acquisition of the controlling interest;
- (b) for the purposes of section 76ATH(1)(b)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (7), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would have been entitled, as provided in subsection (8), before the day that is 3 years before the day of the acquisition of the controlling interest.
- (5) Unless subsection (6) applies, where the relevant acquisition is within section 76ATJ(1)(b) the dutiable value —
- (a) for the purposes of section 76ATH(1)(c)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the corporation to which the person, or the person and a related person, would be entitled, as provided in subsection (8), after the acquisition of the additional interest;
- (b) for the purposes of section 76ATH(1)(c)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the corporation to which the person, or the person and a related person, would have been entitled, as provided in subsection (8), at the time of the immediately preceding relevant acquisition by that person, or a related person.

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations
Division 3b Listed corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 3a

s. 76ATL

- (6) Where approval has been granted under section 76ATG(4) the dutiable value —
- (a) for the purposes of section 76ATH(1)(d)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the corporation to which the person, or the person and a related person, would be entitled, as provided in subsection (8), at the end of the relevant period to which the section 76ATG statement relates;
 - (b) for the purposes of section 76ATH(1)(d)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation was entitled, as provided by subsection (7), at the time the controlling interest was acquired, as the proportion of the property of the corporation to which the person, or the person and a related person, would have been entitled, as provided in subsection (8), before the beginning of the relevant period to which the section 76ATG statement relates.
- (7) For the purposes of subsections (3), (4), (5) and (6) the unencumbered value of the land and chattels to which a corporation is entitled at any time is the sum of —
- (a) in the case of land and chattels to which the corporation is entitled without reference to subsection (6) of section 76ATI, the unencumbered value of the land and chattels at that time; and
 - (b) in the case of land and chattels to which a trustee or a corporation is entitled as mentioned in that subsection, the amount to which, if the property of a trust or corporation referred to in that subsection or all such trusts and corporations in the chain of relationships were to be distributed at that time (in the case of a

corporation, on the basis of a winding up), without having regard to any liabilities of the same, the corporation would be entitled in respect of the unencumbered value at that time of land and chattels to which all such trusts and corporations are entitled.

- (8) For the purposes of subsections (3), (4), (5) and (6), the property of a corporation to which a person, or the person and any related person, would be entitled is the property to which the person, or the person and any related person, would be entitled if the property of the corporation and all holding corporations, as defined in section 76ATK(4), in the chain of relationships were to be distributed after the acquisition (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same.
- (9) If the day of the acquisition of the controlling interest is 30 June 2007 or earlier, the reference in subsection (4)(b) to the day that is 3 years before the day of the acquisition of the controlling interest is taken to be a reference to 1 July 2004.

[Section 76ATL inserted by No. 11 of 2004 s. 29.]

Division 4 — Reassessment of liability for duty

[Heading inserted by No. 60 of 2000 s. 19.]

76AU. Reassessment where deeming provision applied

- (1) If, on the application of a person who has paid, or is liable to pay, duty on a Part IIIBA statement, the Commissioner is satisfied that —
- (a) but for the operation of a deeming provision in relation to a contract or agreement —
 - (i) the duty would not have been chargeable; or
 - (ii) the amount of the duty would have been less;
 - and
 - (b) the contract or agreement has been —

Stamp Act 1921

Part IIIA Duty on change of control of certain land-owning corporations

Division 5 Avoidance of duty

s. 76AU

- (i) if a deeming-in provision applied — rescinded, annulled or otherwise terminated without being completed; or
- (ii) if a deeming-out provision applied — completed,

the duty chargeable on the Part IIIA statement is the duty that would have been payable had the deeming provision not applied to the contract or agreement.

- (2) In a case where a deeming-in provision applied, subsection (1) does not apply if the Commissioner is not satisfied that the rescission, annulment or other termination of the contract or agreement was not part of a scheme or arrangement under which the object of the contract or agreement has been or may be achieved in another way.
- (3) This section is in addition to the provisions of the *Taxation Administration Act 2003* relating to the reassessment of duty and does not affect the operation of those provisions.
- (4) In this section —

“deeming-in provision” means section 76AI(5)(a), 76AI(6)(a), 76AP(5)(a), 76AP(6)(a), 76ATB(7)(a), 76ATB(8)(a), 76ATI(7)(a) or 76ATI(8)(a);

“deeming-out provision” means section 76AI(5)(b), 76AI(6)(b), 76AP(5)(b), 76AP(6)(b), 76ATB(7)(b), 76ATB(8)(b), 76ATI(7)(b) or 76ATI(8)(b);

“deeming provision” means a deeming-in provision or a deeming-out provision.

[Section 76AU inserted by No. 2 of 2003 s. 99; amended by No. 11 of 2004 s. 30.]

Division 5 — Avoidance of duty

[Heading inserted by No. 11 of 2004 s. 31.]

76AV. Commissioner may determine that an obligation to lodge a statement has been avoided

- (1) This Division applies to an arrangement or scheme (the “**scheme**”) if the Commissioner determines that, but for the scheme —
 - (a) a relevant acquisition within the meaning given by section 76AJ would have occurred on or after 1 July 2004 by reason of which a person would have been required to lodge a section 76AG statement;
 - (b) a relevant acquisition within the meaning given by section 76AQ would have occurred on or after 1 July 2004 by reason of which a corporation would have been required to lodge a section 76AN statement;
 - (c) a relevant acquisition within the meaning given by section 76ATC would have occurred by reason of which a person would have been required to lodge a section 76AT statement; or
 - (d) a relevant acquisition within the meaning given by section 76ATJ would have occurred by reason of which a corporation would have been required to lodge a section 76ATG statement.
- (2) The Commissioner can only make a determination under subsection (1) if the Commissioner is of the opinion that the scheme is or was one having as its purpose, or one of its purposes, the defeat of the object of Division 2, 3, 3a or 3b, as the case may be.
- (3) For the purposes of subsection (2) the Commissioner may have regard to —
 - (a) the way in which the scheme was entered into and carried out;
 - (b) the form and substance of the scheme, including the legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme;

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations

Division 5 Avoidance of duty

s. 76AW

- (c) when the scheme was entered into and the length of the period during which the scheme was carried out;
- (d) any change to a person's financial position, or any other consequence, that has resulted, will result or may reasonably be expected to result from the scheme's having been entered into and carried out;
- (e) the circumstances surrounding the scheme; and
- (f) any other matter that the Commissioner considers relevant.

[Section 76AV inserted by No. 11 of 2004 s. 31.]

76AW. Liability to pay duty that has been avoided

If this Division applies to an arrangement or scheme, the person or corporation mentioned in paragraph (a), (b), (c) or (d) of section 76AV(1) is liable to pay the duty that would have been payable if the statement mentioned in that paragraph had been lodged.

[Section 76AW inserted by No. 11 of 2004 s. 31.]

76AX. Reasons for determination that duty has been avoided

The assessment notice served under section 23(3) of the *Taxation Administration Act 2003* in respect of the duty under section 76AW is to contain or be accompanied by the Commissioner's reasons for making the determination under section 76AV(1) including the reasons for forming the opinion required by section 76AV(2).

[Section 76AX inserted by No. 11 of 2004 s. 31.]

[76AY. Repealed by No. 2 of 2003 s. 99.]

Part IIIC — Vehicle licences

[Heading inserted by No. 2 of 2003 s. 100.]

76B. Interpretation in Part IIIC

(1) In this Part —

“**charitable organisation**” means a charitable institution or public benevolent institution endorsed by the Commonwealth Commissioner of Taxation under the Commonwealth *Income Tax Assessment Act 1997* as a deductible gift recipient or as exempt from income tax;

“**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 *Road Traffic Act 1974*;

“**dealer**” means a person who —

- (a) carries on the business of selling new vehicles;
- (b) is the holder of a dealer’s licence under the *Motor Vehicle Dealers Act 1973*;
- (c) carries on the business of acquiring new or used vehicles for resale or disposal under hire purchase or leasing agreements; or
- (d) in the course of the person’s business, takes possession of vehicles that are the subject of hire purchase or leasing agreements and resells them;

“**Director General**” means the chief executive officer of the department of the Public Service principally assisting in the administration of the provisions of the *Road Traffic Act 1974* that section 5 of that Act defines as the “licensing provisions of this Act”;

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

s. 76B

“eligible vehicle” means a motor vehicle (as defined in the *Road Traffic Act 1974* but not including a trailer, semi-trailer or caravan) —

- (a) that is constructed or designed, or has been modified, to include or have permanently affixed to it, specialised equipment; and
- (b) that is designed to be driven or controlled by a person carried in or on the vehicle;

“grant”, in relation to a licence, includes renew;

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

“licence” means a vehicle licence granted under Part III of the *Road Traffic Act 1974*, but does not include a duplicate licence or a certified copy of a licence granted under that Act;

“market value” means —

- (a) in relation to a new vehicle —
 - (i) which is a vehicle of a class prescribed for the purposes of this paragraph; and
 - (ii) for which a price has been fixed by the manufacturer, importer or principal distributor as the retail selling price in Western Australia of a vehicle of that make and model,the sum of —
 - (iii) the price so fixed; and
 - (iv) the price fixed by the manufacturer, importer or principal distributor as the additional retail selling price in Western Australia of any optional feature in or of the vehicle;

and

- (b) in relation to any other vehicle — the amount for which the vehicle might reasonably be sold, free of encumbrances, in the open market;

“net value”, in relation to the grant or transfer of the licence for an eligible vehicle, means the market value of the vehicle as if the specialised equipment attached to it at the time the application for the grant or transfer was made was not attached to it;

“new vehicle” means a vehicle that has never been used or that has only been used for a purpose referred to in section 76D(5)(a) or (5a)(a), but does not include a vehicle that has been used for the purpose referred to in section 76D(5)(a)(ii), or a purpose referred to in section 76D(5a)(a), for a period of more than 3 months;

“non-beneficial”, in relation to a change of ownership of a vehicle, has the meaning given in section 76C(1);

“optional feature” means —

- (a) any particular kind of transmission in a vehicle; and
- (b) any other feature in or of a vehicle prescribed by the regulations,

that is not a standard feature of a vehicle of that make and model;

“purchase price”, in relation to a vehicle, includes any amount —

- (a) allowed by the seller on a trade-in or an exchange of any article;
- (b) paid to the seller for anything included with or incorporated into the vehicle; or
- (c) paid to the seller for the preparation of the vehicle for delivery to the purchaser;

“specialised equipment” means —

- (a) a crane;
- (b) an excavator, road roller, road grader, bulldozer, mechanical shovel, plough, rotary hoe or similar plant;

s. 76C

- (c) hoisting equipment for lifting, partial lifting or towing other vehicles;
- (d) bitumen spraying equipment;
- (e) a cement agitator;
- (f) garbage collection equipment;
- (g) road sweeping equipment;
- (h) a refrigeration unit;
- (i) a stock crate;
- (j) a tank for transporting liquids;
- (k) equipment to make the vehicle habitable by a person in the course of a journey; or
- (l) any similar plant or equipment;

“trustee” does not include a discretionary trustee or a unit trustee;

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

“unit trust scheme” means a private unit trust scheme within the meaning in section 63(2);

“vehicle” means a vehicle that is required to be licensed under the *Road Traffic Act 1974*.

- (2) A reference in this Part to the use of a vehicle for a purpose referred to in section 76D(4)(a), 5(a) or (5a)(a); includes a reference to its use for that purpose and for minor incidental purposes.

[Section 76B inserted by No. 2 of 2003 s. 100; amended by No. 66 of 2003 s. 70; No. 34 of 2005 s. 4.]

76C. Non-beneficial change of ownership

- (1) On application by a person to whom the licence for a vehicle has been or is to be transferred the Commissioner may authorise duty to be charged on the transfer in accordance with section 76D(2) if the Commissioner is satisfied that —

- (a) the change in the legal ownership of the vehicle to which the licence relates that necessitated, or will necessitate, the transfer of the licence did not, or will not, change the beneficial ownership of the vehicle; and
 - (b) the transferor of the licence —
 - (i) acquired the legal ownership of the vehicle in his or her capacity as trustee, discretionary trustee or unit trustee (as the case requires); and
 - (ii) paid duty on the grant or transfer to him or her of the licence.
- (2) An application for an authorisation is to be made to the Commissioner in an approved form.
- (3) For the purposes of subsection (1)(a), a change in the legal ownership of a vehicle does not change the beneficial ownership of the vehicle if —
- (a) the change in the legal ownership of the vehicle is made to effect the appointment of a new trustee, or the retirement of a trustee, whether the trust is expressed or implied;
 - (b) the legal ownership of a vehicle passes to a beneficiary from a trustee or a person in any other fiduciary capacity (except a discretionary trustee or a unit trustee), under a trust, whether express or implied;
 - (c) the legal ownership of the vehicle passes to a beneficiary under a discretionary trust (whether express or implied) from the discretionary trustee otherwise than as a result of the exercise by the trustee of a power of appointment;
 - (d) the legal ownership of the vehicle passes to a beneficiary under a discretionary trust from the discretionary trustee as a result of the exercise by the trustee of a power of appointment if —
 - (i) the beneficiary is an individual;

s. 76C

- (ii) the beneficiary acquires the vehicle for his or her own use and benefit; and
 - (iii) at the time the trustee acquired the vehicle 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 vehicle;
- (e) the legal ownership of the vehicle passes to the holder of a unit in a unit trust scheme from the unit trustee if the change in the legal ownership of the vehicle —
- (i) has the effect of reducing the rights of the transferee in respect of the trust property to the extent of the vehicle or the value of the vehicle; and
 - (ii) 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 trust property;
- or
- (f) the change in the legal ownership of the vehicle —
- (i) does not pass a beneficial interest in the vehicle;
 - (ii) is not made in contemplation of the passing of a beneficial interest in the vehicle; and
 - (iii) is not part of, or made pursuant to, a scheme whereby any beneficial interest in the vehicle, whether vested or contingent, has passed or will or may pass.

[Section 76C inserted by No. 2 of 2003 s. 100.]

[76CA, 76CB. Repealed by No. 2 of 2003 s. 100.]

76D. Duty on the grant or transfer of a vehicle licence

- (1) Subject to this section, duty is payable on the grant or transfer of a licence in accordance with item 14 of the Second Schedule.
- (2) Subject to this section, duty is payable on the transfer of a licence in accordance with item 6 of the Second Schedule if —
 - (a) the vehicle to which the licence relates is transferred under a testamentary instrument or on an intestacy to a person entitled to it under the instrument or on the intestacy; or
 - (b) the Commissioner has granted an authorisation in respect of the transfer of the licence under section 76C(1) or 112UE(2).
- (3) Duty is not payable on —
 - (a) the grant of a licence if no fee is payable under the *Road Traffic Act 1974* for the grant of the licence;
 - (b) the transfer of a licence if no fee would be payable under the *Road Traffic Act 1974* for the grant of the licence if it was granted to the transferee on the date of the transfer; or
 - (c) the transfer of a licence if an exemption certificate issued under section 75JB(3a) in relation to an instrument relating to the vehicle is given to the Director General.
- (4) Duty is not payable on the transfer of a licence to a dealer, if —
 - (a) the dealer has acquired the vehicle to which the licence relates solely for the purpose of reselling it to another person;
 - (b) the resale is in the ordinary course of the dealer's business; and
 - (c) the application for the transfer of the licence is accompanied by a certificate certifying that while the

s. 76D

applicant holds the licence the vehicle will be used solely for the purpose referred to in paragraph (a).

- (5) Duty is not payable on the grant of a licence to a dealer if —
- (a) the dealer acquired the vehicle to which the licence relates solely for the purpose of —
 - (i) selling it to another person in the ordinary course of the dealer's business; or
 - (ii) demonstrating it to prospective purchasers;and
 - (b) the application for the grant of the licence is accompanied by a certificate certifying that while the applicant holds the licence the vehicle will be used solely for the purposes referred to in paragraph (a).
- (5a) Duty is not payable on the grant or transfer of a licence to a dealer if —
- (a) the vehicle for which the licence was granted or transferred is to be loaned by the dealer —
 - (i) to a charitable organisation to be used solely for providing assistance to underprivileged or disadvantaged persons;
 - (ii) to a charitable organisation to be used solely for providing emergency assistance;
 - (iii) to a school (as defined in the *School Education Act 1999*) to be used solely for student driver training;
 - (iv) to an individual solely for a philanthropic purpose approved by the Commissioner; or
 - (v) solely for a purpose prescribed in the regulations;and
 - (b) the application for the grant or transfer of the licence is accompanied by a certificate certifying that while the

applicant holds the licence the vehicle will be used solely for a purpose referred to in paragraph (a).

- (5b) The Commissioner may approve a philanthropic purpose for the purposes of subsection (5a)(a)(iv) for a particular dealer or class of dealer, and the approval may take effect from a day that is earlier than the day on which the Commissioner grants the approval, but no earlier than 23 August 2000.
- (6) The duty payable on the grant or transfer of a licence for an eligible vehicle (“**vehicle B**”) is to be calculated on the net value of the vehicle if —
- (a) the applicant holds, or previously held, the licence for another eligible vehicle (“**vehicle A**”);
 - (b) the applicant is the last person to hold a licence for vehicle A;
 - (c) the duty paid by the applicant on the grant or transfer of the licence for vehicle A was assessed on the market value of vehicle A including the specialised equipment that was then attached to it (“**original equipment**”);
 - (d) the original equipment has been removed from vehicle A and attached to vehicle B; and
 - (e) the application for the grant or transfer of the licence for vehicle B is accompanied by a certificate certifying that while the applicant holds the licence for vehicle B —
 - (i) vehicle B will not be used if the original equipment has been removed from it; or
 - (ii) if the original equipment is removed from vehicle B and vehicle B is used with different equipment, the original equipment will not be attached to any other vehicle for which the applicant intends to become the licence holder.
- (7) A certificate for the purposes of subsection (4)(c), (5)(b), (5a)(b) or (6)(e) must be in an approved form and be signed by the applicant for the grant or transfer of the licence.

s. 76E

- (8) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.

[Section 76D inserted by No. 2 of 2003 s. 100; amended by No. 66 of 2003 s. 71; No. 34 of 2005 s. 5.]

76E. Determination of value and assessment of duty

- (1) When an application is made for the grant or transfer of a licence the Director General must assess the amount of duty payable on it.
- (2) For the purpose of making the assessment, if duty is payable on the grant or transfer in accordance with item 14 of the Second Schedule the Director General must determine —
- (a) the market value; or
 - (b) if section 76D(6) applies, the net value,
- of the vehicle to which the licence relates.
- (3) For the purpose of determining the market value or net value of the vehicle the Director General may, by notice given to the applicant, require the applicant to provide, within a period stated in the notice, evidence of the market value of the vehicle and the applicant must comply with that requirement.
- Penalty: \$20 000.
- (4) An assessment made under subsection (1) is an official assessment for the purposes of the *Taxation Administration Act 2003*.

[Section 76E inserted by No. 2 of 2003 s. 100.]

76F. Payment of duty

Duty payable on the grant or transfer of a licence and any penalty tax is payable —

- (a) to the Director General in accordance with the *Road Traffic Act 1974*; or
- (b) if the assessment or a reassessment is made by the Commissioner, in accordance with the *Taxation Administration Act 2003*.

[Section 76F inserted by No. 2 of 2003 s. 100.]

76G. Applicant's statement of value in application

A person who applies under the *Road Traffic Act 1974* for the grant or transfer of a licence (other than a transfer chargeable with duty under section 76D(2) or to which section 76D(3)(c) applies) must include in the application a statement signed by the applicant setting out —

- (a) the applicant's estimate of the market value of the vehicle to which the licence relates at the time of the application; and
- (b) if the applicant is a purchaser of the vehicle, the purchase price paid for the vehicle.

Penalty: \$20 000.

[Section 76G inserted by No. 2 of 2003 s. 100; amended by No. 66 of 2003 s. 72.]

76H. Seller's obligation to notify purchase price

- (1) A person who ceases to be the owner of a vehicle and is required under the *Road Traffic Act 1974* to notify the Director General of the new owner must (unless the transfer of the licence for the vehicle is, or will be, chargeable with duty under section 76D(2) or is a transfer to which section 76D(3)(c) applies) include in that notice a statement signed by the person setting out —
 - (a) the purchase price (if any) received for the vehicle to which the licence relates; and

s. 76I

- (b) the person's estimate of the market value of the vehicle at the time the person ceased to be the owner of it.

Penalty: \$20 000.

- (2) A dealer who sells a new vehicle must, within 7 days after the sale, give to the Director General a statement signed by the dealer setting out —

- (a) the purchase price received for the vehicle; and
- (b) the dealer's estimate of the market value of the vehicle at the time the vehicle was sold.

Penalty: \$20 000.

- (3) If —

- (a) a person understates, in a statement under this section, the purchase price or estimated market value of a vehicle; and
- (b) the duty payable on the grant or transfer of the licence for that vehicle is initially assessed on a value for the vehicle that is less than the proper market value,

the person is jointly and severally liable with the purchaser to pay the difference between the amount of duty as initially assessed and the amount of duty assessed on the vehicle's proper market value.

[Section 76H inserted by No. 2 of 2003 s. 100; amended by No. 66 of 2003 s. 73.]

76I. Use of dealer registered vehicle for other purposes

- (1) If under section 76D(4), (5) or (5a) no duty was payable on the grant or transfer of a licence to a dealer, then while the dealer remains the licensee of the vehicle to which the licence relates the dealer must not use, or allow any other person to use, the vehicle for a purpose other than a purpose referred to in section 76D(4)(a), (5)(a) or (5a)(a).

Penalty: \$20 000.

- (2) If a dealer contravenes subsection (1) —
- (a) the grant or transfer of the licence is taken not to be, and never to have been, exempt from duty under section 76D(4), (5) or (5a) (as the case may be);
 - (b) the grant or transfer of the licence is chargeable with penalty tax of an amount equal to the amount of duty chargeable on the grant or transfer of the licence; and
 - (c) the duty and penalty tax is due for payment within one month after an assessment notice is issued in respect of the grant or transfer of the licence.

[Section 76I inserted by No. 2 of 2003 s. 100; amended by No. 66 of 2003 s. 74; No. 34 of 2005 s. 6.]

76J. Use of specialised equipment on another vehicle

- (1) If —
- (a) under section 76D(6) duty on the grant or transfer of a licence for an eligible vehicle to a person is calculated on the net value of the vehicle; and
 - (b) while that person holds the licence for that vehicle it is used with specialised equipment other than the equipment that was attached to it at the time the application for the grant or transfer of the licence was made (“**original equipment**”),

the person must not attach the original equipment to any other vehicle for which the licensee intends to become the licence holder.

Penalty: \$20 000.

- (2) If a licensee contravenes subsection (1) —
- (a) the grant or transfer of the licence is taken to be, and always to have been, chargeable with duty on the market value of the eligible vehicle including the specialised equipment attached to it;

s. 76K

- (b) the grant or transfer of the licence is chargeable with penalty tax of an amount equal to the amount of duty chargeable on the grant or transfer of the licence; and
- (c) the duty and penalty tax is due for payment within one month after an assessment notice is issued in respect of the grant on transfer of the licence.

[Section 76J inserted by No. 2 of 2003 s. 100.]

76K. Failure to apply for transfer of licence

- (1) For the purposes of section 26 of the *Taxation Administration Act 2003*, a failure by a person to apply for the transfer of a licence when required by the *Road Traffic Act 1974* to do so is taken to be a contravention of a taxation Act.
- (2) If it appears to the Commissioner that a person has failed to apply for the transfer of a licence when required by the *Road Traffic Act 1974* to do so, section 20 of the *Taxation Administration Act 2003* applies as if —
 - (a) the transfer were an instrument required to be lodged under a taxation Act; and
 - (b) an application for the transfer had been made as required by the *Road Traffic Act 1974*.

[Section 76K inserted by No. 2 of 2003 s. 100.]

76L. Powers of Director General and Commissioner

- (1) For the purposes of this Part the Director General has the functions of the Commissioner under sections 26 and 29 of the *Taxation Administration Act 2003*.
- (2) The Commissioner has all of the functions of the Director General under this Part.
- (3) For the purposes of the *Taxation Administration Act 2003* anything done by the Director General in the exercise of a

function conferred by subsection (1) is taken to have been done by the Commissioner.

[Section 76L inserted by No. 2 of 2003 s. 100.]

76M. Duty to be remitted to Commissioner

The Director General must, in accordance with any agreement between the Director General and the Commissioner —

- (a) provide to the Commissioner details of licences granted or transferred and the duty and any penalty tax paid in relation to them; and
- (b) remit that duty and penalty tax to the Commissioner.

[Section 76M inserted by No. 2 of 2003 s. 100.]

76N. Records

A dealer must keep —

- (a) the records that are prescribed in the regulations for the purposes of this Part (if any); and
- (b) any other records necessary to enable the Commissioner to determine the dealer's liability to pay duty under this Part.

Penalty: \$20 000.

[Section 76N inserted by No. 34 of 2005 s. 7.]

[Part IIICA repealed by No. 13 of 1997 s. 39.]

Part IIID — Leases

[Heading inserted by No. 37 of 1979 s. 56.]

77. Agreement for any lease to be charged as a lease

- (1) An agreement for a lease, or with respect to the letting of any lands or tenements for any term, is to be charged with duty under item 12 of the Second Schedule as if it were an actual lease made for the term and consideration mentioned in the agreement.
- (2) A lease made subsequently to and in conformity with an agreement referred to in subsection (1) shall not be chargeable with duty but the Commissioner, on being requested to do so, is to endorse on the lease the duty paid in accordance with subsection (1).

[Section 77 amended by No. 113 of 1965 s. 8(1); No. 37 of 1979 s. 57; No. 2 of 2003 s. 101; No. 66 of 2003 s. 75.]

77A. Offer to lease

- (1) Subject to subsection (2), where there is a transaction —
 - (a) by which —
 - (i) land situated in Western Australia;
 - (ii) buildings on land situated in Western Australia;
or
 - (iii) fixtures annexed to, or to buildings on, land situated in Western Australia,is or are leased;
 - (b) in respect of which there exists a written offer to lease, or a written acceptance of an offer to lease, that land or those buildings or fixtures; and
 - (c) which is not effected or evidenced by an instrument chargeable with *ad valorem* duty under item 12 of the Second Schedule,

the lessee of the land, buildings or fixtures shall, within 2 months after entering into the transaction, lodge a statement with the Commissioner in respect of the transaction.

Penalty: \$20 000.

- (2) Subsection (1) does not apply to a lessee unless, had an instrument effecting or evidencing the transaction been executed, the lessee would have been liable to pay *ad valorem* duty under item 12 of the Second Schedule in respect of the transaction.
- (3) A dutiable statement shall be prepared in an approved form.
- (4) A dutiable statement lodged under subsection (1) is taken to be a lease and is chargeable with duty accordingly.
- (5) Each party to a transaction described in subsection (1), except the person required to lodge the dutiable statement, shall, within 2 months after entering into the transaction, notify the Commissioner in an approved form that the transaction has been entered into.
Penalty: \$20 000.
- (6) Subsection (5) does not apply to a party unless, had an instrument effecting or evidencing the transaction been executed, the lessee would have been liable to pay *ad valorem* duty under item 12 of the Second Schedule in respect of the transaction.
- (7) Nothing in this section prevents the joint making of a notification under subsection (5) in respect of a transaction by any 2 or more parties to the transaction who are required to make the notification.
- (8) The requirement to lodge a dutiable statement under subsection (1) or give notification under subsection (5) ceases to apply if an instrument that evidences the transaction and is chargeable with *ad valorem* duty under item 12 of the Second Schedule is executed at any time after the transaction was

s. 78

entered into, but nothing in this subsection affects the liability of a person for an offence against subsection (1) or (5) committed before the instrument was executed.

- (9) Where subsection (8) has effect, the instrument referred to in that subsection is to be regarded, for the purposes of section 17A, as having been first executed on the day on which the transaction occurred.
- (10) If an instrument is executed as referred to in subsection (8) after a dutiable statement has been lodged under subsection (1), subsection (4) ceases to apply to the dutiable statement unless duty has already been paid in respect of it.
- (11) If duty has already been paid as mentioned in subsection (10), the instrument is not chargeable with *ad valorem* duty but the Commissioner, on being requested to do so, is to endorse on the instrument the duty paid.
- (12) Regulations may exempt from the operation of subsections (1) and (5) any transactions belonging to a class specified in those regulations.

[Section 77A inserted by No. 66 of 2003 s. 76.]

78. Leases: how to be charged in respect of produce, etc.

- (1) Where the consideration or any part of the consideration for which any lease is granted or agreed to be granted does not consist of money, but consists of any produce or other goods, the value of such produce or goods is to be deemed a consideration in respect of which the lease or agreement is chargeable with *ad valorem* duty. And where it is stipulated that the value of such produce or goods is to amount at least to, or is not to exceed a given sum, or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of such produce or goods is, for the purpose of assessing the *ad valorem* duty, to be estimated at such given sum or according to such permanent rate.

- (2) A lease or agreement for a lease made either entirely or partially for any such consideration, if it contains a statement of the value of such consideration, and is stamped in accordance with such statement, is, so far as regards the subject matter of such statement, to be deemed stamped, unless or until it is otherwise shown that such statement is incorrect, and that it is in fact not stamped.

[Section 78 amended by No. 2 of 2003 s. 102.]

79. Directions as to duty in certain cases

- (1) A lease or agreement for a lease, or with respect to any letting, is not to be charged with any duty in respect of any penal rent or increased rent in the nature of a penal rent thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease or agreement of or relating to the same subject matter.
- (2) No lease or agreement for a lease made for any consideration or considerations in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease or agreement for a lease; is to be charged with any duty in respect of such further consideration.

Provided that this subsection shall not apply as respects any further consideration in the lease or agreement for a lease consisting of a covenant which if it were contained in a separate deed would be chargeable with *ad valorem* duty, and accordingly the lease or agreement for a lease shall in any such case be charged with duty in respect of any such further consideration under section 19.

[Section 79 amended by No. 37 of 1979 s. 58; No. 20 of 1996 s. 37; No. 2 of 2003 s. 103; No. 66 of 2003 s. 77.]

s. 80A

[80. Repealed by No. 66 of 2003 s. 78.]

80A. Power to exempt instruments made for charitable or similar purposes

Where the Commissioner is satisfied that any lease or agreement for a lease has been made for the purpose of a university or for charitable or similar public purposes, he may exempt from duty that lease or agreement for a lease.

[Section 80A inserted by No. 14 of 1983 s. 3; amended by No. 2 of 2003 s. 104.]

Part III E — Mortgage duty

[Heading inserted by No. 66 of 2003 s. 79.]

Division 1 — Interpretation for this Part

[Heading inserted by No. 66 of 2003 s. 79.]

81. Definitions

In this Part, unless the contrary intention appears —

“**advance**” has the meaning given in section 83;

“**corresponding Act**” means an Act of another State that deals with the imposition and assessment of mortgage duty (however described);

“**collateral mortgage**” means a mortgage that is or is to be stamped as a collateral mortgage under section 91B;

“**home mortgage**” has the meaning given in section 85;

“**liability date**”, in relation to a mortgage, means a date on which the liability to pay mortgage duty on the instrument arises;

“**loan**”, in relation to a mortgage, has the meaning given in section 84;

“**mortgage**” has the meaning given in section 82;

“**mortgage duty**” means duty payable on a mortgage in accordance with this Part;

“**mortgage package**” has the meaning given in section 91A;

“**referable point**” means the document used under section 91(3) to work out the dutiable proportion of a mortgage;

“**secured amount**”, in relation to a mortgage, means the amount determined under Division 3 as the amount secured by the mortgage;

“**security interest**”, in relation to property, means the estate or interest of a mortgagee, chargee or other secured creditor.

[Section 81 inserted by No. 66 of 2003 s. 79.]

82. Mortgages

- (1) For the purposes of this Part, a “**mortgage**” is an instrument that —
 - (a) is a security by way of mortgage or charge over property that is wholly or partly in Western Australia at the liability date;
 - (b) is a security by way of a conveyance or an assignment of property that is wholly or partly in Western Australia to a trustee, that is to be sold or otherwise converted into money, and is redeemable before the sale or conversion, except a conveyance or an assignment made for the benefit of creditors who accept the conveyance or assignment in full satisfaction of debts owed to them;
 - (c) is a conveyance or an assignment of property that is wholly or partly in Western Australia, or effects or is evidence of an agreement for the conveyance or assignment of property that is wholly or partly in Western Australia, where the conveyance or assignment apparently is or will be absolute but is intended only as security for an advance; or
 - (d) on the deposit of documents of title, authority to control title or a pledge to provide authority to control title, to property wholly or partly in Western Australia, becomes a mortgage or evidences the terms of a mortgage.
- (2) For section 91B, a reference to a mortgage or earlier mortgage includes a reference to a mortgage first executed before the commencement of this section.
- (3) For the purposes of subsection (1), an insured person’s interest in, or right to receive amounts payable under, a policy of insurance is property that is in Western Australia if the insured person is in Western Australia.

- (4) An insured person is in Western Australia if —
- (a) for an insured person who is an individual — the individual's place of residence is in Western Australia;
 - (b) for an insured person that is a body corporate other than a WA company — the body corporate is incorporated by or under a written law; or
 - (c) the insured person is a WA company.

[Section 82 inserted by No. 66 of 2003 s. 79; amended by No. 11 of 2005 s. 26.]

83. Advances

- (1) An “**advance**” is the provision or obtaining of funds by way of financial accommodation by —
- (a) a loan; or
 - (b) a bill facility that is one or more agreements, understandings or arrangements as a consequence of which a bill of exchange or promissory note —
 - (i) is drawn, accepted, endorsed or made; or
 - (ii) is held, negotiated or discounted.
- (2) Subsection (1)(b) applies whether or not the funds are obtained from —
- (a) the person who draws, accepts, endorses or makes the bill of exchange or promissory note; or
 - (b) a person who is a party to any of the agreements, understandings or arrangements.

- (3) An “**advance**” includes a contingent liability under section 90.

[Section 83 inserted by No. 66 of 2003 s. 79.]

84. Loans

Each of the following is a “**loan**” —

- (a) an advance of money;

- (b) the payment of money for or on account of, or at the request of, any person;
- (c) a forbearance to require the payment of money owing on any account;
- (d) any transaction, whatever its terms or form, that in substance effects a loan of money.

[Section 84 inserted by No. 66 of 2003 s. 79.]

[84A. Repealed by No. 39 of 1994 s. 9.]

85. Home mortgages

- (1) A mortgage is a home mortgage if —
 - (a) the mortgagor is an individual;
 - (b) part or all of the secured amount is used for a dwellinghouse as provided by subsection (2); and
 - (c) the dwellinghouse is being or will be used by the mortgagor as his or her sole or principal place of residence.
- (2) An amount is used for a dwellinghouse if it is used solely in or towards the cost of any of the following —
 - (a) purchasing any property which is or includes a dwellinghouse;
 - (b) building a dwellinghouse;
 - (c) effecting improvements or additions to a dwellinghouse;
 - (d) repaying money that was used solely for a purpose referred to in paragraph (a), (b) or (c).

[Section 85 inserted by No. 66 of 2003 s. 79.]

Division 2 — Liability for mortgage duty

[Heading inserted by No. 66 of 2003 s. 79.]

86. Assessing mortgage duty

- (1) For the purposes of section 16, the amount of mortgage duty chargeable on a mortgage specified in item 13 of the Second Schedule is calculated, subject to the exemptions set out in item 7 of the Third Schedule and in this Part, by applying the rates of duty specified in item 13 to the secured amount in accordance with this Part.
- (2) A mortgage is not chargeable with any other duty.
- (3) An instrument, other than a mortgage, that effects or has an effect on the transfer of an interest in property as security under or in accordance with a mortgage is not chargeable with any duty.
- (4) A person must not give effect to, recognise, register or record an instrument to which subsection (3) applies if mortgage duty is payable on the mortgage referred to in that subsection and the duty has not been paid.
Penalty: \$20 000.
- (5) Subsections (2) and (3) do not apply to, or in relation to, a mortgage or other instrument if the Commissioner is satisfied that —
 - (a) the transfer effected by the mortgage is not intended principally or solely as security under or in accordance with the mortgage; or
 - (b) the transfer effected by the other instrument is not intended principally or solely as security under or in accordance with a mortgage.

[Section 86 inserted by No. 66 of 2003 s. 79; amended by No. 11 of 2005 s. 27; No. 34 of 2005 s. 9.]

86A. Exemption — refinancing home loans

- (1) Duty is not payable on a home mortgage to the extent to which the secured amount is to refinance a previous secured amount

that was used for the dwellinghouse (as provided by section 85(2)).

- (2) A secured amount is to refinance a previous secured amount if —
- (a) the secured amount is, or is to be, used to pay out all of the unpaid amount of the previous secured amount;
 - (b) the previous secured amount was secured by a home mortgage (the “**previous mortgage**”);
 - (c) the previous mortgage is, or is to be, discharged;
 - (d) the mortgagor, or one of the mortgagors, who executed the previous mortgage is the mortgagor, or one of the mortgagors, who executed the home mortgage; and
 - (e) at least some of the property subject to the home mortgage is the same as some of the property subject to the previous mortgage.
- (3) Subsection (1) does not apply unless all mortgage duty payable on the previous mortgage (if any) has been paid.
- (4) If —
- (a) the previous secured amount was used to purchase land upon which a dwellinghouse was to be built for the mortgagor, or at least one of the mortgagors, as the sole or principal place of residence of the mortgagor; or
 - (b) the previous secured amount was used to purchase or build a dwellinghouse that was not the sole or principal place of residence of the mortgagor, or any of the mortgagors, and, prior to the home mortgage being executed, the dwellinghouse became the sole or principal place of residence of the mortgagor or one of the mortgagors,
- then —
- (c) subsection (1) has effect as if the reference to the previous secured amount being used for the

dwellinghouse included a reference to the previous secured amount being used to purchase the land referred to in paragraph (a); and

- (d) subsection (2)(b) has effect as if it referred to the previous secured amount being secured by a mortgage rather than a home mortgage.
- (5) For the purposes of this section, the amount of the previous secured amount is to be worked out disregarding section 89(2).
- (6) The mortgagee must discharge the previous mortgage as soon as practicable.

[Section 86A inserted by No. 34 of 2005 s. 10(1).]

86B. Exemption — refinancing small business loans

- (1) Duty is not payable on a business mortgage to the extent to which —
 - (a) the secured amount is to refinance a previous secured amount; and
 - (b) the previous secured amount was used for the purposes of carrying on the business.
- (2) A secured amount is to refinance a previous secured amount if —
 - (a) the secured amount is, or is to be, used to pay out all of the unpaid amount of the previous secured amount;
 - (b) the previous secured amount was secured by a business mortgage (the “**previous mortgage**”);
 - (c) the previous mortgage is, or is to be, discharged;
 - (d) the mortgagor, or one of the mortgagors, who executed the previous mortgage is the mortgagor, or one of the mortgagors, who executed the business mortgage;
 - (e) the business owner, or one of the business owners, before the business mortgage is executed is the business

owner, or one of the business owners, after the business mortgage is executed; and

- (f) at least some of the property subject to the business mortgage is the same as some of the property subject to the previous mortgage.
- (3) Subsection (1) does not apply unless —
- (a) the unpaid amount of the previous secured amount is less than or equal to \$5 000 000;
 - (b) the secured amount is less than or equal to \$5 000 000; and
 - (c) mortgage duty was payable on the previous mortgage and all of that duty has been paid, or the previous mortgage was exempt from mortgage duty under this section.
- (4) A mortgage is a “**business mortgage**” if part or all of the secured amount is, or is to be, used for the purposes of carrying on a business.
- (5) An amount is used for the purposes of carrying on a business if it is used for operating or capital purposes.
- (6) A “**business owner**”, in relation to a business mortgage, is an entity (which may be an individual, a body corporate, a trust or a partnership) that carries on the business (whether alone or with others) for which the amount secured by the business mortgage is, or is to be, used.
- (7) For the purposes of this section, the amount of the previous secured amount is to be worked out disregarding section 89(2).
- (8) The mortgagee must discharge the previous mortgage as soon as practicable.

[Section 86B inserted by No. 34 of 2005 s. 10(1).]

87. Liability dates

- (1) A mortgage is liable to mortgage duty when it is first executed.
- (2) A mortgage is also liable to mortgage duty when an advance or a further advance is made under the mortgage if the total secured amount exceeds the secured amount for which the mortgage has been stamped, or is exempt from duty, under this or a corresponding Act.
- (3) Subsection (4) applies to an instrument of security that does not affect property in Western Australia when it is first executed if the instrument —
 - (a) affects any property that is specifically identified, whether or not in the instrument, when it is first executed and, under an arrangement, the property is intended to be secured by the security; or
 - (b) affects land, other than a security interest, in Western Australia within one year after it is first executed.
- (4) The instrument of security is liable for mortgage duty when it first affects the property or land unless it is stamped with, or is exempt from, similar duty under a corresponding Act.
- (5) An instrument referred to in section 82(1)(d) that becomes a mortgage or is evidence of the terms of a mortgage is liable to mortgage duty on the deposit of the instruments.

[Section 87 inserted by No. 66 of 2003 s. 79.]

[87A. Repealed by No. 37 of 1979 s. 66.]

88. Stamping before advance

- (1) A mortgage may be stamped before an advance is made under the mortgage, whether or not an earlier advance has been made under it.
- (2) A mortgage mentioned in section 91 or 91A may be stamped to secure any amount exceeding that to which it is already stamped

based on the dutiable proportion for the mortgage when it is stamped.

[Section 88 inserted by No. 66 of 2003 s. 79.]

[88A. Repealed by No. 66 of 2003 s. 79.]

Division 3 — Amount secured by a mortgage

[Heading inserted by No. 66 of 2003 s. 79.]

89. The secured amount

- (1) The amount secured by a mortgage is the amount equal to the sum of the advances actually secured by it and recoverable under the terms of the mortgage.
- (2) However, if —
 - (a) a mortgage has been stamped, or is exempt from duty, under this or a corresponding Act for an amount of advances secured by the mortgage;
 - (b) a further advance secured by the mortgage is made; and
 - (c) the total amount secured by the mortgage exceeds the amount for which the mortgage has been stamped,then the amount secured by the mortgage is the amount by which the amount of the advances secured by the mortgage exceeds the amount for which the mortgage has been stamped.
- (3) Mortgage duty is not payable on any part of the secured amount that is advanced for one or more of the following —
 - (a) the insurance of the mortgaged property against damage by fire, or for keeping up a life insurance policy included in the mortgaged property or for taking out a new life insurance policy in lieu of the previous policy;
 - (b) the renewal of any grant or lease of any of the mortgaged property upon the ending of a life interest in the mortgaged property.

[Section 89 inserted by No. 66 of 2003 s. 79.]

90. Contingent liabilities

- (1) This section applies to a mortgage securing or capable of securing, whether directly or indirectly, an amount contingently payable (the “**secured amount**”) in connection with an advance (the “**primary advance**”) —
 - (a) by a guarantor or indemnifying party under a guarantee or indemnity; or
 - (b) by another party under another type of instrument.
- (2) Mortgage duty is assessed on the secured amount as if it were a separate advance secured by the mortgage.
- (3) For subsection (2), the contingent liability is limited to the amount of the primary advance.
- (4) This section —
 - (a) does not apply if the Commissioner is satisfied there is no connection between the mortgage and the primary advance; and
 - (b) does not require mortgage duty to be paid more than once for an advance.

[Section 90 inserted by No. 66 of 2003 s. 79.]

[90A. Repealed by No. 66 of 2003 s. 79.]

91. Mortgage over property partly outside WA

- (1) Mortgage duty chargeable in relation to mortgaged property that is partly in Western Australia and partly outside Western Australia is assessed by applying the appropriate rate of duty to the dutiable proportion of the secured amount worked out in accordance with subsection (2).
- (2) The dutiable proportion of the secured amount is the amount that bears to the secured amount the same proportion that, at the

liability date, the value of the mortgaged property in Western Australia bears to the total value of the mortgaged property (excluding the value of any part of the mortgaged property that is located in the State of Victoria or a Territory or outside Australia).

- (3) The dutiable proportion must be worked out by reference to the property values according to a referable point.
- (4) For subsection (3), a referable point is any of the following prepared in the year before the liability date for the mortgage —
 - (a) an independent valuation of the secured property;
 - (b) a statement of the mortgagee based on information obtained by the mortgagee in deciding to make the advance to the mortgagor;
 - (c) property valuations used by the mortgagor in preparing an annual return to be lodged under the Corporations Act;
 - (d) a financial report of the mortgagor, certified by an independent auditor as presenting a true and fair view of the corporation's financial position;
 - (e) agreed property valuations that form the basis of the mortgagor's insurance policies;
 - (f) another document the Commissioner considers to be appropriate for working out the dutiable proportion.
- (5) However, if there is more than one referable point for a mortgage, the referable point is the later or latest of the referable points.
- (6) Also, the referable point used for the purposes of this Act must be the same as the referable point used to determine liability to mortgage duty under the corresponding Acts of the other jurisdictions in which part of the property is located.

[Section 91 inserted by No. 66 of 2003 s. 79; amended by No. 12 of 2004 s. 32(1)².]

91A. Mortgage packages

- (1) Two or more security instruments constitute a “**mortgage package**” if —
 - (a) at least one of the instruments is a mortgage;
 - (b) at a liability date, the instruments secure or partly secure the same moneys; and
 - (c) at least one of the instruments is a security affecting property wholly or partly outside Western Australia.
- (2) Also, a “**mortgage package**” includes —
 - (a) a mortgage executed after the liability date if the Commissioner is satisfied the mortgage was intended to be part of the package; and
 - (b) a mortgage previously collateral to an earlier advance under one or more of the other mortgages in the package.
- (3) Mortgage duty on a mortgage package is assessed as if the instruments constituting the mortgage package were one mortgage that was first executed on the day the last of the executed instruments was executed.
- (4) One of the mortgages in the mortgage package must be stamped with the mortgage duty paid in Western Australia for the mortgage package and each other mortgage in the mortgage package must be stamped as a collateral mortgage.

[Section 91A inserted by No. 66 of 2003 s. 79.]

91B. Collateral mortgages

- (1) Mortgage duty is not imposed in relation to the part of the amount secured by a collateral mortgage that is secured by —
 - (a) a mortgage or security instrument that is stamped under this Act or a corresponding Act; or
 - (b) a mortgage package that has been stamped under section 91A or a corresponding Act.

- (2) A collateral mortgage that no longer secures an amount secured by a mortgage, instrument or mortgage package mentioned in subsection (1) is not security for another advance unless mortgage duty for the amount of the other advance is paid.
- (3) The Commissioner, on being requested to do so, is to endorse on the collateral mortgage the mortgage duty paid on the mortgage, instrument or mortgage package and the extent to which the mortgage, instrument or mortgage package is exempt from mortgage duty.

[Section 91B inserted by No. 66 of 2003 s. 79; amended by No. 34 of 2005 s. 11.]

91C. Extent to which mortgage can be enforced

- (1) A mortgage or mortgage package for which mortgage duty is imposed or a similar duty is chargeable under a corresponding Act is enforceable only to the extent of the amount secured by the mortgage or mortgage package for which duty has been paid or the mortgage or mortgage package is exempt from mortgage duty, under this Act or the corresponding Act.
- (2) For subsection (1), mortgage duty has been paid on a mortgage or mortgage package affecting property that is partly in and partly outside Western Australia if —
 - (a) duty has been paid on the total advances under the mortgage or mortgage package when the mortgage duty paid is taken with the duty paid under a corresponding Act; and
 - (b) the dutiable proportion of the mortgage or mortgage package is not incorrect by more than 5% when worked out under section 91(3).

[Section 91C inserted by No. 66 of 2003 s. 79.]

91D. Use of stamped and collateral mortgages as security

- (1) A stamped or collateral mortgage that was, but is no longer, part of the same mortgage package and no longer secures the same moneys as were or are secured by the package is not security for another advance unless mortgage duty for the amount of the other advance is paid.
- (2) The fact that the stamped or collateral mortgage is no longer part of the mortgage package does not affect the amounts for which the remaining mortgages in the mortgage package provide security.

[Section 91D inserted by No. 66 of 2003 s. 79; amended by No. 12 of 2004 s. 33.]

91E. Multi-jurisdictional statement

- (1) If mortgage duty is imposed in relation to the dutiable proportion of a mortgage, (whether for a mortgage over property not wholly in Western Australia, a mortgage package or on original or subsequent advances), the mortgagor or mortgagee must make a statement in the approved form about the location and value of the secured property.
Penalty: \$5 000.
- (2) The making of a statement under subsection (1) by the mortgagor or mortgagee relieves the other person from complying with the subsection.
- (3) The statement may be taken to be the mortgage, or the instruments comprising the mortgage package, as the case requires.

[Section 91E inserted by No. 66 of 2003 s. 79.]

91F. Exemptions for charitable or public purposes

If the Commissioner is satisfied that a mortgage has been given to secure an advance that has been, is being or will be used for a

Stamp Act 1921

Part III E Mortgage duty

Division 3 Amount secured by a mortgage

s. 91F

university or any charitable or similar public purpose, the
Commissioner may exempt the mortgage from mortgage duty.

[Section 91F inserted by No. 66 of 2003 s. 79.]

Part IIIF — ~~Policies of insurance~~ Insurance

[Heading inserted by No. ~~37~~ 36 of ~~1979~~ 2005 s. ~~68~~ 6.]

~~92.~~ Division 1 — Interpretation in Part IIIF and connection to the State

~~(1) In~~ [Heading inserted by No. 36 of 2005 s. 6.]

92. Terms used in this Part, ~~except so far as~~

In this Part, unless the ~~context requires otherwise~~ — contrary intention appears —

“~~accident insurance company~~” ~~includes the~~ means insurance for any payment agreed to be made on the death of any person only from accident or violence or otherwise than from a natural cause or as compensation for personal injury;

“~~contract of insurance~~” means a contract of insurance that effects general insurance (whether or not it also effects other kinds of insurance);

“~~Defence Service Homes Insurance Commission~~ ~~Scheme~~” has the meaning given to that term in section 38 of ~~Western Australia continued under~~ the Defence Service Homes Act 1918 of the Commonwealth;

“~~Division 4 insurer~~” has the meaning given to that term in section 95;

“~~financial services licensee~~” has the meaning given to that term in section 761A of the Corporations Act;

“~~general insurance~~” has the meaning given to that term in section 92A;

“~~health insurance business~~” has the meaning given to that term in section 67 of the National Health Act 1953 of the Commonwealth;

“~~instalment~~” means a portion of a premium;

“insurer” means the Insurance Commission of Western Australia ~~Act 1986~~; or a person who —

~~“person resident in Western Australia” includes any body corporate —~~

~~(a) which is a corporation; or~~

~~(b) which carries on business in Western Australia;~~

“policy of insurance” includes every certificate, receipt or declaration concerning the existence of any instrument of guarantee or indemnity or any agreement for any insurance or any instrument whereby any contract of insurance is made and which operates in Western Australia wholly or in part as an insurance, whether issued in or outside Western Australia, and includes a policy of insurance against accident, but does not include —

~~(a) any policy of life insurance where the period for which the insurance is effected commences on or after the day on which section 80 of the *Business Tax Review (Assessment) Act (No. 2) 2003* came into operation; or~~

~~(b) any policy of — (a) writes general insurance otherwise than as an intermediary of an insurer (including a Division 4 insurer); and~~

~~(b) is either —~~

~~(i) authorised under the *Insurance Act 1973* of the Commonwealth; or~~

~~(ii) registered under the *Life Insurance Act 1995* of the Commonwealth;~~

“intermediary”, of an insurer, means —

(a) a representative of the insurer; or

(b) a financial services licensee, who is not otherwise a representative of the insurer, who arranges or effects insurance for or with the insurer;

“life insurance” means insurance provided under or in accordance with a policy of insurance or assurance on any life or lives or on any event or contingency relating to or depending on any life or lives, other than a policy of accident insurance;

“offshore risk insurance” means any kind of insurance that is applicable to —

- (a) property outside Australia; or
- (b) any liability, loss or damage that arises or is brought about as a result of the occurrence of an event outside Australia;

“premium” means the total consideration paid to an insurer (including a Division 4 insurer) by or on behalf of an insured person to effect insurance, without deductions for any amounts paid or payable, or allowed or allowable, by way of commission or discount to an intermediary of the insurer, but does not include —

- (a) an amount paid to an intermediary of the insurer by the insured person as a fee if the amount can be clearly identified as a fee; or
- (b) an amount paid on account of duty under this Part or interstate duty;

“registered insurer” means an insurer who is registered under section 93A;

“registered organisation” has the meaning given to that term in section 4 of the *National Health Act 1953* of the Commonwealth;

“reinsurance” means the indemnification of one party by another against liability or payment arising under a contract or contracts of insurance or reinsurance;

“representative” has the meaning given to that term in section 910A of the Corporations Act;

“return period”, of a registered insurer, has the meaning given in section 94B.

[Section 92 inserted by No. 36 of 2005 s. 6.]

92A. Meaning of general insurance and connection to the State

(1) “General insurance” means any kind of insurance that is applicable to —

(a) property in Western Australia; or

(b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, Western Australia,

or both.

(2) General insurance does not include any of the following —

(a) life insurance;

(b) insurance against an employer’s liability to pay compensation under the *Workers’ Compensation and Injury Management Act 1981*⁶ ~~where the period for which the insurance is effected commences on or after 30 June 2004;~~

~~“policy of insurance against accident” means a policy of insurance for any payment agreed to be made on the death of any person only from accident or violence or otherwise than from a natural cause or as compensation for personal injury;~~

~~“policy of life insurance” means a policy of insurance or assurance on any life or lives or on any event or contingency relating to or depending on any life or lives, except a policy of insurance against accident;~~

~~“premium”, in respect of a policy of insurance or a policy of insurance against accident, means the gross premium reckoned so as to include any commission or discount paid in respect of that premium.~~

(c) reinsurance;

- (d) insurance in respect of goods in the course of being transported, whether by rail, road, air or sea, and whether within Western Australia or elsewhere;
- (e) insurance in respect of a marine hull used primarily for commercial purposes;
- (f) insurance effected by an exempt body (as defined in section 119);
- (g) insurance issued by a registered organisation in the course of its health insurance business;
- (h) insurance under the Defence Service Homes Insurance Scheme;
- (i) offshore risk insurance;
- (j) insurance of a class prescribed by the regulations.

[Section 92A inserted by No. 36 of 2005 s. 6.]

92B. Additional insurance — life riders

- (1) This section does not apply to a policy of life insurance unless the insured person's place of residence is in Western Australia.
- (2) If —
 - (a) a policy of life insurance, in addition to providing the insurance referred to in the definition of "~~policy of~~ life insurance²," in section 92, also provides for the payment of a benefit on the happening of ~~an event or a~~ contingency or event that does not relate to or depend on a life or lives (the "**additional insurance**"); and
 - (b) an identifiable part of the premium payable ~~under in~~ respect of the policy is attributable to the additional insurance,

then ~~to the extent that it provides for~~ the additional insurance, provided under or in accordance with the policy is ~~a policy of to~~ be taken to be general insurance ~~but is and~~ not ~~a policy of~~ life insurance.

- (3) Subsection (2) applies —
- (a) whether or not the life insurance and the additional insurance are distinct matters for the purposes of section 19; and
 - (b) whether or not payment of a benefit under the additional insurance component of the policy —
 - (i) will or may reduce the benefit payable under the life insurance component of the policy; or
 - (ii) will or may terminate the policy.

[Section ~~92~~ 92B inserted by No. ~~37~~ 36 of ~~1979~~ 2005 s. ~~69~~; amended 6.]

92C. Payment of premiums

(1) For the purposes of this Part, a premium, or an instalment, is paid when the first of the following events occurs —

- (a) the premium or instalment is received by the insurer; or
- (b) an account of the insurer is credited with the amount of the premium or instalment.

(2) A premium, or an instalment (apart from the case where the premium or instalment is received directly by an insurer) is taken to have been received by an insurer if it is received by another person on the insurer's behalf.

(3) In this section, a reference to an insurer includes a reference to a Division 4 insurer.

[Section 92C inserted by No. ~~10~~ 36 of ~~1982~~ 2005 s. ~~28~~; 6.]

Division 2 — Registration of insurers

[Heading inserted by No. ~~41~~ 36 of ~~1989~~ 2005 s. ~~23~~; 6.]

93. Insurers to be registered

(1) On becoming an insurer, the insurer must apply to be registered under section 93A.

(2) An application for registration must be made in an approved form on or before the 21st day after the end of the month in which the insurer became an insurer.

Penalty: \$20 000.

[Section 93 inserted by No. 36 of 2005 s. 6.]

93A. Registration of insurers

(1) The Commissioner must register an insurer that applies for registration.

(2) The Commissioner must register an insurer that has not applied for registration if satisfied that the insurer ought to be registered for the purposes of this Part.

(3) The Commissioner must give notice to an insurer of its registration.

[Section 93A inserted by No. 36 of 2005 s. 6.]

93B. Cancelling registration of insurers

(1) The Commissioner may cancel the registration of an insurer on his or her own initiative or at the request of the insurer.

(2) The Commissioner is not to cancel an insurer's registration unless satisfied that registration of the insurer is no longer necessary for the purposes of this Part.

(3) A cancellation has effect on and from the day specified in the notice of cancellation of registration, which may be a day that is earlier than the day on which the notice is issued.

[Section 93B inserted by No. 36 of 2005 s. 6.]

Division 3 — Duty payable by insurers

[Heading inserted by No. 36 of 2005 s. 6.]

94. Lodging returns and paying duty

(1) A registered insurer must —

(a) lodge a return in an approved form for each return period of the insurer; and

(b) pay the duty payable on the return (if any),

on or before the 21st day after the end of the return period.

Penalty: \$5 000.

(2) The insurer must lodge the return even if no duty is payable on the return.

(3) On becoming an insurer, the insurer must, for the month in which the insurer became an insurer and for each subsequent month until the month in which the insurer becomes a registered insurer or ceases to be an insurer —

(a) lodge a return in an approved form for the month; and

(b) pay the duty payable on the return (if any),

on or before the 21st day after the end of the month.

Penalty: \$5 000.

(4) The month referred to in subsection (3) is to be treated as a return period for the purposes of this Part.

[Section 94 inserted by No. 36 of 2005 s. 6.]

94A. Calculating the amount of duty payable on a return

(1) The amount of duty payable on the return for a return period is 10% of the assessable amount.

(2) The assessable amount for a return period of an insurer is the sum of each premium or instalment (to the extent to which the premium or instalment is attributable to general insurance) paid to the insurer in the return period in respect of contracts of insurance entered into by or on behalf of the insurer.

(3) Section 96 has an effect on the extent to which the premium or instalment is attributable to general insurance.

[Section 94A inserted by No. 36 of 2005 s. 6.]

94B. Return period of an insurer

The return period of a registered insurer is —

(a) one month, if a special tax return arrangement is not in force; or

(b) the return period provided in a special tax return arrangement in force under section 49 of 1992 s. 29; ~~No. 39 of 1994 s. 21; No. 45 of 1996 s. 38; No. 2 of the Taxation Administration Act 2003 s. 111; No. 66 of 2003 s. 80 and 98(1)⁴.~~

~~92A. Dutiable statement required if policy issued outside Western Australia~~

[Section 94B inserted by No. 36 of 2005 s. 6.]

Division 4 — Duty payable by insured persons

[Heading inserted by No. 36 of 2005 s. 6.]

95. Meaning of insurer in this Division

In this Division —

“Division 4 insurer” means a person, other than the Insurance Commission of Western Australia, who writes general insurance, otherwise than as an intermediary of an insurer (including a Division 4 insurer), but who is not authorised under the *Insurance Act 1973* of the Commonwealth and not registered under the *Life Insurance Act 1995* of the Commonwealth.

[Section 95 inserted by No. 36 of 2005 s. 6.]

95A. Insured person to lodge statement and pay duty

(1) ~~Every~~ If a person resident in Western Australia who obtains,
effects ~~any insurance in respect of —~~

~~(a) property in Western Australia; or~~

~~(b) any liability, loss or damage occurring or brought about
by the happening of any event within Western Australia;~~

~~for which~~ renews general insurance a policy of insurance is or is
to be issued or renewed outside Western Australia shall within
one month after effecting the insurance lodge with the
Commissioner a statement in respect of the insurance. a
Division 4 insurer, the person must —

~~Penalty: \$20 000.~~

~~(2) A dutiable~~ (a) lodge a statement in an approved
form; and

~~(b) pay the duty payable on the statement is,~~

on or before the 21st day after the end of the month, or each
month, in which the person paid the premium or an instalment
for the insurance.

Penalty: \$5 000.

(2) The amount of duty payable on the statement is 10% of the
proportion of the premium or instalment that is attributable to
general insurance.

(3) Section 96 has an effect on the proportion of the premium or
instalment that is attributable to general insurance.

(4) This section does not require a separate statement to be prepared
~~in an approved form~~ if the document evidencing the insurance
contains all the information required in a statement, in which
case, the document is taken to be the statement.

~~(3) A dutiable statement lodged under subsection (1) is taken
[Section 95A inserted by No. 36 of 2005 s. 6.]~~

95B. Insurer and intermediary to ~~be a policy~~ notify Commissioner of contracts of insurance

(1) A Division 4 insurer must, for each month in which the insurer is paid a premium or an instalment in respect of ~~the~~ a contract of insurance ~~to which it relates and is chargeable~~ entered into by or on behalf of the insurer, notify the Commissioner in the approved form, of —

(a) each such contract of insurance for which the insurer has been paid a premium or instalment in that month; and

(b) the amounts of those premiums or instalments,

on or before the 21st day after the end of the month.

Penalty: \$5 000.

(2) An intermediary of a Division 4 insurer must, for each month in which the intermediary receives a premium or an instalment in respect of a contract of insurance for a Division 4 insurer, notify the Commissioner in the approved form, of —

(a) each contract of insurance for which the intermediary has received a premium or instalment for a Division 4 insurer; and

(b) the amounts of those premiums or instalments,

on or before the 21st day after the end of the month.

Penalty: \$5 000.

(3) If a person complies with ~~duty accordingly~~.

~~— (4) The duty payable on a dutiable statement lodged under a requirement in subsection (1) is payable —~~

~~— (a) by the person who effected the insurance; and~~

~~— (b) within one month after the insurance was effected.~~

~~— (5) Subsections (1) to (4) do not apply if, before a dutiable statement lodged under subsection (1) is stamped, a policy of insurance for the insurance referred to in subsection (1) is stamped.~~

~~(6) A person resident in Western Australia must not accept payment of, or agree to have allowed on account, any money on or in respect of any insurance the policy for which is or is to be issued or renewed outside Western Australia unless the policy, or a dutiable statement or (2) in respect of the insurance, has been stamped. a contract of insurance then the requirement in the other subsection is to be taken to have been complied with.~~

~~Penalty: \$20 000.~~

[Section ~~92A~~ 95B inserted by No. 236 of 20032005 s. 112; amended by No. 66 of 2003 s. 816.]

~~{92AA. Repealed by No. 2 of 2003 s. 113.}~~

~~92B. Statements to be made in respect of certain insurance~~

~~(1) Every person —~~

~~(a) with whom there is effected by any person resident in Western Australia any insurance in respect of property in Western Australia, or in respect of any liability, loss or damage occurring, or brought about by the happening of any event, within Western Australia, and who in connection therewith issued or issues a policy of insurance or a renewal of any such policy outside Western Australia; or~~

~~(b) who for or on behalf of any person resident in Western Australia arranges any insurance in respect of property in Western Australia, or in respect of any liability, loss or damage occurring, or brought about by the happening of any event, within Western Australia, for which insurance a policy of insurance or a renewal of any such policy was or is issued outside Western Australia,~~

~~shall furnish a statement each month to the Commissioner giving such particulars of that policy or renewal as the Commissioner requires.~~

~~Penalty: \$20 000.~~

~~(2) A statement required to be furnished to the Commissioner under subsection (1) —~~

~~(a) shall be furnished within a period of 15 days after the end of the month to which that statement relates;~~

~~(b) may contain particulars of more than one policy of insurance or renewal of a policy of insurance; and~~

~~(c) shall, when no insurance referred to in that subsection has been effected during the month to which that statement relates, be a nil statement.~~

~~{(3), (4) — repealed}~~

~~(5) A statement furnished to the Commissioner under this section is admissible in evidence in any proceedings under section 92A or section 94 and is evidence of the facts stated therein.~~

~~[Section 92B inserted by No. 54 of 1968 s. 6; amended by No. 32 of 1972 s. 6; No. 37 of 1979 s. 71; No. 61 of 1983 s. 4; No. 2 of 2003 s. 114; No. 66 of 2003 s. 82.]~~

~~{93. — Repealed by No. 37 of 1979 s. 72.}~~

94. — Penalty for not making out policy

~~(1) A person who receives or takes credit for any premium or consideration for any contract of insurance must, within 3 months after receiving or taking credit for such premium or consideration, make out, execute and have stamped, a policy of such insurance.~~

~~Penalty: \$20 000.~~

~~(1a) A person must not make, execute, or deliver out, or pay or allow in account, or agree to pay or allow in account, any money on or in respect of any policy of insurance which is not stamped.~~

~~Penalty: \$20 000.~~

~~(2) Any person who in consideration of any premium, sum of money, or other valuable consideration, paid, furnished or provided by any person in Western Australia, makes, enters into~~

~~or renews any contract of insurance for or on behalf of any insurer outside Western Australia must notify the Commissioner, in an approved form, that the contract of insurance has been made, entered into or renewed.~~

~~Penalty: \$20 000.~~

~~[(3) repealed]~~

~~(3a) Where a person satisfies the Commissioner that he cannot, with reasonable diligence, ascertain the premium paid in respect of a policy of insurance or renewal thereof issued outside Western Australia, the Commissioner may approve of the policy, or document stampable as such or the renewal, as the case may be, being stamped with the duty payable under item 16(2) of the Second Schedule, and the stamping of the policy, document or renewal in accordance with this subsection within one month after it is received in Western Australia constitutes sufficient compliance with the provisions of this section relating to the stamping of, and payment of duty upon, the policy, stampable document or renewal.~~

~~(4) Where duty has been paid under section 92A on a dutiable statement and the policy of insurance or renewal thereof, in respect of the insurance to which the dutiable statement relates is thereafter received in Western Australia, the duty so paid shall be allowed as a set off against any duty payable under this section in respect of the policy or the renewal.~~

~~[Section 94 amended by No. 113 of 1965 s. 8(1); No. 54 of 1968 s. 7; No. 32 of 1972 s. 7; No. 37 of 1979 s. 73; No. 22 of 1998 s. 55; No. 2 of 2003 s. 115.]~~

95. Policies of reinsurance to be exempt from duty

~~No duty shall be chargeable on any policy upon the face whereof it is expressed that such policy is a policy of reinsurance, and whereby any insurance company, or underwriter, or association of underwriters effects an insurance~~

~~the subject matter of which, at the time of such reinsurance, is insured under a policy that has been stamped.~~

~~[Section 95 amended by No. 2 of 2003 s. 116.]~~

~~[95A. Repealed by No. 2 of 2003 s. 117.]~~

~~96. No duty chargeable on amount received on account of duty~~

Division 5 — General provisions

~~[Heading inserted by No. 36 of 2005 s. 6.]~~

96. Apportionment of premiums and instalments

(1) This section applies ~~in relation to a policy~~contract of insurance referred to in item 16(1) of the ~~Second Schedule~~.

~~(2) The amount that is chargeable with duty under item 16(1) of the Second Schedule shall be calculated by ascertaining the total amount paid to the person with whom the policy of that effects both general insurance is effected in respect of the issue or renewal of the policy.~~

~~(3) Where a policy of and other insurance or a renewal certificate in respect of a policy of insurance shows an amount that represents the amount payable on account of duty in respect of the issue or renewal of the policy that amount shall be disregarded for the purposes of the calculation under subsection (2).~~

~~[Section 96 inserted by No. 41 of 1989 s. 24; amended by No. 11 of 2002 s. 10; No. 2 of 2003 s. 118; No. 66 of 2003 s. 83.]~~

~~97. Offshore risk policies exempt from duty~~

~~(1) In this section —~~

~~“offshore risk insurance” means any kind of insurance that is applicable to —~~

~~(a) property outside Australia; or~~

- ~~— (b) any liability, loss or damage that arises or is brought about as a result of the occurrence of an event outside Australia.~~
- ~~— (2) Duty is not chargeable in respect of the issue or renewal of a policy of insurance to the extent that the policy effects offshore risk insurance.~~
- ~~— (3) If a policy of insurance effects both offshore risk insurance and other insurance and the proportion of the total amount paid to the person with whom the policy is effected (in respect of the issue or renewal) premium that is attributable to the offshore risk general insurance is not ascertainable at the time of the issue or renewal contract is entered into, the proportion is the proportion calculated in accordance with the applicable method of apportionment from time to time established as a practice of the Commissioner and published under section 127 of the Taxation Administration Act 2003.~~
- (3) A method of apportionment published under section 127 of the Taxation Administration Act 2003 may, for a particular class of contracts of insurance, have the effect that the proportion of the premium that is attributable to general insurance is zero.
- (4) ~~However, if~~ If the Commissioner is not satisfied that the total amount a premium or instalment has not been, or cannot be, appropriately apportioned under this section, the Commissioner may —
- (a) determine the appropriate proportions; and
 - (b) if necessary — reassess the amount of duty payable in respect of the ~~issue or renewal accordingly~~ contract of insurance.
- ~~— (5) Any amount paid or payable to the person with whom the policy of insurance is effected on account of duty in respect of the issue or renewal of the policy shall be disregarded for the purpose of calculating the total amount paid to the person in respect of the issue or renewal.~~

(5) The extent to which an instalment is attributable to general insurance is the same as the extent to which the premium is attributable to general insurance under this section.

[Section 9796 inserted by No.-36 of 2005 s. 56.]

~~*{98, 99. Repealed by No. 102 of 1970 s. 2.}*~~

~~*{99A. Repealed by No. 102 of 1970 s. 7.}*~~

~~*{99B. Repealed by No. 102 of 1970 s. 8.}*~~

~~*{99C. Repealed by No. 102 of 1970 s. 9.}*~~

~~*{99D. Repealed by No. 102 of 1970 s. 2.}*~~

~~**{101A. Repealed by No. 102 of 1970 s. 11}**~~ **96A. Refunds**

(1) If —

(a) an insurer has paid duty in respect of a contract of insurance in accordance with section 94A; and

(b) the insurer has refunded some or all of the premium for the contract,

the insurer is entitled to a refund of the duty paid to the extent to which the premium was refunded.

(2) If —

(a) a person has paid duty in respect of a contract of insurance in accordance with section 95A(2); and

(b) the Division 4 insurer has refunded some or all of the premium for the contract,

the person is entitled to a refund of the duty paid to the extent to which the premium was refunded.

(3) For the purposes of this section, an insurer (including a Division 4 insurer) refunds an amount of a premium if the insurer or an intermediary of the insurer —

(a) repays the amount to the insured person; or

Stamp Act 1921

Part III F Policies of insurance Insurance

Division 5 General provisions

s. 96B

(b) otherwise provides a benefit to the insured person to the value of the amount refunded.

[Section 96A inserted by No. 36 of 2005 s. 6.]

96B. Records

(1) An insurer and a person who is liable to pay duty under Division 4 must keep —

(a) the records that are prescribed in the regulations for the purposes of this section (if any); and

(b) any other records necessary to enable the Commissioner to determine the insurer's or the person's liability to pay duty under this Part.

Penalty: \$20 000.

(2) A person who is required to notify the Commissioner under section 95B (disregarding the effect of section 95B(3)) must keep the records necessary to enable the Commissioner to verify the information in the notice.

Penalty: \$20 000.

[Section 96B inserted by No. 36 of 2005 s. 6.]

[Part IV (s. 100-107) repealed by No. 66 of 2003 s. 84.]

[Part IVAA (s. 108-112) repealed by No. 6 of 2000 s. 5.]

[Part IVA: s. 112A, 112D-112F repealed by No. 53 of 1999 s. 31; Div. 3, 4, 5 (s. 112FA-112FQ) repealed by No. 53 of 1999 s. 31; balance repealed by No. 2 of 2003 s. 120.]

[Part IVAB (s. 112GA-112GG) repealed by No. 53 of 1999 s. 31.]

[Part IVAC (s. 112H-112HA) repealed by No. 66 of 2003 s. 84.]

[112HB. Repealed by No. 10 of 2001 s. 185.]

[Part IVBA repealed by No. 39 of 1994 s. 11.]

Part IVB — Hire of goods

[Heading inserted by No. 66 of 2003 s. 85.]

Division 1 — Interpretation in Part IVB

[Heading inserted by No. 66 of 2003 s. 85.]

112I. Commercial hire business

- (1) For the purposes of this Part, a person who hires out goods as a business is called a “**commercial hire business**”.
- (2) It is immaterial whether or not hiring out the goods is the principal business of the person or is ancillary to some other form of business, and whether or not any such principal or ancillary business is carried on wholly or partly outside Western Australia.

[Section 112I inserted by No. 66 of 2003 s. 85.]

112IA. Goods

For the purposes of this Part, “**goods**” includes —

- (a) all chattels personal;
- (b) a fixture which is severable from the realty; and
- (c) a fixture which is not severable from the realty, but which is treated by an arrangement between the owner of the realty and any other person, made in connection with a grant of the right to use the fixture, as if it were not a part of the realty,

but does not include books, money, livestock and things in action.

[Section 112IA inserted by No. 66 of 2003 s. 85.]

112IB. Hire of goods

- (1) A “**hire of goods**” is an arrangement under which goods are or may be used at any time by a person other than the person hiring

Stamp Act 1921

Part IVB Hire of goods

Division 1 Interpretation in Part IVB

s. 112IB

out the goods, except an arrangement excluded under subsection (3).

- (2) There are 2 kinds of hire of goods —
 - (a) equipment financing arrangements; and
 - (b) ordinary hiring arrangements.
- (3) A hire of goods does not include any of the following —
 - (a) an arrangement that gives a person a right to use goods that is in conjunction with a lease of, or a licence to occupy or use, land;
 - (b) an arrangement made between related corporations;
 - (c) an arrangement for the hire of an aircraft, ship or vessel, or for the hire of an engine or other component part of an aircraft, ship or vessel;
 - (d) an arrangement for the provision of goods to a trader for the purpose of displaying or demonstrating the goods pending their sale or hire to a third party;
 - (e) an arrangement under which an operator is provided by or at the direction of the person hiring out the goods to operate the goods for the hirer (that is, an arrangement that is commonly known as a “wet hire”);
 - (f) an arrangement for the use of goods the provision of which is incidental and ancillary to the provision of a service if the provision of the goods is solely to enable the contractual provision of the service;
 - (g) an arrangement under which a motor vehicle is subleased by an employee to an employer in connection with the employee’s remuneration or other employment benefits;
 - (h) an arrangement for the use, by a person who is partially or totally incapacitated, of an invalid aid or prosthetic device or of any similar aid, device or appliance;

- (i) a credit contract within the meaning of the *Consumer Credit (Western Australia) Code*;
 - (j) an arrangement relating to the use of a caravan that is to remain on site;
 - (k) a State hire of goods;
 - (l) an arrangement that is prescribed by regulations made for the purpose of this subsection.
- (4) A hire of goods need not be effected or evidenced by an instrument in writing for the purposes of this Part.
- (5) A hire of goods may be constituted by 2 or more arrangements, which individually do not constitute a hire of goods.

[Section 112IB inserted by No. 66 of 2003 s. 85; amended by No. 11 of 2005 s. 28.]

112IC. State hire of goods

- (1) A “**State hire of goods**” is a hire of goods to which at least one of the following is a party —
- (a) the State;
 - (b) a State instrumentality, agent of the State or Government authority, designated by the Minister as an exempt person or body for the purposes of this subsection;
 - (c) a person acting on behalf of, or for the benefit of, the State or an exempt person or body.
- (2) The Minister may by order published in the *Gazette* designate a State instrumentality, agent of the State or Government authority as exempt for the purposes of subsection (1).
- (3) An order under subsection (2) may be varied or revoked by the Minister by a further order published in the *Gazette*.

[Section 112IC inserted by No. 66 of 2003 s. 85.]

112ID. Equipment financing arrangements

- (1) An **“equipment financing arrangement”** is a hire of goods that consists of —
 - (a) a hire purchase agreement; or
 - (b) some other agreement for a term of not less than 9 months and under which the final payment is payable at least 8 months after the agreement is entered into.
- (2) A **“hire purchase agreement”** is —
 - (a) a letting of goods with an option to purchase; or
 - (b) an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise),

but does not include any agreement by which the property in the goods covered by the agreement passes at the time of the agreement or on or at any time before the delivery of the goods.

[Section 112ID inserted by No. 66 of 2003 s. 85.]

112IE. Hiring charges

- (1) **“Hiring charges”** are payments made by or on behalf of the hirer to the person who hires out the goods —
 - (a) for the hire of the goods; or
 - (b) that arise as an incident of the hire of the goods.
- (2) The following charges are included as hiring charges —
 - (a) payments for damage waiver or for damage excess;
 - (b) late return fees;
 - (c) an amount paid to the person who hires out the goods for giving the hirer information about, or rights relating to, the use of the goods for the purposes of the hire of goods.

- (3) The following charges are not included as hiring charges —
- (a) payments for delivery, repositioning, erection, installation, maintenance or cleaning of the goods;
 - (b) refundable deposits or bonds (unless retained as hiring charges);
 - (c) in the case of hire purchase agreements — deposits or other consideration paid or given to the person who hires out the goods at or before the time the agreement is made;
 - (d) insurance premiums payable by the hirer;
 - (e) an amount equivalent to duty paid or payable under this Act or interstate duty;
 - (f) payments for the sale of goods (such as fuel, replacement parts or theft replacement);
 - (g) an amount equivalent to any GST payable on the supply to which the hire of goods relates;
 - (h) a payment by the hirer under a hire of goods if title to the goods passes to the hirer as a consequence of the payment;
 - (i) any payment of a type prescribed by the regulations.

[Section 112IE inserted by No. 66 of 2003 s. 85.]

112IF. Terms used in this Part

In this Part —

“annual duty-free threshold” has the meaning given by section 112LB(2);

“commercial hire business” has the meaning given by section 112I;

“duty-free threshold”, for a return period, is worked out in accordance with section 112LB(2);

“equipment financing arrangement” has the meaning given by section 112ID(1);

“**goods**” has the meaning given by section 112IA;

“**hire of goods**” has the meaning given by section 112IB;

“**hire purchase agreement**” has the meaning given by section 112ID(2);

“**hirer**” means a person who hires goods from a person who hires out goods under a hire of goods;

“**hiring charges**” has the meaning given by section 112IE;

“**ordinary hiring arrangement**” means a hire of goods that is not an equipment financing arrangement (see section 112IB(2));

“**registered commercial hire business**” means a commercial hire business that is registered under section 112JA;

“**return period**” has the meaning given by section 112LC;

“**State hire of goods**” has the meaning given by section 112IC.

[Section 112IF inserted by No. 66 of 2003 s. 85.]

Division 2 — Registration of commercial hire businesses

[Heading inserted by No. 66 of 2003 s. 85.]

112J. Commercial hire businesses to be registered

- (1) A commercial hire business that is not registered under section 112JA must apply to be registered under that section if, in a month, the total amount of the hiring charges received by the commercial hire business in the month exceeds \$4 167.
- (2) An application for registration must be made in an approved form on or before the 21st day after the end of the month referred to in subsection (1).

Penalty: \$20 000.

[Section 112J inserted by No. 66 of 2003 s. 85.]

112JA. Registration of commercial hire businesses

- (1) The Commissioner must register a commercial hire business that applies for registration.
- (2) The Commissioner must register a commercial hire business that has not applied for registration if satisfied that the commercial hire business ought to be registered for the purposes of this Part.
- (3) The Commissioner must give notice to a commercial hire business of its registration.

[Section 112JA inserted by No. 66 of 2003 s. 85.]

112JB. Cancelling registration of commercial hire businesses

- (1) The Commissioner may cancel the registration of a commercial hire business on his or her own initiative or at the request of the business.
- (2) The Commissioner is not to cancel a commercial hire business's registration unless satisfied that registration of the commercial hire business is no longer necessary for the purposes of this Part.
- (3) A cancellation has effect on and from the day specified in the notice of cancellation of registration, which may be a day that is earlier than the day on which the notice is issued.

[Section 112JB inserted by No. 66 of 2003 s. 85.]

Division 3 — Connection to the State

[Heading inserted by No. 66 of 2003 s. 85.]

112K. Connection to the State — hire of goods and persons to which this Part applies

- (1) Duty under Division 4 is payable in relation to a hire of goods in a return period if the goods are used solely or predominantly in Western Australia during the return period.

- (2) Duty under Division 5 is payable in relation to a hire of goods if the goods are used solely or predominantly in Western Australia during the course of the hire.
- (3) For the purposes of deciding whether goods are used solely or predominantly in Western Australia —
 - (a) if a motor vehicle that is registered under the law of a State or Territory is the subject of an equipment financing arrangement — the vehicle is taken to be used solely in that State or Territory;
 - (b) if a motor vehicle that is registered under the law of a State or Territory is the subject of an ordinary hiring arrangement — the vehicle is taken to be used solely in the State or Territory in which it is initially delivered under the arrangement;
 - (c) in any other case — goods are used predominantly in Western Australia if they are used more in Western Australia than in any other single State or Territory; and
 - (d) if goods are not used solely or predominantly in any particular State or Territory — they are taken to be used predominantly in the State or Territory in which they are initially delivered under the hire of goods.

[Section 112K inserted by No. 66 of 2003 s. 85.]

[112KA. Repealed by No. 66 of 2003 s. 85.]

Division 4 — Commercial hire businesses

[Heading inserted by No. 66 of 2003 s. 85.]

112L. Lodging returns and paying duty

- (1) A registered commercial hire business must —
 - (a) lodge a return in an approved form for each return period of the commercial hire business; and
 - (b) pay the duty payable on the return (if any),
on or before the 21st day after the end of the return period.

Penalty: \$5 000.

- (2) The commercial hire business must lodge the return even if no duty is payable on the return.
- (3) A commercial hire business that is not registered under section 112JA must —
 - (a) lodge a return in an approved form for a month if the total amount of hiring charges received by the commercial hire business in that month exceeds \$4 167; and
 - (b) pay the duty payable on the return (if any),on or before the 21st day after the end of the month.

Penalty: \$5 000.

- (4) The month referred to in subsection (3) is to be treated as a return period for the purposes of this Part.

[Section 112L inserted by No. 66 of 2003 s. 85.]

112LA. Calculating the assessable amount for a return period

- (1) The assessable amount for a return period of a commercial hire business is —
 - (a) the sum of all hiring charges received by the commercial hire business in the return period; or
 - (b) if the Commissioner has, under subsection (2), approved another basis for calculating the assessable amount for the commercial hire business — the amount calculated for the return period on that basis.
- (2) The Commissioner may by notice approve a basis for calculating an assessable amount for a return period for a commercial hire business if the Commissioner is satisfied that the amount of duty payable on that basis will, over a period of time, approximate the amount of duty otherwise payable using assessable amounts calculated in accordance with subsection (1)(a).

- (3) An approval may be revoked by the Commissioner at any time by notice to the commercial hire business.
- (4) A registered commercial hire business may, with the Commissioner's consent, change the basis for calculating the assessable amount from return period to return period but it must not change the basis within a return period.
- (5) On the change of basis, the Commissioner may assess or reassess the duty payable in any return period prior to the change of basis to include any hiring charges that would not be accounted for, or to exclude any hiring charges that would otherwise be accounted for twice, because of the change of basis.

[Section 112LA inserted by No. 66 of 2003 s. 85.]

112LB. Calculating the amount of duty payable on a return

- (1) The amount of duty payable on the return for a return period is the amount equal to the sum of —
 - (a) 0.75% of that part of the assessable amount for the return period that is attributable to equipment financing arrangements; and
 - (b) 1.5% of the amount by which that part of the assessable amount for the return period that is attributable to ordinary hiring arrangements exceeds the duty-free threshold for the return period.
- (2) The duty-free threshold for a return period is —

$$\text{annual duty - free threshold} \times \frac{\text{number of whole months in the return period}}{12}$$

where —

“annual duty-free threshold” is \$50 000.

[Section 112LB inserted by No. 66 of 2003 s. 85.]

112LC. Return period for a commercial hire business

The return period of a registered commercial hire business is —

- (a) one month, if a special tax return arrangement is not in force; or
- (b) the return period provided in a special tax return arrangement in force under section 49 of the *Taxation Administration Act 2003*.

[Section 112LC inserted by No. 66 of 2003 s. 85.]

112LD. Annual reconciliation

- (1) If the sum of all assessable amounts of a registered commercial hire business in a financial year does not exceed the annual duty-free threshold, the commercial hire business is entitled to a refund or rebate of all duty paid or payable in respect of those assessable amounts.
- (2) If —
 - (a) the sum of all assessable amounts of a registered commercial hire business in a financial year exceeds the annual duty-free threshold;
 - (b) the assessable amount for one or more return periods of the commercial hire business in the year consists of or includes an amount of hiring charges attributable to ordinary hiring arrangements (an “**attributable amount**”); and
 - (c) the sum of all attributable amounts in the year does not exceed the annual duty-free threshold,

the commercial hire business is entitled to a refund or rebate of all duty paid or payable in respect of the attributable amounts.

- (3) If —
 - (a) the sum of all assessable amounts of a registered commercial hire business in a financial year exceeds the annual duty-free threshold;

Stamp Act 1921

Part IVB Hire of goods

Division 5 Persons other than commercial hire businesses

s. 112M

- (b) the assessable amount for one or more return periods of the commercial hire business in the year consists of or includes an amount of hiring charges attributable to ordinary hiring arrangements (an **“attributable amount”**);
- (c) the sum of all attributable amounts of the year exceeds the annual duty-free threshold; and
- (d) the sum of the amounts of duty paid by the commercial hire business in respect of the attributable amounts in the financial year exceeds 1.5% of the dutiable amount,

then the commercial hire business is entitled to a rebate equal to the difference between the total amount of duty paid in respect of the attributable amounts and 1.5% of the dutiable amount.

- (4) In subsection (3)(d) —

“dutiable amount” means the amount by which the sum of the attributable amounts in the financial year exceeds the annual duty-free threshold for the financial year.

- (5) If a commercial hire business is registered for a part of a financial year, then, in applying subsection (1), (2) or (3), the annual duty-free threshold for the commercial hire business is reduced as follows —

$$\text{annual duty - free threshold} \times \frac{\text{number of days in the year the commercial hire business was registered}}{\text{number of days in the year}}$$

- (6) Subject to section 17(4) of the *Taxation Administration Act 2003*, the Commissioner must make any assessment necessary to give effect to this section.

[Section 112LD inserted by No. 66 of 2003 s. 85.]

Division 5 — Persons other than commercial hire businesses

[Heading inserted by No. 66 of 2003 s. 85.]

112M. Statement of transaction

- (1) If a hirer hires goods under a hire of goods from a person who is not a commercial hire business and the total amount of hiring charges paid or payable for the hire of the goods is at least \$1 000, the hirer must prepare a statement that includes particulars of the following —
 - (a) the name and address of each party to the hire;
 - (b) a description of the goods;
 - (c) the commencement date and the term of the hire;
 - (d) the total of the hiring charges paid or payable over the term of the hire;
 - (e) the intervals at which the hiring charges are paid or payable.
 - (2) The statement must be prepared at or before the earlier of —
 - (a) the time that the hirer makes the first (or only) payment of hiring charges; or
 - (b) the time that the hiring charges become payable.
- Penalty applicable to subsections (1) and (2): \$5 000.
- (3) This section does not require a separate statement to be prepared if the hire is already evidenced in a document that otherwise complies with this section, in which case, the document is taken to be the statement.
 - (4) The hirer need not prepare a statement under subsection (1) if the hire of goods is wholly for private or domestic purposes.

[Section 112M inserted by No. 66 of 2003 s. 85.]

112MA. Lodging statements and paying duty

- (1) Within 3 months after the statement is required to be prepared, the hirer must —
 - (a) lodge the statement with the Commissioner; and
 - (b) pay the duty payable on the statement.

Penalty: \$5 000.

- (2) Duty payable on a statement is —
 - (a) 0.75% of the total amount of hiring charges if the hire of goods is an equipment financing arrangement; or
 - (b) 1.5% of the total amount of hiring charges if the hire of goods is an ordinary hiring arrangement.

[Section 112MA inserted by No. 66 of 2003 s. 85.]

112MB. Method of calculating total hiring charges if they are not readily ascertainable

- (1) If the Commissioner is satisfied that it is not reasonably practicable to calculate the total of the hiring charges payable over the term of the hire by the time a statement is required to be lodged under section 112MA, the Commissioner may, in a notice given to the hirer, require the hirer to prepare one or more statements, at the time or times specified in the notice, to take the place of the statement required by section 112M.
- (2) To the extent possible, the statement or statements must include the same information as is specified in section 112M.
- (3) Within 3 months after a statement is required to be prepared, the hirer must —
 - (a) lodge the statement with the Commissioner; and
 - (b) pay duty on the statement calculated in accordance with section 112MA(2) to the extent that the total hiring charges are ascertainable at the time the statement is prepared.

Penalty: \$5 000.

- (4) The amount of duty paid on a prior statement relating to the same hire of goods is to be deducted from the duty payable on any subsequent statement.

[Section 112MB inserted by No. 66 of 2003 s. 85.]

Division 6 — General provisions

[Heading inserted by No. 66 of 2003 s. 85.]

112N. Credit for duty paid in another Australian jurisdiction

The duty otherwise payable under this Part in respect of a hire of goods is reduced by the amount of interstate duty paid in respect of the hire.

[Section 112N inserted by No. 66 of 2003 s. 85.]

112NA. Splitting or redirecting hiring charges — anti-avoidance provision

- (1) The Commissioner may include in an assessment or reassessment, as part of an amount received as hiring charges, any of the following —
- (a) a payment, or a portion of the payment, under a hire of goods that is not a hiring charge, including a charge referred to in section 112IE(3), that the Commissioner is satisfied has been made or included in the payment for the purpose of minimising duty under this Part;
 - (b) a payment that would be a hiring charge except for the fact that it is paid to a person other than the person who hires out the goods.
- (2) The Commissioner may include in an assessment or reassessment penalty tax of an amount equal to the amount included in the assessment or reassessment under subsection (1).

[Section 112NA inserted by No. 66 of 2003 s. 85.]

112NB. Ascertainment and disclosure of place of use of goods

- (1) A commercial hire business may, in determining the commercial hire business's liability to duty, rely on a statement of the hirer as to —
 - (a) where the goods will be solely or predominantly used in the course of the hire; or
 - (b) in the case of an unregistered motor vehicle, where the motor vehicle will be registered during the course of the hire,

unless the commercial hire business knows that the statement is false.

- (2) A commercial hire business is not bound to inquire as to any change in the place of use of the goods or, in the case of a motor vehicle, the place of its registration, but cannot continue to rely upon a statement referred to in subsection (1) if the commercial hire business becomes aware of a change in the place of use or registration.
- (3) If goods are solely or predominantly used in a place other than the place advised by the hirer in a statement referred to in subsection (1), the Commissioner may assess or reassess the duty payable according to the actual place of sole or predominant use of the goods.
- (4) If a motor vehicle is registered in a place other than the place advised by the hirer in a statement referred to in subsection (1), the Commissioner may assess or reassess the duty payable according to the place of its registration.
- (5) A person who fails to pay duty on a hire of goods in reliance on a statement referred to in subsection (1) does not contravene a taxation Act for the purposes of the *Taxation Administration Act 2003* and the person is not liable to penalty tax unless the duty is not paid within one month after the issue of a notice of assessment of the duty.

- (6) A hirer who knowingly falsely makes a statement referred to in subsection (1) (whether it is relied upon or not) is guilty of an offence.

Penalty applicable to subsection (6): \$20 000.

[Section 112NB inserted by No. 66 of 2003 s. 85.]

112NC. Records

A commercial hire business and a hirer who must prepare a statement under Division 5 must keep —

- (a) the records that are prescribed in the regulations for the purposes of this section (if any); and
- (b) any other records necessary to enable the Commissioner to determine the person's liability to duty under this Part.

Penalty: \$20 000.

[Section 112NC inserted by No. 66 of 2003 s. 85.]

[1120, 112P. Repealed by No. 66 of 2003 s. 85.]

Part IVC — Exemptions in relation to aged or disabled persons

[Heading inserted by No. 13 of 1997 s. 41(1)]

112Q. Certain residential agreements with charitable bodies exempt

- (1) Notwithstanding anything in a stamp 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 is a de facto partner of 2 years, or a former de facto partner of 2 years, or is a surviving de facto partner of 2 years, of the person.

[Section 112Q inserted by No. 13 of 1997 s. 41(1); amended by No. 2 of 2003 s. 130; No. 28 of 2003 s. 193.]

112R. Certain aged care agreements exempt

- (1) Notwithstanding anything in a stamp Act, duty shall not be charged on an agreement under the *Aged Care Act 1997* of the Commonwealth between an approved provider and a person relating to aged care services for the person.

(2) In subsection (1) —

“aged care service” has the same meaning as in the *Aged Care Act 1997* of the Commonwealth;

“approved provider” has the same meaning as in the *Aged Care Act 1997* of the Commonwealth.

[Section 112R inserted by No. 22 of 1998 s. 27; amended by No. 2 of 2003 s. 131.]

112S. Instruments not required to be lodged

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

[Section 112S inserted by No. 13 of 1997 s. 41(1).]

[112T. Repealed by No. 37 of 1979 s. 97.]

[112U. Repealed by No. 61 of 1983 s. 12.]

Part IVD — Maintenance agreements and orders

[Heading inserted by No. 45 of 1982 s. 3.]

112UA. Interpretation in Part IVD

(1) In this Part, unless the contrary intention appears —

“**de facto relationship**” means a de facto relationship which the Commissioner is satisfied comes within section 205Z(1)(a), (b) or (c) of the *Family Court Act 1997*;

“**Family Court Act**” means the *Family Court Act 1997* of Western Australia;

“**Family Law Act**” means the *Family Law Act 1975* of the Commonwealth and any Act of the Commonwealth amending or in substitution for that Act;

“**maintenance agreement**” means an agreement in writing with respect to any one or more of the following, namely —

- (a) the maintenance of one of the parties to the agreement;
- (b) the conveyance or transfer of property (whether real or personal) of the parties to the agreement or either of them to one of the parties or to a dependent child of the parties or of either of them or to both a dependent child of one of the parties and one of them;
- (c) the maintenance of a dependent child of the parties or either of them;

“**order**” means a sealed copy of an order made by a court exercising federal or non-federal jurisdiction in any proceeding under the *Family Court Act* or the *Family Law Act* with respect to one or both of the following, namely —

- (a) the conveyance or transfer of real or personal property;
- (b) the vesting of property;

“**property**” includes an interest in property.

- (2) A reference in this Part to persons who are married to each other or have been married to each other includes persons who are married to each other or who have been married to each other by a marriage that is void under the Family Law Act.

[Section 112UA inserted by No. 45 of 1982 s. 3; amended by No. 41 of 1997 s. 37; No. 25 of 2002 s. 52; No. 2 of 2003 s. 132.]

112UB. Application of Part IVD

- (1) Sections 112UC and 112UD do not apply to or in relation to —
- (a) an order; or
 - (b) a maintenance agreement between parties who are married to each other or have been married to each other,

or in relation to an instrument of conveyance or transfer of property pursuant to such an order or agreement unless the parties referred to in the order or the agreement are separated or divorced from each other.

- (1a) Sections 112UC and 112UD do not apply to or in relation to —
- (a) an order under Part 5A of the *Family Court Act 1997*; or
 - (b) a maintenance agreement between de facto partners,
- or in relation to an instrument of conveyance or transfer of property pursuant to such an order or agreement unless the de facto relationship between the de facto partners that are referred to in the order or agreement has ended.

- (2) Where —
- (a) one of the parties referred to in a maintenance agreement, an order, or an instrument of conveyance or transfer effected pursuant to a maintenance agreement or order is a person who is not entitled to or liable to provide maintenance under the Family Court Act or the Family Law Act; and

s. 112UC

- (b) the maintenance agreement, order, or instrument of conveyance or transfer in addition to being a maintenance agreement, order, or instrument of conveyance or transfer for the purposes of the Family Court Act or the Family Law Act relates to one or more distinct matters between any party or parties other than a person who is entitled to or liable to provide maintenance under the Family Court Act or the Family Law Act which would, but for this Part, be chargeable with duty,

the maintenance agreement, order, or instrument of conveyance or transfer is chargeable with duty in respect of those other matters in accordance with this Act other than this Part.

- (3) A statement in a maintenance agreement to the effect that —
 - (a) the parties to a marriage are separated or divorced from each other; or
 - (b) the de facto relationship between de facto partners has ended,

is conclusive evidence of the fact stated, in the absence of evidence to the contrary.

[Section 112UB inserted by No. 45 of 1982 s. 3; amended by No. 25 of 2002 s. 52; No. 2 of 2003 s. 133.]

112UC. Duty on maintenance agreements and orders

Notwithstanding anything in a stamp Act but subject to section 112UB —

- (a) a maintenance agreement that is entered into for the purposes of the Family Court Act or the Family Law Act; or
- (b) an order,

except a sale, shall be charged with duty in accordance with item 8 of the Second Schedule.

[Section 112UC inserted by No. 45 of 1982 s. 3; amended by No. 2 of 2003 s. 134.]

112UD. Duty on conveyance or transfer under maintenance agreement or order

Notwithstanding anything in a stamp Act but subject to section 112UB an instrument of conveyance or transfer that is effected pursuant to a maintenance agreement or an order that has been stamped is not to be charged with any duty higher than the duty set out in item 6 of the Second Schedule.

[Section 112UD inserted by No. 45 of 1982 s. 3; amended by No. 2 of 2003 s. 135.]

Part IVE — Managed investment schemes

[Heading inserted by No. 24 of 1999 s. 6.]

112UE. Duty on certain instruments for the purpose of managed investment schemes

(1) In this section —

“old public unit trust” means an undertaking, together with the prescribed interests to which it relates and the trustee or representative and the management company in relation to those interests, to which Division 11 (sections 1451 to 1465) of Part 11.2 of the Corporations Law applied by reason of section 1452 of that Law.

(2) Upon application the Commissioner may authorise duty at the rate specified in item 6 of the Second Schedule to be charged on —

- (a) a conveyance or transfer;
- (b) a deed of settlement or deed of gift; or
- (c) the transfer of a licence for a vehicle,

in respect of which *ad valorem* duty would otherwise be payable if the Commissioner is satisfied that it is one to which subsection (4) applies.

(3) Upon application the Commissioner may authorise duty at the rate specified in item 6 of the Second Schedule to be charged on an instrument in respect of which *ad valorem* duty would otherwise be payable, other than one referred to in subsection (2), if the Commissioner is satisfied that —

- (a) the instrument is one to which subsection (4) applies;
- (b) the instrument replaces another instrument; and
- (c) the terms and conditions of the instrument are the same as the instrument it replaces.

- (4) This subsection applies to an instrument described in subsection (2) or (3) —
- (a) if the instrument is entered into on or after 6 April 1999 for the purpose of, or as a consequence of, an old public unit trust becoming, in accordance with Division 11 (sections 1451 to 1465) of Part 11.2 of the Corporations Law, a managed investment scheme that is registered under section 601EB of that Law; and
 - (b) if, after the instrument is executed, the members of the managed investment scheme have the same beneficial interests in the scheme's property as they had in the old public unit trust's property before the instrument was executed.
- (5) An application is to be made to the Commissioner in an approved form.

[Section 112UE inserted by No. 24 of 1999 s. 6; amended by No. 10 of 2001 s. 186; No. 2 of 2003 s. 136.]

Part V — Miscellaneous

[112V. Repealed by No. 2 of 2003 s. 137.]

[112W. Repealed by No. 37 of 1979 s. 99.]

113. Commissioner may impound unstamped documents

If it appears to the Commissioner that an instrument in the Commissioner's possession or control (regardless of how it came to be in the Commissioner's possession or control) is chargeable with duty but has not been stamped, the Commissioner may impound the instrument until the duty and any penalty tax payable in respect of the instrument have been paid.

[Section 113 inserted by No. 2 of 2003 s. 137.]

114. Commissioner may destroy instruments

- (1) The Commissioner may destroy any instrument in the Commissioner's possession or control if —
 - (a) 6 years have elapsed since the original assessment of the amount of duty payable in respect of the instrument was made; and
 - (b) any amount that remains unpaid under a stamp Act in respect of the instrument has been written off under the *Taxation Administration Act 2003*.
- (2) Neither the Commissioner, nor any person acting under the Commissioner's authority, is liable in tort for any act done under subsection (1).

[Section 114 inserted by No. 2 of 2003 s. 137.]

[115-118. Repealed by No. 2 of 2003 s. 137.]

119. Certain exemptions where the State of Western Australia etc. is a party

(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 government, 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 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, 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) repealed]*

s. 120

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

[Section 119 inserted by No. 20 of 1996 s. 43; amended by No. 57 of 1997 s. 113(5); No. 2 of 2003 s. 138; No. 66 of 2003 s. 86.]

120. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by a stamp Act to be prescribed or are necessary or convenient to be prescribed to give effect to a stamp Act.
- (2) Regulations may be made in relation to any or all of the following matters —
- (a) the fees payable under a stamp Act;
 - (b) the records required to be kept for the purposes of a stamp Act.
- (3) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding \$5 000.
- (4) Regulations made under this section or under any other provision of this Act may be expressed to apply to an instrument that was executed before the date on which the regulations come into operation, or to an event or transaction that took place before that date, if the application of the regulations to the instrument, event or transaction would not adversely affect a person who is or may become liable to pay duty on the instrument or in relation to the event or transaction, or adversely affect a party to the transaction.

[Section 120 inserted by No. 2 of 2003 s. 139; amended by No. 12 of 2004 s. 34.]

121. Application of section 1070A of the Corporations Act limited

The following matter is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to section 1070A(1)(a) of that Act — interests in registered schemes within the meaning of that Act.

[Section 121 inserted by No. 21 of 2003 s. 32.]

[First Schedule repealed by No. 2 of 2003 s. 140.]

Second Schedule

[Section 16(1)]

Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
[1-2	<i>deleted]</i>		
3.	CATTLE SALES STATEMENT		The vendor
	(1) Any statement written out or caused to be written out by the owner or his agent, pursuant to the <i>Cattle Industry Compensation Act 1965</i> in respect of the sale of any cattle or carcasses of cattle, whether payment of the purchase money therefor is or is not made in full at the time of the sale or is to be made by instalments or is otherwise deferred —		
	for every \$1 and also for any fractional part of \$1 —		
	(a) of the amount of the purchase money in respect of one animal or one carcass sold singly	5/12 cent	
	or		
	(b) of the total amount of the purchase money in respect of any number of cattle or carcasses, as the case may be, sold in one lot	5/12 cent	
	or such amount, not being more than 5/12 of a cent, as the Governor may, from time to time, by proclamation declare.		
	(2) Notwithstanding the provisions of subitem (1), the duty in respect of the amount of the purchase money of any one animal, or any one carcass, whether sold singly or as part of a lot, shall not exceed the sum of 50 cents or such lesser sum as the Governor may, from time to time, by proclamation declare.		

Duties payable on instruments

Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
4.	CONVEYANCE OR TRANSFER ON SALE OF PROPERTY		
	(1) Transfer of land under the <i>Transfer of Land Act 1893</i> on a sale thereof or conveyance or transfer of any other property — Where the amount or value of the consideration —		The purchaser
	(a) does not exceed \$80 000	\$2.00 for every \$100 of the amount or value of the consideration and every fractional part of \$100	
	(b) exceeds \$80 000 but does not exceed \$100 000	\$1 600 and \$3.00 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$80 000	
	(c) exceeds \$100 000 but does not exceed \$250 000	\$2 200 and \$4.00 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$100 000	
	(d) exceeds \$250 000 but does not exceed \$500 000	\$8 200 and \$5.00 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$250 000	

Second Schedule Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(e)	exceeds \$500 000	\$20 700 and \$5.40 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$500 000	
(2)	Transfer under the <i>Transfer of Land Act 1893</i> of land that includes a home within the meaning of section 75AG, where duty on the instrument of transfer becomes chargeable under that section Where the amount or value of the consideration —		the transferee as defined in section 75AG
(a)	does not exceed \$250 000.....	nil	
(b)	exceeds \$250 000 but does not exceed \$350 000	\$13.20 for every \$100 and any fractional part of \$100 by which the amount or value of the consideration exceeds \$250 000	
(3)	Transfer under the <i>Transfer of Land Act 1893</i> of vacant land, where duty on the instrument of transfer becomes chargeable under section 75AG Where the amount or value of the consideration —		the transferee as defined in section 75AG
(a)	does not exceed \$150 000.....	nil	
(b)	exceeds \$150 000 but does not exceed \$200 000.....	\$12.40 for every \$100 and for any fractional part of \$100 by which the amount or value of the consideration exceeds \$150 000	
	<i>[(4), (4a) deleted]</i>		

Duties payable on instruments **Second Schedule**

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(5)	Transfer of land under the <i>Transfer of Land Act 1893</i> on a sale thereof or conveyance or transfer of any other property where the conveyance or transfer is chargeable under section 75AE with duty under this subitem —		The purchaser
	(a) where the amount or value of the consideration does not exceed \$100 000.....	\$1.50 for every \$100 of the amount or value of the consideration and every fractional part of \$100	
	(b) where the amount or value of the consideration exceeds \$100 000	\$1 500 and \$4.70 for every \$100 and every fractional part of \$100 by which the amount or value of the consideration exceeds \$100 000	
5.	CONVEYANCE OR TRANSFER		The transferee
	(1) Conveyance or transfer of a lot by the responsible authority for a town planning scheme, including the Metropolitan Region Scheme, to a person who on the date of the coming into operation of the scheme was the owner of —		
	(a) the land comprised in the lot; or		
	(b) land comprised in the scheme and to whom the lot is conveyed or transferred in substitution or exchange for that land or part thereof, where the lot is comprised in the scheme and the conveyance or transfer is made in order to carry out or facilitate the carrying out of the scheme	20.00	

Second Schedule Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(2)	Expressions used in this item have the same meaning as they respectively have in the <i>Town Planning and Development Act 1928</i> , or the <i>Metropolitan Region Town Planning Scheme Act 1959</i> , as the case requires.		
6.	<p>CONVEYANCE OR TRANSFER</p> <p>Conveyance or transfer of any kind not described elsewhere in this Schedule and not being —</p> <p>(a) a settlement;</p> <p>(b) a deed of gift; or</p> <p>(c) an exchange.</p>	<p>The lesser of —</p> <p>(a) \$20; and</p> <p>(b) the duty that would be payable under item 4 if the conveyance or transfer was chargeable with duty under that item</p>	The transferee
[7.	<i>deleted</i>		
8.	<p>DEED OR DECLARATION</p> <p>(1) Deed of any kind not otherwise chargeable with duty</p> <p>(2) Declaration of any use or trust of any property by any writing and not being a will or an instrument chargeable with <i>ad valorem</i> duty as a settlement or gift</p>	<p>20.00</p> <p>20.00</p>	<p>The parties thereto</p> <p>The person making the declaration</p>
9.	<p>DUPLICATE OR COUNTERPART</p> <p>Duplicate or counterpart of a stamped instrument</p>	\$5.00 or the same duty as the original if less than \$5.00	The person liable to duty on the original instrument

Second Schedule Duties payable on instruments

Item	Nature of instrument	Duty payable \$ each additional \$100 and every fractional part of \$100	Person liable to pay duty
(2b)	For the amount secured by a home mortgage where only part of the secured amount is used for the mortgagor's dwellinghouse as provided in section 85(2).....	\$20.00 for any amount up to and including \$8 000 plus \$0.25 for each additional \$100 and every fractional part of \$100 that is used for the mortgagor's dwellinghouse, plus \$0.40 for each \$100 and every fractional part of \$100 that is not used for the mortgagor's dwellinghouse	Mortgagor
(3)	An instrument setting out the transfer or assignment of any mortgage —		
(a)	by way of sale for a consideration in money or money's worth for not less than market value.....	20.00	Transferee
(aa)	by way of sale, other than a sale to which paragraph (a) of this subitem applies.....	See item 4	Transferee
(b)	by way of gift.....	See item 19	Donor
	<i>[(c) deleted]</i>		
(d)	of any other kind.....	20.00	Transferee
14.	VEHICLE LICENCES, GRANT OR TRANSFER		
(1)	On the grant or transfer of a licence for a vehicle that is not a heavy vehicle —		The person in whose name the

Duties payable on instruments **Second Schedule**

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(a)	where the market value of the vehicle does not exceed \$15 000	2.75% of the market value	licence is granted or the transferee; and see section 76H(2)
(b)	where the market value of the vehicle exceeds \$15 000 but does not exceed \$40 000	$\left[2.75 + \left(\frac{MV - 15\,000}{6\,666.66} \right) \right] \%$ $\left[2.75 + \left(\frac{MV - 15000}{6666.66} \right) \right] \%$	
		(rounded to 2 decimal places) of the market value (MV)	
(c)	where the market value of the vehicle exceeds \$40 000	6.5% of the market value	
(2)	On the grant of a licence for a heavy vehicle that has not previously been used nor licensed or registered under the <i>Road Traffic Act 1974</i> or a corresponding State law	The lesser of — (a) 3% of the market value; and (b) \$12 000	
(3)	On the grant or transfer of a licence for any other heavy vehicle —		
(a)	where the market value of the vehicle does not exceed \$15 000	2.5% of the market value	
(b)	where the market value of the vehicle exceeds \$15 000 but does not exceed \$40 000	$\left[2.5 + \left(\frac{MV - 15\,000}{10\,000} \right) \right] \%$ $\left[2.5 + \left(\frac{MV - 15000}{10000} \right) \right] \%$	
		(rounded to 2 decimal places) of the market value (MV)	
(c)	where the market value of the vehicle exceeds \$40 000	The lesser of — (a) 5% of the market value; and (b) \$20 000	

Second Schedule Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
		The duty payable under item 14 is to be rounded down to the nearest 5 cents	
14A.	ORDER TO WHICH SECTION 112UB(2) APPLIES	See item 4. Property transferred or vested under an order. On the value of the property referred to the same duty as that set out in item 4, references to consideration in that item being construed as references to the amount or value of the property concerned	Transferee or the person in whom the property is ordered to be vested
15.	PARTITION		
	(1) Any instrument effecting a partition of any property	20.00	The parties thereto
	(2) Any instrument setting out any amount required to achieve equality	See section 75AD	
16.	POLICY OF INSURANCE		
	(1) Any instrument evidencing a policy of insurance — — (a) — deleted}		The person issuing the policy and see sections 92A(4)(a) and 94
	— (b) — issued under the Motor Vehicle (Third Party Insurance) Act 1943(1) A return under section 94 ...	10% of the amount calculated under See section 96(2)94A	-The insurer
	— (c) — in any other case(2) A statement under section 95A	10% of the amount calculated under See section 96(2)95A	-The person required to lodge the statement
	(2) — On a policy of insurance (undislosed premium) — — for every \$100, and also for every		Insured

Duties payable on instruments

Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
	fractional part of \$100, of the sum insured	0.10	
17.	RELEASE OR RENUNCIATION OF ANY PROPERTY OR OF ANY RIGHT OR INTEREST IN ANY PROPERTY An instrument of release or renunciation referred to in the heading to this item — (a) by way of sale (b) by way of gift	See item 4 See item 19	Purchaser Donor
18.	HIRE OF GOODS (1) A return under section 112L (2) A statement under section 112M	See section 112LB See section 112MA	The commercial hire business The hirer of the goods
19.	SETTLEMENT, DEED OF, OR DEED OF GIFT (1) Any instrument, whether voluntary or upon any good or valuable consideration other than a <i>bona fide</i> pecuniary consideration whereby any property is settled or agreed to be settled in any manner whatsoever, or is given or agreed to be given in any manner whatsoever. (2) Any instrument declaring that the property vested in the person executing the same shall be held in trust for the person or persons mentioned therein.	See item 4 References to consideration in item 4 being construed as references to the amount or value of the property concerned	The settlor or donor

[Second Schedule inserted by No. 37 of 1979 s. 108; amended by No. 81 of 1981 s. 8 and 9; No. 45 of 1982 s. 4; No. 93 of 1982 s. 8; No. 99 of 1982 s. 5; No. 14 of 1983 s. 6; No. 61 of 1983 s. 13; No. 81 of 1984 s. 37; No. 19 of 1985 s. 22; No. 85 of 1985 s. 3; No. 98 of 1986 s. 20; No. 16 of 1989 s. 4; No. 58 of 1990 s. 6; No. 42 of 1993 s. 5; No. 39 of 1994 s. 12 and 14; No. 22 of 1995 s. 4; No. 20 of 1996 s. 44; No. 48 of 1996 s. 37; No. 13 of 1997 s. 23 and 28; No. 57 of 1997 s. 113(6); No. 18 of 1998 s. 12; No. 22 of 1998 s. 53; No. 25 of 1999 s. 7(1); No. 53 of 1999 s. 30; No. 6 of 2000 s. 7; No. 4 of 2001 s. 8; No. 11 of 2002 s. 4, 7 and 11; No. 46 of 2002 s. 10; No. 2 of 2003 s. 141; No. 21 of 2003 s. 33; No. 44 of 2003 s. 4(2)-(6) and 5; No. 59 of 2003 s. 4; No. 66 of 2003 s. 87, 99 and 107(7); No. 11 of 2004 s. 6 and 7⁷; No. 83 of 2004 s. ~~88~~; [No. 35 of 2005 s. 4.](#)]

Third Schedule

[Section 16(2)]

Exemptions from duty

Item	Nature of instrument
[1.	<i>deleted</i>
2.	CONVEYANCE OR TRANSFER ON SALE OF PROPERTY:
	(1) A conveyance or transfer of a marketable security or right in respect of shares or an agreement under which an option is given or taken to purchase or sell a marketable security or right in respect of shares.
	<i>[(2)-(4) deleted]</i>
	(5) Conveyance, transfer or surrender of the fee simple or other less estate in land to the Crown.
	(6) A conveyance or transfer of the fee simple in —
	(a) Crown land by way of exchange where the decision to exchange the land is given effect under clause 4;
	(b) Crown land the subject of a licence referred to in clause 21;
	(c) Crown land the subject of a lease referred to in clause 22;
	(d) Crown land the subject of a conditional purchase lease referred to in clause 26;
	(e) Crown land the subject of a conditional purchase lease referred to in clause 27;
	(f) war service land referred to in clause 30; or
	(g) Crown land referred to in clause 32, of Schedule 2 to the <i>Land Administration Act 1997</i> .
	(6a) A transfer of the fee simple in Crown land —
	(a) pursuant to a request under section 45A; or
	(b) granted under section 80, of the <i>Public Works Act 1902</i> as in force immediately before the commencement of the <i>Acts Amendment (Land Administration) Act 1997</i> ⁸ .
	(6b) A grant of a mining tenement under the <i>Mining Act 1978</i> .
	(6c) A conveyance of the fee simple in Crown land under section 87 of the <i>Land Administration Act 1997</i> to complete a land exchange under section 11(1)(b) of that Act.

Third Schedule Exemptions from duty

- | Item | Nature of instrument |
|------|--|
| (6d) | A conveyance, grant or transfer of the fee simple or other less estate in Crown land pursuant to — <ul style="list-style-type: none">(a) a request under section 212;(b) an agreement under section 255;(c) an award under section 256; or(d) section 257, of the <i>Land Administration Act 1997</i> . |
| (7) | A conveyance or transfer of any estate or interest in any real or personal property locally situated out of Western Australia. |
| (7a) | A conveyance or transfer of any estate or interest in goods, wares or merchandise that are — <ul style="list-style-type: none">(a) stock-in-trade held or used in connection with a business;(b) held for use in, or are under, manufacture; or(c) prescribed to be exempt. |
| (7b) | A conveyance or transfer of any estate or interest in any ship or vessel, or part interest or share or property of or in any ship or vessel. |
| (7c) | The conveyance or transfer of any estate or interest in goods, wares or merchandise not referred to in subitems (7a) and (7b), except as provided in sections 70(2) and (3) and referred to in section 31B(3)(b) or (c). |
| | <i>[(8)-(10) deleted]</i> |
| (11) | A transfer to a person of the whole or any part of, or an interest in — <ul style="list-style-type: none">(a) a trade debt;(b) cash or money in an account at call;(c) money on deposit with any person;(d) a negotiable instrument;(e) choses in action with respect to work in progress. |
| | <i>[(12)-(14) deleted]</i> |
| (15) | A conveyance or transfer of property to the representative in Australia of the Government of another country, a foreign consul, or a trade commissioner of another country, if that property is intended for official use. |
| | <i>[(16), (17) deleted]</i> |

- | Item | Nature of instrument |
|-------------|--|
| (18) | <p>Any of the following matters under the <i>Strata Titles Act 1985</i> —</p> <ul style="list-style-type: none"> (a) the passing of any property that occurs by operation of section 21I, 21M or an order under section 103P; (b) a transfer or other document or a disposition statement referred to in section 21V or 31H; (c) anything that occurs by operation of section 21W, 21Y, 31G, 31J or an order under section 103P; or (d) anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III, <p>but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property.</p> |
| (19) | <p>A timber sharefarming agreement under the <i>Conservation and Land Management Act 1984</i> or the <i>Forest Products Act 2000</i> under which a <i>profit à prendre</i> is created but this subitem does not apply to such an agreement if a <i>profit à prendre</i> had been previously created in respect of a crop of trees to which the agreement applies.</p> |
| (20) | <p>An agreement under the <i>Tree Plantation Agreements Act 2003</i> in respect of which a plantation interest, as defined in that Act, is created but this subitem does not apply to such an agreement if a plantation interest had been previously created in respect of a plantation to which the agreement applies.</p> |
| 3. | <p>DEED OR DECLARATION:</p> <ul style="list-style-type: none"> (1) Any instrument for the purpose of — <ul style="list-style-type: none"> (a) discharging or releasing any stamped instrument of security which discharge or release is not made to effect a voluntary disposition <i>inter vivos</i> or a conveyance or transfer on sale; or (b) extending the terms of repayment of the amount secured by a stamped security. (2) Any instrument or undertaking given by a society registered under the <i>Housing Societies Act 1976</i> to the Treasurer where the instrument is associated with a guarantee given by the Treasurer securing advances to the society. (3) Any instrument executed on or after 1 July 1992 granting a power of attorney. (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. |

Third Schedule Exemptions from duty

- | Item | Nature of instrument |
|-------------|--|
| (5) | Any of the following matters under the <i>Strata Titles Act 1985</i> — <ol style="list-style-type: none">(a) anything that occurs by operation of section 21W, 21Y, 31G or 31J; or(b) anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III,

but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property. |
| (6) | Draft or order drawn by any financial institution in Western Australia on any other financial institution in Western Australia not payable to bearer or order, and used solely for the purpose of settling or clearing any account between those financial institutions. |
| (7) | Letter written by a financial institution in Western Australia to any other financial institution in Western Australia directing the payment of any sum of money, the same not being payable to bearer or to order, and that letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf. |
| (8) | Letter of credit granted in Western Australia authorising drafts payable in Western Australia to be drawn out of Western Australia. |
| (9) | A deed that evidences — <ol style="list-style-type: none">(a) a lease or an agreement to lease; or(b) a bond, debenture, covenant, bill of sale, guarantee, lien or other instrument of security that is not subject to duty under item 13 of the Second Schedule. |
| 4. | DUPLICATE OR COUNTERPART:
Duplicates or counterparts of insurance policies. |
| 5. | DEEDS OF SETTLEMENT OR DEEDS OF GIFT:
An instrument otherwise dutiable under item 19 of the Second Schedule which would be exempt if it effected, or evidenced, a conveyance or transfer that is exempt under item 2 of the Third Schedule. |
| 6. | LEASE OR AGREEMENT FOR LEASE: <ol style="list-style-type: none">(1) All leases or agreements for leases from —<ol style="list-style-type: none">(a) the Crown;(b) the Minister to whom the administration of the <i>Land Administration Act 1997</i> is for the time being committed, under that Act; or(c) the Minister to whom the <i>Mining Act 1978</i> is for the time being committed, under that Act. |

Item	Nature of instrument
	<i>[(2) deleted]</i>
	(3) A lease or an agreement for a lease to the representative in Australia of the Government of another country, a foreign consul, or a trade commissioner of another country, if the property subject to the lease or agreement is intended for official use.
7.	MORTGAGES (INCLUDING HOME MORTGAGES)
	<i>[(1), (2) deleted]</i>
	(3) Any mortgage when the total amount secured is less than \$100.
	<i>[(4)-(10) deleted]</i>
	(11) Any instrument charging the assets of a society registered under the <i>Housing Societies Act 1976</i> in favour of the Treasurer where the instrument is associated with a guarantee given by the Treasurer securing advances to the society.
	(12) Any instrument securing the repayment of moneys borrowed for the purchase by, or lease to, the representative in Australia of the Government of another country, a foreign consul, or a trade commissioner of another country, if the property purchased or leased is intended for official use.
	(13) Any of the following matters under the <i>Strata Titles Act 1985</i> — <ul style="list-style-type: none"> <li data-bbox="507 1025 1177 1093">(a) the passing of any property that occurs by operation of section 21I, 21M or an order under section 103P; <li data-bbox="507 1099 1272 1160">(b) a transfer or other document or a disposition statement referred to in section 21V or 31H; <li data-bbox="507 1167 1246 1227">(c) anything that occurs by operation of section 21W, 21Y, 31G, 31J or an order under section 103P; or <li data-bbox="507 1234 1272 1294">(d) anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III,
	but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property.
<u>[8.</u>	POLICY OF INSURANCE: <i>deleted]</i>
	(1) Any policy of reinsurance. (See section 95.)
	(2) Any policy of insurance in respect of goods in the course of being transported, whether by rail, road, air or sea, and whether within Western Australia or elsewhere.
	(3) Any policy of insurance in respect of a marine hull used primarily for commercial purposes.

Item	Nature of instrument
	(3a) Any policy of insurance effected by an exempt body (as defined in section 119) on or after 30 June 1989.
	(4) Any policy of insurance of a class or description prescribed by regulations made under section 120.
9.	VEHICLE LICENCE
	<i>[(1) deleted]</i>
	(2) A licence granted to a person for a vehicle which was, before the grant of that licence, last licensed or registered in that person's name under — (a) the <i>Road Traffic Act 1974</i> ; (b) a law of any other country corresponding to the <i>Road Traffic Act 1974</i> ; or (c) a corresponding State law, but this subitem does not apply to a licence granted to a person for a heavy vehicle which was, before the grant of that licence, last licensed or registered 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 granted for a vehicle that is in a prescribed class of vehicles 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 granted 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 or registration has been granted under the <i>Road Traffic Act 1974</i> or a corresponding State law for the vehicle in any other person's name.
	(5) A licence granted to a person for a vehicle — (a) that was modified and that was, before the grant of the licence, last licensed or registered in that person's name under — (i) the <i>Road Traffic Act 1974</i> ; (ii) a law of any other country corresponding to the <i>Road Traffic Act 1974</i> ; or (iii) a corresponding State law; or

- | Item | Nature of instrument |
|------|---|
| | <ul style="list-style-type: none"> (b) that was part of a vehicle that was modified and that was, before the grant of the licence, last licensed or registered in that person's name under — <ul style="list-style-type: none"> (i) the <i>Road Traffic Act 1974</i>; (ii) a law of any other country corresponding to the <i>Road Traffic Act 1974</i>; or (iii) a corresponding State law. |
| (6) | The exemption in subitem (5) applies whether or not a vehicle that results from the modification needs to meet a standard or requirement before it can be licensed that is different to the one that the original vehicle had to meet. |

[Third Schedule inserted by No. 37 of 1979 s. 109; amended by No. 63 of 1980 s. 3; No. 10 of 1982 s. 28; No. 14 of 1983 s. 7; No. 61 of 1983 s. 14; No. 81 of 1984 s. 38; No. 109 of 1984 s. 3 and 12; No. 84 of 1985 s. 11; No. 98 of 1986 s. 21; No. 100 of 1987 s. 14; No. 3 of 1989 s. 8; No. 41 of 1989 s. 27; No. 73 of 1990 s. 45; No. 52 of 1991 s. 14; No. 39 of 1994 s. 13, 20 and 21; No. 79 of 1994 s. 5(1); No. 14 of 1995 s. 44; No. 14 of 1996 s. 4; No. 20 of 1996 s. 45; No. 48 of 1996 s. 30(1) and 38; No. 61 of 1996 s. 40; No. 13 of 1997 s. 30 and 47; No. 31 of 1997 s. 82 and 141; No. 22 of 1998 s. 43 and 54; No. 58 of 1998 s. 8; No. 2 of 1999 s. 23; No. 26 of 1999 s. 103(3); No. 53 of 1999 s. 31; No. 29 of 2000 s. 4 and 16; No. 10 of 2001 s. 187; No. 12 of 2001 s. 51; No. 11 of 2002 s. 8; No. 2 of 2003 s. 142; No. 56 of 2003 s. 9; No. 66 of 2003 s. 88; No. 12 of 2004 s. 35; (Correction to Reprint in Gazette 20 Jul 2004 p. 2909); No. 11 of 2005 s. ~~29~~29; No. 35 of 2005 s. 5.]

Notes

¹ This is a compilation of the *Stamp Act 1921* and includes the amendments made by the other written laws referred to in the following table ^{1a, 9, 10, 11, 12}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Stamp Act 1921</i>	10 of 1922	31 Jan 1922	1 Apr 1922 (see s. 1 and <i>Gazette</i> 17 Mar 1922 p. 479)
<i>Stamp Act Amendment Act 1923</i>	53 of 1923	22 Dec 1923	22 Dec 1923
<i>Stamp Act Amendment Act 1924</i>	23 of 1924	31 Dec 1924	31 Dec 1924
<i>Ministers' Titles Act 1925 s. 2</i>	8 of 1925	24 Sep 1925	24 Sep 1925
<i>Stamp Act Amendment Act 1925</i>	47 of 1925	31 Dec 1925	31 Dec 1925
<i>Stamp Act Amendment Act 1926</i>	17 of 1926	6 Nov 1926	6 Nov 1926
<i>Stamp Act Amendment Act 1927</i>	10 of 1927	6 Dec 1927	6 Dec 1927
<i>Stamp Act Amendment Act 1928</i>	22 of 1928	21 Dec 1928	21 Dec 1928
<i>Stamp Act Amendment Act 1929</i>	5 of 1929	7 Oct 1929	7 Oct 1929
<i>Stamp Act Amendment Act (No. 3) 1930</i>	11 of 1930	19 Nov 1930	19 Nov 1930
<i>Stamp Act Amendment Act (No. 1) 1930</i>	12 of 1930	19 Nov 1930	19 Nov 1930
<i>Stamp Act Amendment Act 1931</i>	39 of 1931	26 Nov 1931	1 Dec 1931 (see s. 2 and <i>Gazette</i> 27 Nov 1931 p. 2499)
Reprint of the <i>Stamp Act 1921</i> in Appendix to session Volume 1933-34 ¹³ (includes amendments listed above)			
<i>Stamp Act Amendment Act 1941</i>	35 of 1941	19 Dec 1941	19 Dec 1941
<i>Stamp Act Amendment Act 1942</i>	40 of 1942	23 Dec 1942	23 Dec 1942

Short title	Number and year	Assent	Commencement
<i>Stamp Act Amendment Act 1944</i>	20 of 1944	23 Dec 1944	23 Dec 1944
Reprint of the Stamp Act 1921 approved 3 Apr 1950 in Volume 5 of Reprinted Acts (includes amendments listed above)			
<i>Stamp Act Amendment Act 1950</i>	11 of 1950	17 Nov 1950	17 Nov 1950
<i>Stamp Act Amendment Act 1954</i>	5 of 1954	25 Aug 1954	25 Aug 1954
<i>Betting Control Act 1954 s. 3(2)</i>	63 of 1954	30 Dec 1954	1 Aug 1955 (see s. 2 and <i>Gazette</i> 29 Jul 1955 p. 1767)
<i>Stamp Act Amendment Act 1957</i>	70 of 1957	6 Dec 1957	1 Feb 1958 (see s. 2 and <i>Gazette</i> 24 Jan 1958 p. 129)
Reprint of the Stamp Act 1921 approved 1 May 1958 in Volume 12 of Reprinted Acts (includes amendments listed above)			
<i>Stamp Act Amendment Act (No. 2) 1959</i>	64 of 1959	10 Dec 1959	21 Dec 1959 (see s. 2 and <i>Gazette</i> 18 Dec 1959 p. 3337)
<i>Stamp Act Amendment Act 1959</i>	72 of 1959	14 Dec 1959	1 Jan 1960 (see s. 2 and <i>Gazette</i> 24 Dec 1959 p. 3457)
<i>Stamp Act Amendment Act 1960</i>	22 of 1960	11 Oct 1960	13 Mar 1961 (see s. 2 and <i>Gazette</i> 10 Mar 1961 p. 653)
<i>Stamp Act Amendment Act (No. 2) 1960</i>	41 of 1960	3 Nov 1960	1 Jul 1961 (see s. 2 and <i>Gazette</i> 5 May 1961 p. 1069)
<i>Stamp Act Amendment Act 1961</i>	21 of 1961	30 Oct 1961	30 Oct 1961
<i>Stamp Act Amendment Act 1962</i>	20 of 1962	1 Oct 1962	1 Oct 1962
<i>Stamp Act Amendment Act (No. 2) 1962</i>	60 of 1962	30 Nov 1962	1 Jan 1963 (see s. 2)
<i>Stamp Act Amendment Act (No. 3) 1962</i>	69 of 1962	30 Nov 1962	30 Nov 1962
Reprint of the Stamp Act 1921 approved 22 Apr 1963 (not in a Volume) (includes amendments listed above)			
<i>Stamp Act Amendment Act 1963</i>	7 of 1963	15 Oct 1963	15 Oct 1963
<i>Stamp Act Amendment Act (No. 2) 1963</i>	37 of 1963	19 Nov 1963	31 Dec 1963 (see s. 2 and <i>Gazette</i> 31 Dec 1963 p. 4055)

Stamp Act 1921

Short title	Number and year	Assent	Commencement
<i>Stamp Act Amendment Act (No. 3) 1963</i>	57 of 1963	17 Dec 1963	17 Dec 1963
<i>Stamp Act Amendment Act (No. 4) 1963</i>	58 of 1963	17 Dec 1963	1 Jul 1964 (see s. 2 and <i>Gazette</i> 5 Jun 1964 p. 2335)
<i>Stamp Act Amendment Act 1965</i>	72 of 1965	25 Nov 1965	s. 7, 8, 16(d), (h)(i), (j)(i)-(iii), (v) and (o): 1 Dec 1965 (see s. 2(2)); balance other than s. 3, 14 and 16(c): 1 Jan 1966 (see s. 2(1)); s. 3, 14 and 16(c): 14 Feb 1966 (see s. 2(2))
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
Reprint of the Stamp Act 1921 approved 14 Feb 1966 in Volume 19 of Reprinted Acts (includes amendments listed above)			
<i>Stamp Act Amendment Act 1966</i>	67 of 1966	12 Dec 1966	s. 1, 2, 4 and 15(a), (b) and (f): 1 Jan 1967 (see s. 2(2)); balance: 1 Feb 1967 (see s. 2(1))
<i>Stamp Act Amendment Act (No. 2) 1966</i>	90 of 1966	12 Dec 1966	1 Jan 1967 (see s. 2)
<i>Stamp Act Amendment Act (No. 3) 1966</i>	93 of 1966	12 Dec 1966	1 Jul 1967 (see s. 2 and <i>Gazette</i> 23 Jun 1967 p. 1691)
<i>Stamp Act Amendment Act 1967</i>	50 of 1967	24 Nov 1967	1 Dec 1967 (see s. 2)
Reprint of the Stamp Act 1921 approved 27 Aug 1968 (not in a Volume) (includes amendments listed above)			
<i>Stamp Act Amendment Act 1968</i>	54 of 1968	13 Nov 1968	1 Jan 1969 (see s. 2 and <i>Gazette</i> 13 Dec 1968 p. 3809)
<i>Stamp Act Amendment Act 1969</i>	113 of 1969	28 Nov 1969	1 Jan 1970 (see s. 2 and <i>Gazette</i> 16 Dec 1969 p. 4077)
<i>Acts Amendment (Commissioner of State Taxation) Act 1970 Pt. VI</i>	21 of 1970	8 May 1970	1 Jul 1970 (see s. 2 and <i>Gazette</i> 26 Jun 1970 p. 1831)

Short title	Number and year	Assent	Commencement
<i>Stamp Act Amendment Act 1970</i>	102 of 1970	8 Dec 1970	s. 12(a), (c)-(e): 1 Jul 1970 (see s. 2(3)); s. 5-11 and 15(b): 1 Oct 1970 (see s. 2(2)); s. 3, 4, 12(b), 13, 14, and 15(a): 1 Jan 1971 (see s. 2(1)(c))
<i>Stamp Act Amendment Act 1971</i>	3 of 1971	13 Sep 1971	13 Sep 1971
<i>Stamp Act Amendment Act (No. 2) 1971</i>	29 of 1971	1 Dec 1971	1 Jan 1972 (see s. 2 and <i>Gazette</i> 10 Dec 1971 p. 5169)
<i>Stamp Act Amendment Act 1972</i>	32 of 1972	16 Jun 1972	1 Jul 1972 (see s. 2 and <i>Gazette</i> 30 Jun 1972 p. 2100)
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19 of 1973 s. 4)	4 Dec 1972	Relevant amendments (see Second Sch. ¹⁴) took effect on 1 Jul 1973 (see s. 4(2) and <i>Gazette</i> 22 Jun 1973 p. 2379)
<i>Stamp Act Amendment Act 1974</i>	9 of 1974	27 Sep 1974	s. 1, 2 and 7: 27 Sep 1974 (see s. 2(1)); s. 5, 6 and 9: 1 Dec 1974 (see s. 2(2)); s. 3, 4, 8 and 10: 1 Jan 1975 (see s. 2(2) and <i>Gazette</i> 22 Nov 1974 p. 5089)
<i>Stamp Act Amendment Act (No. 2) 1974</i>	46 of 1974	18 Nov 1974	1 Dec 1974 (see s. 2 and <i>Gazette</i> 29 Nov 1974 p. 5167)
Reprint of the Stamp Act 1921 approved 20 Feb 1976 (includes amendments listed above)			
<i>Stamp Act Amendment Act 1976</i>	96 of 1976	12 Nov 1976	1 Jan 1977 (see s. 2)
<i>Stamp Act Amendment Act 1977</i>	63 of 1977	23 Nov 1977	23 Nov 1977
<i>Stamp Act Amendment Act 1979</i>	37 of 1979	18 Oct 1979	s. 1, 2, 42 and 61: 18 Oct 1979 (see s. 2(2)); balance: 1 Jan 1980 (see s. 2(1) and <i>Gazette</i> 7 Dec 1979 p. 3769)
<i>Credit Unions (Consequential Provisions) Act 1979 Pt. 1</i>	47 of 1979	7 Nov 1979	1 Jul 1980 (see s. 2)

Stamp Act 1921

Short title	Number and year	Assent	Commencement
Reprint of the Stamp Act 1921 approved 25 Mar 1980 (includes amendments listed above except those in the <i>Credit Unions (Consequential Provisions) Act 1979</i>)			
<i>Stamp Amendment Act 1980</i>	63 of 1980	26 Nov 1980	4 Nov 1980 (see s. 1(4))
<i>Stamp Amendment Act 1981</i> ¹⁵	81 of 1981	9 Nov 1981	Act other than s. 3 and 8: 1 Dec 1981 (see s. 2(1)); s. 3 and 8: 1 Jan 1982 (see s. 2(2))
<i>Acts Amendment (Traffic Board) Act 1981 Pt. VIII</i>	106 of 1981	4 Dec 1981	2 Feb 1982 (see s. 2)
<i>Stamp Amendment Act 1982</i>	1 of 1982	8 Apr 1982	8 Apr 1982
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Stamp Amendment Act (No. 2) 1982</i>	15 of 1982	14 May 1982	Act other than s. 4: 8 Apr 1982 (see s. 2(1)); s. 4: 14 May 1982 (see s. 2(2))
<i>Stamp Amendment Act (No. 3) 1982</i>	45 of 1982	26 Aug 1982	24 Dec 1981 (see s. 2)
<i>Stamp Amendment Act (No. 4) 1982</i>	93 of 1982	22 Nov 1982	Act other than s. 3-6, 7(1) and 8: 22 Nov 1982 (see s. 2(1)); s. 3-6, 7(1) and 8: 1 Jan 1983 (see s. 2(2))
<i>Stamp Amendment Act (No. 5) 1982</i>	99 of 1982	24 Nov 1982	1 Jan 1983 (see s. 2)
<i>Stamp Amendment Act (No. 6) 1982</i>	112 of 1982	8 Dec 1982	26 Oct 1982 (see s. 2)
<i>Stamp Amendment Act 1983</i>	14 of 1983	31 Oct 1983	Act other than s. 6(d): 1 Nov 1983 (see s. 2(2)); s. 6(d): 1 Dec 1983 (see s. 2(1) and <i>Gazette</i> 25 Nov 1983 p. 4649)
<i>Stamp Amendment Act (No. 2) 1983</i>	61 of 1983	13 Dec 1983	s. 1-4: 13 Dec 1983 (see s. 2(1)); balance: 1 Jan 1984 (see s. 2(2))

Short title	Number and year	Assent	Commencement
<i>Stamp Amendment Act 1984</i>	81 of 1984	7 Dec 1984	1 Jan 1985 (see s. 2 and <i>Gazette</i> 28 Dec 1984 p. 4197)
<i>Stamp Amendment Act (No. 2) 1984</i>	109 of 1984	19 Dec 1984	1 Jan 1985 (see s. 2)
<i>Acts Amendment (Lotteries) Act 1985 Pt. V</i>	19 of 1985	19 Apr 1985	19 Apr 1985 (see s. 2(1))
Reprint of the Stamp Act 1921 as at 9 Jun 1985 (includes amendments listed above)			
<i>Stamp Amendment Act 1985</i>	84 of 1985	4 Dec 1985	1 Jan 1986 (see s. 2)
<i>Stamp Amendment Act (No. 2) 1985</i>	85 of 1985	4 Dec 1985	1 Jan 1986 (see s. 2)
<i>Stamp Amendment Act 1986</i> ¹⁶	98 of 1986	11 Dec 1986	s. 4-10: 11 Nov 1986 (see s. 2(2)); s. 13-18, 20, 21(1)(a)(i) and 22: 11 Dec 1986 (see s. 2(1)); s. 21(1)(b) and (2): 1 Jan 1987 (see s. 2(4) and <i>Gazette</i> 19 Dec 1986 p. 4859); s. 11 and 19: 8 Jan 1987 (see s. 2(3)); s. 12 and 21(1)(a)(ii): 1 Feb 1987 (see s. 2(4) and <i>Gazette</i> 19 Dec 1986 p. 4859)
<i>Stamp Amendment Act 1987</i> ¹⁷	33 of 1987	30 Jun 1987	Act other than s. 5, 15 and 19: 30 Jun 1987 (see s. 2(1)); s. 5, 15 and 19: 24 Jul 1987 (see s. 2(2) and <i>Gazette</i> 24 Jul 1987 p. 2813)
<i>Stamp Amendment Act (No. 2) 1987</i> ¹⁸	100 of 1987	18 Dec 1987	1 Jan 1988 (see s. 2)
Reprint of the Stamp Act 1921 as at 21 Mar 1989 (includes amendments listed above)			
<i>Stamp Amendment Act (No. 2) 1989</i>	3 of 1989	20 Apr 1989	20 Apr 1989 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Stamp Amendment Act (No. 4) 1989</i>	16 of 1989 (as amended by No. 41 of 1989 s. 28)	16 Nov 1989	s. 4(2): 1 Nov 1989 (see s. 2(2) and <i>Gazette</i> 29 Dec 1989 p. 4665); s. 4(4): 1 Nov 1989 (see s. 2(4)); s. 4(1): 16 Nov 1989 (see s. 2(1)); s. 4(3): 1 Jul 1990 (see s. 2(3) and <i>Gazette</i> 8 Jun 1990 p. 2615)
<i>Taxation (Reciprocal Powers) Act 1989 s. 16</i>	18 of 1989	1 Dec 1989	5 Oct 1990 (see s. 2 and <i>Gazette</i> 5 Oct 1990 p. 5122)
<i>Stamp Amendment Act (No. 3) 1989</i>	41 of 1989	21 Dec 1989	s. 27(3): 30 Jun 1989 (see s. 2(4)); s. 11, 13, 20(a) and (b), 24 and 26: 1 Nov 1989 (see s. 2(2)); s. 4, 10(a)-(c), 12, 20(c) and 27(1): 1 Dec 1989 (see s. 2(3)(b)); s. 1-9, 10(d), 12, 14-16, 18(b)-(e), 21-23, 25, 27(4) and 28: 21 Dec 1989 (see s. 2(5)); s. 17, 18(a), (f) and (g), 19 and 27(2): 1 Jul 1990 (see s. 2(1) and <i>Gazette</i> 8 Jun 1990 p. 2615)
<i>Stamp Amendment Act 1990</i>	20 of 1990	24 Jul 1990	24 Jul 1990 (see s. 2)
<i>Acts Amendment (Betting Tax and Stamp Duty) Act (No. 2) 1990 Pt. 2</i>	58 of 1990	17 Dec 1990	1 Aug 1989 (see s. 2)
<i>R & I Bank Act 1990 s. 45(1)</i>	73 of 1990	20 Dec 1990	1 Jan 1991 (see s. 2(2) and <i>Gazette</i> 28 Dec 1990 p. 6369)
<i>Stamp Amendment Act 1991</i> ¹⁹	52 of 1991	17 Dec 1991	s. 4 and 6: 29 Aug 1991 (see s. 2(2)); balance: 17 Dec 1991 (see s. 2(1))
<i>Stamp Amendment Act (No. 2) 1991</i>	53 of 1991	17 Dec 1991	17 Dec 1991 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>SGIO Privatisation Act 1992</i> s. 29	49 of 1992	9 Dec 1992	7 Jan 1993 (see s. 2(3) and <i>Gazette</i> 7 Jan 1993 p. 15)
<i>Stamp Amendment Act 1993</i>	42 of 1993	20 Dec 1993	Act other than s. 6 and Pt. 2: 20 Dec 1993 (see s. 2(1)); Pt. 2: 1 Jan 1994 (see s. 2(2)); s. 6: 11 Jan 1994 (see s. 2(3) and <i>Gazette</i> 11 Jan 1994 p. 43)
<i>R & I Bank Amendment Act 1994</i> s. 13	6 of 1994	11 Apr 1994	26 Apr 1994 (see s. 2 and <i>Gazette</i> 26 Apr 1994 p. 1743)
<i>Stamp Amendment Act 1994</i>	39 of 1994	26 Aug 1994	1 Sep 1994 (see s. 2)
<i>Stamp Amendment Act (No. 2) 1994</i> ^{5, 20}	79 of 1994	22 Dec 1994	22 Dec 1994 (see s. 2)
<i>Bank of Western Australia Act 1995</i> s. 44	14 of 1995	4 Jul 1995	1 Dec 1995 (see s. 2(3) and <i>Gazette</i> 29 Nov 1995 p. 5529)
<i>Road Traffic Amendment Act 1995</i> s. 14	21 of 1995	13 Jul 1995	25 Nov 1995 (see s. 2 and <i>Gazette</i> 24 Nov 1995 p. 5390)
<i>Stamp Amendment (Marketable Securities Duty) Act 1995</i> ²¹	22 of 1995	13 Jul 1995	1 Jul 1995 (see s. 2)
<i>Stamp Amendment Act 1995</i> ^{22, 23}	41 of 1995	24 Oct 1995	24 Oct 1995 (see s. 2)
<i>Acts Amendment (Vehicle Licences) Act 1995</i> Pt. 3	57 of 1995	20 Dec 1995	20 Dec 1995 (see s. 2)
Reprint of the Stamp Act 1921 as at 23 Jan 1996 (includes amendments listed above)			
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act 1996</i> Pt. 5 ²⁴	20 of 1996	28 Jun 1996	28 Jun 1996 (see s. 2(1))
<i>Acts Amendment (ICWA) Act 1996</i> s. 38	45 of 1996	25 Oct 1996	1 Oct 1997 (see s. 2 and <i>Gazette</i> 23 Sep 1997 p. 5357)

Stamp Act 1921

Short title	Number and year	Assent	Commencement
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 1996</i> Pt. 5	48 of 1996	25 Oct 1996	Div. 1-2: 30 Nov 1995 (see s. 2(2)); Div. 3: 15 Jul 1996 (see s. 2(3)); Div. 4: 1 Oct 1996 (see s. 2(4)); Div. 5: 25 Oct 1996 (see s. 2(1))
<i>Stamp Amendment Act 1996</i> ²⁵	57 of 1996	11 Nov 1996	20 Nov 1995 (see s. 2)
<i>Strata Titles Amendment Act 1996</i> s. 40	61 of 1996	11 Nov 1996	20 Jan 1997 (see s. 2 and <i>Gazette</i> 17 Jan 1997 p. 405)
<i>Road Traffic Amendment Act 1996</i> Pt. 3 Div. 8	76 of 1996	14 Nov 1996	1 Feb 1997 (see s. 2 and <i>Gazette</i> 31 Jan 1997 p. 613)
<i>Transfer of Land Amendment Act 1996</i> s. 153(1) and (2)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Revenue Laws Amendment (Assessment) Act 1997</i> Pt. 4 ²⁶⁻²⁹	13 of 1997	25 Jun 1997	Div. 2: 27 Dec 1996 (see s. 2(3)); Div. 3: 14 Jan 1997 (see s. 2(4)); Div. 4: 12 May 1997 (see s. 2(5)); Div. 1, 5-6: 25 Jun 1997 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 55 and s. 141	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Acts Amendment and Repeal (Family Court) Act 1997</i> s. 37	41 of 1997	9 Dec 1997	26 Sep 1998 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 1997</i> Pt. 3	51 of 1997	12 Dec 1997	12 Dec 1997 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 113	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Revenue Laws Amendment (Taxation) Act 1998</i> Pt. 3 ^{30, 31}	18 of 1998	30 Jun 1998	1 Jul 1998 (see s. 2(2) and also take note of s. 2(4) and (5))

Short title	Number and year	Assent	Commencement
<i>Revenue Laws Amendment (Assessment) Act 1998</i> Pt. 5, Pt. 6 Div. 4 and Pt. 7	22 of 1998	30 Jun 1998	Pt. 5 Div. 2: 1 Oct 1997 (see s. 2(1)); Pt. 5 Div. 1 and 3 and Pt. 7: 30 Jun 1998 (see s. 2(1)); Pt. 5 Div. 4: 1 Jul 1998 (see s. 2(1)); Pt. 6 Div. 4: 2 Jul 1998 (see s. 2(1))
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 1998</i> Pt. 3	58 of 1998	18 Dec 1998	s. 8: 30 Mar 1998 (see s. 2(2)); balance: 18 Dec 1998 (see s. 2(1))
<i>Friendly Societies (Western Australia) Act 1999</i> s. 23	2 of 1999	25 Mar 1999	24 May 1999 (see s. 2 and <i>Gazette</i> 21 May 1999 p. 1999)
<i>Revenue Laws Amendment (Assessment) Act 1999</i> Pt. 2	24 of 1999	29 Jun 1999	s. 4: 1 Jul 1998 (see s. 2(2)); s. 5 and 6: 29 Jun 1999 (see s. 2(1)); s. 7: 1 Jul 1999 (see s. 2(3))
<i>Revenue Laws Amendment (Taxation) Act 1999</i> Pt. 3 ³²	25 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(4))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 103	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
Reprint of the Stamp Act 1921 as at 22 Oct 1999 (includes amendments listed above)			
<i>Financial Relations Agreement (Consequential Provisions) Act 1999</i> Pt. 5 ³³	53 of 1999	13 Dec 1999	Div. 1 and 3: 13 Dec 1999 (see s. 2(1)); Div 2: 1 Jul 2001 (see s. 2(2))
<i>Acts Amendment (Continuing Lotteries) Act 2000</i> Pt. 2 ³⁴	6 of 2000 (as amended by No. 45 of 2002 s. 6)	11 Apr 2000	1 Jul 2000 (see s. 2 and <i>Gazette</i> 23 Jun 2000 p. 3191)
<i>Stamp Amendment Act 2000</i>	28 of 2000	6 Jul 2000	6 Jul 2000 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act 2000</i> Pt. 2 ^{35, 36}	29 of 2000	6 Jul 2000	6 Jul 2000 (see s. 2(1))

Stamp Act 1921

Short title	Number and year	Assent	Commencement
<i>Stamp Amendment Act (No. 3) 2000</i> ³⁷	60 of 2000	4 Dec 2000	10 Aug 2000 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act 2001 Pt. 4</i>	3 of 2001	26 Jun 2001	Div. 1 and 2: 26 Jun 2001 (see s. 2(1)); Div. 3: 30 Jun 2001 (see s. 2(4)); Div. 4: 1 Jul 2001 (see s. 2(6))
<i>Revenue Laws Amendment (Taxation) Act 2001 Pt. 3</i>	4 of 2001	26 Jun 2001	30 Jun 2001 (see s. 2(4))
<i>Corporations (Consequential Amendments) Act 2001 Pt. 48</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Building Societies Amendment Act 2001 s. 51</i>	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)
Reprint of the Stamp Act 1921 as at 3 Aug 2001 (includes amendments listed above) (correction in <i>Gazette</i> 23 Nov 2001 p. 6030)			
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 2001 Pt. 5 and 6</i>	36 of 2001	7 Jan 2002	7 Jan 2002 (see s. 2(1))
<i>Revenue Laws Amendment (Taxation) Act (No. 2) 2001 Pt. 4 (s. 13-15)</i>	37 of 2001	7 Jan 2002	s. 13: 7 Jan 2002 (see s. 2(1)); s. 14: 7 Jan 2002 (see s. 2(4)); s. 15: 7 Jan 2002 (see s. 2(5))
<i>Machinery of Government (Planning and Infrastructure) Amendment Act 2002 s. 65</i>	7 of 2002	19 Jun 2002	1 Jul 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037)
<i>Stamp Amendment (Budget) Act 2002</i> ^{38, 39, 40}	11 of 2002	28 Jun 2002	1 Jul 2002 (see s. 2)
<i>Family Court Amendment Act 2002 s. 52</i>	25 of 2002	25 Sep 2002	1 Dec 2002 (see s. 2 and <i>Gazette</i> 29 Nov 2002 p. 5651)

Short title	Number and year	Assent	Commencement
<i>Taxation Administration (Consequential Provisions) (Taxing) Act 2002 Pt. 3</i> ⁴¹	46 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Stamp Amendment Act 2003</i>	2 of 2003	20 Mar 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Corporations (Consequential Amendments) Act (No. 3) 2003 Pt. 14</i> ⁴²	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and <i>Cwlth Gazette</i> 24 Oct 2001 No. GN42)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 55</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Stamp Amendment (Budget) Act 2003</i> ⁴³	44 of 2003	30 Jun 2003	s. 4: 1 Jul 2003 (see s. 2(2)); s. 5: 1 Jul 2003, but in relation to certain policies of insurance it comes into operation 8 May 2003 (see s. 2(3))
Reprint 14: The Stamp Act 1921 as at 12 Sep 2003 (includes amendments listed above) (correction in <i>Gazette</i> 20 Jul 2004 p. 2909)			
<i>Acts Amendment (Carbon Rights and Tree Plantation Agreements) Act 2003 Pt. 4</i>	56 of 2003	29 Oct 2003	24 Mar 2004 (see s. 2 and <i>Gazette</i> 23 Mar 2004 p. 975)
<i>Business Tax Review (Taxing) Act (No. 2) 2003</i>	59 of 2003	26 Nov 2003	Act other than s. 4(3): 1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5721); s. 4(3): 1 Jul 2004 (see s. 2 and <i>Gazette</i> 21 May 2004 p. 1711)

Short title	Number and year	Assent	Commencement
<i>Business Tax Review (Assessment) Act (No. 2) 2003</i> Pt. 2 Div. 1 and 2, s. 97-99 and s. 107 ^{4,44}	66 of 2003	5 Dec 2003	s. 107: 1 Jul 2003 (see s. 2(5) and <i>Gazette</i> 27 Jun 2003 p. 2383); Pt. 2 Div. 1 and 2 (other than s. 70(1), 80, 81(1)(a), 82, 83, 85, 87(9), 93, and 94): 1 Jan 2004 (see s. 2(1) and (2) and <i>Gazette</i> 30 Dec 2003 p. 5721); s. 70(1): 1 Mar 2004 (see s. 2(1) and (2) and <i>Gazette</i> 30 Dec 2003 p. 5721); s. 80, 81(1)(a), 82, 83, 85, 87(9), 93 and 94: 1 Jul 2004 (see s. 2(1) and (2) and <i>Gazette</i> 21 May 2004 p. 1711); s. 97-99: 1 Jul 2004 (see s. 2(3))
<i>Revenue Laws Amendment Act 2004</i> Pt. 3 ⁷	11 of 2004	29 Jun 2004	1 Jul 2004 (see s. 2(2))
<i>Revenue Laws Amendment and Repeal Act 2004</i> Pt. 5 ²	12 of 2004	29 Jun 2004	Div. 1 and 4 (other than s. 26 and 32): 29 Jun 2004 (see s. 2(1)); Div. 2 and 3 and s. 26 and 32: 1 Jul 2004 (see s. 2(2))
<i>Workers' Compensation Reform Act 2004</i> s. 174	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)
<i>Revenue Laws Amendment (Tax Relief) Act (No. 2) 2004</i> Pt. 4 ⁴⁵	83 of 2004	8 Dec 2004	8 Dec 2004 (see s. 2)
Reprint 15: The Stamp Act 1921 as at 3 Jun 2005 (includes amendments listed above)			
<i>Revenue Laws Amendment Act 2005</i> Pt. 3 ^{46,47}	11 of 2005	30 Aug 2005	s. 27 & 29: 1 Jan 2004 (see s. 2(3)); s. 28: 1 Jul 2004 (see s. 2(4)); s. 8, 11(1), 13(2) & (3) and 18-25: 18 May 2005 (see s. 2(2)); balance: 30 Aug 2005 (see s. 2(1))

Short title	Number and year	Assent	Commencement
<i>Revenue Laws Amendment Act (No. 2) 2005 Pt. 3</i>	12 of 2005	30 Aug 2005	30 Aug 2005 (see s. 2(1))
<i>Stamp Amendment Act 2005</i> ^{49, 50}	34 of 2005	12 Dec 2005	Act other than Pt. 3: 12 Dec 2005 (see s. 2); Pt. 3: 1 Jan 2006 (see s. 2(2))
<u><i>Stamp Amendment (Taxing) Act 2005</i></u>	<u>35 of 2005</u>	<u>12 Dec 2005</u>	<u>1 Mar 2006 (see s. 2 and Gazette 24 Jan 2006 p. 429)</u>
<i>Stamp Amendment (Assessment) Act 2005</i> s. 1-5 and 7 ⁵²	36 of 2005	12 Dec 2005	s. 1-4 and 7: 12 Dec 2005 (see s. 2(1)); s. 5: 1 Jul 1997 (see s. 2(2)) <u>s. 6 and 8: 1 Mar 2006 (see s. 2(3) and Gazette 24 Jan 2006 p. 429)</u>

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and Year	Assent	Commencement
<i>Housing Societies Repeal Act 2005</i> s. 30 ⁴⁸	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3) and (4))
<i>Stamp Amendment (Taxing) Act 2005</i> s. 4 and 5 ⁵¹	35 of 2005	12 Dec 2005	1 Mar 2006 (see s. 2 and Gazette 24 Jan 2006 p. 429)
<i>Stamp Amendment (Assessment) Act 2005</i> s. 6 and 8 ⁵³	36 of 2005	12 Dec 2005	1 Mar 2006 (see s. 2(3) and Gazette 24 Jan 2006 p. 429)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15 ⁵⁴	38 of 2005	12 Dec 2005	To be proclaimed (see s. 2)

² The *Revenue Laws Amendment and Repeal Act 2004* s. 19 and 32 read as follows:

“

19. Transitional provisions

- (1) The *Stamp Act 1921* as amended by this Division applies in relation to instruments executed on or after 1 July 2004.
- (2) The *Stamp Act 1921* as in force immediately before the commencement of this Division applies in relation to instruments executed before 1 July 2004.

32. Section 91 amended and transitional provision

- (1) Section 91(2) is amended by inserting after “located in” —
“ the State of Victoria or ”.
- (2) Despite the amendment effected by subsection (1), the *Stamp Act 1921* as in force immediately before the commencement of that subsection continues to apply to and in relation to an advance made before 1 July 2004 in respect of property referred to in section 91.

”

³ Repealed by the *Mining Act 1978*.

⁴ The *Business Tax Review (Assessment) Act (No. 2) 2003* s. 16(2), 24(3), 25(2), 27(2), 40(3), 50(2), (11), (12), 89-94 and 98(2) read as follows:

“

16. Part IIIA (s. 49-50D) repealed and transitional

- (2) The amendments effected by this section and sections 87(2), 88(2) and 88(4) do not apply in relation to a blank cheque provided by a financial institution to the holder of a cheque account before this section came into operation regardless of when the cheque is drawn.

24. Section 63AF amended and transitional

- (3) However, section 63AF(2) of the *Stamp Act 1921* continues to apply in relation to an instrument of conveyance or transfer disclosed in a dutiable statement if the instrument was executed before this section came into operation, and in any such case the reference in section 63AF(2) to item 4A is to be read as a reference to that item as in force from time to time prior to its repeal by this Act.

25. Sections 63AG to 63AJ inserted and transitional

- (2) Section 63AG of the *Stamp Act 1921*, as inserted by subsection (1), does not apply to or in relation to a disposition referred to in that section —
- (a) made before the day on which this section comes into operation; or
 - (b) made in response to an offer made or arrangement entered into before that day.

27. Section 69 amended and transitional

- (2) However, section 69(2) as in force before this section came into operation continues to apply in relation to an instrument of conveyance or transfer to an intermediary executed before this section came into operation and in any such case the reference in section 69(2) to item 4A is to be read as a reference to that item as in force from time to time prior to its repeal by this Act.

40. Section 75AG amended and transitional

- (3) The amendments effected by this section do not apply in relation to —
- (a) an agreement for the conveyance or transfer of residential property executed before this section came into operation regardless of when any instrument of conveyance or transfer entered into in accordance with the agreement is executed; or
 - (b) an instrument of conveyance or transfer made in accordance with an agreement referred to in paragraph (a), regardless of when the instrument is executed.

50. Section 75JB amended and transitional

- (2) The amendment effected by subsection (1)(a) does not apply in relation to an instrument if, before the commencement day, the Commissioner issued a pre-determination to the effect that section 75JB(1)(d)(i) of the *Stamp Act 1921* applied to the parties to the instrument, and in any such case —
- (a) the reference in section 75JB(1)(d)(i) to section 75JA(1a) is to be read as a reference to that subsection as in force from time to time prior to its repeal by this Act; and
 - (b) any such pre-determination is as binding on the Commissioner after the commencement day as it was before that day.

- (11) The amendments effected by subsections (6)(b), (6)(c), (10)(b) and (10)(c) do not apply in relation to an instrument executed before the commencement day, and in any such case the references in section 75JB of the *Stamp Act 1921* to section 75JA(1a) of that Act are to be read as references to that subsection as in force from time to time prior to its repeal by this Act.
- (12) In this section —
“**commencement day**” means the day on which this section came into operation.

Division 2 — Transitional provisions

89. Registered pooled investment trusts

- (1) In this section —
“**commencement day**” means the day on which this section came into operation;
“**former provisions**” means the *Stamp Act 1921*, as in force immediately before the commencement day;
“**new provisions**” means the *Stamp Act 1921*, as in force on the commencement day;
“**start up period**” has the same meaning as it has in section 63AC(2) of the former provisions and refers to a period that ends on or after the commencement day.
- (2) Without limiting sections 63AD and 63AE of the new provisions, a disqualifying event occurs for the purposes of those sections if —
- (a) on the commencement day, a pooled investment trust registered under section 63AA(2) of the former provisions; or
 - (b) on the day on which the start up period ends, a pooled investment trust granted interim registration under section 63AC(2) of the former provisions, does not comply with section 63AB(2) of the new provisions.
- (3) Subject to subsection (2) and to the new provisions other than section 63AA(3a), if the registration of a pooled investment trust under section 63AA(2) of the former provisions has effect immediately before the commencement day, that registration continues to have effect for the period of 3 years from that day.

90. Determinations under section 75JBA or 75JC

- (1) In this section —

“**commencement day**” means the day on which this section came into operation.

- (2) If, before the commencement day, the Commissioner made a determination —
- (a) under section 75JBA that a controlling body would be approved and the claw-back waived; or
 - (b) under section 75JC that an exemption would be granted,
- the determination is as binding on the Commissioner after the commencement day as it was before that day, even if any of the relevant provisions of the *Stamp Act 1921* have been amended or repealed by this Act.

91. Agreements for lease

The amendments effected by sections 5, 77, 78 and 87(6) do not apply in relation to —

- (a) an agreement for lease executed before this section came into operation regardless of when any lease entered into in accordance with the agreement is executed; or
- (b) any such lease, regardless of when it is executed.

92. Mortgages

- (1) In this section —

“**amended Act**” means the *Stamp Act 1921* as amended by this Act and the *Business Tax Review (Taxing) Act (No. 2) 2003*;

“**commencement day**” means the day on which section 79 came into operation;

“**former Act**” means the *Stamp Act 1921* as in force from time to time before the commencement day.

- (2) The amended Act does not apply to a mortgage or other security on which duty was payable under Part III E of the former Act if the amount secured by the mortgage does not increase on or after the commencement day.
- (3) However, a mortgage that was liable to duty under Part III E of the former Act is liable to duty under Part III E of the amended Act as if the mortgage had first been executed after the commencement day if an advance as defined in Part III E of the amended Act is made under the mortgage after the commencement day.

93. Life insurance

The amendments effected by sections 80, 81, 82, 83 and 87(9) do not apply in relation to a policy of life insurance where the period

for which the insurance is effected commenced before this section came into operation.

94. Hire of goods

- (1) In this section —
 - “**commencement**” means the time at which section 85 came into operation;
 - “**new Part IVB**” means Part IVB of the *Stamp Act 1921* as in force after commencement and, for the purposes of this section, is taken to include item 18 of the Second Schedule as in force after commencement;
 - “**old Part IVB**” means Part IVB of the *Stamp Act 1921* as in force immediately before commencement and, for the purposes of this section, is taken to include item 18 of the Second Schedule as in force immediately before commencement.
- (2) An expression used in this section that is given a meaning in the *Stamp Act 1921* (including old Part IVB and new Part IVB) has the meaning so given unless the contrary intention appears.
- (3) On commencement, a person who was registered under old Part IVB immediately before commencement is taken, for all purposes, to have been registered under section 112JA of new Part IVB.
- (4) For the purposes of the ongoing application of old Part IVB under subsection (7), the registration of a person who was registered under old Part IVB immediately before commencement is taken to continue under old Part IVB, unless the person’s registration is cancelled under new Part IVB.
- (5) On commencement, a designation made by the Minister under section 112N(1)(fa)(ii) of old Part IVB and in force immediately before commencement is taken, for all purposes, to have been made under section 112IC(2) of new Part IVB.
- (6) New Part IVB applies to hiring charges received under a hire of goods entered into after commencement.
- (7) Despite the repeal of old Part IVB, it continues to apply —
 - (a) in relation to the conduct of a rental business before commencement; and
 - (b) in relation to the conduct of a rental business after commencement to the extent that the conduct of the rental business relates to rights, granted before commencement, to which old Part IVB applied before commencement.

- (8) To the extent that section 112O of old Part IVB has effect after commencement in relation to the conduct of a rental business, it has effect subject to the *Taxation Administration Act 2003*.

98. Section 92 amended and transitional

- (2) The amendments effected by this section and section 99 do not apply in relation to a policy of insurance against an employer's liability to pay compensation under the *Workers' Compensation and Rehabilitation Act 1981* where the period for which the insurance was effected commenced on or before 29 June 2004.

⁵ The *Stamp Amendment Act (No. 2) 1994* s. 4(2) reads as follows:

“

- (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.

”

⁶ Formerly referred to the *Workers' Compensation and Rehabilitation Act 1981*, the short title of which was changed to the *Workers' Compensation and Injury Management Act 1981* by the *Workers' Compensation Reform Act 2004* s. 5. This reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

⁷ The *Revenue Laws Amendment Act 2004* s. 8 reads as follows:

“

8. Transitional provision

Despite the amendments made by this Division, the *Stamp Act 1921* as in force immediately before the commencement of this Division applies to and in relation to —

- (a) an instrument that was first executed before 1 July 2004;
- (b) an instrument of conveyance or transfer that replaces another instrument for the conveyance or transfer of the same property where the replaced instrument was first executed before 1 July 2004;
- (c) an instrument of conveyance or transfer of property where —
 - (i) the person to whom the property is conveyed or transferred (the transferee) had an option to purchase the property, or the person who conveys or transfers the

- property had an option to require the transferee to purchase the property; and
- (ii) in either case, the option was granted on or after 6 May 2004 but before 1 July 2004;
- and
- (d) an instrument of conveyance or transfer where —
 - (i) the conveyance or transfer of property is made in accordance with an arrangement made on or after 6 May 2004; and
 - (ii) the sole or principal purpose of the arrangement was to defer the conveyance or transfer of the property until 1 July 2004 or later so that the rates of duty applicable on or after 1 July 2004 would apply to the instrument.

”

⁸ *The Acts Amendment (Land Administration) Act 1997* came into operation 30 Mar 1998.

⁹ *The Road Traffic Amendment Act 2000* Pt. 3 Div. 3 will not come into operation because it was repealed by the *Taxation Administration (Consequential Provisions) Act 2002* s. 28(3).

¹⁰ Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7 this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002*. Pt. 1 and Pt. 7 Div. 1 of those regulations read as follows:

“

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002*.

2. Commencement

- (1) These regulations do not have effect unless an arrangement is in operation under section 5 of the Act.
- (2) When such an arrangement is in operation, these regulations and the modifications they prescribe are deemed to have taken effect on 6 October 1997.

- (3) If a State taxing law was repealed before these regulations take effect then, despite the repeal, when these regulations are deemed under subsection (2) to have taken effect, the repealed law is deemed to have been modified, in accordance with these regulations, on 6 October 1997.

3. Modification of State taxing laws

- (1) In its operation as an applied WA law, the Act is modified by omitting section 7.
- (2) For the purposes of section 7(2) of the Act, each State taxing law is taken to be modified to the extent necessary to give effect to subregulation (3).
- (3) If —
- (a) a State taxing law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding applied law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction;
 - (b) a person is required or permitted, or could be required or permitted, to take an action under both the State taxing law and the corresponding applied law in relation to the event, state of affairs or transaction;
 - (c) the person has taken the action in accordance with the corresponding applied law; and
 - (d) the Commissioner has enough information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the State taxing law or the corresponding applied law or both, as the case requires,
- then —
- (e) the person is not required to take the action under the State taxing law; and
 - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the State taxing law in relation to the event, state of affairs or transaction.
- (4) The particular modifications set out in these regulations of certain State taxing laws have effect for the purposes of section 7(2) of the Act.

Part 7 — Stamp duty

Division 1 — The *Stamp Act 1921*

57. **Modification of the *Stamp Act 1921***

This Division sets out modifications of the *Stamp Act 1921*.

58. **Section 2 inserted**

After section 1 the following section is inserted —

“

2. Application of Act in non-Commonwealth places

- (1) In this Act, unless the contrary intention appears —
 - (a) a reference to this Act is to be read as a reference to this Act in its application as a law of Western Australia;
 - (b) a reference to the regulations is to be read as a reference to those regulations in their application as a law of Western Australia;
 - (c) a reference to the *Revenue Laws Amendment (Assessment) Act 2000* is to be read as a reference to that Act in its application as a law of Western Australia;
 - (d) a reference to the *Stamp Act Amendment Act 1979* is to be read as a reference to that Act in its application as a law of Western Australia;
 - (e) a reference to the *Taxation (Reciprocal Powers) Act 1989* is to be read as a reference to that Act in its application as a law of Western Australia;
 - (f) a reference (however expressed) to an Act administered by the Commissioner is to be read as including a reference to an Act administered by the Commissioner under an arrangement under section 5 of the *Commonwealth Places (Mirror Taxes Administration) Act 1999*.
- (2) This Act is to be read with the applied Stamp Act as a single body of law.
- (3) If this Act requires any duty paid or payable in another State or a Territory to be taken into account for the purpose of calculating the amount of duty payable under this Act, then any duty paid or payable under the applied Stamp Act must also be taken into account if it would have been taken

into account under this Act if it were paid or payable solely under this Act.

”

59. Section 4 modified

Section 4(1) is modified by inserting the following definitions in their appropriate alphabetical positions —

“

“applied interstate law” means a law of another State in its application as a law of the Commonwealth in or in relation to Commonwealth places in that State in accordance with the Commonwealth Mirror Taxes Act;

“applied Stamp Act” means the *Stamp Act 1921* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

“Commonwealth Mirror Taxes Act” means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

“Commonwealth place” means a Commonwealth place in or in relation to which the applied Stamp Act applies, or is taken to have applied, under the Commonwealth Mirror Taxes Act;

”

60. Section 4AA inserted

After section 4 the following section is inserted —

“

4AA. Instruments subject to dual liability

- (1) If an instrument or 2 or more instruments is, are or may be liable for duty under both this Act and the applied Stamp Act, the amount of duty payable is calculated by reference to the amount equal to the sum of —
 - (a) the amount or amounts on which duty is payable under this Act; and
 - (b) the amount or amounts on which duty is payable under the applied Stamp Act.
- (2) The amount of duty payable on the instrument or instruments under this Act is the amount calculated under subsection (1) minus any amount paid or payable under the applied Stamp Act.

”.

61. Section 8 modified

- (1) Section 8 is modified by inserting before “The” the subsection designation “(1)”.
- (2) At the end of section 8 the following subsection is inserted —

“

- (2) The Commissioner may use for the purposes of any other Act administered by the Commissioner any information concerning the affairs of any other person acquired by the Commissioner, by reason of his or her office, under or for the purposes of this Act.

”.

62. Section 9 modified

Section 9(2) is modified as follows:

- (a) in paragraph (a) by inserting after “this Act” —
“ or the applied Stamp Act ”;
- (b) in paragraph (b) by inserting after “this Act” —
“ or the applied Stamp Act ”.

63. Section 31B modified

Section 31B(5) is modified by deleting “the law of another State or of a Territory” and inserting instead —

“

the applied Stamp Act or a law in force in another State or a Territory, including an applied interstate law

”.

64. Section 73D modified

Section 73D(6a)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“

under the applied Stamp Act or a law in force in another State or a Territory, including an applied interstate law

”.

65. Section 75AE modified

After subsection 75AE(2) the following subsection is inserted —

“

- (2a) For the purposes of subsection (2)(b), if duty is or may be payable on the instrument of conveyance or transfer of property both under this Act and the applied Stamp Act, the purchaser is entitled to a rebate only if the total value of the property conveyed or transferred by the instrument does not exceed \$135 000.

”

66. Section 76AH modified

Section 76AH(4)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“

under the applied Stamp Act or a law in force in another State or a Territory, including an applied interstate law

”

67. Section 76AO modified

Section 76AO(4)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“

under the applied Stamp Act or a law in force in another State or a Territory, including an applied interstate law

”

68. Section 84 modified

After section 84(4) the following subsection is inserted —

“

(5) In this section —

- (a) a reference to duty paid or payable in another State is to be read as including a reference to duty paid or payable under the applied Stamp Act or under an applied interstate law;
- (b) a reference to an instrument that is exempt in another State is to be read as including a reference to an instrument that is exempt under the applied Stamp Act or under an applied interstate law.

”

69. Section 87 modified

- (1) Section 87(1) is modified by inserting after “Second Schedule” —

“
or item 13 of the Second Schedule to the applied Stamp Act
”

“ (2) Section 87(1b) is modified by inserting after “or (2)” —
of the Second Schedule or item 13(1)(a), (1a) or (2) of the Second
Schedule to the applied Stamp Act (as the case requires)
”

70. Section 112A modified

Section 112A(1) is modified by deleting the definition of
“corresponding law” and inserting the following definition
instead —

“
“**corresponding law**” means —
(a) the applied Stamp Act;
(b) a law in force in another State or in a Territory that is
declared by proclamation to be a corresponding law for
the purposes of Division 3; or
(c) an applied interstate law that corresponds to a law
referred to in paragraph (b).
”

¹¹ Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 8(2) of the Commonwealth, this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*. Pt. 1 and Pt. 7 Div. 1 of that notice read as follows:

“

Part 1 — Preliminary

1. Citation

This notice may be cited as the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*.

2. Commencement

- (1) This notice does not have effect unless an arrangement is in operation under section 9 of the Commonwealth Places Mirror Taxes Act in relation to Western Australia.
- (2) When such an arrangement is in operation, this notice and the modifications it prescribes are deemed to have taken effect on 6 October 1997.
- (3) If an applied WA law was repealed before this notice takes effect then, despite the repeal, when this notice is deemed under subsection (2) to have taken effect, the repealed law is deemed to have been modified on 6 October 1997 as set out in this notice.

3. Definitions

In this notice —

“**applied WA law**” means the provisions of a State taxing law of Western Australia that apply or are taken to have applied in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

“**Commonwealth Mirror Taxes Act**” means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

“**WA taxing law**” means a State taxing law of Western Australia.

4. Modification of applied WA laws

- (1) For the purposes of section 8 of the Commonwealth Mirror Taxes Act, each applied WA law is taken to be modified to the extent necessary to give effect to subregulation (2).
- (2) If —
 - (a) an applied WA law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding State taxing law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction;
 - (b) a person is required or permitted, or could be required or permitted, to take an action under both the applied WA law and the corresponding State taxing law in relation to the event, state of affairs or transaction;
 - (c) the person has taken the action in accordance with the corresponding State taxing law; and
 - (d) the Commissioner has enough information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the applied WA law or

the corresponding State taxing law or both, as the case requires,

then —

- (e) the person is not required to take the action under the applied WA law; and
 - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the applied WA law in relation to the event, state of affairs or transaction.
- (3) The particular modifications set out in this notice of certain applied WA laws have effect for the purposes of section 8 of the Commonwealth Mirror Taxes Act.

Part 7 — Stamp duty

Division 1 — The applied *Stamp Act 1921*

83. Modification of the applied Act

This Division sets out modifications of the *Stamp Act 1921* of Western Australia.

84. Section 2 inserted

After section 1 the following section is inserted —

“

2. Application of Act in Commonwealth places

- (1) In this Act, unless the contrary intention appears —
 - (a) a reference to this Act is to be read as a reference to this Act in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;
 - (b) a reference to the regulations is to be read as a reference to the regulations in their application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;
 - (c) a reference (however expressed) to an Act administered by the Commissioner is to be read as a reference to —

- (i) an Act of which the Commissioner has the general administration under an arrangement under section 9 of the Commonwealth Mirror Taxes Act; or
 - (ii) an Act administered by the Commissioner as a law of Western Australia;
 - (d) a reference to the *Taxation (Reciprocal Powers) Act 1989* is to be read as a reference to the applied Taxation (Reciprocal Powers) Act;
 - (e) a reference to the *Gazette* is to be read as a reference to the *Government Gazette* of Western Australia;
 - (f) a reference to the Supreme Court is to be read as a reference to the Supreme Court of Western Australia;
 - (g) a reference to the Minister is to be read as a reference to the Minister of the Crown in right of Western Australia to whom the administration of the corresponding Stamp Act is for the time being committed by the Governor of Western Australia;
 - (h) a reference to the Treasurer is to be read as a reference to the Treasurer of Western Australia;
 - (i) a reference to any of the following Acts is to be read as a reference to the Act of that name of the Parliament of Western Australia —
 - (i) the *Acts Amendment (Continuing Lotteries) Act 2000*;
 - (ii) the *Building Societies Act 1976*;
 - (iii) the *Financial Sector (Transfer of Business) Act 1999*;
 - (iv) the *Gaming Commission Act 1987*;
 - (v) the *Housing Societies Act 1976*;
 - (vi) the *Local Government Act 1995*;
 - (vii) the *Mining Act 1978*;
 - (viii) the *Public Sector Management Act 1994*;
 - (ix) the *Transfer of Land Act 1893*;
 - (x) the *Workers' Compensation and Rehabilitation Act 1981*;
- and

- (j) a reference to any of the following enactments is to be read as a reference to the enactment of that name of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act —
 - (i) the *Pay-roll Tax Assessment Act 1971*;
 - (ii) the *Revenue Laws Amendment (Assessment) Act 2000*;
 - (iii) the *Stamp Act Amendment Act 1979*;
 - (iv) the *Stamp Act Regulations 1966*.
- (2) This Act is to be read with the corresponding Stamp Act as a single body of law.
- (3) In addition to being modified as prescribed by the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*, this Act is deemed to be further modified to any extent that is necessary or convenient —
 - (a) to enable this Act to operate effectively as a law of the Commonwealth; and
 - (b) to ensure that the combined liability of a taxpayer under this Act and the corresponding Stamp Act is as nearly as possible the same as the taxpayer's liability would be under the corresponding Stamp Act alone if the Commonwealth places in Western Australia were not Commonwealth places.
- (4) If this Act requires any duty paid or payable in another State or a Territory, or any duty previously paid, to be taken into account for the purpose of calculating the amount of duty payable under this Act, then any duty paid, payable or previously paid under the corresponding Stamp Act must also be taken into account if it would have been taken into account under this Act if it were paid or payable solely under this Act.

”

85. Section 2A modified

Section 2A(1) is repealed.

86. Section 4 modified

- (1) Section 4(1) is modified by inserting the following definitions in their appropriate alphabetical positions —

“

“**Applied Taxation (Reciprocal Powers) Act**” means the *Taxation (Reciprocal Powers) Act 1989* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

“**applied interstate law**” means a law of another State in its application as a law of the Commonwealth in or in relation to Commonwealth places in that State in accordance with the Commonwealth Mirror Taxes Act;

“**Commonwealth Mirror Taxes Act**” means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

“**Commonwealth place**” means a Commonwealth place in or in relation to which this Act applies or is taken to have applied under section 6 of the Commonwealth Mirror Taxes Act;

“**corresponding Stamp Act**” means the *Stamp Act 1921* of Western Australia in its application as a law of Western Australia;

”.

- (2) Section 4(1) is further modified as follows:
- (a) in the definition of “Commissioner” by deleting all the words after “office” and inserting instead —

“

of Commissioner of State Revenue of Western Australia
”;

- (b) by deleting the definition of “the Crown”.

87. Section 4AA inserted

After section 4 the following section is inserted —

“

4AA. Instruments subject to dual liability

- (1) If an instrument or 2 or more instruments is, are or may be liable for duty under both this Act and the corresponding

Stamp Act, the total amount of duty payable is calculated by reference to the amount equal to the sum of —

- (a) the amount or amounts on which duty is payable under this Act; and
 - (b) the amount or amounts on which duty is payable under the corresponding Stamp Act.
- (2) The amount of duty paid or payable on the instrument or instruments under this Act is the amount equal to the amount calculated under subsection (1) minus any amount paid or payable under the corresponding Stamp Act.

”

88. Section 6 modified

After section 6(2) the following subsections are inserted —

“

- (3) If, under section 6 of the corresponding Stamp Act, the Commissioner has delegated a function under that Act to a person, the corresponding function under this Act is taken to have been delegated to the person under this section.
- (4) A person who is authorised to perform a function under the corresponding Stamp Act is taken to be authorised to perform the corresponding function under this Act.

”

89. Section 8 modified

- (1) Section 8 is modified as follows:
 - (a) by inserting before “The” the subsection designation “(1)”;
 - (b) by inserting after “this Act” —
“ or the corresponding Stamp Act ”;
 - (c) by inserting before “any other Act” —
“ this Act or ”.
- (2) At the end of section 8 the following subsection is inserted —

“

- (2) The Commissioner may use for the purposes of any other Act administered by him or her any information concerning the affairs of any other person acquired by the Commissioner by reason of his or her office under or for the purposes of this Act.

- ”
.
- 90. Section 9 modified**
Section 9(2) is modified as follows:
(a) in paragraph (a) by inserting after “this Act” —
“ or the corresponding Stamp Act ”;
(b) in paragraph (b) by inserting after “this Act” —
“ or the corresponding Stamp Act ”.
- 91. Section 11 modified**
Section 11 is modified by deleting “on behalf of the Crown”.
- 92. Section 15B modified**
Section 15B(1)(b) is modified by deleting “*Financial Administration and Audit Act 1985*” and inserting instead —
“
Financial Management and Accountability Act 1997 of the Commonwealth
”.
- 93. Section 16 modified**
Section 16(1) is modified by deleting “for the use of the Crown”.
- 94. Section 26 modified**
(1) Section 26(1) is modified by deleting “Crown” and inserting instead —
“ Commonwealth ”.
(2) Section 26(1a) is modified by deleting “Crown” and inserting instead —
“ Commonwealth ”.
- 95. Section 31B modified**
Section 31B(5) is modified by deleting “the law of another State or of a Territory” and inserting instead —
“
the corresponding Stamp Act or a law in force in another State or Territory, including an applied law within the meaning of the Commonwealth Mirror Taxes Act,
”.

96. Section 39A modified

Section 39A(1) is modified by deleting “Crown” and inserting instead —

“ Commonwealth ”.

97. Section 73D modified

Section 73D(6a)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“

under a law in force in another State or Territory

”.

98. Section 75AE modified

After section 75AE(2) the following subsection is inserted —

“

(2a) For the purposes of subsection (2)(b), if duty is or may be payable on the instrument of conveyance or transfer of property both under this Act and the corresponding Stamp Act, the purchaser is entitled to a rebate only if the total value of the property conveyed or transferred by the instrument does not exceed \$135 000.

”.

99. Section 76AH modified

Section 76AH(4)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“

under a law in force in another State or Territory

”.

100. Section 76AO modified

Section 76AO(4)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“ under a law in force in another State or Territory ”.

101. Section 84 modified

After section 84(4) the following subsection is inserted —

“

(5) In this section —

- (a) a reference to duty payable in another State is to be read as including a reference to duty payable under the corresponding Stamp Act or duty payable under a law of another State that applies as a law of the Commonwealth in or in relation to Commonwealth places in the State in accordance with the Commonwealth Mirror Taxes Act; and
- (b) a reference to an instrument that is exempt in another State is to be read as including a reference to an instrument that is exempt under the corresponding Stamp Act or under a law of another State that applies as a law of the Commonwealth in or in relation to Commonwealth places in the State in accordance with the Commonwealth Mirror Taxes Act.

”

102. Section 87 modified

Section 87(1) is modified by inserting after “chargeable under item 13” —

“

of the second Schedule of this Act or the corresponding Stamp Act

”

103. Section 112A modified

Section 112A(1) is modified by deleting the definition of “corresponding law” and inserting the following definition instead —

“

“**corresponding law**” means —

- (a) the corresponding Stamp Act;
- (b) a law in force in another State or Territory that is declared by proclamation to be a corresponding law for the purposes of Division 3; or
- (c) an applied interstate law that corresponds to a law referred to in paragraph (b).

”

104. Section 112K modified

After section 112K(1a) the following subsection is inserted —

“

- (1b) A reference in subsection (1) to an amount to be shown in a statement does not include a reference to any amount in respect of which stamp duty has been paid under the corresponding Stamp Act.

”

105. Section 120 modified

Section 120(1)(f) is modified by deleting “Crown” and inserting instead —

“ Commonwealth ”.

”

¹² The amendment in the *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 175(3) is not included because the section it sought to amend has been repealed by the *Stamp Amendment Act 2003* s. 7 before the amendment purported to come into operation.

¹³ The renumbering of Parts, Divisions, sections, etc., effected in the 1934 reprint (in the appendix to the annual sessional volume of 1933-1934) and subsequent reprints has been retained. References to the original numbering are contained in those reprints.

¹⁴ The Second Schedule to the *Metric Conversion Act 1972* was inserted by the *Metric Conversion Act Amendment Act 1973*.

¹⁵ The *Stamp Amendment Act 1981* s. 5(2) reads as follows:

“

- (2) Where duty has been or is being paid under section 112K of this Act in respect of a loan, other than a loan upon an account current, at the rate provided for by that section as it was prior to the coming into operation of this section of this Act, section 112K(1)(b) shall continue to apply in respect of every such loan as if this section had not been enacted.

”

¹⁶ The *Stamp Amendment Act 1986* s. 21(2) reads as follows:

“

- (2) The exemptions provided for by subitems (2) and (3) inserted by paragraph (b) of subsection (1) apply to a policy of insurance, or a renewal, entered into after the commencement of that paragraph.

”

¹⁷ The *Stamp Amendment Act 1987* s. 4 reads as follows:

“

4. Retrospective application and transitional provisions

- (1) Section 76AG inserted in the principal Act by section 22 of this Act extends to any relevant acquisition of a majority interest or a further interest in a company to which Division 2 of Part IIIBA of the principal Act applies that occurred on or after 19 January 1987, and the provisions of Divisions 1 and 2 of that Part and any regulations having effect for the purposes of those Divisions shall have effect accordingly.
- (2) Section 76AN inserted in the principal Act by section 22 of this Act extends to any relevant acquisition of a majority interest or a further interest in a corporation to which Division 3 of Part IIIBA of the principal Act applies that occurred on or after 19 January 1987, and the provisions of Divisions 1 and 3 of that Part and any regulations having effect for the purposes of those Divisions shall have effect accordingly.
- (3) Subsections (1) and (2) have effect notwithstanding that duty on an instrument effecting or evidencing an acquisition has already been paid under item 4(3) of the Second Schedule.
- (4) A statement required by subsection (1) or (2) shall be prepared and lodged not later than 3 months after the commencement of this section.
- (5) Notwithstanding subsection (1) or (2), a previous acquisition referred to in subparagraph (ii) of section 76AJ(1)(a) or subparagraph (ii) of section 76AQ(1)(a) of the principal Act shall not be taken into account for the purposes of that subparagraph if it occurred before 19 January 1987.
- (6) Regulations having retrospective effect to 19 January 1987 may be made under section 120(1) of the principal Act so far as it is necessary or expedient to do so to give effect to this section.
- (7) An expression used in this section in relation to a Division of Part IIIBA of the principal Act has the same meaning as it has for the purposes of that Division.

”

¹⁸ The *Stamp Amendment Act (No. 2) 1987* s. 9(2) reads as follows:

“

- (2) A notice of election given under section 112K(2) of the principal Act as in force before the commencement of this Act and not cancelled shall continue to have effect as if given under that subsection after the commencement of this Act.

19 The *Stamp Amendment Act 1991* s. 8(2) reads as follows:

- “
- (2) Nothing in this section affects the approval of an odd lot specialist given under the principal Act before the coming into operation of this section and any odd lot specialist so approved shall be taken to have been approved as an odd lot specialist under the principal Act as amended by this Act.
- ”

20 The *Stamp Amendment Act (No. 2) 1994* s. 5(2) and (3) read as follows:

- “
- (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.
- ”

21 The *Stamp Amendment (Marketable Securities Duty) Act 1995* s. 5 reads as follows:

- “
- 5. Saving provision**
- The principal Act as in force immediately before the commencement of this Act continues to operate in respect of conveyances and transfers of marketable securities and rights in respect of shares made or executed before 1 July 1995.
- ”

22 The *Stamp Amendment Act 1995* s. 4(2) reads as follows:

- “
- (2) Subsection (3) as inserted in section 27 of the principal Act by this Act applies to an instrument or document executed before or after the commencement of this Act.
- ”

23 The *Stamp Amendment Act 1995* s. 6(2) reads as follows:

“

- (2) Section 73F is enacted to avoid doubt and does not limit the application of the principal Act as enacted before the commencement of this section to transactions entered into in relation to business licences (within the meaning of that section) before that commencement.

”

²⁴ The *Revenue Laws Amendment (Assessment) Act 1996* s. 32(5) reads as follows:

“

- (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*.

”

²⁵ The *Stamp Amendment Act 1996* s. 9 reads as follows:

“

9. Transitional

- (1) If because of the amendments made by this Act to the *Stamp Act 1921*, a person is required under Division 2 of Part IIIA of that Act to lodge a statement in respect of a relevant acquisition that occurred on or after 20 November 1995 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 112HA of the *Stamp Act 1921* as inserted by section 8 of this Act, a statement in respect of a capital reduction or a share cancellation is required to be lodged by that section before this Act receives the Royal Assent, then despite section 112HA of that Act the statement shall be lodged within 3 months after the date on which this Act receives the Royal Assent.

”

²⁶ The *Revenue Laws Amendment (Assessment) Act 1997* s. 36(2) reads as follows:

“

- (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.

”

²⁷ The *Revenue Laws Amendment (Assessment) Act 1997* s. 39(2) and (3) read as follows:

“

- (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 IIIICA by this Act.
- (3) In subsection (2) —
“**commencement day**” means the day on which this Act comes into operation.

”

²⁸ The *Revenue Laws Amendment (Assessment) Act 1997* s. 24 reads as follows:

“

24. Reassessment

- (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.

”

²⁹ The *Revenue Laws Amendment (Assessment) Act 1997* s. 48 reads as follows:

“

48. Transitional

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.

”

³⁰ The *Revenue Laws Amendment (Taxation) Act 1998* s. 13 reads as follows:

“

13. Saving

Subject to section 2(4) and (5), and without limiting the operation of the *Interpretation Act 1984*, the provisions of the *Stamp Act 1921* as in force immediately before 1 July 1998 continue to have effect in relation to instruments executed before 1 July 1998.

”

³¹ The *Revenue Laws Amendment (Taxation) Act 1998* s. 2(4) and (5) read as follows:

“

- (4) Section 12(11) is deemed to have come into operation on 30 April 1998 in relation to a policy of insurance that is effected on or after 30 April 1998 and before 1 July 1998 if —
 - (a) the period for which the policy is valid commences on or after 1 July 1998; or
 - (b) the period for which the policy is valid commences on or after 30 April 1998 and before 1 July 1998 and the policy replaces another policy with the same insurer that would otherwise have expired on or after 1 July 1998.
- (5) Section 12(11) is deemed to have come into operation on 30 April 1998 in relation to a policy of insurance that is renewed on or after 30 April 1998 and before 1 July 1998 if —
 - (a) the period for which the policy is renewed commences on or after 1 July 1998; or
 - (b) the policy being renewed would otherwise have expired on or after 1 July 1998.

”

³² The *Revenue Laws Amendment (Taxation) Act 1999* s. 7(2), (3) and (4) read as follows:

“

- (2) Subject to subsection (3), if an application for the issue or transfer of a motor vehicle licence is made to a licensing authority before this section commences, then the *Stamp Act 1921* as it was in force immediately before this section commences continues to operate in respect of the issue or transfer of the licence.
- (3) If —

- (a) an application for the issue or transfer of a motor vehicle licence is made to a licensing authority on or after 1 July 1999; and
- (b) stamp duty in respect of the issue or transfer is not paid before the day on which this section commences,

then the *Stamp Act 1921* as amended by subsection (1) operates in respect of the issue or transfer of the licence.

- (4) If under section 76C(9), (10) or (10C) of the *Stamp Act 1921* duty is assessed before this section commences, then the *Stamp Act 1921* as it was in force immediately before this section commences continues to operate in respect of any issue or transfer of a licence as a result of the assessment.

”

³³ The *Financial Relations Agreement (Consequential Provisions) Act 1999* s. 3 and 32 read as follows:

“

3. Objectives

The main objectives of this Act are —

- (a) to record the intention of this State to comply with, and give effect to, the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*, a copy of which is set out in Schedule 1; and
- (b) to implement, in part, measures described in that agreement.

32. Savings

- (1) Subject to subsection (2), the former provisions continue to apply as if this Division were not enacted, to and in relation to —
 - (a) information referred to in section 9(1c) of those provisions that was acquired on or before 30 June 2001 or during the continued application under this section of Part IVA Division 4 of those provisions;
 - (b) instruments referred to in section 112D of those provisions that were executed on or before 30 June 2001 and the subsequent SCH-regulated transfers;
 - (c) transfers referred to in section 112E or 112F of those provisions that were made on or before 30 June 2001;
 - (d) sales and purchases referred to in Part IVA Division 3 of those provisions that were made or deemed to have been made on or before 30 June 2001;

-
- (e) SCH-regulated transfers to which Part IVA Division 4 of those provisions applies that were made on or before 30 June 2001;
 - (f) matters referred to in Part IVA Division 5 of those provisions, until all instruments required to be endorsed under section 112D of those provisions have been so endorsed;
 - (g) relevant transactions referred to in Part IVAB of those provisions that were made or effected, or deemed to have been made or effected, on or before 30 June 2001;
 - (h) the matters referred to in the Second Schedule item 4A of those provisions where the conveyances or transfers were made on or before 30 June 2001; and
 - (i) exemptions in the Third Schedule of those provisions where the conveyances, transfers, sales or purchases were made on or before 30 June 2001.
- (2) Regulations may be made under section 120 of the *Stamp Act 1921* that, subject to any condition that the regulations may impose, terminate an obligation that, because of subsection (1), would otherwise continue under —
- (a) section 112E(6) and (7) of the former provisions, in relation to a record referred to in section 112E(5) of the former provisions;
 - (b) section 112F(11) and (12) of the former provisions, in relation to a record referred to in section 112F(10) of the former provisions;
 - (c) section 112FI(5) and (6) of the former provisions, in relation to a record referred to in section 112FI(3) of the former provisions;
 - (d) section 112FJ(3) and (4) of the former provisions, in relation to a copy of an instrument endorsed under section 112FJ(2) of the former provisions;
 - (e) section 112FQ of the former provisions, in relation to the particulars and records referred to in that section; or
 - (f) section 112GF of the former provisions, in relation to books and records referred to in that section.
- (3) In this section —
- “**former provisions**” means the *Stamp Act 1921* as in force immediately before the coming into operation of this Division.

”.

³⁴ The *Acts Amendment (Continuing Lotteries) Act 2000* Pt. 4 (as amended by No. 45 of 2002 s. 6) reads as follows:

“

Part 4 — Savings and transitional provisions

17. Interpretation

In this Part —

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

“**Commission**” means the Gaming Commission of Western Australia, established under the *Gaming Commission Act 1987*;

“**Gaming Commission Act**” means the *Gaming Commission Act 1987* as amended by this Act;

“**Stamp Act**” means the *Stamp Act 1921* as in force immediately prior to the commencement day.

[Section 17 amended by No. 45 of 2002 s. 6.]

18. Licences

A licence issued under Part IVAA of the Stamp Act and in force immediately before the commencement day —

- (a) is taken to be a licence issued under Part V Division 7 of the Gaming Commission Act; and
- (b) subject to that Division, continues in force until —
 - (i) the day on which the licence would have expired under Part IVAA of the Stamp Act; or
 - (ii) 5 years after the commencement day,whichever is the earlier.

19. Cancellation of licence

For the purposes of section 104B(3)(c) of the Gaming Commission Act, the cancellation of a licence under Part IVAA of the Stamp Act is to be treated as if it were a cancellation under the Gaming Commission Act, Part V Division 7.

20. Pending appeals

- (1) Subject to subsection (2), an appeal commenced under section 111 of the Stamp Act before the commencement day, may be continued and dealt with as if the amendments in Parts 2 and 3 of this Act had not been passed.
- (2) For the purposes of continuing and dealing with pending appeals, if a Local Court wishes to exercise its power, under

section 111(3)(b) of the Stamp Act, to remit a matter under appeal, it is to remit that matter to the Commission, instead of the Commissioner of State Revenue.

21. Continuing effect of approvals

Any approval granted under section 111B of the Stamp Act continues in force until that approval is varied or revoked by the Commission under section 104F(2) of the Gaming Commission Act.

22. Returns

If duty payable to the Commissioner of State Revenue under section 111B of the Stamp Act on a return lodged, or to be lodged, with the Commissioner of State Revenue under section 111B of the Stamp Act has not been paid prior to the commencement day then, despite this Act, the duty payable continues as a debt due to the Commissioner of State Revenue.

23. Refund of duty

Where a licensed supplier is entitled to a refund of duty from the Commissioner of State Revenue under section 111D of the Stamp Act, and that duty has not been refunded before or on the commencement day, then despite this Act, the licensed supplier is entitled to a refund of that amount of duty from the Commissioner of State Revenue.

24. Memoranda

- (1) Where the Commissioner of State Revenue was entitled to create a memorandum under section 111E of the Stamp Act, and that entitlement had not been exercised by the Commissioner of State Revenue before or on the commencement day, then on and from the commencement day the Commission is instead entitled to create that memorandum.
- (2) In addition to the entitlement under subsection (1), the Commission is entitled to assess the amount to be paid (including any fine), and to collect the outstanding amount, in relation to a memorandum created under subsection (1).

”

³⁵ The *Revenue Laws Amendment (Assessment) Act 2000* s. 6(2) reads as follows:

“

- (2) In the event of a cessation of ownership or control referred to in section 75JB(5f)(a) or (b) of the *Stamp Act 1921* as inserted by subsection (1) taking place on or after 25 May 2000 and before this Act receives the Royal Assent, the notification required by

section 75JB(5f)(c) of that Act is to be given within one month after this Act receives the Royal Assent.

”

³⁶ The *Revenue Laws Amendment (Assessment) Act 2000* s. 8(2), (3) and (4) read as follows:

“

- (2) In subsections (3) and (4) —
 “transitional period” means the period beginning on 25 October 1999 and ending when subsection (1) comes into operation.
- (3) If an exemption under section 75JB of the *Stamp Act 1921* has been granted during the transitional period and the Commissioner is of the opinion that it would not have been granted if subsection (1) had come into operation on 25 October 1999, the claw-back under Part IIIBAAA of that Act applies.
- (4) Section 75JDA(4) of the *Stamp Act 1921* does not apply to a requirement under section 75JC(5) of that Act if the determination under section 75JC was made during the transitional period.

”

³⁷ The *Stamp Amendment Act (No. 3) 2000* s. 21 reads as follows:

“

21. Transitional

- (1) In this section —
 “amended provisions” means the provisions of Part IIIBA and sections 32, 73DA, 75HA, 75I and 75J of the *Stamp Act 1921* as enacted after the coming into operation of this Act;
 “existing provisions” means the provisions of Part IIIBA and sections 32, 73DA, 75HA, 75I and 75J of the *Stamp Act 1921* as enacted before the coming into operation of this Act.
- (2) Subject to subsection (3), the existing provisions continue to apply to and in relation to an acquisition of an interest in a corporation that occurred before 10 August 2000 and the amended provisions do not apply to it.
- (3) Subsection (2) does not affect the operation of the amended provisions in relation to an acquisition of an interest that occurred before 10 August 2000 in so far as those provisions have effect for the purpose of determining whether an acquisition that occurred

on or after 10 August 2000 is a relevant acquisition for the purposes of those provisions.

- (4) If —
- (a) a legally enforceable agreement in writing was executed before 10 August 2000;
 - (b) that agreement created before 10 August 2000 an entitlement to an interest in a corporation; and
 - (c) that entitlement resulted or results in that interest being acquired on or after 10 August 2000 but before 1 January 2001,

the acquisition of that interest is to be regarded for the purposes of subsections (2) and (3) as having occurred before 10 August 2000.

- (5) Despite section 76AG(3) or 76AN(2), as the case may be, of the amended provisions, if —
- (a) an acquisition of an interest in a corporation occurred on or after 10 August 2000 but before this Act receives the Royal Assent;
 - (b) a statement has to be lodged under section 76AG or 76AN in respect of that acquisition because of the operation of the amended provisions; and
 - (c) the existing provisions would not have required such a statement to be lodged,

the statement may be lodged at any time before the end of the period of 3 months after the day on which this Act receives the Royal Assent.

”

³⁸ Between 16 May 2002 and 30 June 2002, the amendments in Part 4 of the *Stamp Amendment (Budget) Act 2002* operated in relation to policies of insurance issued under the *Motor Vehicle (Third Party Insurance) Act 1943* that —

- (a) were effected or renewed on or after 16 May 2002 but before 1 July 2002; and
- (b) are valid for a period commencing on or after 1 July 2002.

See section 2(4) of the *Stamp Amendment (Budget) Act 2002*.

³⁹ The *Stamp Amendment (Budget) Act 2002* s. 5 reads as follows:

“

5. Transitional

Despite the amendments effected by this Part, the *Stamp Act 1921* as in force immediately before 1 July 2002 continues to apply to

and in relation to instruments of a kind referred to in the Second Schedule item 4(1) to that Act that were executed before 1 July 2002.

⁴⁰ The *Stamp Amendment (Budget) Act 2002* s. 9 reads as follows:

“

9. Transitional

- (1) Despite the amendments effected by this Part, the *Stamp Act 1921* as in force immediately before the commencement day continues to apply to and in relation to the issue or transfer of a motor vehicle licence the application for which was made before the commencement day.
- (2) Despite subsection (1), if —
 - (a) the commencement day is after 1 July 2002;
 - (b) an application for the issue or transfer of a motor vehicle licence is made to a licensing authority on or after 1 July 2002; and
 - (c) stamp duty in respect of the issue or transfer of the licence is not paid before the commencement day,

then the *Stamp Act 1921* as amended by this Part applies to and in relation to the issue or transfer of the licence.

- (3) If, under section 76C(9), (10) or (10C) of the *Stamp Act 1921*, the amount of duty payable in respect of the issue or transfer of a licence is assessed before the commencement day, then the *Stamp Act 1921* as in force immediately before that day continues to apply to and in relation to the issue or transfer of the licence and the assessment.
- (4) In this Part —

“commencement day” means day on which this Part comes into operation.

⁴¹ The *Taxation Administration (Consequential Provisions) (Taxing) Act 2002* s. 3 and 4 and Pt. 4 Div. 1, 2 and 6 read as follows:

“

3. Relationship with other Acts

The *Taxation Administration Act 2003* is to be read with this Act as if they formed a single Act.

4. **Meaning of terms used in this Act**

The Glossary at the end of the *Taxation Administration Act 2003* defines or affects the meaning of some of the words and expressions used in this Act and also affects the operation of other provisions.

Part 4 — Transitional provisions

Division 1 — Interpretation

33. **Definitions**

In this Part —

“**commencement day**” means the day on which the *Taxation Administration Act 2003* comes into operation;

“**old Act**” means —

- (a) an Act repealed by section 5;
- (b) the old Stamp Act; or
- (c) section 41 of the *Metropolitan Region Town Planning Scheme Act 1959* as in force immediately before the commencement day;

“**old Stamp Act**” means the *Stamp Act 1921* as in force immediately before the commencement day;

“**substantive provisions**”, in relation to an old Act, means the provisions of the old Act other than those dealing with matters dealt with in the *Taxation Administration Act 2003*.

Division 2 — General transitional provisions

34. **General transitional arrangements**

- (1) Section 37(1) of the *Interpretation Act 1984*, except paragraphs (a) and (b), does not apply in relation to the repeal of an old Act.
- (2) The repeal of an old Act does not, unless the contrary intention appears —
 - (a) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;
 - (b) affect any duty, obligation, liability, or burden of proof imposed, created, or incurred prior to the repeal;
 - (c) subject to section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995*, affect any penalty or forfeiture incurred or liable to be incurred in respect of an offence committed against the old Act; or
 - (d) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege,

status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture.

- (3) Subject to subsections (4) and (5) —
- (a) a right, interest, title, power, privilege, duty, obligation, liability or burden of proof referred to in subsection (2)(a) or (b) may be exercised or enforced;
 - (b) a penalty or forfeiture referred to in subsection (2)(c) may be imposed and enforced; and
 - (c) an investigation, legal proceeding or remedy referred to in subsection (2)(d) may be instituted, continued, or enforced,
- as if the substantive provisions of the relevant old Act —
- (d) had not been repealed;
 - (e) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
 - (f) had been amended to make any modifications necessary for this section to have effect.
- (4) If an objection, appeal or other legal proceeding (the “**action**”) was instituted under an old Act and was not finally determined before the commencement day —
- (a) the action may be continued;
 - (b) any requirement to pay interest on an amount of tax determined in the action to have been overpaid applies and may be enforced;
 - (c) any penalty may be imposed and enforced; and
 - (d) any decision, order or determination made in the action has effect, and may be enforced,
- as if this Act and the taxation Acts had not commenced.
- (5) If the time limited by an old Act for doing anything is longer than the time limited by a taxation Act for doing the equivalent thing under that Act, then in relation to a matter to which subsection (3) applies, the time limited under the old Act applies in relation to the doing of the thing under the taxation Act.
- (6) If the time limited by an old Act for commencing proceedings in relation to an offence under that Act is shorter than the 5 year period limited by section 111 of the *Taxation Administration Act 2003*, then despite section 111, proceedings in relation to an offence under the old Act (including an offence under a provision of the old Act that is continued in force under this Part) cannot be

commenced after the expiry of the shorter period provided for by the old Act.

- (7) In this section a reference, in relation to the *Stamp Act 1921*, to the repeal of the old Act is a reference to the amendment of the Act by the *Stamp Amendment Act 2003*.

35. Commissioner not to increase tax liability

Despite Part 3 Division 1 of the *Taxation Administration Act 2003*, the Commissioner must not make a reassessment that increases the amount of tax a person is liable to pay in relation to anything that happened before the commencement day if the reassessment could not have been made under the relevant old Act.

36. Delegations

A delegation made under an old Act and in force immediately before the commencement day continues in force on and after that day as a delegation made under section 10 of the *Taxation Administration Act 2003*.

Division 6 — Stamp duty

43. Adhesive stamps (*Stamp Act 1921*, s. 15, 21 and 23)

- (1) Despite its repeal by the *Stamp Amendment Act 2003*, section 15 of the old Stamp Act continues in force for 12 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
- (2) Despite their repeal by the *Stamp Amendment Act 2003*, sections 21 and 23 of the old Stamp Act continue in force for 3 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
- (3) If adhesive stamps affixed to an instrument have been cancelled in accordance with the old Stamp Act (including the provisions of the old Stamp Act continued in force by subsections (1) and (2)) the instrument is taken to have been endorsed in accordance with section 17C of the *Stamp Act 1921*.

44. Printing of “Stamp Duty Paid” on cheques (*Stamp Act 1921*, s. 52)

- (1) An authorisation of a financial institution granted under section 52 of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.

- (2) Any requirement that applied, immediately before the commencement day, to a person to whom an authorisation continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the authorisation was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

45. First home owners — reassessment (*Stamp Act 1921, s. 75AG*)

Despite section 17(1) of the *Taxation Administration Act 2003*, if property that included a dwellinghouse was conveyed or transferred before the commencement day, an application for a reassessment of the duty payable on the conveyance or transfer on the basis that a rebate under section 75AG of the old Stamp Act should have been, but was not, allowed cannot be made more than 12 months after the date of the original assessment.

46. Reassessment of duty on grant or transfer of vehicle licences (*Stamp Act 1921, s. 76C(18) and (19), 76CA(3a) and 76CB(9)*)

- (1) This section applies in relation to a grant or transfer of a licence that occurred before the commencement day.
- (2) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should not have been paid because —
- (a) in the case of a grant — no vehicle licence fee was payable under the *Road Traffic Act 1974* in respect of the licence; or
 - (b) in the case of a transfer — had the transferee applied for the licence on the date of the transfer no vehicle licence fee would have been payable under the *Road Traffic Act 1974*,

cannot be made more than 15 months after the licence was granted or transferred.

- (3) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty paid on the transfer of a licence on the basis that the duty should have been, but was not, charged in accordance with item 6 of the Second Schedule to the old Stamp Act because the transfer did not pass a beneficial interest, cannot be made more than 12 months after the licence was transferred.
- (4) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should have been,

but was not, assessed on the net market value of the vehicle (as defined in section 76CB of the old Stamp Act), cannot be made more than 12 months after the licence was granted or transferred.

47. Alternative to stamping individual insurance policies (Stamp Act 1921, s. 95A)

- (1) A permission granted under section 95A of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

48. Workers' compensation insurance (Stamp Act 1921, s. 97 and item 16 of the Second Schedule)

- (1) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the issue or renewal of a policy of insurance that occurred before the commencement day on the basis that the duty was assessed under item 16(1)(a)(i) of the Second Schedule to the old Stamp Act but should have been assessed under item 16(1)(a)(ii), cannot be made more than 2 years after the beginning of the insurance policy's cover period.
- (2) Despite the amendment of Schedule 2 item 16(1)(a) of the *Stamp Act 1921*, on and for 12 months after the commencement day —
 - (a) the reference in Schedule 2 item 16(1)(a)(i)(A) to the *Pay-roll Tax Assessment Act 2002* includes a reference to the *Pay-roll Tax Assessment Act 1971*; and
 - (b) the reference in Schedule 2 item 16(1)(a)(i)(B) to section 39 or 40 of the *Pay-roll Tax Assessment Act 2002* includes a reference to section 10 of the *Pay-roll Tax Assessment Act 1971*.

49. Payment of duty by returns (Stamp Act 1921, s. 112V)

- (1) A permission granted under section 112V of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement under the *Taxation Administration Act 2003*.

- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

⁴² The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

“

2. Commencement

- (1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.
- (2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

3. Interpretation

In this Part —

“**Financial Services Reform Act**” means the *Financial Services Reform Act 2001* of the Commonwealth;

“**FSR commencement time**” means the time when Schedule 1 to the Financial Services Reform Act comes into operation;

“**statutory rule**” means a regulation, rule or by-law.

4. Validation

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial

Services Reform Act had not commenced, is taken to be valid and lawful.

- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —
- (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
 - (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,
- is taken not to be valid, and to never have been valid.

43 The *Stamp Amendment (Budget) Act 2003* s. 4(7) reads as follows:

- “
- (7) Despite the amendments made by this section, the *Stamp Act 1921* as in force immediately before 1 July 2003 continues to apply to and in relation to instruments of a kind referred to in the Second Schedule item 4(1) to that Act that were executed before 1 July 2003.
- ”

44 The amendment in the *Business Tax Review (Assessment) Act (No. 2) 2003* s. 107(5) is not included because the section it sought to amend was previously amended by the *Acts Amendment (Equality of Status) Act 2003* (No. 28 of 2003) s. 192(2).

45 The *Revenue Laws Amendment (Tax Relief) Act (No. 2) 2004* s. 9 reads as follows:

“

9. Application provision

- (1) In this section —
- “**conveyance or transfer**” of property includes a contract, agreement or other instrument that is chargeable with duty as a conveyance or transfer of property;
 - “**duty**” means duty payable under the *Stamp Act 1921*;
 - “**existing instrument**” means a conveyance or transfer of property (the “**dutiable property**”) that was first executed before 29 October 2004;

“former provisions” means provisions of the *Stamp Act 1921* that are amended by this Part, as those provisions were enacted at any time before 29 October 2004.

- (2) Despite the amendments made by this Part, former provisions that applied in relation to an existing instrument before 29 October 2004 —
- (a) continue to apply in relation to the existing instrument; and
 - (b) if an instrument first executed on or after 29 October 2004 replaces the existing instrument, apply in relation to the replacement instrument to the extent to which it is a conveyance or transfer of the dutiable property.
- (3) Subject to subsection (2)(b), the provisions of the *Stamp Act 1921* as amended by this Part apply in relation to a conveyance or transfer of property first executed on or after 29 October 2004.

46 The *Revenue Laws Amendment Act 2005* s. 13(5) reads as follows:

- (5) A notification required under the *Stamp Act 1921* section 75JB(4) as amended by subsection (4) does not have to be given before the end of the period of one month after the day on which this Act receives the Royal Assent.

47 The *Revenue Laws Amendment Act 2005* s. 30 reads as follows:

30. Saving and transitional provisions

- (1) In this section —

“amended provisions” means the *Stamp Act 1921* sections 76AI, 76AP, 76AR, 76ATB, 76ATI, 76ATK and 76AW as enacted after the coming into operation of sections 18 to 25 of this Act;

“existing provisions” means the *Stamp Act 1921* sections 76AI, 76AP, 76AR, 76ATB, 76ATI, 76ATK and 76AW as enacted before the coming into operation of sections 18 to 25 of this Act;

“relevant acquisition” has the meaning given by the *Stamp Act 1921* section 76AJ, 76AQ, 76ATC or 76ATJ (as the case requires).

-
- (2) The existing provisions continue to apply in relation to a relevant acquisition made on or before 18 May 2005 and the amended provisions do not apply to it.
 - (3) Despite the *Stamp Act 1921* section 76AG(1), 76AN(1), 76AT(1) or (2) or 76ATG(1) or (2), as the case may be, if —
 - (a) an acquisition of an interest in a corporation was made on or after 18 May 2005 and before the day on which this Act receives the Royal Assent;
 - (b) a statement has to be lodged under section 76AG, 76AN, 76AT or 76ATG in respect of that acquisition because of the operation of the amended provisions; and
 - (c) the existing provisions would not have required such a statement to be lodged,the statement does not have to be lodged before the end of the period of 2 months after the day on which this Act receives the Royal Assent.

⁴⁸ On the date as at which this compilation was prepared, the *Housing Societies Repeal Act 2005* s. 30 had not come into operation. It reads as follows:

“

30. Stamp Act 1921 amended

- (1) The amendments in this section are to the *Stamp Act 1921*.
- (2) The Third Schedule is amended by deleting items 3(2) and 7(11).

⁴⁹ The *Stamp Amendment Act 2005* s. 8 reads as follows:

“

8. Retrospective effect of certain provisions

- (1) A person who was a dealer at any time during the retrospective period is to be treated, in respect of the person's liability to duty under Part IIIC during that period, as if Part IIIC included a provision to the effect of the *Stamp Act 1921* section 76D(5a) (excluding paragraph (b)) as inserted by section 5(1) of this Act.
- (2) Despite the *Taxation Administration Act 2003* section 17, the Commissioner may make any assessment or reassessment necessary to give effect to subsection (1).
- (3) For the purposes of assessing or reassessing the liability, at a particular time during the retrospective period, of a person who was a dealer at that time —

- (a) a reference in subsection (1) to Part IIIC is a reference to the *Stamp Act 1921* Part IIIC as in force at that time; and
 - (b) a reference to a dealer in subsection (1) is a reference to a dealer as defined in the *Stamp Act 1921* Part IIIC as in force at that time.
- (4) In this section —
- “**assessment**” has the meaning given to that term in the *Taxation Administration Act 2003*;
 - “**Commissioner**” has the meaning given to that term in the *Taxation Administration Act 2003*;
 - “**reassessment**” has the meaning given to that term in the *Taxation Administration Act 2003*;
 - “**retrospective period**” means the period beginning on 23 August 2000 and ending on the day before the day on which this Part comes into operation.

⁵⁰ The *Stamp Amendment Act 2005* s. 10(2) reads as follows:

- “
- (2) The *Stamp Act 1921* sections 86A(1) and 86B(1) do not apply to mortgages (as defined in the *Stamp Act 1921* section 82) executed before 1 January 2006.
- ”

⁵¹ ~~On the date as at which this compilation was prepared, the *Stamp Amendment (Taxing) Act 2005* s. 4 and 5 had not come into operation. They read as follows:~~

~~4. **Second Schedule amended**~~

~~The Second Schedule item 16 is deleted and the following item is inserted instead—~~

~~16. **POLICY OF INSURANCE**~~

- | | | |
|--|----------------------------|---|
| (1) A return under section 94 | See section 94A | The insurer |
| (2) A statement under section 95A | See section 95A | The person required to lodge the statement |

~~5. **Third Schedule amended**~~

~~The Third Schedule item 8 is deleted.~~

51 [Footnote no longer applicable.](#)

⁵² The *Stamp Amendment (Assessment) Act 2005* s. 7 ~~reads~~ [and 8 read](#) as follows:

“

7. Transitional provisions — offshore risk policies

- (1) This section applies to the issue or renewal of a policy of insurance that effects offshore risk insurance, or both offshore risk insurance and other insurance, where the issue or renewal was effected on or after 1 July 1997 but before this Act received the Royal Assent.
- (2) If the issue or renewal of the policy was effected before the commencement of the *Taxation Administration Act 2003*, that Act applies to a reassessment as if the issue or renewal had been effected after the commencement of that Act.
- (3) Despite section 17 of the *Taxation Administration Act 2003*, the Commissioner may make a reassessment even if the respective original assessment was made more than 5 years before the reassessment.
- (4) However, a person is not entitled to apply for a reassessment more than 12 months after the day on which this Act receives the Royal Assent.
- (5) Where the policy of insurance effects both offshore risk insurance and other insurance then, despite section 35 of the *Taxation Administration (Consequential Provisions) Act 2002*, the Commissioner may make a reassessment even if the reassessment increases the amount of duty that a person is liable to pay in relation to the issue or renewal of the policy to the extent that it effects insurance other than offshore risk insurance.
- (6) In this section —
 - “**duty**” means duty payable under the *Stamp Act 1921*;
 - “**offshore risk insurance**” has the meaning given to that term in section 97 of the *Stamp Act 1921* as inserted by section 5 of this Act;
 - “**original assessment**” has the meaning given to that term in the *Taxation Administration Act 2003*;
 - “**policy of insurance**” has the meaning given to that term in Part IIIF of the *Stamp Act 1921* as in force immediately before this Act received the Royal Assent;

“reassessment” means a reassessment as defined in the *Taxation Administration Act 2003*, being a reassessment of the amount of duty chargeable in respect of the issue or renewal of a policy of insurance to which this section applies.

”.

⁵³ ~~On the date as at which this compilation was prepared, the *Stamp Amendment (Assessment) Act 2005* s. 6 and 8 had not come into operation. They read as follows:~~

“

~~6. Part IIIF replaced~~

~~Part IIIF is repealed and the following Part is inserted instead~~

“

Part IIIF — Insurance

Division 1 — Interpretation in Part IIIF and connection to the State

92. — Terms used in this Part

~~In this Part, unless the contrary intention appears —~~

~~“accident insurance” means insurance for any payment agreed to be made on the death of any person only from accident or violence or otherwise than from a natural cause or as compensation for personal injury;~~

~~“contract of insurance” means a contract of insurance that effects general insurance (whether or not it also effects other kinds of insurance);~~

~~“Defence Service Homes Insurance Scheme” has the meaning given to that term in section 38 of the *Defence Service Homes Act 1918* of the Commonwealth;~~

~~“Division 4 insurer” has the meaning given to that term in section 95;~~

~~“financial services licensee” has the meaning given to that term in section 761A of the *Corporations Act*;~~

~~“general insurance” has the meaning given to that term in section 92A;~~

~~“health insurance business” has the meaning given to that term in section 67 of the *National Health Act 1953* of the Commonwealth;~~

~~“instalment” means a portion of a premium;~~

-
- ~~—“insurer” means the Insurance Commission of Western Australia or a person who—~~
- ~~—(a) writes general insurance otherwise than as an intermediary of an insurer (including a Division 4 insurer); and~~
 - ~~—(b) is either—~~
 - ~~—(i) authorised under the *Insurance Act 1973* of the Commonwealth; or~~
 - ~~—(ii) registered under the *Life Insurance Act 1995* of the Commonwealth;~~
- ~~—“intermediary”, of an insurer, means—~~
- ~~—(a) a representative of the insurer; or~~
 - ~~—(b) a financial services licensee, who is not otherwise a representative of the insurer, who arranges or effects insurance for or with the insurer;~~
- ~~—“life insurance” means insurance provided under or in accordance with a policy of insurance or assurance on any life or lives or on any event or contingency relating to or depending on any life or lives, other than a policy of accident insurance;~~
- ~~—“offshore risk insurance” means any kind of insurance that is applicable to—~~
- ~~—(a) property outside Australia; or~~
 - ~~—(b) any liability, loss or damage that arises or is brought about as a result of the occurrence of an event outside Australia;~~
- ~~—“premium” means the total consideration paid to an insurer (including a Division 4 insurer) by or on behalf of an insured person to effect insurance, without deductions for any amounts paid or payable, or allowed or allowable, by way of commission or discount to an intermediary of the insurer, but does not include—~~
- ~~—(a) an amount paid to an intermediary of the insurer by the insured person as a fee if the amount can be clearly identified as a fee; or~~
 - ~~—(b) an amount paid on account of duty under this Part or interstate duty;~~
- ~~—“registered insurer” means an insurer who is registered under section 93A;~~
- ~~—“registered organisation” has the meaning given to that term in section 4 of the *National Health Act 1953* of the Commonwealth;~~

~~—“reinsurance” means the indemnification of one party by another against liability or payment arising under a contract or contracts of insurance or reinsurance;~~

~~—“representative” has the meaning given to that term in section 910A of the Corporations Act;~~

~~—“return period”, of a registered insurer, has the meaning given in section 94B.~~

92A. — Meaning of general insurance and connection to the State

~~(1) “General insurance” means any kind of insurance that is applicable to—~~

~~(a) property in Western Australia; or~~

~~(b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, Western Australia,~~

~~— or both.~~

~~(2) General insurance does not include any of the following—~~

~~(a) life insurance;~~

~~(b) insurance against an employer’s liability to pay compensation under the *Workers’ Compensation and Injury Management Act 1981*;~~

~~(c) reinsurance;~~

~~(d) insurance in respect of goods in the course of being transported, whether by rail, road, air or sea, and whether within Western Australia or elsewhere;~~

~~(e) insurance in respect of a marine hull used primarily for commercial purposes;~~

~~(f) insurance effected by an exempt body (as defined in section 119);~~

~~(g) insurance issued by a registered organisation in the course of its health insurance business;~~

~~(h) insurance under the Defence Service Homes Insurance Scheme;~~

~~(i) offshore risk insurance;~~

~~(j) insurance of a class prescribed by the regulations.~~

92B. — Additional insurance — life riders

~~(1) This section does not apply to a policy of life insurance unless the insured person’s place of residence is in Western Australia.~~

~~(2) If —~~

- ~~— (a) — a policy of life insurance, in addition to providing the insurance referred to in the definition of “life insurance” in section 92, also provides for the payment of a benefit on the happening of a contingency or event that does not relate to or depend on a life or lives (the “**additional insurance**”); and~~
- ~~— (b) — an identifiable part of the premium payable in respect of the policy is attributable to the additional insurance;~~
- ~~— then the additional insurance provided under or in accordance with the policy is to be taken to be general insurance and not life insurance.~~
- ~~— (3) — Subsection (2) applies —~~
 - ~~— (a) — whether or not the life insurance and the additional insurance are distinct matters for the purposes of section 19; and~~
 - ~~— (b) — whether or not payment of a benefit under the additional insurance component of the policy —~~
 - ~~— (i) — will or may reduce the benefit payable under the life insurance component of the policy; or~~
 - ~~— (ii) — will or may terminate the policy.~~

92C. — Payment of premiums

- ~~— (1) — For the purposes of this Part, a premium, or an instalment, is paid when the first of the following events occurs —~~
 - ~~— (a) — the premium or instalment is received by the insurer; or~~
 - ~~— (b) — an account of the insurer is credited with the amount of the premium or instalment.~~
- ~~— (2) — A premium, or an instalment (apart from the case where the premium or instalment is received directly by an insurer) is taken to have been received by an insurer if it is received by another person on the insurer’s behalf.~~
- ~~— (3) — In this section, a reference to an insurer includes a reference to a Division 4 insurer.~~

Division 2 — Registration of insurers

93. — Insurers to be registered

- ~~— (1) — On becoming an insurer, the insurer must apply to be registered under section 93A.~~
- ~~— (2) — An application for registration must be made in an approved form on or before the 21st day after the end of the month in which the insurer became an insurer.~~

~~Penalty: \$20 000.~~

~~**93A. Registration of insurers**~~

- ~~(1) The Commissioner must register an insurer that applies for registration.~~
- ~~(2) The Commissioner must register an insurer that has not applied for registration if satisfied that the insurer ought to be registered for the purposes of this Part.~~
- ~~(3) The Commissioner must give notice to an insurer of its registration.~~

~~**93B. Cancelling registration of insurers**~~

- ~~(1) The Commissioner may cancel the registration of an insurer on his or her own initiative or at the request of the insurer.~~
- ~~(2) The Commissioner is not to cancel an insurer's registration unless satisfied that registration of the insurer is no longer necessary for the purposes of this Part.~~
- ~~(3) A cancellation has effect on and from the day specified in the notice of cancellation of registration, which may be a day that is earlier than the day on which the notice is issued.~~

~~**Division 3 — Duty payable by insurers**~~

~~**94. Lodging returns and paying duty**~~

- ~~(1) A registered insurer must —
 - ~~(a) lodge a return in an approved form for each return period of the insurer; and~~
 - ~~(b) pay the duty payable on the return (if any);~~on or before the 21st day after the end of the return period.
~~Penalty: \$5 000.~~~~
- ~~(2) The insurer must lodge the return even if no duty is payable on the return.~~
- ~~(3) On becoming an insurer, the insurer must, for the month in which the insurer became an insurer and for each subsequent month until the month in which the insurer becomes a registered insurer or ceases to be an insurer —
 - ~~(a) lodge a return in an approved form for the month; and~~
 - ~~(b) pay the duty payable on the return (if any);~~on or before the 21st day after the end of the month.
~~Penalty: \$5 000.~~~~

~~(4) The month referred to in subsection (3) is to be treated as a return period for the purposes of this Part.~~

94A. Calculating the amount of duty payable on a return

~~(1) The amount of duty payable on the return for a return period is 10% of the assessable amount.~~

~~(2) The assessable amount for a return period of an insurer is the sum of each premium or instalment (to the extent to which the premium or instalment is attributable to general insurance) paid to the insurer in the return period in respect of contracts of insurance entered into by or on behalf of the insurer.~~

~~(3) Section 96 has an effect on the extent to which the premium or instalment is attributable to general insurance.~~

94B. Return period of an insurer

~~The return period of a registered insurer is—~~

~~(a) one month, if a special tax return arrangement is not in force; or~~

~~(b) the return period provided in a special tax return arrangement in force under section 49 of the *Taxation Administration Act 2003*.~~

Division 4 — Duty payable by insured persons

95. Meaning of insurer in this Division

~~In this Division—~~

~~“Division 4 insurer” means a person, other than the Insurance Commission of Western Australia, who writes general insurance, otherwise than as an intermediary of an insurer (including a Division 4 insurer), but who is not authorised under the *Insurance Act 1973* of the Commonwealth and not registered under the *Life Insurance Act 1995* of the Commonwealth.~~

95A. Insured person to lodge statement and pay duty

~~(1) If a person obtains, effects or renews general insurance with a Division 4 insurer, the person must—~~

~~(a) lodge a statement in an approved form; and~~

~~(b) pay the duty payable on the statement,~~

~~on or before the 21st day after the end of the month, or each month, in which the person paid the premium or an instalment for the insurance.~~

~~Penalty: \$5 000.~~

- ~~—(2) The amount of duty payable on the statement is 10% of the proportion of the premium or instalment that is attributable to general insurance.~~
- ~~—(3) Section 96 has an effect on the proportion of the premium or instalment that is attributable to general insurance.~~
- ~~—(4) This section does not require a separate statement to be prepared if the document evidencing the insurance contains all the information required in a statement, in which case, the document is taken to be the statement.~~

~~**95B. Insurer and intermediary to notify Commissioner of contracts of insurance**~~

- ~~—(1) A Division 4 insurer must, for each month in which the insurer is paid a premium or an instalment in respect of a contract of insurance entered into by or on behalf of the insurer, notify the Commissioner in the approved form, of —
 - ~~—(a) each such contract of insurance for which the insurer has been paid a premium or instalment in that month; and~~
 - ~~—(b) the amounts of those premiums or instalments,~~on or before the 21st day after the end of the month.
~~Penalty: \$5 000.~~~~
- ~~—(2) An intermediary of a Division 4 insurer must, for each month in which the intermediary receives a premium or an instalment in respect of a contract of insurance for a Division 4 insurer, notify the Commissioner in the approved form, of —
 - ~~—(a) each contract of insurance for which the intermediary has received a premium or instalment for a Division 4 insurer; and~~
 - ~~—(b) the amounts of those premiums or instalments,~~on or before the 21st day after the end of the month.
~~Penalty: \$5 000.~~~~
- ~~—(3) If a person complies with a requirement in subsection (1) or (2) in respect of a contract of insurance then the requirement in the other subsection is to be taken to have been complied with.~~

~~**Division 5 — General provisions**~~

~~**96. Apportionment of premiums and instalments**~~

- ~~—(1) This section applies to a contract of insurance that effects both general insurance and other insurance.~~

- ~~(2) If the proportion of the premium that is attributable to general insurance is not ascertainable at the time the contract is entered into, the proportion is the proportion calculated in accordance with the applicable method of apportionment from time to time established as a practice of the Commissioner and published under section 127 of the *Taxation Administration Act 2003*.~~
- ~~(3) A method of apportionment published under section 127 of the *Taxation Administration Act 2003* may, for a particular class of contracts of insurance, have the effect that the proportion of the premium that is attributable to general insurance is zero.~~
- ~~(4) If the Commissioner is satisfied that a premium or instalment has not been, or cannot be, appropriately apportioned under this section, the Commissioner may —~~
- ~~(a) determine the appropriate proportions; and~~
 - ~~(b) if necessary reassess the amount of duty payable in respect of the contract of insurance.~~
- ~~(5) The extent to which an instalment is attributable to general insurance is the same as the extent to which the premium is attributable to general insurance under this section.~~

96A. Refunds

- ~~(1) If —~~
- ~~(a) an insurer has paid duty in respect of a contract of insurance in accordance with section 94A; and~~
 - ~~(b) the insurer has refunded some or all of the premium for the contract;~~
- ~~the insurer is entitled to a refund of the duty paid to the extent to which the premium was refunded.~~
- ~~(2) If —~~
- ~~(a) a person has paid duty in respect of a contract of insurance in accordance with section 95A(2); and~~
 - ~~(b) the Division 4 insurer has refunded some or all of the premium for the contract;~~
- ~~the person is entitled to a refund of the duty paid to the extent to which the premium was refunded.~~
- ~~(3) For the purposes of this section, an insurer (including a Division 4 insurer) refunds an amount of a premium if the insurer or an intermediary of the insurer —~~
- ~~(a) repays the amount to the insured person; or~~
 - ~~(b) otherwise provides a benefit to the insured person to the value of the amount refunded.~~

96B. — Records

- ~~(1) An insurer and a person who is liable to pay duty under Division 4 must keep —~~
- ~~(a) the records that are prescribed in the regulations for the purposes of this section (if any); and~~
 - ~~(b) any other records necessary to enable the Commissioner to determine the insurer's or the person's liability to pay duty under this Part.~~
- ~~Penalty: \$20 000.~~
- ~~(2) A person who is required to notify the Commissioner under section 95B (disregarding the effect of section 95B(3)) must keep the records necessary to enable the Commissioner to verify the information in the notice.~~
- ~~Penalty: \$20 000.~~

»

8. Transitional provisions — Part IIIF

- (1) An expression used in this section that is given a meaning in the *Stamp Act 1921* (including old Part IIIF and new Part IIIF) has the meaning so given unless the contrary intention appears.
- (2) New Part IIIF does not apply to or in respect of premiums or instalments paid to an insurer after commencement in respect of which duty, under old Part IIIF, became payable before commencement.
- (3) A person who was an insurer (as defined in new Part IIIF) immediately before commencement is to be taken to have become an insurer on commencement for the purposes of new Part IIIF.
- (4) In this section —
 - “**commencement**” means the time at which section 6 of this Act comes into operation;
 - “**new Part IIIF**” means Part IIIF of the *Stamp Act 1921* as in force after commencement and, for the purposes of this section, is to be taken to include item 16 of the Second Schedule of the *Stamp Act 1921* as in force after commencement;
 - “**old Part IIIF**” means Part IIIF of the *Stamp Act 1921* as in force immediately before commencement and, for the purposes of this section, is to be taken to include item 16 of the Second Schedule and item 8 of the Third Schedule of the *Stamp Act 1921*, as in force immediately before commencement.

⁵³ [Footnote no longer applicable.](#)

⁵⁴ On the date as at which this compilation was prepared, the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 15, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

15. Acts in Schedule 2 amended

The Acts mentioned in Schedule 2 are amended as set out in that Schedule.

Schedule-2, cl. 62 reads as follows:

“

Schedule 2 — Consequential amendments

[s. 15]

62. Stamp Act 1921

- (1) The Second Schedule item 5(1) is amended by deleting “a town planning scheme, including the Metropolitan Region Scheme” and inserting instead —

“ a planning scheme ”.

- (2) The Second Schedule item 5(2) is deleted and the following subitem is inserted instead —

“

- (2) Expressions used in this item have the same meaning as they have in the *Planning and Development Act 2005*.

”

”