

STAMP ACT, 1921-1979.

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Approved for reprint 25th March, 1980.

WESTERN AUSTRALIA.

STAMP.

12° Geo., V., No. XLIV.

No. 10 of 1922.¹

(Affected by Act No. 26 of 1932.)

[As amended by Acts:

No. 53 of 1923, assented to 22nd December, 1923;
No. 23 of 1924, assented to 31st December, 1924;
No. 8 of 1925, assented to 24th September, 1925;
No. 47 of 1925, assented to 31st December, 1925;
No. 17 of 1926, assented to 6th November, 1926;
No. 10 of 1927, assented to 6th December, 1927;
No. 22 of 1928, assented to 21st December, 1928;
No. 11 of 1930, assented to 19th November, 1930;
No. 12 of 1930, assented to 19th November, 1930;
No. 39 of 1931, assented to 26th November, 1931;²
No. 35 of 1941, assented to 19th December, 1941;
No. 40 of 1942, assented to 23rd December, 1942;
No. 20 of 1944, assented to 23rd December, 1944;
No. 11 of 1950, assented to 17th November, 1950;
No. 5 of 1954, assented to 25th August, 1954;
No. 63 of 1954, assented to 30th December, 1954;³
No. 70 of 1957, assented to 6th December, 1957;⁴
No. 64 of 1959, assented to 10th December, 1959;⁵
No. 72 of 1959, assented to 14th December, 1959;⁶
No. 22 of 1960, assented to 11th October, 1960;⁷
No. 41 of 1960, assented to 3rd November, 1960;⁸
No. 21 of 1961, assented to 30th October, 1961;
No. 20 of 1962, assented to 1st October, 1962;
No. 60 of 1962, assented to 30th November, 1962;⁹
No. 69 of 1962, assented to 30th November, 1962;
No. 7 of 1963, assented to 15th October, 1963;
No. 37 of 1963, assented to 19th November, 1963;¹⁰
No. 57 of 1963, assented to 17th December, 1963;
No. 58 of 1963, assented to 17th December, 1963;¹¹
No. 72 of 1965, assented to 25th November, 1965;¹²
No. 113 of 1965, assented to 21st December, 1965;¹³
No. 67 of 1966, assented to 12th December, 1966;¹⁴
No. 90 of 1966, assented to 12th December, 1966;¹⁵
No. 93 of 1966, assented to 12th December, 1966;¹⁶
No. 50 of 1967, assented to 24th November, 1967;¹⁷
No. 54 of 1968, assented to 13th November, 1968;¹⁸
No. 113 of 1969, assented to 28th November, 1969;¹⁹
No. 21 of 1970, assented to 8th May, 1970;²⁰
No. 102 of 1970, assented to 8th December, 1970;²¹
No. 3 of 1971, assented to 13th September, 1971;
No. 29 of 1971, assented to 1st December, 1971;²²
No. 32 of 1972, assented to 16th June, 1972;²³
No. 94 of 1972 (as amended by No. 19 of 1973);²⁴
No. 9 of 1974, assented to 27th September, 1974;²⁵
No. 46 of 1974, assented to 18th November, 1974;²⁶
No. 96 of 1976, assented to 12th November, 1976;²⁷
No. 63 of 1977, assented to 23rd November, 1977;
No. 37 of 1979, assented to 18th October, 1979;²⁸

and reprinted pursuant to the Amendments Incorporation Act, 1938]^{*}

REFERENCES TO AMENDING ACTS.

- ¹ Proclaimed to commence on 1st April, 1922, see *Gazette*, 17th March, 1922, p. 479.
 - ² Proclaimed to commence 1st December, 1931, see *Gazette*, 27th November, 1931, p. 2499.
 - ³ Proclaimed to commence on 1st August, 1955, see *Gazette*, 27th July, 1955, p. 1767.
 - ⁴ Proclaimed to commence on 1st February, 1958, see *Gazette*, 24th January, 1958.
 - ⁵ Proclaimed to commence on 21st December, 1959, see *Gazette*, 18th December, 1959, p. 3337.
 - ⁶ Proclaimed to commence on 1st January, 1960, see *Gazette*, 24th December, 1959, p. 3457.
 - ⁷ Proclaimed to commence on 13th March, 1961, see *Gazette*, 10th March, 1961, p. 653.
 - ⁸ Proclaimed to commence on 1st July, 1961, see *Gazette*, 5th May, 1961, p. 1069.
 - ⁹ Came into operation, 1st January, 1963.
 - ¹⁰ Came into operation on 31st December, 1963, see *Gazette*, 31st December, 1963, p. 4055.
 - ¹¹ Came into operation on 1st July, 1964, see *Gazette*, 5th June, 1964, p. 2335.
 - ¹² Came into operation—as to ss. 7, 8 and paragraph (d), subparagraph (i) of paragraph (h), subparagraphs (i), (ii), (iii) and (v) of paragraph (j), and paragraph (o) of s. 16 on 1st December, 1965; as to ss. 3, 14 and paragraph (c) of s. 16 on 14th February, 1966; as to the remaining provisions of the Act on 1st January, 1966.
 - ¹³ Decimal Currency Act, 1965. Came into operation on the date of assent, except ss. 4 to 9 (both inclusive) which sections came into operation on 14th February, 1966.
 - ¹⁴ Sections 1, 2, 4, 15 (a) 15 (b) and 15 (f) operated from 1st January, 1967; and the remaining sections operated from 1st February, 1967.
 - ¹⁵ Operated from commencement of Act No. 87 of 1966; i.e., 1st January, 1967.
 - ¹⁶ Proclaimed to commence on 1st July, 1967, *Gazette* 23rd June, 1967, p. 1961.
 - ¹⁷ Came into operation 1st December, 1967.
 - ¹⁸ Came into operation on 1st January, 1969, see *Gazette* 13th December, 1968, p. 3809.
 - ¹⁹ Came into operation 1st January, 1969, see *Gazette* 16th December, 1969, p. 4077.
 - ²⁰ Came into operation on 1st July, 1970, see *Gazette* 26th June, 1970, p. 1831.
 - ²¹ Sections 1 and 2 operated from assent. Sections 3, 4, 12 (b), 13, 14, and 15 (a) operated from 1st January, 1971; sections 5, 6, 7, 8, 9, 10, 11 and 15 (b) operated from 1st October, 1970; section 12 (a), (c), (d) and (e) operated from 1st July, 1970.
 - ²² Came into operation on 1st January, 1972. See *Gazette* 10th December, 1971, p. 5169.
 - ²³ Came into operation on 1st July, 1972. See *Gazette* 30th June, 1972, p. 2100.
 - ²⁴ Metric Conversion Act, 1972-1973. The relevant amendments included in this reprint effective from 1st July, 1973. See *Gazette* 22nd June, 1973, p. 2379.
 - ²⁵ Sections 3, 4, 8, 10 Proclaimed 1st January, 1975; sections 5, 6, 9 Proclaimed 1st December, 1974; balance to operate from assent.
 - ²⁶ Proclaimed 1st December, 1974; see *Gazette* 29th November, 1974, p. 5167.
 - ²⁷ Came into operation on 1st January, 1977.
 - ²⁸ Sections 1, 2, 42 and 61 operated from Assent. Balance came into operation on 1st January, 1980; see *Gazette* 7th December, 1979, p. 3769.
- * In this reprint
- (a) references in the marginal and footnotes to:
 - (i) the 1934 reprint are references to the Reprint of the Stamp Act, 1921-1931, contained in the Appendix to the 1933-34 Sessional Volume of Acts;
 - (ii) the 1950 reprint are references to the Reprint of the Stamp Act, 1921-1950, contained in Vol. 5 of the Reprinted Acts (approved for reprint, 3rd April, 1950).
 - (b) the numbering or lettering of parts, sections, subsections, paragraphs, etc., as adopted in the 1950 reprint is retained.
 - (c) Act No. 48 of 1952, wholly repealed by No. 63 of 1954, is omitted.

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.

[Assented to 31st January, 1922.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Stamp Act, 1921-1979*, and shall come into operation on a day to be fixed by proclamation.¹

Short title and commencement. No. 10 of 1922, s. 1, as amended by No. 37 of 1979, s. 1.

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

2A. (1) This Act shall be read and construed subject to the limits of the legislative powers of the State and so as not to exceed those powers, to the intent that, where any provision thereof, but for this section, would be construed as being in excess of those powers, it shall nevertheless be a valid enactment to the extent to which it is not in excess of those powers.

Act to be construed subject to legislative powers of the State. Added by No. 54 of 1968, s. 3.

(2) This section shall be deemed to have come into operation on the date this Act came into operation.

3. The Acts mentioned in the First Schedule to this Act are hereby repealed.

Repeal. First Schedule.

4. (1) In this Act, except so far as the context otherwise requires—

Definitions. Substituted by No. 37 of 1979, s. 4.

“adhesive coupon” means an adhesive coupon in the prescribed form made out and affixed by the Commissioner or any prescribed person to denote the payment of any duty, fine or fee;

¹ See note ¹ on previous page.

Stamp.

“adhesive stamp” means an adhesive stamp in the prescribed form, but does not include an adhesive coupon;

“Commissioner” means the person holding the office of Commissioner of State Taxation under the Public Service Act, 1978;

“die” means any plate, type, machine, tool or implement whatever used for expressing or denoting any duty or the fact that any duty, fine or fee has been paid or that an instrument is duly stamped or is not chargeable with any duty and includes any part of any such plate, type, machine, tool or implement;

“duty” means the stamp duty for the time being chargeable by law;

“executed” and “execution”, with reference to instruments not under seal, mean “signed” and “signature”;

“instrument” includes every document in writing or duplicate or counterpart or copy thereof and every matter or thing enumerated or set forth in the Second Schedule to this Act;

“local authority” means a municipality constituted under the Local Government Act, 1960;

“marketable security” means—

- (a) any stock or share of any municipal or other corporation or company or society;
- (b) any debenture, debenture stock, bond, note or other security of a Government or of any municipal or other corporation or company or society, whether or not constituting a charge on the assets of the Government or municipal or other corporation or company or society;

- (c) any right or interest, whether described as a unit or sub-unit or otherwise, of a beneficiary under a unit trust scheme, the deed relating to which is an approved deed for the purposes of Division 5 of Part IV of the Companies Act, 1961;

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

“paper” includes any sort of material on which words or figures can be expressed;

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

“person” includes body corporate and body unincorporate;

“right in respect of shares” means right of the holder of shares in a corporation or company to have issued to him shares in any corporation or company, whether or not on the payment of any money or other consideration for the lastmentioned shares;

“stamp” means—

- (a) an adhesive stamp;
- (b) a stamp impressed by means of a die; or
- (c) an adhesive coupon,

for denoting any duty, fine or fee;

“stamped”, in relation to an instrument or paper, applies to an instrument or paper—

- (a) to which an adhesive stamp is affixed;
- (b) on which a stamp is impressed by means of a die; or

- (c) to which an adhesive coupon is affixed;

“the Crown” means the Crown in right of the State.

(2) Whenever a word or expression is defined in any Part of this Act, 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 to this Act, be given the same meaning as it bears in that Part unless the context in which it is used in that Schedule otherwise requires.

PART II.—ADMINISTRATION.

Act administered by Commissioner. Substituted by No. 37 of 1979, s. 5.

5. The Commissioner shall have the general administration of this Act.

Power of Commissioner to delegate. Substituted by No. 21 of 1970, s. 30; amended by No. 37 of 1979, s. 6.

6. (1) The Commissioner may, by instrument in writing under his hand, delegate to the person holding the office of Assistant Commissioner or other officer of the staff assisting the Commissioner in the administration of this Act such powers, duties and functions as are conferred or imposed upon the Commissioner by or under this Act and which are specified in the instrument.

(2) A delegation under this section does not prevent the exercise of a power or the performance of a duty or function by the Commissioner.

Powers of Commissioner in relation to entry and documents. Substituted by No. 37 of 1979, s. 7.

7. (1) The Commissioner—

- (a) shall at all reasonable times have full and free access to all buildings and places and to all books, documents and other papers;
- (b) may take copies of or extracts from books, documents and other papers referred to in paragraph (a) of this subsection; and

- (c) may require any person to produce to him for inspection within a reasonable time after demand has been made all instruments liable to duty and all books, documents or other papers relevant thereto in the possession, custody or power of the person.

(2) A person who has in his possession, custody or power any instruments, books, documents or other papers referred to in paragraph (c) of subsection (1) of this section and who, when so required by the Commissioner, refuses or neglects to produce to the Commissioner those instruments, books, documents or other papers commits an offence against this Act.

(3) Whenever any instrument which is produced to or otherwise comes into the hands of the Commissioner appears to him to be chargeable with duty and to be unstamped or insufficiently stamped, he may impound that instrument until the duty and any fine payable under this Act has been paid.

(4) When an instrument has been impounded under subsection (3) of this section, the Commissioner may assess the duty with which the instrument is in his opinion chargeable.

7A. (1) The Commissioner may by notice in writing require any person—

- (a) for any of the purposes of this Act to furnish him within such period as is specified in that notice with such information as is specified therein; or
- (b) to attend and give evidence before him on a date specified in that notice in any case in which it may be necessary to ascertain any facts in order to determine the amount of duty chargeable on any instrument or whether or not any instrument is chargeable with duty and to bring with him such instruments, books, documents and other papers as are specified in that notice.

Power of Commissioner to obtain information and evidence. Added by No. 37 of 1979, s. 7.

(2) The Commissioner by notice in writing may require the information or evidence referred to in subsection (1) of this section to be given—

- (a) on oath and either orally or in writing; or
- (b) by statutory declaration,

and may for that purpose administer an oath.

(3) A person who fails to comply with a requirement made under subsection (1) or (2) of this section commits an offence against this Act.

Power of Commissioner to use information. Repealed and re-enacted by No. 21 of 1970, s. 31. Amended by No. 37 of 1979, s. 8.

8. The Commissioner may use for the purposes of this Act any information concerning the affairs of any other person acquired by him by reason of his office under or for the purposes of any other Act administered by him.

Exchange of information and obligation of secrecy. Repealed and re-enacted by No. 113 of 1969, s. 5. Amended by No. 37 of 1979, s. 9.

9. (1) The Commissioner or any person authorised in writing by him, may communicate—

- (a) to the Commissioner, Second Commissioner or a Deputy Commissioner under any law of the Commonwealth relating to taxation or to any person authorised in writing by any such Commissioner, Second Commissioner or Deputy Commissioner; or
- (b) to the Commissioner or any other officer of any State or Territory of the Commonwealth administering any law of that State or Territory relating to taxation or to any person authorised in writing by any such Commissioner or other officer,

any information respecting the affairs of any person disclosed or obtained under the provisions of this Act.

(2) The Commissioner or any other person who is or has been employed in the administration of this Act, shall not while he is, or after he ceases to be, so employed—

- (a) either directly or indirectly, except in the performance of a function or duty in relation to this Act and in particular in

accordance with subsection (1) of this section, make a record of, or divulge or communicate to any person, any information acquired by him in the course of his being so employed, respecting the affairs of any other person;

- (b) be required to produce in a court a document that is, in the course of his being so employed, in his custody or to divulge or communicate to a court any matter or thing that comes under his notice in the course of his being so employed, except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

(3) A person who contravenes subsection (2) of this section commits an offence against this Act.

10. The Governor may from time to time by regulation prescribe the form, size, and material of the stamps and dies to be used and the mode and place of impressing, affixing or denoting thereupon the value of the same under the provisions of this Act.

Governor to prescribe stamps, dies, etc.

11. The Commissioner shall be the only person authorised in the first instance to issue stamps on behalf of the Crown to any person on payment of the duty denoted by the same.

Commissioner to issue stamps.
Amended by No. 37 of 1979, s. 10.

12. (1) The Commissioner may in writing—

- (a) grant to any person a licence to sell adhesive stamps; and
(b) at any time revoke a licence referred to in paragraph (a) of this subsection.

Commissioner may license vendors of adhesive stamps.
Substituted by No. 37 of 1979, s. 11.

(2) A person to whom a licence has been granted under subsection (1) of this section shall be allowed such commission on the value of adhesive stamps purchased by him for sale as is prescribed.

13. [*Repealed by No. 37 of 1979, s. 12.*]

14. [*Repealed by No. 37 of 1979, s. 12.*]

15. (1) In this section—

Spolled
stamps.
Substituted
by No. 37 of
1979, s. 13.

“unnecessary”, in relation to a stamp which has been affixed to or impressed on an instrument, means unnecessary because—

- (a) an accident or error has occurred in the instrument and rendered it of no avail;
- (b) the party whose signature is necessary to effect the transaction intended by the instrument has died or refused to sign the instrument, which remains incomplete and of no avail;
- (c) failure of consideration has prevented the transaction intended by the instrument from being effected;
- (d) the transaction intended by the instrument has been effected by some other instrument which has been duly stamped;
- (e) in the case of an instrument which is a bill of exchange, the bill of exchange has not been brought into use or presented for acceptance; or
- (f) in the case of an instrument which is delivered as an escrow, the condition on which that instrument is delivered is not and cannot be fulfilled.

(2) Subject to this section, the Commissioner may, if—

- (a) any stamp (in this section called “the spoiled stamp”), having been issued in accordance with this Act, becomes damaged, spoiled, unfit for use or unnecessary;
- (b) application for relief in connexion with the spoiled stamp is made to him; and
- (c) the instrument bearing the spoiled stamp is delivered to him,

after payment of the prescribed spoil fee, give to the applicant stamps of the same amount or value in money or, if the applicant so requests, refund that amount or value to the applicant in cash.

(3) In deciding whether or not to exercise the power conferred on him by subsection (2) of this section, the Commissioner shall have regard to, among other considerations, whether or not a period of more than twelve months has elapsed since the spoiled stamp became damaged, spoiled, unfit for use or unnecessary.

(4) In exercising the power conferred on him by subsection (2) of this section, the Commissioner may waive wholly or in part the prescribed spoil fee.

(5) Notwithstanding anything in this section, the Commissioner may refuse to exercise the power conferred on him by subsection (2) of this section unless all stamped duplicates or counterparts of the instrument to which the spoiled stamp has been affixed are delivered to him for cancellation and any other instruments on which the payment of the duty concerned has been denoted are delivered to him for amendment of that denotation.

PART III.—GENERAL PROVISIONS.

16. (1) From and after the commencement of this Act and subject to subsection (2) of this section, the duties to be charged for the use of the Crown

Charge of duties on instruments.
Amended by No. 21 of 1961, s. 2; No. 3 of 1971, s. 2; No. 37 of 1979, s. 14.
Second Schedule.

on or in respect of the instruments specified in the Second Schedule to this Act shall, subject to this Act, 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.

[*Previous subsection (2) repealed by No. 3 of 1971, s. 2.*]

(2) The duties specified in the Second Schedule to this Act shall be subject to the exemptions specified in any section of, or in the Third Schedule to, this Act and in any other Act for the time being in force.

Duties to be paid in accordance with Act and regulations. Amended by No. 72 of 1965, s. 4; No. 9 of 1974, s. 10; No. 37 of 1979, s. 15.

17. (1) All duties chargeable upon any instruments are to be paid and denoted according to the provisions in this Act contained, and subject to any express provision of this Act or any regulation may be denoted by stamps.

(2) Subject to this Act the Governor may by regulation prescribe the use of impressed stamps, or adhesive coupons or adhesive stamps only, or any two of those modes of denoting duty only, on any class of instruments or under any specified circumstances either generally throughout the State or in any part thereof.

(3) (a) Where the Commissioner thinks it expedient so to do he may, instead of denoting the duty chargeable upon any instrument by stamps, require the amount of that duty to be paid to him in money and on receipt of the money the Commissioner shall issue a receipt therefor, showing that such duty has been paid in respect of those instruments.

(b) Any instrument to which a receipt issued under paragraph (a) of this subsection relates shall, on production of that receipt, be deemed to have been duly stamped.

18. (1) Every instrument shall be written in such a manner as to leave a blank space at least forty 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.

How
instruments
to be
written and
stamped.
Substituted
by No. 37 of
1979, s. 16.

(2) Every instrument written on stamped paper is to be written in such a manner, and every instrument partly or wholly written before being stamped is to be so stamped, that the stamp concerned appears on the first page or face of that instrument and cannot be used for or applied to any other instrument written on the same piece of paper.

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

Instruments
to be
separately
charged with
duty in
certain
cases.

- (a) an instrument containing or relating to several 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.

20. (1) Except when other express provision is made by this Act, any unstamped or insufficiently stamped instrument may be stamped without fine after the execution thereof—

Stamping
instruments
after
execution.
Substituted
by No. 37 of
1979, s. 17.

- (a) if executed within Western Australia, within a period of one calendar month after the date of first execution of that instrument; or
- (b) if executed outside Western Australia, within a period of one calendar month after that instrument was first received in Western Australia.

Stamp.

(2) If an instrument is not presented for stamping within the period referred to in paragraph (a) or (b), as the case may be, of subsection (1) of this section, the instrument shall, in addition to being charged with the appropriate duty, be charged with a fine equal to ten per cent of that duty or a fine of two dollars, whichever is the greater amount.

(3) If the full amount of the duty chargeable on an instrument is not paid within a period of three calendar months after the date of issue of an assessment of duty made by the Commissioner in accordance with this Act in respect of the instrument, the instrument shall, in addition to being charged with the appropriate duty, be charged with a fine equal to ten per cent of that duty or a fine of two dollars, whichever is the greater amount.

(4) Any fine chargeable under subsection (3) of this section shall be in addition to, and not in substitution for, any fine chargeable under subsection (2) of this section.

(5) Any fine charged under subsection (2) or (3) of this section shall be denoted on the instrument concerned by a stamp.

(6) The Commissioner may remit wholly or in part any fine chargeable under this section.

Cancellation
of adhesive
stamps.
Substituted
by No. 37 of
1979, s. 18.

21. (1) Except when otherwise specifically provided by this Act, adhesive stamps affixed to any instrument shall be cancelled by the Commissioner or by any person or class of person prescribed for the purposes of this section before the expiry of the period within which the instrument may in accordance with section twenty of this Act be stamped without fine or, subject to the payment of any fine chargeable under subsection (2) of that section, after the expiry of that period.

(2) Every person who is required or authorised by law to cancel adhesive stamps shall—

- (a) before proceeding to cancel the adhesive stamp concerned, ensure that it is properly affixed to the instrument concerned and sufficient to comply with the requirements of this Act; and
- (b) cancel the adhesive stamp concerned by writing, stamping or legibly marking thereon—
 - (i) his name or initials; or
 - (ii) if he is so required or authorised by virtue of his office, the name of that office.

(3) Every person who—

- (a) being required by law to cancel adhesive stamps, wilfully neglects or refuses duly and effectually to do so in the manner required by subsection (2) of this section; or
- (b) not being required or authorised by law to cancel adhesive stamps, cancels any adhesive stamp,

commits an offence against this Act.

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

23. It is the duty of the Commissioner or any person required or authorised under this Act to impress stamps, make out and affix adhesive coupons or cancel adhesive stamps, to determine whether any instrument produced for stamping or to have the stamp cancelled may be stamped, and the amount of the duty payable, and of the fine (if any), and, in case of doubt on the part of any person other than the Commissioner, the question shall be referred by such person to the Commissioner.

Commissioner or authorised person to determine amount of duty and fine.
Amended by No. 9 of 1974, s. 10; No. 37 of 1979, s. 19.

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

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

Facts and circumstances affecting duty to be set forth in instrument. Amended by No. 113 of 1965, s. 4 (1); No. 37 of 1979, s. 21.

26. (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 every person who, with intent to defraud the Crown—

- (a) executes 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, neglects or omits fully and truly to set forth therein all the said facts and circumstances,

commits an offence against this Act.

(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 duly stamped.

(3) A person who, unless authorised or required by law to do so, alters any instrument in any material respect after it has been duly stamped commits an offence against this Act.

Instruments not duly stamped inadmissible except in criminal proceedings. Amended by No. 67 of 1966, s. 3; No. 102 of 1970, s. 4.

27. Except as otherwise provided by this Act no instrument 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, 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 duly stamped in accordance with the law in force at the time when it was first executed.

28. (1) Every person whose duty it is to receive, register, enrol, enter or record 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 duly stamped or is exempt from duty or that the duplicate or counterpart instrument or copy has been duly stamped under subsection (3) of this section, as the case may be.

No instrument to be registered unless stamped. Substituted by No. 37 of 1979, s. 22.

(2) A person referred to in subsection (1) of this section 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 duly stamped and the Commissioner is satisfied that it is not reasonably practicable to present the original instrument for stamping, he may, 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) When it is intended to lodge a caveat—

- (a) under Part V of the Transfer of Land Act, 1893, in respect of an instrument which is liable to duty, the Registrar of Titles; or
- (b) under the Mining Act, 1904, in respect of an instrument which is liable to duty, the Principal Registrar in the Department of Mines or a warden, as the case may be,

shall refuse to receive the caveat unless that instrument has been duly stamped and is produced for his inspection.

Omission
or insuffi-
ciency of
stamp.

Amended by
No. 9 of
1974, s. 10;
No. 37 of
1979, s. 23.

29. (1) Upon production of an instrument chargeable with any duty as evidence in any court of civil judicature, or before any arbitrator or referee, notice shall be taken by the judge, arbitrator, or referee of any omission or insufficiency of the stamp thereon.

(2) If the instrument is one which may legally be stamped at the time of production, it may, on payment to an officer of the court, or to the arbitrator or referee, of the amount of the unpaid duty, and any fine payable on stamping same, be received in evidence saving all just exceptions on other grounds.

(3) On receiving payment under subsection (2) of this section, the officer of the court, arbitrator or referee concerned shall forthwith transmit to the Commissioner the instrument concerned, together with the duty and any fine paid thereon.

(4) On receiving an instrument transmitted to him under subsection (3) of this section, the Commissioner shall denote the payment of the duty and any fine concerned on the instrument in accordance with the provisions of this Act and return the instrument to the officer of the court, arbitrator or referee who transmitted it to him.

Secondary
evidence.

Amended by
No. 37
of 1979,
s. 24.

30. In proceedings in any court of civil judicature or before any arbitrator or referee secondary evidence of a document may, if the document is one which might then legally be stamped, be admitted saving all just exceptions on other grounds, notwithstanding that such document is subject to duty, and has not been duly stamped, if the amount of the duty or the amount of the deficiency of the duty, and any fine imposed by this Act are paid to an officer of the court or to the arbitrator or referee.

Assessment
of duty by
Commis-
sioner.

Substituted
by No. 37 of
1979, s. 25.

31. (1) Subject to subsection (6) of this section, the Commissioner shall, if required by any other person, or may, of his own volition, express

his opinion with reference to any executed instrument—

- (a) on whether or not that instrument is chargeable with any duty; and
- (b) if he is of the opinion that that instrument is chargeable with any duty, on the amount of duty with which that instrument is chargeable.

(2) Having expressed his opinion under subsection (1) of this section, the Commissioner shall—

- (a) if he is of the opinion that the instrument concerned is chargeable with duty, issue an assessment of duty in respect thereof; and
- (b) endorse on the instrument concerned his opinion—
 - (i) on the amount of duty with which that instrument is chargeable; or
 - (ii) that that instrument is not chargeable with duty,as the case requires.

(3) Every instrument—

- (a) on which the opinion of the Commissioner that that instrument is not chargeable with duty is denoted; or
- (b) which has been stamped in accordance with an assessment of duty issued under subsection (2) of this section in respect of that instrument,

shall be admissible in evidence and available for all purposes.

(4) An instrument on which the duty has been assessed by the Commissioner shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment of duty issued under subsection (2) of this section in respect of that instrument.

(5) The Commissioner may require the person submitting the instrument concerned to furnish him with an abstract thereof and with such information or evidence as the Commissioner deems necessary to satisfy him that all the facts and circumstances affecting the liability of that instrument to duty or to any particular amount of duty are fully and truly set forth therein.

(6) When the Commissioner has made a requirement under subsection (5) of this section, he may, until that requirement has been complied with, refuse to express his opinion with reference to the instrument concerned.

(7) When the duty chargeable on an instrument amounts to two dollars or less than two dollars, the Commissioner may waive that duty and the instrument shall be marked accordingly and shall thereupon be deemed to be duly stamped.

Objection to
assessment.
Substituted
by No. 37 of
1979, s. 26.

32. (1) A person (in this section called "the objector") who is dissatisfied with an assessment of duty made by the Commissioner in accordance with this Act and who pays the amount of duty so assessed and any fine charged under section twenty of this Act within a period of forty-two days after the date of issue of that assessment may, within that period or such longer period after the date of issue of that assessment as the Commissioner may in writing allow, object to that assessment by forwarding to the Commissioner a statement in writing of the grounds for his objection to that assessment.

(2) On receiving an objection under subsection (1) of this section, the Commissioner may confirm or, by reducing the amount of duty payable, modify the assessment of duty to which the objection relates and shall serve on the objector notice in writing of his decision.

(3) If an assessment of duty is modified under subsection (2) of this section, the amount of the reduction concerned shall be such amount as is

fixed by the Commissioner and the Commissioner shall cause that amount, together with the amount, if any, by which any fine charged under section twenty of this Act is thereby reduced, to be refunded to the objector.

33. (1) When a person (in this section called "the appellant") who has objected under section thirty-two of this Act to an assessment of duty made by the Commissioner is dissatisfied with the decision of the Commissioner on that objection, he may within a period of forty-two days after the service on him of notice of that decision or such longer period after that service as the Supreme Court may allow, appeal to the Supreme Court against that decision.

Appeal from assessment. Substituted by No. 37 of 1979, s. 26.

(2) The Supreme Court shall hear and determine an appeal made to it under subsection (1) of this section and shall assess the duty, if any, with which the instrument concerned is chargeable under this Act.

(3) When the Supreme Court—

(a) decides that the assessment of duty to which an appeal relates is erroneous, the Supreme Court—

(i) shall order the Commissioner to refund to the appellant the amount of any excess of duty which may have been paid by him in accordance with that assessment and the amount of any excess of any fine charged under section twenty of this Act; and

(ii) may order the Commissioner to pay the costs of the appeal;

or

(b) confirms the assessment of duty to which an appeal relates, the Supreme Court may order the appellant to pay to the Commissioner the costs of the appeal.

(4) The Supreme Court may make rules relating to the conduct of appeals under this section.

Commissioner may state case. Substituted by No. 37 of 1979, s. 26.

34. (1) The Commissioner may, if he thinks fit, state a case on any question of law arising with regard to the assessment of duty on any instrument and forward that case to the Supreme Court for its opinion thereon.

(2) The Supreme Court shall give its opinion on any case forwarded to it under subsection (1) of this section and cause the Commissioner to be notified of that opinion.

Duplicates and counterparts.

35. (1) The duplicate or counterpart of an instrument chargeable with duty (including the counterpart of a lease whether executed by the lessor or not) may be impressed or affixed with a stamp indicating to what amount the instrument of which it is the duplicate or counterpart has been stamped, and it may then be stamped as a duplicate or counterpart, but otherwise it shall be chargeable with duty as an original.

(2) No duplicate or counterpart shall be deemed to be duly stamped unless the original is sufficiently stamped.

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

Amended by No. 93 of 1966, s. 5; No. 37 of 1979, s. 27.

36. 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 this State 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.

[Subsection (2) repealed by No. 37 of 1979, s. 27(b).]

37. Where the duty with which an instrument may be chargeable under this Act shall depend in any manner upon the duty paid upon another instrument, the payment of such lastmentioned duty may, on production of both the instruments, be denoted in such manner as the Commissioner shall think fit upon the firstmentioned instrument.

Contingent duties.

38. An escrow shall for the purposes of this Act be deemed an instrument duly executed and delivered and shall be subject to duty in accordance with the provisions of this Act.

Instruments held in escrow. Amended by No. 37 of 1979, s. 28.

39. (1) If any instrument which is liable to duty and to which section twenty of this Act applies is not duly stamped within the period referred to in paragraph (a) or (b), as the case may be, of subsection (1) of that section, the person in that behalf specified in the Second Schedule to this Act or in subsection (4) of this section—

Liability for omission to stamp instruments. Substituted by No. 37 of 1979, s. 29.

(a) is liable to pay the amount of the duty concerned and of the fine or fines for—

(i) the omission to present the instrument for stamping within that period; and

(ii) any omission to pay the full amount of the duty assessed in respect of that instrument within the period referred to in subsection (3) of that section;

and

(b) commits an offence against this Act.

(2) The duty and fine or fines referred to in subsection (1) of this section, together with any penalty with which conviction of an offence referred to in paragraph (b) of that subsection is punishable, are recoverable on a complaint laid in the name of the Commissioner in any court of summary jurisdiction.

(3) The averment in a complaint under subsection (2) of this section—

- (a) that the complainant is acting with the authority of the Commissioner; or
- (b) that the defendant is a party to the instrument concerned and is liable in respect thereof,

shall be deemed to be proved in the absence of proof to the contrary.

(4) Except where otherwise provided by this Act, the person liable under this section in respect of the instrument concerned is the party to that instrument by whom or on whose behalf it is held.

(5) When two or more persons are liable under this section in respect of an instrument, any order made or judgment recovered against one of those persons is, to the extent to which it remains unsatisfied, without prejudice to the liability of the remaining person or persons so liable.

(6) All proceedings for the recovery of any duty or of any fines or penalties referred to in this section shall be commenced within a period of two years after the instrument concerned was first presented for stamping.

(7) Nothing in this section shall be deemed—

- (a) to exonerate any other person from any liability imposed on him by or under this Act; or
- (b) to exempt any instrument or matter from any duty or disability to which it is liable under this Act.

40. [*Repealed by No. 37 of 1979, s. 30.*]

41. [*Repealed by No. 37 of 1979, s. 30.*]

42. [*Repealed by No. 37 of 1979, s. 30.*]

43. [*Repealed by No. 37 of 1979, s. 30.*]

44. [*Repealed by No. 37 of 1979, s. 30.*]

[*Headings before s. 45 deleted by No. 37 of 1979, s. 31.*].

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

46. [*Repealed by No. 72 of 1965, s. 6 (b).*]

47. [*Repealed by No. 72 of 1965, s. 6 (c).*]

48. [*Repealed by No. 72 of 1965, s. 6 (d).*]

PART IIIA.—BILLS OF EXCHANGE AND
PROMISSORY NOTES.

Heading to
Part IIIA
inserted by
No. 37 of
1979, s. 33.

49. In this Part, except so far as the context otherwise requires—

Definitions
in Part IIIA.
Substituted
by No. 37 of
1979, s. 34.

“bill of exchange” includes any draft, order, cheque or letter of credit or any document or writing entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw on any other person for, any sum of money, and includes any bill of exchange payable on demand;

“bill of exchange payable on demand” includes any order for—

- (a) the payment of any sum of money by a bill of exchange or promissory note;

Stamp.

- (b) the delivery of any bill of exchange or promissory note in satisfaction of any sum of money;
- (c) the payment of any sum of money out of any particular fund which may or may not be available or on any condition or contingency which may or may not be performed or happen;
- (d) the payment of any sum of money weekly, monthly or at any other stated periods; or
- (e) the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf;

“promissory note” includes—

- (a) any negotiable document or writing containing a promise to pay any sum of money; or
- (b) any note promising the payment of any sum of money out of any particular fund which may or may not be available, or on any condition or contingency which may or may not be performed or happen.

49A. (1) Duty shall not be charged on—

- (a) cheques or orders for the withdrawal of moneys deposited in any bank, drawn or issued by a body in respect of which the Commissioner has granted a certificate in writing stating that the Commissioner is satisfied that that body is for the purposes of this section a charitable body or a body established for similar public purposes, as the case may be; or

Exempt
cheques.
Added by
No. 22 of
1960, s. 3.
Substituted
by No. 37 of
1979, s. 35.

- (b) cheques drawn by persons specified in subitem (4) of item 1 of the Third Schedule to this Act in the circumstances set out in that subitem.

(2) Notwithstanding the repeal and substitution of section forty-nine A of this Act by section thirty-five of the Stamp Act Amendment Act, 1979, duty shall not be charged on cheques or orders for the withdrawal of moneys deposited in any bank, drawn or issued by a body granted a certificate under section forty-nine A of this Act before that repeal and substitution, which certificate was in force immediately before that repeal and substitution.

50. (1) Every person who draws, makes, issues, accepts, endorses, transfers, negotiates, presents for payment or pays any bill of exchange or promissory note which is liable to duty and is not duly stamped commits an offence against this Act.

Stamping
of bills.
Substituted
by No. 37 of
1979, s. 36.

(2) A person who takes or receives from any other person, whether in payment, as a security, by purchase or otherwise, a bill of exchange or promissory note referred to in subsection (1) of this section is not entitled to recover thereon or to make the same available for any purpose whatever until it is duly stamped.

(3) Notwithstanding anything in subsections (1) and (2) of this section, if a bill of exchange which is not duly stamped is presented for payment the person to whom it is so presented may affix thereto stamps denoting the proper duty and cancel the same as if he had been the drawer of the bill and may thereon pay the sum mentioned in that bill of exchange and charge that duty in account against the person by whom that bill was drawn or deduct that duty from that sum, and the bill is, so far as respects that duty, deemed to be valid and available.

(4) Nothing in subsection (3) of this section relieves any person from any penalty incurred by him in respect of the bill of exchange concerned.

Cancellation
of adhesive
stamps on
bills.

Added by No.
9 of 1974, s. 5.
Substituted
by No. 37 of
1979, s. 36.

50A. Every person who draws, makes or issues a bill of exchange or promissory note shall, before he delivers the bill of exchange or promissory note out of his hands, custody or power, cancel the adhesive stamp when used for denoting the duty on the bill of exchange or promissory note in accordance with the provisions of section twenty-one of this Act.

One bill in
set only to
be stamped.
Added by No.
37 of 1979,
s. 36.

50B. (1) When a bill of exchange is drawn in a set and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty.

(2) On proof of the loss or destruction of a duly stamped bill of exchange forming one of a set, any other bill of the set, which bill has not been issued or in any manner negotiated apart from the lost or destroyed bill, may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

Duties on
foreign bills.

Added by
No. 37 of
1979, s. 36.

50C. The duties in respect of bills of exchange or promissory notes drawn out of Western Australia shall be payable on all such bills of exchange or promissory notes if and when accepted, paid, endorsed, transferred or otherwise negotiated within Western Australia wheresoever payable.

Provision
for stamping
foreign bills.

Added by
No. 37 of
1979, s. 36.

50D. (1) Every person into whose hands any bill of exchange or promissory note drawn or made out of Western Australia comes within Western Australia before it is duly stamped shall, before he presents for payment or acceptance, or endorses, transfers or in any manner negotiates or pays that bill of exchange or promissory note, cause the same to be duly stamped.

(2) Notwithstanding anything in subsection (1) of this section, if at the time when any bill of exchange or promissory note referred to in that

subsection comes into the hands of a *bona fide* holder there is affixed to that bill of exchange or promissory note an adhesive stamp—

- (a) effectually cancelled, that adhesive stamp shall, so far as it relates to that holder, be deemed to be duly cancelled, although it may not appear to have been affixed or cancelled by the proper person; or
- (b) not duly cancelled, it shall be competent for that holder to cancel that adhesive stamp as if he were the person by whom it was affixed and, when he does so, that bill of exchange or promissory note shall be deemed to be duly stamped and as valid and available as if that adhesive stamp had been cancelled by the person by whom it was affixed.

(3) Nothing in subsection (1) or (2) of this section relieves any person from any penalty incurred by him for not cancelling an adhesive stamp.

(4) When a bank receives a draft from outside Western Australia for acceptance and payment within Western Australia, it shall be lawful for the bank to affix thereto adhesive stamps for denoting the duty chargeable thereon.

50E. (1) When a bill of exchange has been accepted as payable otherwise than as drawn, the bill shall be deemed for the purposes of this Act to be a bill of exchange drawn as accepted.

Bills accepted or capable of being accepted, otherwise than as drawn.
Added by No. 37 of 1979, s. 36.

(2) When a bill of exchange has been endorsed and the endorsement has the effect of limiting the endorsee as a holder of the bill to require payment otherwise than as drawn, the bill shall be deemed for the purposes of this Act to be a bill of exchange drawn as endorsed.

(3) When the drawer of a bill of exchange or any other person has expressly or by implication signified that the bill may be accepted otherwise than as drawn, the bill shall be deemed for the purposes of this Act to have been drawn as so signified.

(4) When under any agreement expressed or implied a bill of exchange is to be paid otherwise than as drawn or accepted, the bill shall be deemed for the purposes of this Act to have been drawn or accepted, as the case may be, in accordance with the agreement.

(5) When a bill of exchange becomes liable to duty by the operation of any of the provisions of this section, the amount of *ad valorem* duty that is so payable shall be reduced by an amount equal to the *ad valorem* duty with which the bill has been stamped.

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

Printing of
"Stamp Duty
Paid" on
cheques.
Substituted
by No. 37 of
1979, s. 38.

52. (1) Notwithstanding anything in this Act, a bank may apply in writing to the Commissioner for authority in writing to cause to be printed on cheques drawn on the bank the words "Stamp Duty Paid" and, subject to regulations made under this Act, to pay duty on those cheques on the issue thereof by monthly returns in such form and manner as the Commissioner requires in writing.

(2) On receiving an application under subsection (1) of this section, the Commissioner may by instrument in writing grant the authority applied for and may in like manner revoke any authority so granted.

53. [*Repealed by No. 37 of 1979, s. 39.*]

54. [*Repealed by No. 37 of 1979, s. 39.*]

55. [*Repealed by No. 37 of 1979, s. 39.*]

56. [*Repealed by No. 37 of 1979, s. 39.*]

57. [*Repealed by No. 37 of 1979, s. 39.*]

58. [*Repealed by No. 37 of 1979, s. 39.*]

59. [*Repealed by No. 37 of 1979, s. 39.*]

60. [*Repealed by No. 37 of 1979, s. 39.*]

[*Heading to Sec. 61 deleted by No. 96 of 1976, s. 4.*]

61. [*Repealed by No. 96 of 1976, s. 4.*]

[*Heading to Sec. 62 deleted by No. 96 of 1976, s. 5.*]

62. [*Repealed by No. 96 of 1976, s. 5.*]

PART IIIB.—CONVEYANCES AND TRANSFERS.

Conveyances on Sale.

Heading to
Part IIIB
inserted by
No. 37 of 1979,
s. 40.

63. In this Part—

Definition of
“conveyance
on sale”.
Substituted
by No. 37 of
1979, s. 41.

“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.

Duty on certain decrees and orders. Added by No. 37 of 1979, s. 41.

63A. (1) *Ad valorem* duty on a decree or order referred to in the definition of "conveyance on sale" in section sixty-three of this Act 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, 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) of this section, any conveyance or transfer following on that decree or order shall not be liable to duty and the Commissioner, on being requested to do so, shall denote on that conveyance or transfer the payment of *ad valorem* duty on that decree or order on production to him of that decree or order, duly stamped, and that conveyance or transfer shall thereupon be deemed to be duly stamped.

How *ad valorem* duty to be calculated in respect of stock and securities. No. 10 of 1922, s. 63. Renumbered s. 64 in 1934 reprint. Amended by No. 93 of 1966, s. 6.

64. (1) Where the consideration or any part of the consideration for a conveyance on sale consists of any marketable security, such conveyance is to be charged with *ad valorem* duty in respect of the value of such security.

(2) Where the consideration or any part of the consideration for a conveyance on sale consists of any security not being a marketable security, 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.

How *ad valorem* duty to be calculated in respect of securities and periodical payments. Substituted by No. 37 of 1979, s. 42.

65. (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 in accordance with the provisions of this Act 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) of this section, 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.

66. Where any property is conveyed 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 or marketable security, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or marketable security 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.

How conveyances in consideration of a debt or subject to future payment, etc., to be charged.
No. 10 of 1922, s. 65.
Renumbered s. 66 in 1934 reprint.
Amended by No. 93 of 1966, s. 7.

67. (1) 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.

Duty where conveyance is partly in consideration of improvements made or to be made on property.
No. 10 of 1922, s. 66.
Renumbered s. 67 in 1934 reprint.
Amended by No. 37 of 1979, s. 43.

(2) When any instrument chargeable with *ad valorem* duty under subsection (1) of section seventy-four of this Act (in this subsection called "the main instrument") or any instrument or contractual arrangement, whether oral or in writing, executed or made in connexion with the main

instrument contains any provision for the vendor or transferor of the property concerned or an associate of that vendor or transferor to erect on that property any improvements and the purchaser of that property is not entitled to have that property conveyed to him—

- (a) at the time of entering into the contract or agreement concerned; or
- (b) at any time prior to the commencement of the erection of the improvements,

ad valorem duty is chargeable on both the value of that property and the value of the improvements.

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

Conveyance duty in cases where conveyance made at request or by direction of intermediary. Added as s. 67A by No. 47 of 1925, s. 2. Amended by No. 39 of 1931, s. 8; No. 37 of 1979, s. 45. Renumbered s. 69 in 1934 reprint.

69. Subject to sections seventy-three and seventy-four of this Act, when property is conveyed or transferred by one person to another—

- (a) by the direction, or at the request, or with the consent of an intermediary who, under an agreement of sale, or a trust, or otherwise howsoever, has the right to call for a conveyance or transfer of the property to himself or to any other person; or
- (b) in pursuance of any derivative title obtained by the transferee, from or through the intermediary by way of an agreement of sale, or otherwise howsoever,

the instrument of conveyance or transfer 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 several 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.

70. Where upon the sale of any annuity or other right not before in existence, such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments, if there be more than one, is to be charged with the same duty as an actual grant or conveyance, and is for all purposes of this Act to be deemed an instrument of conveyance on sale.

As to the sale of an annuity, or right not before in existence. No. 10 of 1922, s. 68. Renumbered s. 70 in 1934 reprint.

71. Where there are several 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 lastmentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument.

Where several instruments, the principal instrument only is to be charged with *ad valorem* duty. No. 10 of 1922, s. 69. Renumbered s. 71 in 1934 reprint. Amended by No. 37 of 1979, s. 46.

72. [Repealed by No. 72 of 1965, s. 9.]

Documents Treated as Conveyances.

73. (1) Except as in this Act otherwise provided, 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 acknowledgment 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: Provided that—

As to conveyances on any occasion except sale or mortgage. No. 10 of 1922, s. 71. Renumbered s. 73 in 1934 reprint. Amended by No. 35 of 1941, s. 2; No. 113 of 1965, s. 4 (1); No. 63 of 1977, s. 2; No. 37 of 1979, s. 47.

- (a) a conveyance or transfer made for effectuating the appointment of a new trustee, or the retirement of a trustee, whether the trust is expressed or implied;

- (b) a conveyance or transfer made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust whether expressed or implied; or
- (c) a conveyance or transfer under which no beneficial interest passes in the property conveyed or transferred not being a conveyance or transfer which, in the opinion of the Commissioner, is made in contemplation of the passing of a beneficial interest in that property,

is not to be charged with any duty higher than the duty set out in item 6 of the Second Schedule to this Act.

(2) An assessment of duty shall not be subject to any objection or appeal under section thirty-two or thirty-three of this Act on any grounds relating to the exercise by the Commissioner of the discretion conferred on him by paragraph (c) of the proviso to subsection (1) of this section but a person who is dissatisfied with a decision made by the Commissioner in the exercise of that discretion may, within forty-two days after the date of the assessment or within such longer period as the Treasurer may allow, post to or lodge with the Treasurer an appeal in writing stating fully and in detail the grounds on which he relies.

(3) The Treasurer shall, with all reasonable despatch, consider the appeal and may either disallow it or, for reasonable cause shown by the person making the appeal, allow it.

(4) The Treasurer shall give to the person making the appeal written notice of his decision on the appeal and that decision shall be final.

Conveyance
subject to
an option.
Added by
No. 63 of
1977, s. 3.
Amended by
No. 37 of
1979, s. 48.

73A. (1) Where any property or estate or interest therein (in this section referred to as "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 in accordance with the provisions of this Act 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 the amount paid by way of consideration for the granting of the option and the amount payable in the event of the option being exercised.

(2) The duty referred to in subsection (1) of this section is payable by the parties to the agreement or the conveyance or transfer, as the case may be, or any one of them.

(3) The proviso to subsection (1) of section seventy-three of this Act does not apply to a conveyance or transfer referred to in subsection (1) of this section.

(4) Where *ad valorem* duty has been duly paid in conformity with subsection (1) of this section 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 to this Act.

(5) Where, after *ad valorem* duty has been paid in conformity with subsection (1) of this section, 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 who it was conveyed or transferred or to a person to whom his rights have been transmitted on death or bankruptcy; and

Stamp.

- (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,

the Commissioner shall refund the *ad valorem* duty less an amount equal to the duty which would have been payable but for this section, and any reconveyance or retransfer referred to in paragraph (b) of this subsection shall be chargeable with duty under item 6 of the Second Schedule to this Act.

(6) Where *ad valorem* duty has been duly paid in conformity with subsection (1) of this section 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.

Conveyance agreement subject to unilateral determination.

Added by No. 37 of 1979, s. 49.

73B. (1) When any property or estate or interest therein (in this section referred to as "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 two 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) of this subsection as may have become due and payable under that agreement at the time of that determination,

that agreement is chargeable with duty in accordance with the provisions of this Act 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) of this subsection.

(2) The duty referred to in subsection (1) of this section is payable by the person to whom the property is agreed to be conveyed or transferred.

(3) When, after *ad valorem* duty has been duly paid in conformity with subsection (1) of this section, the Commissioner is satisfied that the person referred to in that subsection (in this subsection referred to as "the determiner") determined the agreement concerned before the final payment had become due and payable under that agreement, the Commissioner shall refund the *ad valorem* duty so paid less an amount equal to the duty which would have been payable had the consideration referred to in subsection (1) of this section been an amount equal to the amount of the payment or payments paid or due and payable by the determiner at the time of determination.

74. (1) Every contract or agreement, howsoever executed, for the sale of any estate or interest in any property (except real or personal property locally situated out of Western Australia, or goods, wares or merchandise, or any ship or vessel, or part interest or share or property of or in any ship or vessel) 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.

Certain contracts to be chargeable as conveyances on sale. Substituted by No. 37 of 1979, s. 50.

(2) Subject to subsection (3) of this section, when the name of the purchaser as set out in a contract or agreement referred to in subsection (1) of this section 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) of this section, if—

- (a) the Commissioner is of the opinion that the person named in the contract or agreement concerned as the purchaser was acting as the agent of the person named in the 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 his opinion referred to in paragraph (a) of this subsection; and
- (c) the contract or agreement of sale concerned is duly stamped,

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

(4) When duty has been paid in accordance with subsection (1) of this section, the conveyance or transfer concerned made to the purchaser shall not be liable to duty and the Commissioner, on being requested to do so, shall denote the payment of the *ad valorem* duty concerned on that conveyance or transfer on production to him of the contract or agreement, duly stamped, and that conveyance or transfer shall thereupon be deemed to be duly stamped.

(5) If any contract or agreement (in this section called “the cancelled contract”) on which *ad valorem* duty has been paid is rescinded or annulled or for any other reason not substantially performed or carried into effect so as to operate as or to be followed by a conveyance or transfer, the Commissioner shall refund the amount of that duty after deducting therefrom the prescribed fee.

(6) The cancelled contract shall not, subject to subsection (7) of this section, be deemed to have been rescinded or annulled or not substantially performed or carried into effect for the purposes of subsection (5) of this section if—

- (a) the purchaser concerned has entered into possession of the property concerned, otherwise than as lessee or licensee and whether or not any rent or fee is paid or payable, or has let that property;
- (b) the cancelled contract is cancelled on terms different from those contained therein;
- (c) the purchaser concerned obtains from that rescission, annulment or lack of substantial performance or carriage into effect a financial benefit arising from an increase in the value of the property concerned as determined by the Commissioner; or
- (d) the vendor concerned has assigned or agreed to assign his interest in the contract or agreement to some other person.

(7) Subsection (6) of this section shall not apply to the cancelled contract if the Commissioner is of the opinion that a subsequent sale of the property is a sub-sale, notwithstanding that the subsequent conveyance or transfer is executed by the person who was the vendor in the cancelled contract.

75. (1) Subject to subsection (2) of this section, 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 to this Act.

Duty chargeable on value of property. Substituted by No. 37 of 1979, s. 51.

(2) Every conveyance or transfer or instrument referred to in subsection (1) of this section shall be charged with *ad valorem* duty in respect of the unencumbered value of the property conveyed or transferred.

(3) Subject to subsection (4) of this section, every conveyance or transfer or instrument chargeable as a conveyance on sale of any property is to be charged with *ad valorem* duty on the amount or value of the consideration for the sale concerned.

(4) If the amount or value of the consideration referred to in subsection (3) of this section is less than the unencumbered value of the property concerned, duty shall be charged on the unencumbered value of the property ascertained in accordance with section seventy-five A of this Act.

(5) When the unencumbered value of the property concerned as ascertained in accordance with section seventy-five A of this Act exceeds the consideration payable in respect of that property, the duty payable in respect of the conveyance or transfer or instrument chargeable as a conveyance shall be—

- (a) as to the amount of that consideration, duty at the rate chargeable on a conveyance on sale under item 4 of the Second Schedule to this Act for that amount; and
 - (b) as to the amount by which the Commissioner is of the opinion that the unencumbered value of that property exceeds that consideration, at the rate provided in item 19 of the Second Schedule to this Act for that amount.
- (6) 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 other person in a fiduciary capacity under a trust, whether the trust is expressed or implied; or
 - (c) under which no beneficial interest passes in the property conveyed or transferred, not being a conveyance or transfer which, in

the opinion of the Commissioner, is made in contemplation of the passing of a beneficial interest in that property,

shall not be charged with duty under this section.

(7) A conveyance or transfer operating as a voluntary disposition *inter vivos* shall not be deemed to be duly stamped unless the Commissioner has expressed his opinion thereon under section thirty-one of this Act.

(8) An assessment of duty shall not be subject to any objection or appeal under section thirty-two or thirty-three of this Act on any grounds relating to the exercise by the Commissioner of the discretion conferred on him by paragraph (c) of subsection (6) of this section, but a person who is dissatisfied with a decision made by the Commissioner in the exercise of that discretion may, within a period of forty-two days of the date of that assessment or within such longer period as the Treasurer may allow, post to or lodge with the Treasurer an appeal in writing stating fully and in detail the grounds on which he relies.

(9) The Treasurer shall, with all reasonable dispatch, consider an appeal posted to or lodged with him under subsection (8) of this section and may either disallow that appeal or, for reasonable cause shown by the person making that appeal, allow the same.

(10) The Treasurer shall give to the person making an appeal under subsection (8) of this section notice in writing of his decision on that appeal and that decision shall be final.

75A. (1) In the case of every conveyance, transfer and instrument chargeable with *ad valorem* duty under this Act, the Commissioner may—

- (a) require the purchaser or other person liable in respect of the instrument relating to that conveyance or transfer or in respect of that instrument, as the case may be, to furnish

Valuation of property for assessment purposes. Added by No. 40 of 1942, s. 2. Substituted by No. 37 of 1979, s. 51.

him with a statement in a form approved by the Commissioner concerning the value—

- (i) of the property; or
 - (ii) of the consideration referred to in paragraph (b) or (c) of subsection (1) of section sixty-five of this Act, to which that instrument relates or with such other evidence of that value as the Commissioner thinks fit; and
- (b) assess that duty in accordance with the evidence of value referred to in paragraph (a) of this subsection.

(2) If the Commissioner is not satisfied with the evidence of value furnished under subsection (1) of this section, he may cause the property or consideration concerned to be valued and may assess the duty chargeable thereon on the basis of that valuation.

(3) In valuing property for the purposes of subsection (2) of this section, the existence of any overriding power of revocation or reconveyance or the existence of any fractional interest shall be disregarded.

Power of exemption or refund for certain purposes. Added by No. 37 of 1979, s. 51.

75AA. When the Treasurer is satisfied that any deed of gift, conveyance, transfer, settlement or other instrument operating as a voluntary disposition of property, or any conveyance on the purchase of property, has been made for the purpose of a university or for charitable or similar public purposes, he may exempt from *ad valorem* duty, or refund *ad valorem* duty paid on, that deed, conveyance, transfer, settlement or other instrument or conveyance on the purchase of property.

Power of exemption in respect of certain funds or schemes. Added by No. 37 of 1979, s. 51.

75AB. When the Treasurer is satisfied that any instrument 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 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, he may exempt from *ad valorem* duty, or refund any *ad valorem* duty paid on, that instrument.

75AC. (1) Any instruments affecting an exchange of any properties shall be chargeable with duty as a conveyance or transfer on the values of those properties and any amount paid or other consideration given to achieve equality in the values received by the parties to that exchange is also to be charged with *ad valorem* duty on that amount or on the value of that consideration, as the case may be, under item 4 of the Second Schedule to this Act.

Duty chargeable on exchange of properties. Added by No. 37 of 1979, s. 51.

(2) Notwithstanding anything in subsection (1) of this section, 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 the equality referred to in that subsection, duty shall be chargeable on the amount of that insufficiency under item 19 of the Second Schedule to this Act.

75AD. (1) Any instruments effecting the partition of any property shall be chargeable with duty under item 15 of the Second Schedule to this Act and any amount paid or other consideration given

Duty chargeable on partition of property. Added by No. 37 of 1979, s. 51.

to achieve equality is also to be charged with *ad valorem* duty on that amount or on the value of that consideration under item 4 of the Second Schedule to this Act.

(2) Notwithstanding anything in subsection (1) of this section, 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 to this Act.

Power to exempt from duty on reconstruction of company. Added by No. 69 of 1962, s. 2. Amended by No. 113 of 1969, s. 8; No. 37 of 1979, s. 52.

75B. (1) When a company is incorporated by way of reconstruction upon the basis of a sale of the assets of a company or of a foreign company by the liquidator thereof, to the firstmentioned company, the Treasurer may exempt from *ad valorem* duty, wholly or partially, any instrument whereby those assets are transferred to the firstmentioned company in accordance with the sale or any contract lodged with the Commissioner for Corporate Affairs, pursuant to subsection (3) of section fifty-four of the Companies Act, 1961, that relates to any shares in the firstmentioned company that are to be allotted or transferred to the shareholders of the second mentioned company or foreign company for the purposes of the reconstruction, and that are specified in any such instrument.

(2) In this section “company” means a company incorporated pursuant to the Companies Act, 1961, or pursuant to any previous corresponding enactment and “foreign company” means a foreign company to which Division 3 of Part XI of that Act applies.

76. [*Heading and section 76 repealed by No. 113 of 1969, s. 9.*]

76A. [*Section 76A added by No. 72 of 1959, s. 3. Repealed by No. 113 of 1969, s. 9.*]

PART IIIC.—MOTOR VEHICLE LICENCES AND
TRANSFERS THEREOF.

Heading to
Part IIIC
added by No.
37 of 1979,
s. 53.

[*Previous section 76B added by No. 72 of 1959, s. 3.
Repealed by No. 113 of 1969, s. 9.*]

76B. In this Part, except so far as the context otherwise requires—

Definitions
in Part IIIC.
Added by
No. 37 of
1979, s. 53.

“dealer” means a person who—

- (a) carries on the business of selling new motor 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 motor vehicles for resale or disposal under hire purchase or leasing agreements; or
- (d) in the course of his business, takes possession of any motor vehicles comprised in hire purchase or leasing agreements and resells them;

“licence” means a vehicle licence granted under the provisions of Part III of the Road Traffic Act, 1974, and in respect of which a fee under that Act has been paid or is payable, but does not include—

- (a) any such vehicle licence which is granted to a person in whose name the motor vehicle to which that vehicle licence relates was last licensed under the Road Traffic Act, 1974, or any corresponding law of any other country or of any other State, or of a Territory, of the Commonwealth prior to the grant of that vehicle licence;
- (b) any such vehicle licence which is granted under subsection (15) of section nineteen of the Road Traffic Act, 1974; or

- (c) a duplicate vehicle licence or certified copy thereof issued pursuant to regulations made under the Road Traffic Act, 1974;

“motor vehicle” means any vehicle licensed or required to be licensed under the Road Traffic Act, 1974;

“transfer” means a transfer of a licence granted under the provisions of Part III of the Road Traffic Act, 1974, but does not include a transfer of a licence to a person who, if he were the person named in the licence, would not be required by or under that Act to pay the prescribed fee for the licence.

Duty on motor vehicle licences and transfers thereof.
Added by No. 37 of 1963, s. 3.
Substituted by No. 37 of 1979, s. 54.

76C. (1) Duty referred to in item 14 of the Second Schedule to this Act shall, except when it is denoted on a licence or transfer by an impressed stamp or an adhesive stamp which has been duly cancelled, be paid to the licensing authority granting the licence or transfer.

(2) A licensing authority which is—

- (a) the Road Traffic Authority shall furnish to the Commissioner each month details of amounts of duty brought to account for licences and transfers during the preceding month;
- (b) not the Road Traffic Authority shall, subject to subsection (3) of this section, furnish to the Commissioner within a period of fifteen days after the end of the month in which licences and transfers were granted a return in such form as the Commissioner approves in writing setting out details of those licences and transfers, together with a remittance for the amount of duty payable in respect thereof.

(3) If no duty is payable in respect of the licences and transfers, if any, granted in any month by a licensing authority which is not the Road Traffic

Authority, that licensing authority shall furnish the Commissioner with a nil return in respect of that month.

(4) Every licensing authority shall cause licences and transfers granted by it and charged with duty in accordance with item 14 of the Second Schedule to this Act to be endorsed with the passage "W.A. Stamp Duty Paid" and those licences and transfers shall thereupon be deemed to be duly stamped.

(5) When the charging of duty is denoted on licences or transfers referred to in this section by adhesive stamps, the person issuing those licences or transfers shall furnish the Commissioner, not later than the fifteenth day of the month following the month in which those licences or transfers were issued, with a statement relating to those licences or transfers in such form as the Commissioner requires in writing.

(6) No duty is chargeable under this Act—

(a) in the case of a transfer to a dealer, if that transfer has been obtained by the dealer for the purpose of the resale to another person by the dealer of the motor vehicle to which that transfer relates and that resale is in the ordinary course of the business of the dealer; or

(b) in the case of a licence granted to a person who carries on the business of selling motor vehicles, if that licence has been obtained by that person for the purpose of—

(i) selling the motor vehicle to which that licence relates to another person in the ordinary course of that business; or

(ii) demonstrating the motor vehicle referred to in subparagraph (i) of this paragraph to prospective purchasers thereof,

and the licence is the initial licence granted for or in respect of that motor vehicle.

(7) A person applying for a licence or transfer referred to in subsection (6) of this section shall, before that licence or transfer is granted, make a certificate in such form as the Commissioner requires certifying that, if that licence or transfer is granted to him, the motor vehicle in respect of which he is applying for that licence or transfer will, while he is the holder of that licence or transfer, be used for the purpose specified in that certificate, being one of the purposes referred to in that subsection.

(8) An application for a licence or transfer shall be in writing accompanied—

- (a) by the amount of the duty payable on the licence or transfer; and
- (b) unless that application contains a statement of the market value of the motor vehicle concerned, by a valuation of that motor vehicle in such form as the Commissioner requires.

(9) If the Commissioner is not satisfied that the market value of a motor vehicle given in a statement or valuation referred to in subsection (8) of this section represents the market value of the motor vehicle at the time when that statement or valuation was made, the Commissioner may in writing require the applicant to furnish the Commissioner within the period specified in his requirement with such evidence in writing of that market value as the Commissioner thinks fit.

(10) On receipt of evidence furnished in compliance with a requirement made under subsection (9) of this section, the Commissioner may, having regard to that evidence, reassess the amount of duty chargeable on the licence or transfer concerned and recover from the applicant the amount of any additional duty thereby required to

be paid or refund to the applicant the amount of any overpayment of duty thereby occasioned, as the case requires.

(11) The amount of any additional duty recovered, or the amount of any overpayment of duty refunded, under subsection (10) of this section shall be denoted on the licence or transfer concerned.

(12) If an applicant for a licence or transfer does not state in writing an amount representing the market value of the motor vehicle concerned, the Commissioner may ascertain that value by such means as he thinks fit and make an assessment accordingly.

(13) When the Commissioner assesses or reassesses the market value of a motor vehicle under this section, duty shall be paid under and in accordance with this section on that market value as so assessed or reassessed.

(14) A person who for the purposes of this section makes any return, statement, certificate or valuation, or furnishes any evidence, which is false in a material particular commits an offence against this Act.

76D. (1) When any licence or transfer that is chargeable with duty under section seventy-six C of this Act, is not duly stamped in accordance with that section, in the case of—

- (a) a licence, the person in whose name the licence is granted; and
- (b) a transfer, the person to whom the licence is transferred,

is liable for the payment of the amount of the duty so chargeable on the licence or transfer, as the case may be, and in addition commits an offence against this Act.

Offence of falling to stamp licence and transfer.
Recovery of duty.
Added by No. 72 of 1965, s. 11.
Amended by No. 113 of 1965, s. 4 (1); No. 37 of 1979, s. 55.

(2) The penalty by which an offence referred to in subsection (1) of this section is punishable, together with the amount of the duty is recoverable on a complaint laid in the name of the Commissioner in any court of summary jurisdiction and the provisions of section thirty-nine of this Act apply, so far as applicable, to that complaint and to any order or judgment made or given therein.

(3) [*Repealed by No. 37 of 1979, s. 55(c).*]

Heading to
Part IIID
added by
No. 37 of
1979, s. 56.

PART IIID.—LEASES.

Agreement
for any lease
to be
charged
as a lease.
No. 10 of
1922, s. 75.
Renumbered
s. 77 in 1934
reprint.
Amended by
No. 113 of
1965, s. 4 (1);
No. 37 of
1979, s. 57.

77. (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 to this Act 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) of this section shall not be liable to duty and the Commissioner shall, on production to him of that agreement, duly stamped, denote on that lease the duty paid on that agreement, whereupon that lease shall be deemed to be duly stamped.

Leases—how
to be
charged
in respect
of produce,
etc.
No. 10 of
1922, s. 76.
Renumbered
s. 78 in 1934
reprint.

78. (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 duly stamped, unless or until it is otherwise shown that such statement is incorrect, and that it is in fact not duly stamped.

Effect of statement of value.

79. (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.

Directions as to duty in certain cases. No. 10 of 1922, s. 77. Renumbered s. 79 in 1934 reprint. Amended by No. 37 of 1979, s. 58.

(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 nineteen of this Act.

(3) An instrument, whereby the rent reserved by any other instrument chargeable with duty and duly stamped is increased, is not be charged with duty otherwise than as a lease in consideration of the additional rent thereby made payable.

(4) When the amount of rent payable in respect of a lease or agreement for a lease is a nominal amount or unascertainable at the time of granting or entering into the lease or agreement for a lease, the Commissioner may express his opinion in accordance with section thirty-one of this Act with reference to the amount of duty with which the lease or agreement for a lease is chargeable.

(5) The Commissioner shall, for the purposes of subsection (4) of this section, ascertain the fair annual rental of the property which is the subject of the lease or agreement for a lease concerned and apply the rates of duty set out in item 12 of the Second Schedule to this Act.

[*Previous section 80 repealed by No. 72 of 1965, s. 12.*]

Duty on periodic re-appraisal of rent. Added by No. 37 of 1979, s. 59.

80. A lease or agreement for a lease whereby provision is made for a fixed rent which is subject to periodic re-appraisal whereby the amount of that rent may be increased or reduced to an amount which is not ascertainable at the time when that lease or agreement is granted or entered into shall be charged with duty under item 12 of the Second Schedule to this Act as an actual lease for the term stated therein and shall in addition be charged with duty under subitem (4) of that item in respect of each re-appraisal of the rent.

Heading to Part III added by No. 37 of 1979, s. 60.

PART III.—MORTGAGES AND OTHER SECURITIES.

Definition of "mortgage". No. 10 of 1922, s. 79. Renumbered. s. 81 in 1934 reprint. Amended by No. 37 of 1979, s. 61.

81. The term "mortgage" means a security by way of mortgage for the payment of any definite and certain sum of money advanced and lent at the time or previously due and owing, or foreborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current together with any sum already advanced or due, or without (as the case may be) and includes any

agreement, contract or bond, whether or not accompanied by a deposit of title deeds, for making a mortgage, or any such other security of any lands, estate or property comprised in the title deeds, or for pledging or charging the same as a security, and any security for periodical payments or repayments of money.

82. [*Repealed by No. 37 of 1979, s. 62.*]

83. (1) A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current either with or without money previously due is to be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with duty under item 13 of the Second Schedule to this Act as a security for the amount so limited.

Security for future advances, how to be charged. No. 10 of 1922, s. 81. Renumbered s. 83 in 1934 reprint. Amended by No. 9 of 1974, s. 10; No. 37 of 1979, s. 63.

(2) When the total amount secured or to be ultimately recoverable by or under an instrument of security is not expressed in that instrument to be limited to a definite and certain sum of money, the security concerned is deemed to be security only for the amount in respect of which *ad valorem* duty at the rate set out under item 13 of the Second Schedule to this Act is denoted on that instrument.

(2a) A security referred to in subsection (2) of this section is enforceable as a security only to the extent of the amount in respect of which duty referred to in that subsection has been paid, but when an advance or loan in excess of that amount is made or the indebtedness thereby secured is increased the instrument of security concerned shall be stamped with additional duty paid in respect of the excess or increase and the additional advance or loan or indebtedness is deemed to be a new and separate instrument of security bearing date on the day on which that advance or loan is made or that indebtedness is increased and subject to the provisions of section twenty of this Act accordingly.

(2b) If a security referred to in subsection (2) of this section is registered under any Act relating to the registration of securities, that registration shall be effective in respect of the additional advance or loan or indebtedness, but subject in the case of a bill of sale to paragraph (4) of section six of the Bills of Sale Act, 1899.

(2c) Additional duty referred to in subsection (2a) of this section may be paid and denoted from time to time as further advances or loans are made or as indebtedness is further increased by stamps impressed on or affixed to the security concerned and, in the case of adhesive stamps or adhesive coupons, duly cancelled.

(2d) When the original security concerned is deposited in the Office of Titles or any other public office in which registration is required, any duplicate or counterpart of the original instrument may be stamped with the additional duty referred to in subsection (2a) of this section and that stamping shall have the same effect as if the stamps concerned had been impressed on or affixed to the original instrument.

(3) Notwithstanding anything in this section no money to be advanced for the insurance of any property comprised in any such security against damage by fire, or for keeping up any policy of life insurance comprised in the security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in the security upon the dropping of any life whereon the property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty.

84. [*Repealed by No. 37 of 1979, s. 64.*]

85. [*Repealed by No. 37 of 1979, s. 64.*]

86. [*Repealed by No. 37 of 1979, s. 64.*]

87. (1) When there are several instruments of security for the same moneys which are secured by a primary security duly stamped under item 13 of the Second Schedule to this Act, no further duty is chargeable in respect of those several instruments and the Commissioner shall denote thereon the stamping of that primary security and those several instruments shall be deemed to be duly stamped.

Collateral, additional or substituted securities. Substituted by No. 37 of 1979, s. 65.

(2) When a deed of defeasance or other instrument executed for the purpose of defeasing or making redeemable or explaining or qualifying any conveyance or transfer has been duly stamped under item 13 of the Second Schedule to this Act, any conveyance or transfer of a policy of life assurance or mortgage apparently absolute but intended only as security pursuant to that deed or other instrument shall not be chargeable with any further duty.

(3) The Commissioner shall denote on the conveyance or transfer referred to in subsection (2) of this section the payment of the *ad valorem* duty on that deed or other instrument and that conveyance or transfer shall thereupon be deemed to be duly stamped.

87A. [*Added by No. 32 of 1972, s. 3. Repealed by No. 37 of 1979, s. 66.*]

88. [*Repealed by No. 37 of 1979, s. 66.*]

89. [*Repealed by No. 37 of 1979, s. 66.*]

90. [*Repealed by No. 37 of 1979, s. 66.*]

90A. When the Treasurer is satisfied that any mortgage, bond, debenture, covenant, bill of sale, guarantee, lien or other instrument of security has been given or made for the purpose of securing the payment or repayment of money that is being or is to be used for, or has been used for, a university or

Power to exempt certain instruments of security from duty. Added by No. 50 of 1967, s. 3. Substituted by No. 37 of 1979, s. 67.

any charitable or similar public purpose, he may exempt from duty, or refund any duty paid on, that mortgage, bond, debenture, covenant, bill of sale, guarantee, lien or other instrument of security.

91. [*Heading and section 91 repealed by No. 96 of 1976, s. 6.*]

PART IIIF.—POLICIES OF INSURANCE.

Heading to Part IIIF added by No. 37 of 1979, s. 68.

Definitions in Part IIIF. Substituted by No. 37 of 1979, s. 69.

92. In this Part, except so far as the context requires otherwise—

“person resident in the State”, in the case of a company, includes—

- (a) any company which is registered under any provision of the Companies Act, 1961, or any previous corresponding enactment, whether that company is incorporated in the State or not; and
- (b) any company which carries on business in the State;

“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;

“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.

92A. (1) Every person resident in the State who effects any insurance in respect of property in the State, or in respect of any liability, loss or damage occurring, or brought about by the happening of any event, within the State, for which insurance a policy of insurance or renewal of any such policy is or is to be issued outside the State shall within one month after effecting the insurance furnish to the Commissioner a return containing such particulars and information as to the insurance as the Commissioner requires in writing.

Duty payable on returns where policy issued out of the State.
Added by No. 54 of 1968, s. 5.
Amended by No. 32 of 1972, s. 5; No. 37 of 1979, s. 70.

(2) Every return under subsection (1) of this section is liable to the same duty as would have been chargeable if the insurance to which it relates had been effected under a policy of insurance issued in the State.

(3) The person liable for payment of the duty under subsection (2) of this section is the person who effected the insurance, and the duty is, subject to subsection (4) of this section, payable upon the lodgment of the return with the Commissioner or at such later time as the Commissioner allows.

(4) Where the policy of insurance or renewal has, before the expiration of the period specified in subsection (1) of this section for the furnishing of the return to the Commissioner, or where the Commissioner has allowed further time, before the expiration of that time, been received in the State and duly stamped, no duty is payable under this section in respect of that policy of insurance or renewal.

Offence of failure to lodge return.

(5) Any person resident in the State who effects any insurance of the nature referred to in subsection (1) of this section and who—

- (a) neglects or fails to furnish a return as required by that subsection; or
- (b) accepts payment of, or agrees to have allowed to him on account, any money upon or in respect of any insurance for which a return as required by that subsection has not been furnished,

commits an offence against this Act and is liable not only to the penalty referred to in section one hundred and sixteen of this Act but also to pay a penalty equal to double the duty that would have been payable had the return been so furnished.

(6) A person who furnishes a return pursuant to subsection (1) of this section that is false or misleading commits an offence against this Act and is liable not only to the penalty referred to in section one hundred and sixteen of this Act but also to pay a penalty equal to double the duty evaded.

(7) [*Repealed by No. 37 of 1979, s. 70.*]

Returns to be made in respect of certain insurance.
Added by No. 54 of 1968, s.6.
Amended by No. 32 of 1972, s. 6;
No. 37 of 1979, s. 71.

92B. (1) Every person—

- (a) with whom there is effected by any person resident in the State, any insurance in respect of property in the State, or in respect of any liability, loss or damage occurring, or brought about by the happening of any event, within the State, and who in connection therewith issued or issues a policy of insurance or a renewal of any such policy outside the State; or
- (b) who for or on behalf of any person resident in the State arranges, any insurance in respect of property in the State, or in respect of any liability, loss or damage occurring, or brought about by the happening of any event, within the State,

for which insurance a policy of insurance or a renewal of any such policy was or is issued outside the State,

shall furnish a return each month to the Commissioner giving such particulars of that policy or renewal as the Commissioner requires in writing.

(2) A return required to be furnished to the Commissioner under subsection (1) of this section—

- (a) shall be furnished within a period of fifteen days after the end of the month to which that return 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 return relates, be a nil return.

(3) Any person resident in the State—

- (a) shall when required by the Commissioner by notice in writing so to do, furnish to the Commissioner written particulars of any insurance of the nature referred to in subsection (1) of section ninety-two A of this Act, and
- (b) shall furnish those particulars to the Commissioner within the time specified in the notice.

(4) A person who neglects or fails to furnish a return or written particulars, as the case may be, in accordance with this section or who furnishes any return or written particulars, as the case may be, that is or are false or misleading commits an offence against this Act.

(5) A return and any written particulars furnished to the Commissioner under this section are admissible in evidence in any proceedings under section ninety-two A or section ninety-four of this Act and are evidence of the facts stated therein.

(6) [*Repealed by No. 37 of 1979, s. 71.*]

93. [*Repealed by No. 37 of 1979, s. 72.*]

Penalty for
not making
out policy.

No. 10 of
1922, s. 92.
Renumbered
s. 94 in 1934
reprint.

Amended by
No. 113 of
1965, s. 4 (1);
No. 54 of
1968, s. 7;
No. 32 of
1972, s. 7;
No. 37 of
1979, s. 73.

94. (1) Every person who—

- (a) receives or takes credit for any premium or consideration for any contract of insurance, and does not, within three months after receiving or taking credit for such premium or consideration, make out and execute a duly stamped policy of such insurance;
- (b) makes, executes, or delivers out, or pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of any policy which is not duly stamped,

commits an offence against this Act.

(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 the State shall forthwith issue to any person for whose benefit the insurance is to operate in the State a note or memorandum of the transaction in the prescribed form, stamped with the duty which would be chargeable thereon if it were a policy of insurance or a renewal of a policy as the case may be, and any policy or renewal subsequently issued for such consideration shall be deemed to be exempt from duty if a duly stamped note or memorandum of the transaction has been issued as aforesaid.

(3) A person who contravenes or fails to comply with subsection (2) of this section commits an offence against this Act.

(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 the State, 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 subitem (2) of item 16 of the Second Schedule to this Act, and the stamping of the policy, document or renewal in accordance with this subsection within one month after it is received in this State 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 ninety-two A of this Act upon a return furnished under subsection (1) of that section and the policy of insurance or renewal thereof, in respect of the insurance to which the return relates is thereafter received in the State, 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.

95. No duty shall be chargeable on a transfer or assignment of a policy of fire insurance nor upon 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 upon which the duty imposed by this Act has been paid before such time.

Policies of reinsurance to be exempt from duty. No. 10 of 1922, s. 93. Renumbered s. 95 in 1934 reprint.

95A. (1) Notwithstanding anything in this Part of this Act, an insurance company may apply to the Commissioner in a form approved by him in writing for permission to pay duty in accordance with the provisions of this section in respect of policies of insurance and renewals thereof effected by the

Alternative to stamping of individual insurance policies. Added by No. 37 of 1979, s. 74.

insurance company as an alternative to paying duty by the individual stamping of those policies and renewals on which duty is payable.

(2) The Commissioner may in writing grant or refuse permission applied for under subsection (1) of this section and may at any time in writing revoke permission so granted.

(3) In granting permission under subsection (2) of this section, the Commissioner shall specify the date on which that permission comes into force.

(4) A person whose application for permission has been granted by the Commissioner under subsection (2) of this section is, while that permission is in force, an approved person for the purposes of this section.

(5) An approved person shall not pay duty by the individual stamping of any policies of insurance or renewals thereof to which the permission concerned relates.

(6) Subject to subsection (7) of this section, an approved person shall—

- (a) at such intervals as the Commissioner specifies in writing from time to time lodge with the Commissioner a return in such form as the Commissioner requires in writing;
- (b) transmit with the return referred to in paragraph (a) of this subsection the amount of duty payable in respect of the policies and renewals to which that return relates; and
- (c) endorse on each policy or renewal to which the return referred to in paragraph (a) of this subsection relates the passage "W.A. Stamp Duty Paid".

(7) If no duty is payable in respect of the policies or renewals to which the return concerned relates or, if no policies or renewals were effected during the

period to which that return relates, the approved person concerned shall lodge with the Commissioner a nil return.

(8) An approved person shall maintain a record containing sufficient particulars relating to policies of insurance and renewals thereof effected by the approved person to enable the Commissioner to verify the particulars contained in every return lodged by the approved person.

(9) Any policy or renewal—

- (a) on which duty has been paid; and
- (b) which has been endorsed,

in accordance with subsection (6) of this section is deemed to be duly stamped.

(10) A person who—

- (a) contravenes or fails to comply with subsection (5), (6), (7) or (8) of this section; or
- (b) lodges with the Commissioner under subsection (6) of this section a return which is false in any material particular,

commits an offence against this Act and is liable not only to the penalty referred to in section one hundred and sixteen of this Act but also to pay a penalty equal to double the amount of duty that would have been payable in respect of the return concerned had that return been lodged with the Commissioner in accordance with this section or that is payable in accordance with the particulars given in the return concerned after correction of any false particular therein, as the case may be.

(11) Notwithstanding anything in this section, an insurance company which was, immediately before the date on which section seventy-four of the Stamp Act Amendment Act, 1979, came into operation, furnishing the Commissioner with returns in accordance with regulation 7 of the Stamp Act Regulations, 1966, as from time to time amended, shall be deemed to have applied for, and been granted, permission under this section.

*Stamp.**Receipts.*

[S. 94 of
No. 10 of 1922
was repealed
by No. 39 of
1931, s. 11.]

96. [*Repealed¹ by No. 102 of 1970, s. 2.*]
97. [*Repealed¹ by No. 102 of 1970, s. 2.*]
98. [*Repealed¹ by No. 102 of 1970, s. 2.*]
99. [*Repealed¹ by No. 102 of 1970, s. 2.*]
- 99A. [*Added by No. 67 of 1966, s. 8. Repealed
by No. 102 of 1970, s. 7.*]
- 99B. [*Added by No. 67 of 1966, s. 9. Repealed
by No. 102 of 1970, s. 8.*]
- 99C. [*Added by No. 67 of 1966, s. 10. Repealed
by No. 102 of 1970, s. 9.*]
- 99D. [*Added by No. 50 of 1967, s. 7. Repealed¹
by No. 102 of 1970, s. 2.*]
100. [*Repealed by No. 102 of 1970, s. 10.*]
101. [*Repealed by No. 67 of 1966, s. 12.*]
- 101A. [*Added by No. 67 of 1966, s. 13. Repealed
by No. 102 of 1970, s. 11.*]
102. [*Repealed by No. 5 of 1954, s. 2.*]
103. [*Repealed by No. 5 of 1954, s. 2.*]

¹ On and from 1st January, 1971.

PART IV.—BETTING TICKETS.

Heading to Part IV added by No. 37 of 1979, s. 74. Definitions in Part IV. Added by No. 37 of 1979, s. 75.

103A. In this Part, except so far as the context otherwise requires—

“bet” includes wager and “betting” includes wagering;

“betting ticket” means a betting ticket referred to in section one hundred and four of this Act;

“bookmaker” means a person holding a current license granted under the Betting Control Act, 1954;

“metropolitan racecourse” means a racecourse situated within a radius of fifty kilometres from the Town Hall, Perth.

104. (1) The Commissioner shall provide betting tickets in the prescribed form and numbered consecutively for the use of bookmakers on payment to him of the prescribed charges in addition to the duty payable in respect thereof under item 1 of the Second Schedule to this Act.

Duty in respect of bets. Substituted by No. 37 of 1979, s. 76.

(2) The Commissioner shall cause to be printed on betting tickets provided by him under subsection (1) of this section the passage “W.A. Stamp Duty Paid”.

(3) Before issuing a betting ticket, a bookmaker shall at his own cost cause to be printed on the face of the betting ticket in letterpress his name and that of the controlling body with which he is registered.

(4) A bookmaker shall not issue betting tickets other than those provided by the Commissioner under subsection (1) of this section.

Tickets to be written out and cancelled. Substituted by No. 37 of 1979, s. 77.

105. A bookmaker who makes a bet with any person shall forthwith—

- (a) write or cause to be written out a betting ticket in respect of the bet;
- (b) cancel the betting ticket referred to in paragraph (a) of this section by writing across the face of that betting ticket or otherwise defacing it in such a manner as to prevent the re-use of that betting ticket; and
- (c) issue the betting ticket referred to in paragraph (a) of this section in its correct consecutive numerical order.

106. [*Repealed by No. 37 of 1979, s. 78.*]

Offences by bookmakers. Substituted by No. 37 of 1979, s. 79.

107. A bookmaker who contravenes or fails to comply with any provision of section one hundred and four or one hundred and five of this Act commits an offence against this Act.

108. [*Repealed by No. 37 of 1979, s. 79.*]

109. [*Repealed by No. 93 of 1966, s. 11.*]

110. [*Repealed by No. 93 of 1966, s. 12.*]

111. [*Repealed by No. 93 of 1966, s. 13.*]

112. [*Repealed by No. 93 of 1966, s. 14.*]

PART IVA.—SALES AND PURCHASES OF MARKETABLE SECURITIES BY BROKERS AND DUTY THEREON.

112A. In this Part, unless the contrary intention appears—

Definitions
in Part IVA.

Added by
No. 93 of
1966, s. 15.

Amended by
No. 37 of
1979, s. 80.

“broker” means a person who is a member of The Stock Exchange of Perth Limited and includes a broker’s agent;

“broker’s agent” means an agent or employee of a broker within the meaning of any corresponding law carrying on business for or on behalf of that broker in this State;

“corresponding law” means a law in force in a State other than this State or in a Territory of the Commonwealth that is declared by proclamation, to be a corresponding law for the purposes of this Part;

“dealer” means a broker or a broker’s agent within the meaning of this Act or any corresponding law;

“odd lot” means a parcel of marketable securities or rights in respect of shares that is, under the rules of the stock exchange on which the sale or purchase is effected, required to be bought or sold through an odd lot specialist;

“odd lot specialist” means a broker who is approved by the Commissioner on the recommendation of The Stock Exchange of Perth Limited as an odd lot specialist for the purposes of this Part.

112B. This Part and the duty payable as calculated on the return referred to in section one hundred and twelve C of this Act, in accordance with subitem (4) of item 4 of the Second Schedule

Application
of this Part.

Vide Commonwealth
Currency
Act, 1965,
No. 95 of
1965.

Added by
No. 93 of
1966, s. 16.

Amended by
No. 37 of
1979, s. 81.

to this Act, apply to the sale and purchase of a marketable security or a right in respect of shares only if—

- (a) the consideration for the sale and purchase is in money or money's worth of not less than the unencumbered value of the security or the right; and
- (b) the security or the right is listed on a stock exchange that is a prescribed stock exchange for the purposes of paragraph (h) of subsection (6) of section three hundred and seventy-four of the Companies Act, 1961.

Record and return of sales and purchases. Added by No. 93 of 1966, s. 17. Amended by No. 50 of 1967, s. 8; No. 37 of 1979, s. 82.

112C. (1) Subject to subsection (5) of this section, a broker shall forthwith on a sale or purchase of a marketable security or right in respect of shares being made by him, or being deemed to have been so made, whether in or outside the State—

- (a) pursuant to an order lodged with him in the State; or
- (b) on his own account or behalf,

being a sale or purchase to which this Part applies, enter such details of the sale or purchase in a record to be kept by him in such form as is prescribed.

(2) A broker shall, from the details entered in the record referred to in subsection (1) of this section, make a return in such form as the Commissioner requires in writing and lodge or cause to be lodged that return with the Commissioner within a period of fifteen days after the end of the month to which that return relates, together with a remittance for the amount of the duty payable on the sales and purchases to which that return relates in accordance with this Act.

(3) When a broker has not made or is not deemed to have made any sale or purchase referred to in subsection (1) of this section during any month, he shall lodge or cause to be lodged with the Commissioner a nil return in respect of that month.

(4) For the purposes of subsection (1) of this section—

- (a) a broker who makes a purchase of a marketable security or a right in respect of shares, whether on his own account or on behalf of another person from a person who is not a dealer shall, notwithstanding that no order to sell it was in fact lodged with him, be deemed to have also made a sale of it pursuant to an order to sell lodged with him in this State by the person from whom he made the purchase;
- (b) a broker who makes a sale of a marketable security or a right in respect of shares, whether on his own account or on behalf of another person to a person who is not a dealer shall, notwithstanding that no order to purchase it was in fact lodged with him, be deemed to have also made a purchase of it pursuant to an order to purchase lodged with him in the State by the person to whom he made the sale.

(5) Subsection (1) of this section does not require a broker to enter any prescribed details in respect of—

- (a) a sale, such as is referred to in subsection (1) of this section, where the sale is made pursuant to an order to sell lodged with him by or on behalf of another dealer;
- (b) a purchase, such as is so referred to, where the purchase is made pursuant to an order to purchase lodged with him by or on behalf of another dealer; or
- (c) a sale or purchase of marketable securities of any public statutory body constituted under the law of any other State, or of any Territory, of the Commonwealth, or of any Crown instrumentality, agent of the Crown or Government authority designated by the Treasurer by notice published in the *Government Gazette*,

in a return required to be lodged with the Commissioner under this section, but those details shall be entered in the record kept by the broker pursuant to subsection (1) of this section.

(5a) When the Treasurer has under paragraph (c) of subsection (5) of this section designated any Crown instrumentality, agent of the Crown or Government authority, he may by notice published in the *Government Gazette* amend or revoke that designation.

(6) Subsection (1) of this section also applies to a sale or purchase of—

- (a) a marketable security or right in respect of shares notwithstanding that the instrument of transfer thereof is exempt from duty under this Act; or
- (b) any odd lot of marketable securities or rights in respect of shares by an odd lot specialist.

(7) A broker who—

- (a) contravenes or fails to comply with any of the provisions of subsection (1), (2) or (3) of this section; or
- (b) lodges or causes to be lodged with the Commissioner a return which is false in any material particular,

commits an offence against this Act and is liable not only to the penalty referred to in section one hundred and sixteen of this Act but also to pay a penalty equal to double the amount of duty that would have been payable in respect of the return concerned had that return been lodged in accordance with this section or that is payable in accordance with the particulars given in the return concerned after correction of any false particular therein, as the case may be.

112D. [*Repealed by No. 37 of 1979, s. 83.*]

112E. (1) A broker shall forthwith after entering the prescribed details of a sale or purchase of a marketable security or right in respect of shares in a record required to be kept under section one hundred and twelve C of this Act, or on the making of a sale or purchase of a marketable security or right in respect of shares to which subsection (1) of that section applies by virtue of subsection (6) of that section endorse the transfer of that security or that right with a statement that the duty has been or will be paid by him or that no duty is payable, as the case may be, and affix his stamp and the date he so endorsed the transfer.

Endorsement
of transfer
as to
payment
of duty.
Added by
No. 93 of
1966, s. 19.
Amended by
No. 37 of
1979, s. 84.

(1a) A broker who contravenes or fails to comply with any of the provisions of subsection (1) of this section commits an offence against this Act.

(2) A broker who—

(a) endorses an instrument of transfer as required by subsection (1) of this section in respect of a sale or purchase to which subsection (1) of section one hundred and twelve C of this Act applies, before entering the details of the sale or purchase in the record required to be kept by him under that subsection; or

(b) fails to so endorse an instrument of transfer in respect of a sale or purchase to which subsection (1) of section one hundred and twelve C of this Act applies by virtue of subsection (6) of that section, forthwith after the making of the sale or purchase,

commits an offence against this Act.

(3) An instrument of transfer in respect of a sale or purchase that is endorsed in accordance with the provisions of subsection (1) of this section or with a corresponding law shall be deemed to be duly stamped under this Act.

Power to dealer to recover duty paid by him on account of vendor or purchaser. Added by No. 93 of 1966, s. 20.

112F. Where a broker has paid to the Commissioner under this Part any amount of money for duty in respect of any sale or purchase of a marketable security or right in respect of shares, the broker may—

- (a) recover that amount from the vendor or the purchaser for whom he has made or is deemed to have made the sale or purchase, as a civil debt due to him in a court of competent jurisdiction; or
- (b) reimburse himself that amount out of any money in his possession that belongs to that vendor or that purchaser.

Saving. Added by No. 93 of 1966, s. 21.

112G. Nothing in this Part affects the liability of a person who sells or purchases a marketable security or a right in respect of shares otherwise than through the agency of a broker, to pay the amount of duty that is chargeable under the other Parts of this Act in relation to the sale and purchase of that security or that right.

Prohibition of registration of transfers unless in proper form and duly stamped. Added by No. 93 of 1966, s. 22. Amended by No. 37 of 1979, s. 85.

112H. (1) A transfer of a marketable security or a right in respect of shares shall not be registered, recorded or entered in the books of the corporation, company or society to whose security or right the transfer relates—

- (a) in the case of a transfer to give effect to a sale and purchase or other disposition of that security or that right otherwise than through the agency of a broker unless—
 - (i) a proper instrument of transfer has been delivered to that corporation, company or society and wherein, in the case of a transfer by way of sale, the consideration therefor is expressed in terms of money and the actual date of the sale and the date of the execution by the transferor or

- the transferor and transferee where both are required to execute the instrument, are set out therein; and
- (ii) the instrument is duly stamped; and
- (b) in the case of a transfer to give effect to the sale and purchase of that security or that right through the agency of a broker unless—
- (i) a proper instrument of transfer has been delivered to the corporation, company or society; and
 - (ii) the transfer is by virtue of subsection (3) of section one hundred and twelve E deemed to have been duly stamped.

(2) Where a transfer of a marketable security or of any right in respect of shares has been registered, recorded or entered in the books of a corporation, company or society in the State, the instrument of transfer shall be retained in the State by the corporation, company or society for a period of not less than two years after the date it is so registered, recorded or entered.

Instrument of transfer to be retained for period by company.

(3) A corporation, company or society that contravenes or fails to comply with any provision of this section commits an offence against this Act.

(4) The right or title of a transferee or subsequent holder of a marketable security or right in respect of shares is not invalidated by reason only that the transfer of that security or that right was registered, recorded or entered in the books of a corporation, company or society in contravention of a provision of this section.

Saving.

112HA. (1) Every company in a branch register of which any marketable securities are registered shall, within fifteen days after the end of any month in which the transfer of any of those marketable securities is registered, lodge or cause to be lodged

Payment on returns of certain marketable securities. Added by No. 37 of 1979, s. 86.

with the Commissioner in the form and manner approved by him in writing a return setting out such information as the Commissioner requires in writing of all entries in that branch register relating to that transfer.

(2) When, in respect of any transfer of marketable securities referred to in subsection (1) of this section, the Commissioner is satisfied that—

- (a) stamp duty has not been paid under the law of the State or Territory in which the branch register concerned is situated, the company lodging or causing to be lodged the return concerned shall forthwith on demand in writing being made by the Commissioner pay to him an amount equal to the amount in which duty would have been payable if the marketable securities concerned had at the relevant time been registered in the principal register of that company and that transfer had been registered in that principal register;
- (b) stamp duty has been paid under the law of the State or Territory in which the branch register concerned is situated in an amount which is less than the amount in which duty would have been payable if the marketable securities concerned had at the relevant time been registered in the principal register of the company lodging or causing to be lodged the return concerned and that transfer had been registered in that principal register, that company shall forthwith on demand in writing being made by the Commissioner pay to him the difference between those amounts; or
- (c) stamp duty has been paid under the law of the State or Territory in which the branch register concerned is situated in an amount which is not less than the amount in which duty would have been payable if the marketable securities concerned had at the relevant time been registered in the

principal register of the company lodging or causing to be lodged the return concerned and that transfer had been registered in that principal register, that company is not required to make any payment to the Commissioner under this section.

(3) Any company which—

(a) contravenes or fails to comply with—

(i) any of the provisions of subsection (1) or (2); or

(ii) a demand in writing made by the Commissioner under subsection (2), of this section; or

(b) lodges or causes to be lodged with the Commissioner under subsection (1) of this section a return which is false in any material particular,

commits an offence against this Act and is liable not only to the penalty referred to in section one hundred and sixteen of this Act but also to pay a penalty equal to double the amount of the payment which should have been made to the Commissioner.

(4) In this section—

“branch register” means branch register kept under section one hundred and fifty-seven of the Companies Act, 1961, in any other State, or in any Territory, of the Commonwealth;

“company” has the meaning given by section five of the Companies Act, 1961;

“principal register” means principal register referred to in section one hundred and fifty-seven of the Companies Act, 1961.

112HB. In computing for the purpose of duty under any of the provisions of this Act the value of any marketable security not listed on any stock

Valuation of unlisted marketable securities. Added by No. 37 of 1979, s. 86.

exchange, it shall be assumed that the person issuing that marketable security has complied with all the requirements of the Committee of The Stock Exchange of Perth Limited so as to enable that marketable security to be quoted on the official list of The Stock Exchange of Perth Limited.

PART IVB.—CREDIT AND RENTAL BUSINESS.

Heading.
Added by
No. 113 of
1969, s. 10.

Definitions in
Part IVB.

Added by
No. 113 of
1969, s. 10.

Amended by
No. 102 of
1970, s. 12;
No. 9 of
1974, s. 7;
No. 37 of
1979, s. 87.

112I. (1) In this Part, unless the contrary intention appears—

“acceptable rate of interest” in relation to a loan *bona fide* secured on any interest in land, means the rate of interest that the lender agrees to accept as long as the borrower duly observes and performs all his covenants and agreements including those relating to the prompt payment of interest;

“authorized dealer in the short term money market” means a body corporate declared under subsection (2) of this section to be an authorized dealer in the short term money market;

“bank” means—

- (a) The Rural and Industries Bank of Western Australia constituted under the Rural and Industries Bank Act, 1944;
- (b) any bank constituted under a law of any other State, or of a Territory, of the Commonwealth; or
- (c) any bank as defined in section five of the Banking Act 1959 of the Parliament of the Commonwealth as amended from time to time;

“credit arrangement” means an arrangement for the provision of credit in relation to the sale of goods or the provision of services where any amount in excess of the cash

price is or may be charged for or in relation to the goods or services pursuant to the arrangement, but does not include any such arrangement where the only amount in excess of the cash price that is or may be chargeable is an amount that does not exceed the amount that would have been chargeable if the arrangement required the payment of interest on the amount of credit provided under the arrangement and from time to time outstanding at the declared rate;

“credit business” means the business of making loans or entering into credit arrangements or discount transactions but does not include—

- (a) the business of a pawnbroker carried on in accordance with the Pawnbrokers Act, 1860; or
- (b) any business that is effected or evidenced by an instrument to which Part IVC of this Act applies; or
- (c) the business of making loans to its members of a body known as a credit union that is registered under the Co-operative and Provident Societies Act, 1903;

“dealer in the unofficial short term money market” means a body corporate declared under subsection (2) of this section to be a dealer in the unofficial short term money market;

“discount transaction” means the purchase, acquisition, discounting or factoring of book debts or other things in action, not being marketable securities, for a consideration that is less than the amount of the book debt or the nominal or face value of the thing in action (being an amount or nominal or face value which does not include any amount payable as interest or

appropriated to interest with respect to the book debt or thing in action concerned), but does not include the purchase, acquisition, discounting or factoring of—

- (a) any book debt or other thing in action from a corporation by another corporation that is by virtue of subsection (5) of section six of the Companies Act, 1961, deemed to be related to that first mentioned corporation, where the consideration is not less than ninety-six per centum of the amount of the book debts or the nominal or face value of the things in action;
- (b) any book debt or other thing in action that relates solely to an amount due to any person in the Commonwealth for goods or other chattels personal that have been exported by that person from the Commonwealth; or
- (c) any bill of exchange or promissory note at a discount rate not exceeding the declared rate;

“goods” includes all chattels personal and any fixture severable from the realty but does not include money, livestock and things in action;

“housing loan” means a loan—

- (a) which the borrower has declared by statutory declaration to have been obtained for the purpose of defraying the whole or any part of the cost of—
 - (i) the construction or acquisition of a house or flat that is occupied or intended to be occupied; or

- (ii) the land on which the borrower intends to have constructed a house or flat to be occupied,

by the borrower for residential purposes; and

- (b) the repayment of which is secured by a mortgage of the house or flat, or of the land, referred to in paragraph (a) of this definition or which is to refinance a loan referred to in that paragraph and which loan, when refinanced, is secured by such a mortgage;

“interest”, subject to subsection (3a) of this section, includes any amount, by whatever name called, in excess of the principal amount of the loan concerned, which amount has been or is to be paid or payable in consideration of or otherwise in respect of that loan, but does not include—

- (a) any sum lawfully agreed to be paid on account of duties or fees payable under any Act;
- (b) any sum payable to a legal practitioner for costs necessarily incurred by the lender in relation to a loan *bona fide* secured on any interest in land not exceeding the amount fixed by any general order for the time being in force, made pursuant to section sixty-four of the Legal Practitioners Act, 1893; or
- (c) any sum lawfully agreed to be paid in respect of the valuation of any real property given as security for the loan if the sum payable does not exceed the amount payable for the valuation under the scale of fees, if any, for the time being fixed by The Real Estate Institute of Western Australia;

“loan” includes—

- (a) an advance of money;
- (b) money paid for on on account of, or on behalf of, or at the request of, any person;
- (c) a forbearance to require payment of money owing on any account whatsoever;
- (d) any transaction (whatever its terms or form) that in substance effects a loan of money;
- (e) subject to any direction made under subsection (3b) of this section, a loan which is one of a series of transactions any of which has effected a loan at a rate of interest in excess of the declared rate by a registered person or some other person with whom a registered person is in some way associated, whether under a legally binding contract or arrangement or under an informal or unenforceable arrangement or understanding; and
- (f) a loan in respect of which any amount which is paid or payable to a guarantor or any other person (not being the person making or receiving that loan) in respect of or in connexion with the procuring or making of that loan or of any guarantee of the repayment thereof, together with the amount which is or may be payable by way of interest in consideration of or otherwise in respect of that loan, exceeds the amount which would have been payable if the only amount payable in addition to the principal of that loan had been interest thereon at the declared rate,

but does not include any loan, advance, payment, forbearance or transaction referred to in paragraph (a), (b), (c) or (d) of this definition where the interest payable in consideration or in respect thereof is at an annual rate not exceeding the declared rate;

“principal” in relation to a loan means the amount actually lent;

“rate of interest” in relation to a loan *bona fide* secured on any interest in land, means the acceptable rate of interest;

“registered person” means a person who is registered under this Part;

“rental business” means the business of granting to any person rights to use any goods other than books, whether pursuant to a lease, bailment or licence or otherwise, but does not include the business of granting to any person the right to use goods in conjunction with a lease of, or licence to occupy or use, any real property;

“service costs” means such proportion or percentage of the amount received in relation to rental business as is, in the opinion in writing of the Commissioner, properly attributable to the cost of maintaining in a serviceable condition the goods which are the subject of the rental business;

“short term discount transaction” means a discount transaction which the registered person concerned has elected in the prescribed manner to treat as a short term discount transaction;

“short term loan” means—

- (a) a loan which the registered person concerned has elected in the prescribed manner to treat as a short term loan; or

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- (b) a loan which is a loan upon an account current, other than a loan upon an account current which the registered person concerned has declared, in the prescribed manner and within the prescribed period, to be a special account current;

“the declared rate” means the rate per centum per annum declared by the Treasurer under subsection (3) of this section.

(2) The Treasurer may, by instrument in writing published in the *Government Gazette*, declare a body corporate—

- (a) to be an authorized dealer in the short term money market for the purposes of the definition of “authorized dealer in the short term money market”; or
- (b) to be a dealer in the unofficial short term money market for the purposes of the definition of “dealer in the unofficial short term money market”,

in subsection (1) of this section.

(3) The Treasurer may from time to time by instrument in writing published in the *Government Gazette* declare a rate per centum per annum, which rate shall not be less than nine per centum per annum, for the purposes of the definition of “the declared rate” in subsection (1) of this section.

(3a) For the purposes of this Part—

- (a) when the interest charged on a loan or obligation is not expressed in terms of a rate, any amount paid or payable to the lender in respect of the loan or obligation shall be appropriated to principal and interest in the proportion that the total amount of the principal bears to the total amount of the interest, and the rate per centum per annum represented by the interest charged shall be calculated in

accordance with the Schedule to the Money Lenders Act, 1912, and that rate shall, for the purposes of this Part, be the rate of interest of the loan or obligation; and

- (b) a reference to interest at a rate per centum per annum is a reference to a simple annual rate of interest on the balance of the loan or obligation from time to time outstanding.

(3b) Notwithstanding anything contained in paragraph (e) of the definition of "loan" in subsection (1) of this section, the Commissioner may, if he is satisfied that two or more loans in a series of transactions referred to in that paragraph have been *bona fide* made as separate and distinct loans, direct in writing that those loans shall for the purposes of this Part be deemed to be separate and distinct loans.

(4) This Part does not apply to the transaction of any credit business with a bank, other than—

- (a) a loan that is not an overdraft on current account; or
- (b) a purchase, acquisition, discounting or factoring of bills of exchange or promissory notes at a discount rate in excess of the declared rate.

(4a) The Treasurer may by instrument in writing published in the *Government Gazette* declare that this Part does not apply to or in relation to—

- (a) any discount transaction to which the parties are bodies corporate and which comprises the purchase, acquisition, discounting or factoring of any bill of exchange or promissory note that is—
 - (i) drawn, made, accepted or indorsed by a bank, an authorized dealer in the short term money market, or a dealer in the unofficial short term money market;

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- (ii) drawn or made for a term not exceeding one hundred and eighty days; and
 - (iii) drawn or made for an amount or value of not less than fifty thousand dollars;
- (b) any loan for a term not exceeding one hundred and eighty days to which the parties are bodies corporate and which has a principal of not less than fifty thousand dollars and which is—
- (i) a loan to a bank;
 - (ii) a loan to or by an authorized dealer in the short term money market;
 - (iii) a loan to or by a dealer in the unofficial short term money market; or
 - (iv) a loan by one body corporate to another body corporate by way of temporary investment of surplus funds.

(4b) [*Repealed by No. 37 of 1979, s. 87.*]

(4c) An instrument in writing made by the Treasurer under subsection (2), (3) or (4a) of this section—

- (a) shall be treated as having effect, or as having had effect, as the case requires, on and from the date specified in the instrument, which date may be the date on which the instrument is made or any date earlier or later than that date;
- (b) may be amended, varied or revoked by the Treasurer by instrument in writing published in the *Government Gazette*.

(5) [*Repealed by No. 37 of 1979, s. 87.*]

(6) [*Repealed by No. 37 of 1979, s. 87.*]

112J. (1) Subject to subsection (5) of this section, a person shall not in the State carry on any credit business or any rental business (whether or not he carries on any other business) or advertise or hold himself out in any way as carrying on any such business, whether the head office or principal place of business of that person is in the State or elsewhere, unless he is a registered person.

Persons carrying on credit or rental business required to be registered. Added by No. 113 of 1969, s. 11. Amended by No. 9 of 1974, s. 7; No. 37 of 1979, s. 88.

(1a) A person who contravenes or fails to comply with subsection (1) of this section commits an offence against this Act and is liable not only to the penalty referred to in section one hundred and sixteen of this Act but also to pay a penalty equal to double the amount of duty that would have been payable if he had been a registered person.

- (2) A person who in the course of any business—
- (a) undertakes negotiations in the State with the object of transacting any credit business or rental business; or
 - (b) enters into discount transactions that relate to book debts or other things in action that are situated or enforceable in the State,

shall be deemed to carry on credit business or rental business, as the case may be, in the State, whether he has an established place of business in the State or not.

(3) A person who carries on in the State any credit business or any rental business shall apply to the Commissioner for registration in such form as the Commissioner approves in writing.

(3a) On receiving an application made under subsection (3) of this section, the Commissioner shall—

- (a) register the applicant; and
- (b) issue to the applicant a certificate of registration in respect of each address in the State at which the registered person wishes to carry on any credit business or any rental business.

(4) A registered person who ceases to carry on credit business or rental business in the State may cancel his registration under this Part by giving notice in writing to the Commissioner.

(5) A person is not required to be a registered person by reason only of the fact that he is acting as an agent for, or is an employee of, a person who carries on any credit business or any rental business.

(6) A registration made under subsection (3) of this section before the coming into operation of section eighty-eight of the Stamp Act Amendment Act, 1979, and in force immediately before that coming into operation shall be deemed to be a registration made under subsection (3a) of this section after that coming into operation.

Statements
to be
lodged with
the Com-
missioner by
registered
persons.
Added by
No. 113 of
1969, s. 12.
Amended by
No. 102 of
1970, s. 13;
No. 37 of
1979, s. 89.

112K. (1) A registered person—

(a) shall lodge with the Commissioner each month a statement in such form as the Commissioner requires in writing within fifteen days after the end of the month to which the statement relates, showing—

- (i) the total amount of all loans, other than short term loans and housing loans, made by him during the last preceding month;
- (ii) an amount equal to one and a half per centum of the total amount referred to in subparagraph (i) of this paragraph, as set out in the statement;
- (iii) the sum of the total amount of all short term loans other than housing loans, made by him during the last preceding twelve months that were outstanding in whole or in part at the end of the month to which the statement relates and the total amount of all such short term loans,

other than housing loans, made within such month and repaid within that month;

- (iv) an amount equal to one eighth of one per centum of the total amounts referred to in subparagraph (iii) of this paragraph;
- (v) the total amount expended by him during the last preceding month on discount transactions other than short term discount transactions;
- (vi) an amount equal to one and a half per centum of the total amount referred to in subparagraph (v) of this paragraph, as set out in the statement;
- (vii) the sum of—
 - (I) the total amounts expended by him in respect of short term discount transactions by which book debts or other things in action were purchased, acquired, discounted or factored by him during the last preceding twelve months, but to the extent only that they, at the end of the last preceding month were not realized by collection, sale, disposal or any other form of realization; and
 - (II) the total amount expended by him in respect of short term discount transactions by which book debts or other things in action were purchased, acquired, discounted or factored by him during the last preceding month, but to the extent only that they, at the end of that month, were

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fully realized by collection, sale, disposal or any other form of realization;

- (viii) an amount equal to one eighth of one per centum of the total amounts referred to in subparagraph (vii) of this paragraph, as set out in the statement;
- (ix) the total of all amounts debited by him for the sale of goods or the provision of services during the last preceding month pursuant to a credit arrangement made by him under which credit in excess of two hundred dollars is or may be obtained less any amounts credited against amounts so debited in respect of goods returned or services not provided;
- (ixa) an amount equal to one and a half per centum of the total referred to in subparagraph (ix) of this paragraph, as set out in the statement;
- (x) the total amount received by him during the last preceding month in respect of his rental business;
- (xi) an amount equal to one and a half per centum of the amount arrived at by deducting service costs from the total amount referred to in subparagraph (x) of this paragraph, as set out in the statement;
- (xii) the total amount paid as duty pursuant to section sixteen of this Act under item 13 of the Second Schedule to this Act—
 - (I) in respect of any instrument executed during the last preceding twelve months; or
 - (II) by reason of the provisions of subsection (2a) of section eighty-three of this Act, in

respect of any security deemed to be a new and separate instrument of security bearing date on a day within the last preceding twelve months,

that secures any of the loans the amounts of which were included in the total amounts of loans referred to in subparagraph (i) or (iii) of this paragraph and in respect of which an amount has not been included under this subparagraph in any statement previously lodged by him with the Commissioner under this section, but to the extent only to which the amounts so paid as duty are attributable to the loans the amounts of which are so included in the total amount of loans referred to in those subparagraphs; and

- (b) at the time of lodging the statement referred to in paragraph (a) of this subsection with the Commissioner, shall pay in cash to the Commissioner as duty on that statement a sum equal to the difference between the sum of the amounts referred to in subparagraphs (ii), (iv), (vi), (viii), (ixa) and (xi) and the amount referred to in subparagraph (xii) of paragraph (a) of this subsection, as set out in the statement, but where any loan has been included in a statement lodged with the Commissioner pursuant to subparagraph (i) of paragraph (a) of this subsection and that loan is repaid within ten months of the making of the loan, the registered person concerned may deduct from the amount to be paid pursuant to this paragraph an amount equal to one eighth of one per centum of the amount of the loan so repaid for each complete month between the repayment of the loan and the expiration of twelve months from the making of the loan.

(1a) Notwithstanding anything in subsection (1) of this section, when a registered person has not during the relevant month carried on any credit business or any rental business, he shall lodge with the Commissioner a nil statement.

(1b) For the purposes of subsection (1) of this section—

- (a) the amount of a loan upon an account current, other than a special account current, with a registered person in relation to a statement is the maximum amount of the principal appearing in that account as due to the registered person at any particular time;
- (b) a loan referred to in paragraph (a) of this subsection shall be deemed to have been made and repaid; and
- (c) the amount of a loan upon a special account current with a registered person in relation to a return is the total amount of the loans made upon that account by the registered person,

during the last preceding month.

(2) Where—

- (a) a registered person has been carrying on rental business but not any credit business; and
- (b) the total amount received by him during the last preceding twelve months in respect of his rental business did not exceed five thousand dollars, after deduction of service costs,

the registered person may, instead of lodging a statement with the Commissioner under subsection (1) of this section, by notice in writing in such form as the Commissioner requires in writing elect to lodge with the Commissioner not later than each 31st day of March, a statement showing the total amount received by him in the period commencing on the 1st day of February in the last preceding

year and ending on the 31st day of January in the year in which the statement is lodged in respect of his rental business (not including any amount previously included in a statement lodged with the Commissioner pursuant to paragraph (a) of subsection (1) of this section) and, after deducting service costs, to pay in cash to the Commissioner as duty on that statement an amount equal to one and a half per centum of such net amount.

(3) A registered person who has given to the Commissioner a notice of election under subsection (2) of this section, is liable to pay and shall pay to the Commissioner at the time the statement is lodged with the Commissioner, the amount of duty on the statement in accordance with the notice of election, but where the total amount so received by the registered person in the period to which the statement relates does not exceed five thousand dollars, after deduction of service costs, the registered person is not liable to pay to the Commissioner, any duty on that statement.

(4) An election made by a registered person pursuant to subsection (2) of this section may be cancelled, with effect from and in relation to the period of twelve months commencing on the 1st day of February next following, by notice in writing under the hand of the registered person given to the Commissioner or by notice in writing under the hand of the Commissioner given to the registered person if the Commissioner is satisfied that the total amount received by the registered person who has made the election was in excess of seven thousand five hundred dollars, after deduction of service costs, in any period of twelve months.

(5) A registered person who—

- (a) contravenes, or fails to comply with, any of the requirements of this section; or
- (b) lodges with the Commissioner under subsection (1) of this section a statement which is false in any material particular,

commits an offence against this Act and is liable not only to the penalty referred to in section one hundred and sixteen of this Act but also to pay a penalty equal to double the amount of any duty that would have been payable if the requirement concerned had not been contravened or had been complied with or if the particular concerned had been corrected, as the case requires.

(6) [*Repealed by No. 37 of 1979, s. 89.*]

Amounts to
be included
in statement.
Added by
No. 113 of
1969, s. 13.

112L. The amounts to be shown in any statement required to be lodged under section one hundred and twelve K of this Act include, in relation to—

- (a) loans, the amount of loans made by or on behalf of the registered person to persons resident or domiciled in the State or in respect of which any of the negotiations have taken place in the State;
- (b) discount transactions, the amount of the consideration given by the registered person for books debts or other things in action situated or enforceable in the State;
- (c) credit arrangements, the amount of credit provided by or on behalf of the registered person with respect to goods sold or services supplied in the State; and
- (d) rental business, amounts received by or on behalf of the registered person in respect of the use of goods where—
 - (i) the right to use the goods was granted in the State; or
 - (ii) any of the negotiations by or on behalf of the registered person with respect to the grant of the right to use the goods were undertaken in the State; or
 - (iii) the goods were delivered in the State to the person to whom the right to use the goods was granted.

112M. [*Repealed by No. 37 of 1979, s. 90.*]

112N. (1) Nothing contained in section one hundred and twelve K of this Act requires a registered person to include in a statement, required by that section to be lodged with the Commissioner, any amount in respect of—

Matters not required to be included in statement.
Added by No. 113 of 1969, s. 15.
Amended by No. 37 of 1979, s. 91.

(a) [*Repealed by No. 37 of 1979, s. 91.*]

(b) [*Repealed by No. 37 of 1979, s. 91.*]

(c) [*Repealed by No. 37 of 1979, s. 91.*]

(d) that part of the amount of any loan the repayment of which is secured upon—

- (i) an interest in a loan or upon book debts or other things in action (other than a short term loan) acquired in a discount transaction, the amount of which loan or discount transaction was included by the borrower in a statement lodged with the Commissioner pursuant to section one hundred and twelve K of this Act;
- (ii) an interest in an instalment purchase agreement, as defined in Part IVC of this Act, in respect of which duty has been paid under Part IVC of this Act; or
- (iii) an interest in a lease, bailment, licence or other agreement that confers on any person the right to use any goods in respect of which amounts have been or are being included in statements lodged with the Commissioner pursuant to section one hundred and twelve K of this Act,

which is equal to the value of the interest upon which the repayment is secured;

- (e) a discount transaction, to the extent that the discount transaction relates—
 - (i) to a book debt or other thing in action the amount of which was included in a statement lodged with the Commissioner pursuant to section one hundred and twelve K of this Act; or
 - (ii) to an instalment purchase agreement, as defined in Part IVC of this Act, in respect of which duty under that Part has been paid;
- (f) rental business in respect of which stamp duty or duty of a similar nature has been paid on the hiring arrangement concerned in accordance with the provisions of any law of the Commonwealth or of any other State, or of any Territory, of the Commonwealth;
- (g) any business transacted by him outside the State where—
 - (i) none of the negotiations leading to the transaction of the business took place in the State; and
 - (ii) the amounts obtained or the goods obtained by the other party to the transaction were obtained for the purpose of being wholly expended or wholly used outside the State.

(2) A registered person shall supply to the Commissioner such particulars of the matters referred to in subsection (1) of this section as are required by the Commissioner in writing.

Registered persons to keep records. Added by No. 113 of 1969, s. 16. Amended by No. 37 of 1979, s. 92.

1120. (1) A registered person shall keep or cause to be kept in the State sufficient books and records to enable all amounts required to be set out in a statement to be lodged by him with the Commissioner under section one hundred and twelve K of this Act to be accurately calculated.

(1a) A registered person who contravenes or fails to comply with the requirements of subsection (1) of this section commits an offence against this Act.

(2) A registered person shall keep available for inspection the books and records referred to in subsection (1) of this section, together with all working papers used in making the calculations referred to in that subsection, for a period of two years from the month or year, as the case may be, to which each statement in which the amounts so referred to and set out relates, or for such lesser period as the Commissioner may, in any particular case, allow.

(2a) A registered person who contravenes or fails to comply with the requirements of subsection (2) of this section commits an offence against this Act.

(3) Where the Commissioner is satisfied that—

- (a) it is not reasonably practicable to calculate precisely any total amount that is to be set out in the statement of a registered person required to be lodged under section one hundred and twelve K of this Act, the Commissioner may agree to accept from the registered person statements in which that amount is calculated in such a manner or on such a basis as the Commissioner thinks fit; or
- (b) in the circumstances of a particular case it is not reasonable to require statements to be lodged by the registered person in each month, he may agree to accept statements at such times and relating to such periods as the Commissioner thinks fit.

(4) Where, pursuant to subsection (3) of this section, the Commissioner agrees to accept from a registered person a statement—

- (a) in which an amount is calculated in a manner or on a basis different from that required under section one hundred and twelve K of this Act; or
- (b) at a time or relating to a period otherwise than in accordance with that section,

the registered person shall, at the time of lodging that statement with the Commissioner, pay to him the amount of duty that would be payable on that statement if it were lodged by him with the Commissioner in accordance with that section.

(5) The Commissioner may, by notice in writing served on a registered person, cancel any agreement made pursuant to subsection (3) of this section, and upon the day specified in the notice as the day on which the agreement is cancelled, the agreement has no further force or effect in relation to that registered person.

As to trans-
actions with
unregistered
persons.

Added by
No. 113 of
1969, s. 17.
Amended by
No. 3 of
1971, s. 4;
No. 37 of
1979, s. 93.

112P. (1) Where any person domiciled or resident in the State transacts or offers to transact any business with a person carrying on any credit business or rental business (whether within or outside the State) who is not a registered person, he shall forthwith make a note or memorandum in writing of the transaction or offer containing such particulars as are prescribed.

(2) A note or memorandum made under subsection (1) of this section is chargeable with duty at the rate of one and a half per centum of, in the case of a note or memorandum relating to—

- (a) a credit arrangement, the amount of credit provided or to be provided;
- (b) a discount transaction, the amount of the consideration for the purchase, acquisition, discounting or factoring of the book debts or other things in action;
- (c) a loan, the amount of the loan; and
- (d) any rental business, the amount that is or will be payable for the use of the goods, but where the amount is not capable of being determined, the person making the note or memorandum is liable, instead of paying duty as hereinbefore provided in this subsection, to pay—
 - (i) a duty of two dollars by an impressed stamp on the note or memorandum, which duty shall be

paid by the person required to make the note or memorandum within seven days of the making thereof; and

- (ii) not later than each 31st day of March, further duty on the note or memorandum of an amount equal to one and a half per centum of the amount paid by him in respect of the use of the goods during the year ending on the last preceding 31st day of January.

(3) [*Repealed by No. 37 of 1979, s. 93.*]

(4) A note or memorandum that is not stamped as required by this section may be stamped on payment of a penalty of double the amount of the duty that should have been paid.

(5) A person who fails to comply with subsection (1) of this section commits an offence against this Act and is liable not only to the penalty referred to in section one hundred and sixteen of this Act but also to pay a penalty equal to double the amount of the duty that would have been payable if he had made a note or memorandum in writing of the transaction or offer in compliance with the requirements of that subsection.

(6) Notwithstanding anything contained in this section, a person domiciled or resident in the State is not required to make a note or memorandum of any business transacted or offered to be transacted—

(a) [*Deleted by No. 37 of 1979, s. 93.*]

(b) if the business is an arrangement for the provision of credit in relation to the sale of goods or the provision of services other than a loan or a discount transaction;

(c) if the business relates to the grant of the right to use any goods and the total amount that is or will be payable for the use thereof does not exceed one hundred dollars or the grant of the right to the use of the goods is for a period of fourteen days or less;

- (d) with a person carrying on business outside the State if—
 - (i) none of the negotiations leading to the transaction of or to the offer to transact the business were carried out in the State; and
 - (ii) the amount obtained or the goods obtained by him were obtained for the purpose of being wholly expended or wholly used outside the State;
- (e) with the Crown or any person acting on behalf of the Crown, whether in right of the Commonwealth or any State thereof; or
- (f) which is not a credit arrangement, a discount transaction, a loan or the grant of the right to use goods.

PART IVC.—INSTALMENT PURCHASE AGREEMENTS.

Heading added by No. 113 of 1969, s. 18.

Definitions in Part IVC. Added by No. 113 of 1969, s. 18. Amended by No. 37 of 1979, s. 94.

112Q. In this Part, unless the contrary intention appears—

“approved vendor” means a person—

- (a) carrying on business as a vendor; and
- (b) declared under section one hundred and twelve S of this Act to be an approved vendor;

“credit purchase agreement” means an agreement for the purchase of goods under which—

- (a) irrespective of the time at which the property in the goods passes or is to pass to the purchaser, the purchase price or any part thereof is paid or payable by not less than six instalments which are to be paid over a period of not less than six months; and

- (b) any of the instalments are to be paid after the goods have been delivered to the purchaser,

whether those instalments are paid or payable by cash or by cheque, bill of exchange or promissory note payable on demand or otherwise;

“goods” includes all chattels personal and any fixtures severable from the realty, but does not include money, livestock or things in action;

“hire-purchase agreement” means an agreement for the bailment of goods under which—

- (a) the bailee may buy the goods;
- (b) the property in the goods may pass to the bailee; or
- (c) any provision for credit of payments is to be made in the event of a subsequent purchase of the goods,

and where, by virtue of two or more agreements (none of which itself constitutes a hire-purchase agreement) there is such a bailment of goods, the agreements shall be deemed to be and treated as a single agreement;

“instalment purchase agreement” means a credit purchase agreement or a hire purchase agreement;

“purchase price”—

- (a) in relation to a credit purchase agreement or a hire-purchase agreement, means the total amount payable under the agreement by the purchaser on any account whatsoever in respect of the goods the subject matter of the agreement less the amount of the deposit or other money or consideration paid or given

to the vendor at or before the making of the agreement and less the total amount payable under the agreement for or by way of interest or insurance or other charge;

[(b) Deleted by No. 37 of 1979, s. 94.]

“purchaser” means the person to whom goods are bailed or sold or agreed to be bailed or sold under an instalment purchase agreement;

“vendor” means the person by whom goods are bailed or sold or agreed to be bailed or sold under an instalment purchase agreement.

Duty on instalment purchase agreements. Added by No. 113 of 1969, s. 19. Amended by No. 9 of 1974, s. 10; No. 37 of 1979, s. 95.

112R. (1) [*Repealed by No. 37 of 1979, s. 95.*]

(2) [*Repealed by No. 37 of 1979, s. 95.*]

(3) Where the vendor is a person not bound by the provisions of this Act, the liability to pay the duty on the instalment purchase agreement shall fall on the purchaser.

Declaration of approved vendors and payment of duty on monthly returns. Added by No. 113 of 1969, s. 20. Amended by No. 9 of 1974, s. 10; No. 37 of 1979, s. 96.

112S. (1) A person may apply to the Commissioner in such form as the Commissioner requires in writing to be declared an approved vendor for the purposes of the definition of “approved vendor” in section one hundred and twelve Q of this Act.

(1a) On receiving an application under subsection (1) of this section, the Commissioner may by instrument in writing declare the applicant to be an approved vendor and may in like manner at any time revoke a declaration so made.

(2) Until a declaration made under subsection (1a) of this section is revoked as provided therein, the person specified in the declaration is, for the purposes of this Act, an approved vendor.

(2a) When an approved vendor begins to carry on the business of entering into instalment purchase agreements, or keeps books, records or papers relating to that business, at an address which has not previously been notified to the Commissioner, the approved vendor shall forthwith notify the Commissioner in writing of that address.

(3) A person who is or has been an approved vendor is not liable for the payment of duty denoted by impressed stamp, adhesive coupon or adhesive stamps as provided by this Act in respect of instalment purchase agreements entered into while he is or was an approved vendor, but he is liable for the payment of duty in respect of all such agreements in accordance with, and shall comply with, the provisions of this section.

(4) A person who enters into instalment purchase agreements while he is an approved vendor shall—

(a) lodge with the Commissioner within a period of fifteen days after the end of each month a statement in the form approved in writing by the Commissioner—

(i) setting out the sum of the purchase prices of all instalment purchase agreements, if any, entered into by him during that month and the sum of the purchase prices of all instalment purchase agreements entered into by him during that month which are exempt from duty under item 5 of the Third Schedule to this Act; or

(ii) declaring that no instalment purchase agreements referred to in subparagraph (i) of this paragraph have been entered into by him during that month,

as the case requires;

(b) at the time of lodging the statement with the Commissioner pay in cash to the Commissioner as duty on that statement

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a sum equal to one and a half per centum of the difference between the sums set out in the statement; and

- (c) keep or cause to be kept in the State sufficient books and records to enable all amounts required to be set out in the statement so lodged with the Commissioner under this section to be accurately calculated.

(5) The person referred to in subsection (4) of this section shall keep the books and records so referred to, together with all working papers used in making the calculations so referred to, available for inspection for a period of at least two years from the end of the month to which each statement in which the amounts calculated by means of those books, records and papers are set out relates.

(6) A person who—

- (a) contravenes or fails to comply with any of the requirements of this section; or
- (b) lodges with the Commissioner under subsection (4) of this section a statement which is false in any material particular,

commits an offence against this Act and is liable not only to the penalty referred to in section one hundred and sixteen of this Act but also to pay a penalty equal to double the amount of any duty that would have been payable if the requirement concerned had not been contravened or had been complied with or if the particular concerned had been corrected, as the case requires.

(7) A declaration made under subsection (1) of this section before the coming into operation of section ninety-six of the Stamp Act Amendment Act, 1979, and in force immediately before that coming into operation shall be deemed to be a declaration made under subsection (1a) of this section after that coming into operation.

112T. [*Repealed by No. 37 of 1979, s. 97.*]

112U. (1) The vendor of any goods under an instalment purchase agreement, whether he is an approved vendor or not, shall, where the purchase price of the goods exceeds one hundred dollars, at or before the time of the making of the agreement, prepare an original instrument in relation to the agreement in accordance with this section.

Preparation
of
instrument.
Added by
No. 113 of
1969, s. 22.
Amended by
No. 37 of
1979, s. 98.

(2) The original instrument referred to in subsection (1) of this section shall—

- (a) if the instalment purchase agreement concerned is in writing, be the agreement as in writing; or
- (b) in any other case, be a memorandum in writing of the agreement prepared for the purposes of this section,

and, when the vendor concerned is an approved vendor, shall be boldly marked on the front or first page thereof with the passage "Approved vendor, duty payable on monthly statement".

(3) Subject to subsection (4) of this section, an instrument to which this section relates shall not be prepared in accordance with this section unless it clearly and truly sets out—

- (a) the names of the parties thereto;
- (b) the full name and address of the vendor, identified as the vendor or owner of the goods the subject matter of the agreement;
- (c) a description of the goods sufficient to indicate their nature;
- (d) the total amount payable under the agreement by the purchaser on any account whatsoever in respect of the goods;
- (e) the amount of the deposit or other money or consideration paid or given to the vendor at or before the making of the agreement;

- (f) the total amount payable under the agreement for or by way of interest or insurance or any other charge;
- (g) the purchase price of the goods,
- and the instrument is boldly marked "Original Instrument" on the front or first page thereof.

(4) Notwithstanding anything contained in subsection (3) of this section, an instrument to which this section relates shall be deemed to have been prepared in accordance with this section if it relates to a hire-purchase agreement and complies with subsection (2) of section three of the Hire-Purchase Act, 1959.

(5) The vendor or, if the rights of the vendor under the agreement are assigned to any other person, that other person, shall keep every such original instrument available for inspection throughout the period during which goods are bailed or any rent or instalments of purchase price or other moneys are payable under the agreement and shall at any reasonable time during that period on demand produce it for inspection by the Commissioner or by an officer authorised in writing by the Commissioner for the purpose, whether generally or in a particular case.

(6) A person who contravenes or fails to comply with any provisions of this section commits an offence against this Act.

112V. [*Former Section added by No. 113 of 1969, s. 23. Repealed by No. 57 of 1979, s. 99.*]

112W. [*Former section added by No. 113 of 1969, s. 24. Repealed by No. 57 of 1979, s. 99.*]

PART V.—MISCELLANEOUS.

112V. (1) Any person may apply to the Commissioner in a form approved by him in writing for permission to pay duty in respect of any class

of instruments specified in that application in accordance with the provisions of this section as an alternative to paying duty by the individual stamping of any instrument on which duty is payable.

(2) The Commissioner may in writing grant or refuse permission applied for under subsection (1) of this section and may at any time in writing revoke permission so granted.

(3) When the Commissioner grants permission under subsection (2) of this section, he shall in that permission specify the date on which that permission comes into force and the class of instruments to which that permission relates.

(4) A person whose application for permission has been granted by the Commissioner under subsection (2) of this section—

- (a) is, while that permission is in force, an approved person for the purposes of this section; and
- (b) shall not pay duty by the individual stamping of any instruments of the class to which that permission relates.

(5) Subject to subsection (6) of this section, an approved person shall, within a period of fifteen days after the end of the month to which the return relates, lodge with the Commissioner—

- (a) a return in such form as the Commissioner requires in writing; and
- (b) if one or more instruments have been made during that month, a remittance for the amount of duty that would, if the permission concerned had not been granted, have been payable in respect of each individual instrument to which that return relates.

(6) If no instruments of the class to which his permission relates are made in any one month, the approved person concerned shall lodge with the Commissioner a nil return in respect of that month.

(7) An approved person shall make a record at such times and of such particulars relating to an instrument to which the permission concerned relates as the Commissioner may require in writing.

(8) An approved person shall endorse on every instrument of a class to which the permission concerned relates the passage "W.A. Stamp Duty Paid—Section 112V" or, in the case of instruments referred to in subsection (1) of section eighty-seven of this Act, shall make an endorsement on each of those instruments in accordance with instructions in writing given from time to time by the Commissioner.

(9) An instrument included in a return lodged with the Commissioner under subsection (5) of this section and on which duty is paid by a remittance made under that subsection is deemed to be duly stamped.

(10) Any approved person paying duty in accordance with any permission granted under subsection (2) of this section shall retain the records required to be made under subsection (7) of this section for a period of two years from the date on which they were made and make those records available to the Commissioner or any of his officers for checking purposes at any reasonable time within that period.

(11) Subject to subsection (12) of this section, any approved person who contravenes or fails to comply with any provision of this section commits an offence against this Act.

(12) Notwithstanding anything contained in subsection (11) of this section, any approved person who fails to lodge a return in accordance with subsection (5) of this section or lodges with the Commissioner a return which is false in any material particular commits an offence against this Act and is liable not only to the penalty referred to in section one hundred and sixteen of this Act but also to pay a penalty equal to double the amount of any duty that would have been payable in respect of the return had

the return been lodged in accordance with subsection (5) of this section or that is payable in accordance with the particulars given in the return concerned after correction of any false particular therein, as the case may be.

113. Every person who by writing or by any other means whatsoever defaces an adhesive stamp before it is used commits an offence against this Act.

Defacing adhesive stamps.
No. 10 of 1922, s. 112, renumbered s. 113 in 1934 reprint.
Amended by No. 113 of 1965, s. 4 (1); No. 37 of 1979, s. 101.

114. (1) No person—

- (a) shall resist or obstruct any officer or other person in the performance of any duties or the exercise of any powers under this Act;
- (b) shall wilfully mislead any officer in any particular likely to affect the discharge of his duty;
- (c) being lawfully asked any question by any officer pursuant to this Act shall fail to answer the same truthfully and completely to the best of his knowledge, information and belief.

Penalties for obstructing officers, and similar offences.
No. 10 of 1922, s. 113, renumbered s. 114 in 1934 reprint.
Amended by No. 113 of 1965, s. 4 (1); No. 37 of 1979, s. 102.

(2) A person who contravenes or fails to comply with any of the provisions of subsection (1) of this section commits an offence against this Act.

(3) In subsection (1) of this section—

“officer” means officer of the staff assisting the Commissioner in the administration of this Act.

115. An attempt to commit an offence against this Act shall be punishable as if the offence had been committed.

Attempted offences.
No. 10 of 1922, s. 114, renumbered s. 115 in 1934 reprint.

General penalty. Substituted by No. 37 of 1979, s. 103.

116. A person who commits an offence against this Act shall on conviction be liable to a penalty not exceeding two thousand dollars.

Limitation of criminal proceedings. Substituted by No. 37 of 1979, s. 104.

117. A prosecution for an offence against this Act may be commenced at any time within two years after that offence was committed and not afterwards.

Institution of prosecutions. Substituted by No. 37 of 1979, s. 105.

118. (1) A complaint for an offence against any provision of this Act may be laid in the name of the Commissioner by any officer of the State Taxation Department employed in the administration of this Act and authorised to lay complaints on behalf of the Commissioner, and any prosecution instituted in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by his authority.

(2) An officer referred to in subsection (1) of this section may appear on behalf of the Commissioner in any proceedings for an offence against any provision of this Act.

Instruments to which Crown is party to be exempt from duty in some cases.

No. 10 of 1922, s. 118, renumbered s. 119 in 1934 reprint. Amended by No. 113 of 1969, s. 25; No. 37 of 1979, s. 106.

119. (1) If the Crown or any Crown instrumentality, agent of the Crown or Government authority designated by the Treasurer by notice published in the *Government Gazette* or a local authority, as party to any such instrument as is according to the express provisions of this Act liable to duty, occupies the position of the party or one of the parties who, in accordance with such provisions, might be compelled to pay the duty or would be liable to a penalty on failure to stamp the instrument as in this Act provided or on issuing or executing the instrument unstamped, then the instrument and every duplicate thereof shall, by virtue of this section, be exempt from duty.

(2) When the Treasurer has under subsection (1) of this section designated any Crown instrumentality, agent of the Crown or Government authority, he may by notice published in the *Government Gazette* amend or revoke that designation.

120. (1) The Governor may make regulations in respect of—

- (a) the stamping of documents for the purposes of this Act;
 - (b) the exercise of any powers of the Commissioner by subordinate officers or other persons;
 - (c) the payment of fees for the purposes of this Act;
- [*Old paragraph (c) repealed by No. 102 of 1970, s. 14.*]
- (d) returns to be furnished under this Act;
 - (e) the form, size, colour, numbering, and cancellation of betting tickets, and the particulars to be entered in betting books;
 - (ea) the appointment of persons as persons authorized to make out and affix adhesive coupons;
 - (eb) measures to be taken to prevent the re-use of adhesive coupons;
 - (f) all matters which are required or permitted to be prescribed by regulations or which are necessary or convenient to be prescribed for giving effect to this Act, or for the better securing of the revenue of the Crown as it may be affected by this Act.

Regulations. No. 10 of 1922, s. 119, renumbered s. 120 in 1934 reprint.

Amended by No. 113 of 1965, s. 4 (1); No. 67 of 1966, s. 14; No. 102 of 1970, s. 14; No. 9 of 1974, s. 3; No. 96 of 1976, s. 7; No. 37 of 1979, s. 107.

(2) A person who contravenes or fails to comply with any provision of regulations made under subsection (1) of this section commits an offence against this Act.

(3) The regulations may require that, in such cases as may be prescribed, documents required by or under this Act to be lodged with the Commissioner shall be verified by statutory declaration or by affidavit made by such persons as may be prescribed.

Section 3. FIRST SCHEDULE.
ACTS REPEALED.

- 46 Vict., No. 6—The Stamp Act, 1882.
- 57 Vict., No. 31—The Stamp Act, 1882, Amendment Act, 1893.
- 2 Edw. VII. No. 21—The Stamp Act Amendment Act, 1902.
- No. 20 of 1905—The Stamp Act Amendment Act, 1905.
- No. 7 of 1906—The Stamp Act Amendment Act, 1906.
- No. 29 of 1913—The Stamp Act Amendment Act, 1913.
- No. 6 of 1915—The Stamp Act Amendment Act, 1914.
- No. 12 of 1916—The Stamp Act Amendment Act, 1916.
- No. 21 of 1918—The Stamp Act Amendment Act, 1918.
- No. 41 of 1920—The Stamp Act Amendment Act, 1920.

Substituted by No. 37 of 1979, s. 108.

SECOND SCHEDULE.

(Section 16(1)).

DUTIES PAYABLE ON INSTRUMENTS.

<i>Person liable to pay duty.</i>	<i>Item.</i>	<i>Nature of Instrument.</i>	<i>Duty payable.</i>
The person issuing the betting ticket.	1. BETTING TICKET:		\$
		On every betting ticket issued by a bookmaker—	
		(a) within the grandstand enclosure of any metropolitan racecourse	0.02½
		(b) elsewhere	0.01
The drawer or maker. (See section 50).	2. BILL OF EXCHANGE OR PROMISSORY NOTE:		
		Bill of exchange (including cheque or order) or promissory note—	
		(a) payable on demand or at sight or on presentation, including a cheque drawn on any banker	0.08
		(b) drawn or made out of Western Australia and duly stamped with <i>ad valorem</i> stamp duty under the law of any other State, or of a Territory, of the Commonwealth	0.08
	(c) expressed to be payable at a fixed period of not more than 120 days after date or sight—		
	In respect of each ten days and also of any fractional part of ten days of that period (a period expressed by reference to a month or months being reckoned on the basis of 30 days for a month)—		
	for every \$100, and also for any fractional part of \$100, of the amount or value of the money for which the bill or note is drawn or made		0.01

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<i>Item.</i>	<i>Nature of Instrument.</i>	<i>Duty payable.</i> \$	<i>Person liable to pay duty.</i>
	(d) of any other kind whatsoever— for every \$100, and also for any fractional part of \$100, of the amount or value of the money for which the bill or note is drawn or made	0.12	
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 Cattle Industry Compensation Act, 1965, 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 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 or such amount, not being more than five-twelfths of a cent, as the Governor may, from time to time, by proclamation declare.	5/12 cent 5/12 cent	
	(2) Notwithstanding the provisions of subitem (1) of this item, 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 fifty cents or such lesser sum as the Governor may, from time to time, by proclamation declare.		
4. CONVEYANCE OR TRANSFER ON SALE OF PROPERTY:			
	(1) Land transfer under the Transfer of Land Act, 1893— In the case of a transfer of land on a sale thereof— for every \$100 of the amount or value of the consideration, and also for every fractional part of \$100, up to and including \$10 000 thereof and, in addition, for every \$100 of the amount or value of the consideration and also for every fractional part of \$100 in excess of \$10 000	\$ 1.25 1.50	The purchaser.

<i>Person liable to pay duty.</i>	<i>Item.</i>	<i>Nature of Instrument.</i>	<i>Duty payable.</i> \$
The purchaser.	(2)	Conveyance or transfer of any other property (except any marketable security or right in respect of shares)— for every \$100 of the amount or value of the consideration and also for every fractional part of \$100 up to and including \$10 000 thereof	1.25
		and, in addition, for every \$100 of the amount or value of the consideration and also for every fractional part of \$100 in excess of \$10 000	1.50
The purchaser.	(3)	Conveyance or transfer of any marketable security or right in respect of shares, not being a transfer of a marketable security or right in respect of shares that is made or executed to perfect a sale or purchase thereof to which the provisions of Part IVA apply and which is deemed to be duly stamped in accordance with those provisions or a transfer of any marketable security or right in respect of shares on a register situated outside the State— where the amount or value of the consideration is less than \$100 for every \$25 and also for every fractional part of \$25	0.15
		where the amount or value of the consideration is \$100 or more for every \$100 and also for any fractional part of \$100	0.60
		(4) Conveyance or transfer of any marketable security or right in respect of shares sold and purchased to which a return lodged with the Commissioner pursuant to section 112C relates— an amount calculated on the consideration for each of those sales and purchases— (a) where the consideration— (i) does not exceed \$25	0.08
The broker.	(4)	(ii) exceeds \$25 but does not exceed \$50	0.15
		(iii) exceeds \$50 but does not exceed \$75	0.23
		(iv) exceeds \$75 but less is less than \$100	0.30
		(b) where the consideration is \$100 or more— for every \$100 and also for any fractional part of \$100	0.30
		of the sale price or the purchase price, as the case may be.	
The transferee.	5. CONVEYANCE OR TRANSFER:	(1) Conveyance or transfer of a lot by the responsible authority for a town planning scheme, including the Metropolitan Region	

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Item.	Nature of Instrument.	Duty payable. \$	Person Hable to pay duty.
	<p>Scheme, to a person who on the date of the coming into operation of the scheme was the owner of—</p> <p style="margin-left: 2em;">(a) the land comprised in the lot; or</p> <p style="margin-left: 2em;">(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,</p> <p>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</p>	5.00	
	(2) Expressions used in this item have the same meaning as they respectively have in the Town Planning and Development Act, 1928, or the Metropolitan Region Town Planning Scheme Act, 1959, as the case requires.		
6.	CONVEYANCE OR TRANSFER: Conveyance or transfer of any kind not described elsewhere in this Schedule and not being a settlement, deed of gift or an exchange	\$5.00 or the same duty as for item 4 of this Schedule if less than \$5.00.	The transferee.
7.	CREDIT BUSINESS:	See section 112K.	Payable by registered person.
8.	DEED OR DECLARATION: (1) Deed of any kind not otherwise chargeable with duty	5.00	The parties thereto.
	(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	5.00	The person making the declaration.
9.	DUPLICATE OR COUNTERPART: Duplicate or counterpart of an instrument chargeable with duty	\$2.00 or the same duty as the original if less than \$2.00.	The person liable to duty on the original instrument.
10.	EXCHANGE: For any instrument effecting an exchange of any property	See section 75AC.	The person to whom any property is conveyed by way of exchange.
11.	INSTALMENT PURCHASE AGREEMENT: Any instrument or instruments constituting or evidencing an instalment purchase agreement	1½% of purchase price as defined in section 112Q.	The vendor and see section 112R.

Stamp.

<i>Person liable to pay duty.</i>	<i>Item.</i>	<i>Nature of Instrument.</i>	<i>Duty payable.</i> \$
	12.	LEASE OR AGREEMENT FOR LEASE:	
The lessee.	(1)	Any lease made in perpetuity or for a term of years or for a period terminable with one or more lives, or otherwise contingent, in consideration of a sum of money paid by way of premium, fine or the like, if without rent, or an agreement for such a lease.	Duty on the amount payable. (See item 4 of this Schedule).
The lessee.	(2)	A lease, or an agreement for a lease, of land and tenements at a rent without the payment of any sum by way of premium, fine or the like—	
		(a) for a period not exceeding one year, for every \$100 of the rent and also for every fractional part of \$100 thereof that would be payable for a whole year	0.25
		(b) for a period exceeding one year and not exceeding three years, for every \$100 of the average yearly rent and also for every fractional part of \$100 thereof	0.50
		(c) for a period exceeding three years, for every \$100 of the average yearly rent and also for every fractional part of \$100 thereof	0.75
		(d) for an indefinite term, for every \$100 of the rent and also for every fractional part of \$100 thereof that would be payable for a whole year	0.50
The lessee.	(3)	A lease of any lands or tenements at a rent and in consideration of a premium, fine or the like, or an agreement for such a lease ..	Duty equal to the combined amount of duty payable on a conveyance in consideration of the premium, fine or the like under item 4 of this Schedule and the duty payable on a lease or agreement for a lease for the rent under sub-item (2) of this item.
The lessee.	(4)	A lease of any lands or tenements of any other kind whatsoever not hereinbefore described, or an agreement for such a lease	5.00
	13.	MORTGAGE (LEGAL OR EQUITABLE), BOND, DEBENTURE, COVENANT, BILL OF SALE, GUARANTEE, LIEN OR INSTRUMENT OF SECURITY OF ANY OTHER KIND WHATSOEVER:	
Mortgagor or obligor.	(1)	An instrument referred to in the heading to this item, which instrument sets out the only or principal or primary security for any sum or sums of money at stated periods,	

Item.	Nature of Instrument.	Duty payable. \$	Person liable to pay duty.
	being neither interest for any principal sum secured by a duly stamped instrument nor wages or salary or rent reserved by a lease—		
	(a) for a definite and certain period so that the total amount ultimately payable can be ascertained—		
	for every \$100 and also for every fractional part of \$100	0.15	
	(b) for a term of life or any other indefinite period—		Mortgagor or obligor.
	for every \$100, and also for every fractional part of \$100, of the amount payable annually	2.50	
(2)	An instrument referred to in the heading to this item, which instrument sets out the only or principal or primary security for the payment or repayment of money—		Mortgagor or obligor.
	for every \$100, and also for every fractional part of \$100, of the amount payable	0.15	
(3)	An instrument setting out the transfer or assignment of any mortgage—		
	(a) by way of sale	See item 4 of this Schedule.	Transferee.
	(b) by way of gift	See item 19 of this Schedule.	Donor.
	(c) by way of security	See subitem (1) or (2) of this item.	Transferor.
	(d) of any other kind	5.00	Transferee.
14.	MOTOR VEHICLE LICENCE AND TRANSFER OF MOTOR VEHICLE LICENCE:		The person in whose name the licence is issued or the transferee.
	On a licence or transfer, for every \$100, and also for every fractional part of \$100, of the value of the motor vehicle up to a maximum duty of \$150	0.75	
15.	PARTITION:		The parties thereto.
	(1) Any instrument effecting a partition of any property	5.00	
	(2) Any instrument setting out any amount required to achieve equality	See section 75AD.	
16.	POLICY OF INSURANCE:		The person issuing the policy and see section 94.
	(1) Any instrument evidencing a policy of insurance—		
	(a) against the liability of an employer to pay compensation under the Workers' Compensation Act, 1912—		
	on the amount of the premium	3%	

Stamp.

<i>Person liable to pay duty.</i>	<i>Item.</i>	<i>Nature of Instrument.</i>	<i>Duty payable.</i>
		(b) issued under the Motor Vehicle (Third Party Insurance) Act, 1943	\$ 0.25
		(c) in any other case— on the amount of the premium	5%
Insured.	(2)	On a policy of insurance (undisclosed premium— for every \$100, and also for every fractional part of \$100, of the sum insured	 0.05
	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—	
Purchaser.		(a) by way of sale	See item 4 of this Schedule.
Donor.		(b) by way of gift	See item 19 of this Schedule.
Payable by registered person.	18.	RENTAL BUSINESS:	See section 112.
The settlor or donor.	19.	SETTLEMENT, DEED OF, OR DEED OF GIFT: (1) Any instrument— (a) whether voluntary or on 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; and (b) 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 of this Schedule.	(2)	On the amount or value of property referred to in subitem (1) of this item, the same duty as that set out in item 4 of this Schedule, references to consideration in that item being construed for the purposes of this item as references to the amount or value of the property concerned.	

THIRD SCHEDULE.

Substituted
by No. 37 of
1979, s. 109.

(Section 16(2)).

EXEMPTIONS FROM DUTY.

<i>Item.</i>	<i>Nature of Instrument.</i>
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1. BILL OF EXCHANGE OR PROMISSORY NOTE:

- (1) Draft or order drawn by any banker in Western Australia on any other banker in Western Australia not payable to bearer or order, and used solely for the purpose of setting or clearing any account between those bankers.
- (2) Letter written by a banker in Western Australia to any other banker 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.
- (3) Letter of credit granted in Western Australia authorising drafts payable in Western Australia to be drawn out of Western Australia.
- (4) Cheques or orders for the withdrawal of moneys deposited in any bank, drawn or issued by—
 - (a) a society registered under the Friendly Societies Act, 1894;
 - (b) a company, body, society or club maintaining an account with a savings bank as defined in section 5 of the Banking Act 1959 of the Parliament of the Commonwealth as from time to time amended or with the Savings Bank Division of the Rural Department of The Rural and Industries Bank of Western Australia constituted under the Rural and Industries Bank Act, 1944;
 - (c) the United Kingdom Government for the purpose of paying any person pensions, superannuation, retiring allowances or gratuities;
 - (d) any body in respect of which the Commissioner has granted a certificate referred to in section 49A of this Act.

2. CONVEYANCE OR TRANSFER ON SALE OF PROPERTY:

- (1) A transfer of any marketable securities of—
 - (a) any public statutory body constituted under the law of any other State, or of any Territory, of the Commonwealth; or
 - (b) any Crown instrumentality, agent of the Crown or Government authority designated by the Treasurer by notice published in the *Government Gazette*.

Stamp.

- | <i>Item.</i> | <i>Nature of Instrument.</i> |
|--------------|---|
| (2) | A sale or purchase of a marketable security made by a broker on his own account or behalf when— <ul style="list-style-type: none"> (a) in the case of a sale, the marketable securities or rights in respect of shares concerned were purchased by the broker on or within two clear days (not including any day on which the stock exchange of which he is a member is closed) of the day of the sale; and (b) in the case of a purchase, the marketable securities or rights in respect of shares concerned were sold by the broker on or within two clear days (not including any day on which the stock exchange of which he is a member is closed) of the day of the purchase. |
| (3) | A sale or purchase of any odd lot of marketable securities or rights in respect of shares by an odd lot specialist. |
| (4) | A sale or purchase of marketable securities by a broker when the sale or purchase is made pursuant to an order to sell or purchase lodged with him by or on behalf of a dealer. |
| (5) | Conveyance, transfer or surrender of the fee simple or other less estate in land to the Crown. |
| (6) | Grants for the fee simple or other less estate in lands from the Crown. |

3. DEED OR DECLARATION:

Any instrument for the purpose of—

- (a) discharging or releasing any duly stamped instrument of security which discharge or release is not made to effect a voluntary disposition *inter vivos* or a conveyance or transfer on sale; or
- (b) extending the terms of repayment of the amount secured by a duly stamped security.

4. DUPLICATE OR COUNTERPART:

Duplicates of—

- (a) instalment purchase agreements; and
- (b) insurance policies.

5. INSTALMENT PURCHASE AGREEMENT:

- (1) Any instalment purchase agreement when the purchase price is less than \$100.
- (2) Any instalment purchase agreement under which the purchaser is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods to which the agreement relates.

Item. *Nature of Instrument.*

- (3) Any credit purchase agreement for the purchase of goods together with—
 - (a) real property;
 - (b) any estate or interest in real property; or
 - (c) any business or interest in a business.

6. LEASE OR AGREEMENT FOR LEASE:

All leases or agreements for leases from the Crown or the Minister for Lands or the Minister for Mines under the Land Act, 1933, the Mining Act, 1904, and the regulations thereunder, respectively.

7. MORTGAGE (LEGAL OR EQUITABLE), BOND, DEBENTURE, COVENANT, BILL OF SALE, GUARANTEE, LIEN OR INSTRUMENT OF SECURITY OF ANY OTHER KIND WHATSOEVER:

- (1) Any instrument in respect of a covenant or agreement by any person to pay sums of money, as a principal security, in relation to agreements for—
 - (a) hire of any goods, wares or merchandise;
 - (b) hire, construction or installation of any machinery or plant;
 - (c) execution of any building works; or
 - (d) works or services of civil or other engineering or of a technological nature.
- (2) Any bond, covenant or instrument when the total sum of the annuity or amount payable in each year is less than \$100.
- (3) Any mortgage or bond when the total amount secured is less than \$100.
- (4) Any bond with one or more sureties given by a contractor submitting a tender on construction work to be done in the State to provide that the tender shall not be withdrawn by the obligor before it is accepted or rejected and that if the tender is accepted the obligor shall execute the contract for the construction of the work to which the tender relates within a stipulated time.
- (5) Any bond for the administration of the estate of a deceased person.
- (6) Any bond required for the purposes of any State, Territory or Commonwealth legislation.

*Stamp.**Item.**Nature of Instrument.*

(7) Any instrument acknowledging the receipt of money deposited with or lent to—

(a) a corporation which is a prescribed corporation within the meaning of subsection (7) of section 38 of the Companies Act, 1961; or

(b) a society registered under the Building Societies Act, 1976.

(8) Any charter-party agreement.

8. POLICY OF INSURANCE:

Policy of life insurance.

Policy of reinsurance. (See section 95).