



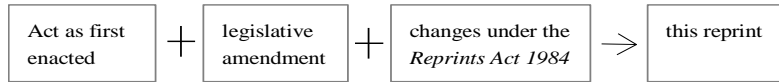
Western Australia

Stamp Act 1921

Reprint 14: The Act as at 12 September 2003

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

Stamp Act 1921

CONTENTS

Part I — Preliminary

1.	Short title and commencement	2
4.	Interpretation	2
4A.	Treatment of amounts payable for GST	6

Part III — General provisions

16.	Charge of duties on instruments	7
17.	Liability to pay duty	8
17A.	Time for payment of duty	8
17B.	Requirement to lodge instrument	9
17C.	Instrument to be endorsed when duty paid etc.	9
18.	How instruments to be written	10
19.	Instruments to be separately charged with duty in certain cases	11
20.	Reduction of duty if matter not carried into effect	11
26.	Facts and circumstances affecting duty to be set forth in instrument	14
27.	Instruments not stamped inadmissible except in criminal proceedings	15
28.	No instrument to be registered, etc. unless stamped	17
29.	Production of instruments as evidence	19
30.	Secondary evidence	20

31B.	Preparation of dutiable statements in absence of dutiable instruments	21
31C.	Preparation of dutiable statement about voluntary transfers under the <i>Financial Sector (Transfers of Business) Act 1999</i> of the Commonwealth	25
33.	Valuation of land or other property	26
34.	Duplicates and counterparts	28
35.	Unlodged transfers — independent person's obligations	28
36.	Mode of calculating <i>ad valorem</i> duty in certain cases	29
38.	Instruments held in escrow	30

Part IIIA — Bills of exchange and promissory notes

49.	Interpretation in Part IIIA	31
49A.	Exempt cheques	32
50.	Stamping of bills	32
50B.	One bill in set only to be stamped	33
50C.	Duties on foreign bills	33
50D.	Provision for stamping foreign bills	33

Part IIIB — Conveyances and transfers

63.	Interpretation in Part IIIB	35
63AA.	Registered unit trust schemes	37
63AB.	Criteria for registration of a unit trust scheme	38
63AC.	Interim registration	43
63AD.	Cancellation of registration or interim registration	44
63AE.	Dutiable statement about disqualifying event and subsequent transfers or dispositions	46
63AF.	Duty chargeable on the dutiable statement	47
63A.	Duty on certain decrees and orders	47
64.	How <i>ad valorem</i> duty to be calculated in respect of stock and securities	48
65.	How <i>ad valorem</i> duty to be calculated in respect of securities and periodical payments	48
66.	How conveyances in consideration of a debt or subject to future payment, etc., to be charged	49
67.	Duty where conveyance is partly in consideration of improvements made or to be made on property	49

69.	Conveyance duty in cases where conveyance made at request or by direction of intermediary	50
70.	Certain transfers of chattels dutiable	51
71.	Duty charged for 2 or more instruments of conveyance	53
72.	Transfer or assignment of mortgages for value	53
73.	As to conveyances on any occasion except sale or mortgage	54
73A.	Conveyance subject to an option	54
73AA.	Duty on conveyance not passing a beneficial interest	57
73B.	Conveyance agreement subject to unilateral determination	59
73C.	Option to purchase with right to renew	60
73D.	Disposition of units in unit trust schemes	61
73DA.	Holdings of majority interest unit trustee	65
73E.	Disposition of shares in discretionary trustee companies	66
73F.	Acquisition of a licence to carry on a business activity	69
74.	Certain contracts to be chargeable as conveyances on sale	70
74A.	Duty chargeable on certain conveyances of corporation property	71
75.	Duty chargeable on conveyance for less than full consideration	74
75A.	Power to exempt instruments made for charitable or similar purposes	76
75AB.	Power to exempt instruments made in respect of certain funds or schemes	77
75ABA.	Power to exempt transfers by bankruptcy trustee to bankrupt	78
75AC.	Exchange of property	78
75AD.	Duty chargeable on partition of property	78
75AE.	Concessional rates for certain residential or business property	79
75AF.	Computation of duty for 2 or more instruments	80
75AG.	Reduction of duty or refund for first home owner	81
75C.	Power to exempt for certain conveyances between spouses	85

**Part IIIBAA — Certain transfers of
farming property**

75D.	Interpretation in Part IIIBAA	88
75E.	Application of this Part	90
75F.	Power to exempt for farming property	93
75G.	Partial exemption of duty	93
75H.	Application for exemption	95
75HA.	Subsequent liability for duty in certain circumstances	95
75I.	Part IIIBA companies	98

**Part IIIBAAA — Exemptions for
corporate reconstructions**

75J.	Interpretation in Part IIIBAAA	100
75JAA.	Meaning of dormant body corporate	102
75JA.	Corporate reconstructions: exemptions	103
75JB.	Corporate reorganisations: exemption from duty on conveyances between associated bodies corporate	107
75JBA.	Operation of claw-back: application for pre-determination in certain cases	113
75JC.	Corporate reorganisations: application for pre-determination	113
75JD.	Corporate reorganisations: application for exemption	115
75JDA.	Exemption may be withheld in certain cases	115
75JE.	Claw-back (instruments)	116
75JF.	Claw-back (Part IIIBA statements)	118
75JG.	Offences and recovery of duty etc.	119

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

**Division 1 — Provisions applicable to Divisions 2
and 3**

76.	Interpretation in Part IIIBA	121
76A.	Relevant acquisitions by trustees	128
76AA.	Assessment in the absence of a dutiable statement	129

Division 2 — Companies taken to be registered in Western Australia		
76AG.	Preparation of dutiable statement	130
76AH.	Statement chargeable with duty	133
76AI.	Companies to which this Division applies	135
76AJ.	Meaning of “relevant acquisition”	140
76AK.	Meaning of “acquiring an interest”, “majority interest” or “further interest”	142
76AL.	How dutiable value is determined	143
76AM.	Liability for duty	144
Division 3 — Corporations incorporated, or taken to be registered, outside Western Australia, and certain other companies not within Division 2		
76AN.	Preparation of dutiable statement	145
76AO.	Statement chargeable with duty	147
76AP.	Corporations to which this Division applies	150
76AQ.	Meaning of “relevant acquisition”	156
76AR.	Meaning of “acquiring an interest”, “majority interest” or “further interest”	158
76AS.	How dutiable value is determined	160
Division 4 — Reassessment of liability for duty		
76AU.	Reassessment where deeming provision applied	162
Part IIIC — Vehicle licences		
76B.	Interpretation in Part IIIC	164
76C.	Non-beneficial change of ownership	166
76D.	Duty on the grant or transfer of a vehicle licence	168
76E.	Determination of value and assessment of duty	171
76F.	Payment of duty	171
76G.	Applicant’s statement of value in application	172
76H.	Seller’s obligation to notify purchase price	172
76I.	Use of dealer registered vehicle for other purposes	173
76J.	Use of specialised equipment on another vehicle	174
76K.	Failure to apply for transfer of licence	175
76L.	Powers of Director General and Commissioner	175
76M.	Duty to be remitted to Commissioner	176

Part IIID — Leases

77.	Agreement for any lease to be charged as a lease	177
78.	Leases: how to be charged in respect of produce, etc.	177
79.	Directions as to duty in certain cases	178
80.	Duty on periodic re-appraisal of rent	179
80A.	Power to exempt instruments made for charitable or similar purposes	180

Part IIIE — Mortgages and other securities

81.	Interpretation in Part IIIE	181
82.	Duty chargeable on certain transfers or conveyances by way of security	181
83.	Security for future advances, how to be charged	182
84.	Charges secured on property outside Western Australia	186
87.	Collateral, additional or substituted securities	189
88.	Instruments that can become securities on a future act or event	190
88A.	Instruments held outside Western Australia that become securities	191
89.	Contingent securities	192
90.	Limits on application of sections 88 to 89	193
90A.	Power to exempt certain instruments of security made for charitable or similar purposes from duty	193

Part IIIF — Policies of insurance

92.	Interpretation in Part IIIF	194
92A.	Dutiable statement required if policy issued outside Western Australia	195
92B.	Statements to be made in respect of certain insurance	196
94.	Penalty for not making out policy	197
95.	Policies of reinsurance to be exempt from duty	198
96.	No duty chargeable on amount received on account of duty	199

Part IV — Unlisted WA securities

100.	Interpretation in Part IV	201
101.	Share buy-back	201
102.	Securities situated in Western Australia	202

103.	Prohibition on registration of unstamped transfer	203
104.	Registration of an overseas transfer	203
105.	Return of overseas transfers and payment of duty	204
106.	Valuing an unlisted WA security	204
107.	Retention of instruments of transfer	205
Part IVAC — Capital reductions by WA companies		
112H.	Interpretation in Part IVAC	206
112HA.	Certain capital reductions dutiable	206
Part IVB — Rental business		
112I.	Interpretation in Part IVB	209
112J.	Persons carrying on rental business required to be registered	210
112K.	Returns to be lodged with the Commissioner by registered persons	212
112KA.	Exemption from duty	214
112L.	Amounts to be included in return	215
112N.	Matters not required to be included in return	215
112O.	Registered persons to keep records	216
112P.	Preparation of dutiable statement for transactions with unregistered persons	218
Part IVC — Exemptions in relation to aged or disabled persons		
112Q.	Certain residential agreements with charitable bodies exempt	220
112R.	Certain aged care agreements exempt	220
112S.	Instruments not required to be lodged	221
Part IVD — Maintenance agreements and orders		
112UA.	Interpretation in Part IVD	222
112UB.	Application of Part IVD	223
112UC.	Duty on maintenance agreements and orders	224
112UD.	Duty on conveyance or transfer under maintenance agreement or order	225

Part IVE — Managed investment schemes

- 112UE. Duty on certain instruments for the purpose of managed investment schemes 226

Part V — Miscellaneous

113. Commissioner may impound unstamped documents 228
114. Commissioner may destroy instruments 228
119. Certain exemptions where the State of Western Australia etc. is a party 229
120. Regulations 230
121. Application of section 1070A of the Corporations Act limited 230

Second Schedule — Duties payable on instruments 231

Third Schedule — Exemptions from duty 244

Notes

- Compilation table 252

Defined Terms



Western Australia

Reprinted under the
Reprints Act 1984 as
at 12 September 2003

Stamp Act 1921

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

Part I — Preliminary

1. Short title and commencement

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

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

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

4. Interpretation

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

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

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

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

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

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

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

“**dutiable statement**” means a statement prepared under section 31B, 31C, 63AE, 75HA, 76AG, 76AN, 92A, 104, 112HA or 112P;

“duty” means duty payable under this Act;

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

“financial institution” means —

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

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

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

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

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

“instrument” does not include a return;

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

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

“marketable security” means —

- (a) any stock or share of any corporation or local government or company or society;
- (b) any debenture, debenture stock, bond, note or other security of a Government or of any corporation or

local government or company or society, whether or not constituting a charge on the assets of the Government, local government, corporation, company or society;

- (c) any right or interest, whether described as a unit or subunit or otherwise, of a beneficiary under a unit trust scheme —
 - (i) any of the units of which is quoted on a recognised financial market; or
 - (ii) that is not a private unit trust scheme within the meaning in section 63(2) or that is a unit trust scheme registered under section 63AA(2) or granted interim registration under section 63AC(2);

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

“Part IIIA statement” means —

- (a) a section 76AG statement; or
- (b) a section 76AN statement;

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

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

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

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

“section 76AG statement” means a dutiable statement prepared under section 76AG in relation to which the

Commissioner has not made a determination under section 76AG(5a);

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

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

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

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

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

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

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

s. 4A

4A. Treatment of amounts payable for GST

- (1) In ascertaining the value of anything or the consideration for anything, there is to be no discount for the amount of GST (if any) payable on the supply of that thing.
- (2) A reference in Part IIIC to purchase price means the purchase price without any discount for the amount of GST (if any) payable on the supply of the vehicle.
- (3) If a lessee is obliged to pay for GST on a leasing an amount that is not included in the rent, a reference in Part IIID or in the Second Schedule item 12 to the rent under the lease refers to the sum of the rent and the amount that the lessee is obliged to pay for GST.

- (4) In this section —

“**GST**” has the same meaning as it has in the Commonwealth *A New Tax System (Goods and Services Tax) Act 1999* except that it includes notional GST of the kind for which payments may be made under the *State Entities (Payments) Act 1999* by a person that is a State entity as defined in that Act;

“**lease**” includes an agreement for a lease;

“**leasing**” means the supply to which the rent under a lease relates;

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

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

[Part II: s. 13-14 repealed by No. 37 of 1979 s. 12; balance (s. 5-12, 15-15B) repealed by No. 2 of 2003 s. 7.]

Part III — General provisions

16. Charge of duties on instruments

- (1) From and after the commencement of this Act ¹ and subject to subsection (2), the duties to be charged for the use of the Crown on or in respect of the instruments specified in the Second Schedule shall be the duties specified opposite to those instruments in that Schedule, which duties shall be in substitution for the duties chargeable under the enactments repealed by this Act.
- (2) The duties specified in the Second Schedule shall be subject to the exemptions specified in the Third Schedule or otherwise by or under this Act and in any other Act for the time being in force.
- (3) Where an instrument which relates to property situate in, or deemed to be situate in, Western Australia or to any matter or thing done or to be done in Western Australia —
 - (a) is executed in Western Australia and held in some place outside Western Australia; or
 - (b) is executed in some place outside Western Australia and held in that place or another place outside Western Australia,

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

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

s. 17

17. Liability to pay duty

- (1) The person liable to pay duty on an instrument on which duty is payable is —
 - (a) if a person is specified in the Second Schedule as the person liable to pay the duty on the instrument — that person;
 - (b) if another person is expressly liable under any other provision of a stamp Act to pay the duty — that other person;
 - (c) if the instrument is a dutiable statement and neither paragraphs (a) nor (b) apply — the person required to prepare the dutiable statement; or
 - (d) in any other case — the party to the instrument by whom or on whose behalf it is held.
- (2) Nothing in this section is to be taken —
 - (a) to exonerate any other person from any liability imposed on the person under a stamp Act; or
 - (b) to exempt any instrument or matter from any duty to which it is liable under a stamp Act.
- (3) A person who is liable to pay duty is also liable to pay any penalty tax, interest or other amount payable under a stamp Act in connection with the duty.

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

17A. Time for payment of duty

- (1) The liability to pay duty on an instrument arises —
 - (a) when the instrument is first executed; or
 - (b) if the instrument is a dutiable statement, on the occurrence of the transaction or event to which the statement relates.
- (2) The duty is payable within one month after the date of the assessment notice.

- (3) Subsection (2) does not apply in a particular case if a provision of a stamp Act specifies that in that particular case duty is payable at, or within, a different time or period.
- (4) A taxpayer must pay the duty within the time required by subsection (2) or that other provision.

Penalty: \$5 000.

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

17B. Requirement to lodge instrument

- (1) A person who is, or may be, liable to pay duty on an instrument must lodge the instrument with the Commissioner —
 - (a) within 2 months after the date on which the instrument was first executed; or
 - (b) if the instrument is a dutiable statement — within 2 months after the occurrence of the transaction or event to which the dutiable statement relates.

Penalty: \$5 000.

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

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

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

- (1) When —
 - (a) duty is paid on an instrument;
 - (b) penalty tax or any other amount payable under a stamp Act in respect of an instrument is paid;
 - (c) the payment of duty payable on, or penalty tax or any other amount payable under a stamp Act in respect of, an instrument is waived;

s. 18

- (d) the Commissioner assesses an instrument as being not chargeable with duty;
- (e) the Commissioner exempts an instrument from duty; or
- (f) the Commissioner allows a reduction of the duty payable on an instrument,

the Commissioner is to endorse the instrument accordingly.

- (2) An endorsement under subsection (1) must be made in a prescribed manner.
- (3) An instrument is taken to be endorsed in accordance with subsection (1) if the Commissioner endorses, in a prescribed manner, a copy or memorandum of the instrument under section 20 of the *Taxation Administration Act 2003*.
- (4) The grant or transfer of a licence (as defined in section 76B) is taken to be endorsed in accordance with subsection (1) when it is granted or transferred.
- (5) An endorsement on an instrument, or on a copy or memorandum of an instrument, in a prescribed manner is *prima facie* evidence of the matters noted in the endorsement.
- (6) The Commissioner may, at the request of a party to an instrument specified in the Third Schedule, endorse the instrument as exempt from duty.

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

18. How instruments to be written

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

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

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

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

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

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

20. Reduction of duty if matter not carried into effect

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

s. 20

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

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

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

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

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

s. 26

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

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

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

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

Penalty: \$20 000.

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

Penalty: \$20 000.

- (4) For the purposes of this section facts and circumstances referred to in subsection (1) that are set forth in a document accompanying an instrument when it is presented for stamping are to be regarded as being set forth in that instrument.

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

27. Instruments not stamped inadmissible except in criminal proceedings

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

s. 27

- (ii) which is not itself chargeable with duty,
shall not, except in criminal proceedings, be pleaded or given in evidence or admitted to be good, useful, or available in law or equity, unless a dutiable statement has been prepared under section 31B(1) or 31C(1) in respect of the transaction or transfer to which that document relates and the duty with which the dutiable statement is chargeable has been paid.
- (3) Sections 29 and 30 and this section do not apply to an instrument or a document relating to a transaction or transfer for which a dutiable statement is required to be prepared under section 31B or 31C pleaded in a pleading filed in any court, or tendered as evidence in any court, on behalf of a party (not being a person who is liable to pay the duty in respect of the instrument or dutiable statement, as the case requires) —
 - (a) in the case where the instrument or document is pleaded, if before the pleading is filed in the court, the person —
 - (i) has informed the Commissioner of the name of the person liable to pay the duty in respect of the instrument or dutiable statement; and
 - (ii) has lodged —
 - (I) the instrument or a copy of the instrument; or
 - (II) the document or a copy of the document,as the case requires, with the Commissioner;and
 - (b) in the case where the instrument or document is tendered, if the court is satisfied that the person —
 - (i) has informed, or will in accordance with arrangements approved by the court, inform the Commissioner of the name of the person liable to

pay the duty in respect of the instrument or dutiable statement; and

- (ii) has lodged, or will in accordance with arrangements approved by the court, lodge —
 - (I) the instrument or a copy of the instrument; or
 - (II) the document or a copy of the document,

as the case requires, with the Commissioner.

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

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

- (1) A person whose duty it is to receive, register, enrol, enter or record —
 - (a) any original instrument or duplicate or counterpart instrument or any copy of an instrument shall not, if the original instrument is chargeable with duty or is exempt from duty or would, if it were in Western Australia, be so chargeable or exempt, receive, register, enrol, enter or record the original instrument, duplicate or counterpart instrument or copy unless he is satisfied that the original instrument has been stamped or is exempt from duty or that the duplicate or counterpart instrument or copy has been stamped under subsection (3), as the case requires; or
 - (b) any document referred to in section 27(2) shall not receive, register, enrol, enter or record that document unless he is satisfied that a dutiable statement has been prepared under section 31B(1) or 31C(1) in respect of the transaction or transfer to which that document relates

s. 28

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

Penalty: \$20 000.

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

Penalty: \$20 000.

- (5) If a caveat relates to an instrument that is not liable to duty the registrar may reject it unless when it is lodged it is accompanied by a statutory declaration —
 - (a) stating that the instrument is not liable to duty; and
 - (b) setting out why the instrument is not liable to duty (including reference to any relevant provisions of a stamp Act).

- (6) In subsections (4) and (5) —

“**caveat**” means a caveat lodged under —

- (a) Part V of the *Transfer of Land Act 1893*; or
- (b) the *Mining Act 1978*;

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

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

29. Production of instruments as evidence

- (1) Upon production of an instrument chargeable with any duty or a document referred to in section 27(2) as evidence in any court of civil judicature, or before any arbitrator or referee, notice shall be taken by the court, arbitrator or referee of whether, and to what amount, the instrument has been stamped or of any failure to comply with section 31B(1) or 31C(1) in respect of the transaction or transfer to which that document relates, or to pay the duty with which the dutiable statement required to be prepared under section 31B(1) or 31C(1) in respect of that transaction or transfer is chargeable, as the case requires.
- (2) If an instrument referred to in subsection (1) is one which may legally be stamped at the time of production, it may, on payment to an officer of the relevant court or to the arbitrator or referee concerned of the amount of unpaid duty and of any penalty tax payable in respect of the instrument, be received in evidence, saving all just exceptions on other grounds.
- (2a) If a document referred to in subsection (1) relates to a transaction or transfer in respect of which a dutiable statement is required to be prepared under section 31B(1) or 31C(1) and either the dutiable statement has not been prepared or the duty with which the dutiable statement is chargeable has not been

s. 30

paid, the document may, on production to an officer of the relevant court or to the arbitrator or referee concerned of the dutiable statement and payment to him of the amount of duty and of any penalty tax payable in respect of the dutiable statement, be received in evidence, saving all just exceptions on other grounds.

- (3) On receiving payment under subsection (2) or (2a) the officer of the court, arbitrator or referee concerned shall forthwith transmit to the Commissioner the instrument or dutiable statement concerned, together with the duty and any penalty tax paid in respect of the instrument or dutiable statement.
- (4) On receiving the instrument or dutiable statement the Commissioner is to make an assessment of the duty payable on it, issue an assessment notice, stamp the instrument or dutiable statement and return it to the officer of the court, arbitrator or referee with the assessment notice.
- (5) Section 23(3) of the *Taxation Administration Act 2003* does not apply to an assessment notice referred to in subsection (4).

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

30. Secondary evidence

- (1) In proceedings in any court of civil judicature or before any arbitrator or referee, secondary evidence of —
 - (a) an instrument may, if the instrument is one which may then legally be stamped, be admitted, saving all just exceptions on other grounds, notwithstanding that the instrument is chargeable with duty and has not been stamped, if the duty and any penalty tax payable in respect of the instrument are paid to an officer of that court or to the arbitrator or referee, as the case requires; or

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

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

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

31B. Preparation of dutiable statements in absence of dutiable instruments

- (1) Subject to this section, a person who becomes a party to a transaction —
- (a) which causes a change in the beneficial ownership of an estate or interest in —
- (i) freehold land, whether or not registered under the *Transfer of Land Act 1893*;
- (ii) a Crown lease registered under the *Transfer of Land Act 1893*; or

s. 31B

- (iii) a mining tenement registered under the *Mining Act 1978*,
or any buildings on, or fixtures annexed to, or to buildings on, any such land, Crown lease or mining tenement, which freehold land, Crown lease or mining tenement is situated in Western Australia;
- (aa) which causes a change in the beneficial ownership of a marketable security or a right in respect of shares;
- (b) by which land situated in Western Australia, or buildings thereon, or fixtures annexed thereto or to buildings thereon, is leased or agreed to be leased, and in respect of which there exists a written offer to lease, or a written acceptance of an offer to lease, that land or those buildings or fixtures;
- (c) by which moneys —
 - (i) are lent, or agreed to be lent, in, or for the purpose of being used in, Western Australia;
 - (ii) having been lent, are to be repaid in Western Australia; or
 - (iii) are lent to a person resident in Western Australia, and in respect of which there exists a written offer, or a written acceptance of an offer, to lend moneys, a written offer to borrow, or a written acceptance of an offer to borrow, moneys, a written application for, or a written approval of an application for, moneys to be lent, or a written application, or a written approval of an application, to lend moneys;
- (ca) by which the beneficial ownership of chattels (as defined in section 70) and land (as defined in section 70) is changed or agreed to be changed;
- (cb) by which the beneficial ownership of chattels (as defined in section 70) is changed or agreed to be changed, and which is part of a series of transactions relating to chattels and to land (as defined in section 70)

at least one of which changes, or is or includes an agreement to change, the beneficial ownership of the land;

- (d) by which goodwill is acquired; or
- (e) to which section 73F applies and which relates to a business licence of a prescribed kind,

but which transaction is not effected or evidenced by any instrument chargeable with *ad valorem* duty, shall, if he would have been liable to pay duty in respect of that transaction had such an instrument been executed, prepare a dutiable statement in respect of the transaction.

Penalty: \$20 000.

- (1a) Subsection (1) does not apply to a transaction relating to chattels and land as referred to in subsection (1)(ca) unless subsection (1) would have applied to the transaction if it had only related to the land.
- (1b) A dutiable statement must be in an approved form.
- (1c) A dutiable statement prepared under subsection (1) is taken to be an instrument evidencing the transaction and is chargeable with duty accordingly.
- (2) Each party to a transaction described in subsection (1), except the person required to prepare the dutiable statement, shall, within 2 months after entering into the transaction, notify the Commissioner in an approved form that the transaction has been entered into.
Penalty: \$20 000.
- (2a) The requirement to prepare a dutiable statement under subsection (1) or give notification under subsection (2) ceases to apply if an instrument that evidences the transaction and is chargeable with *ad valorem* duty is executed at any time after the transaction was entered into, but nothing in this subsection affects the liability of a person for an offence against

s. 31B

subsection (1) or (2) committed before the instrument was executed.

- (2b) Where subsection (2a) has effect, the instrument referred to in that subsection is to be regarded, for the purposes of section 17A, as having been first executed on the day on which the transaction occurred.
- (3) Regulations may exempt from the operation of subsections (1) and (2) any transactions —
- (a) referred to in subsection (1)(b) or (c); and
 - (b) belonging to a class specified in those regulations.
- (4) If interstate duty has been, or in the opinion of the Commissioner will be, paid in respect of a transaction to which subsection (1)(c) applies, the amount of duty payable in respect of the dutiable statement prepared in respect of the transaction is reduced by the amount of interstate duty that has been or will be paid.
- [(5) *repealed*]
- (6) Nothing in this section prevents the joint making of a notification under subsection (2) in respect of a transaction by any 2 or more parties to the transaction who are required to make the notification.
- [(7) *repealed*]
- (8) In subsection (1)(c), a reference, however expressed, to the lending of moneys includes a reference to —
- (a) the advancing of moneys;
 - (b) the paying of moneys for or on account of or on behalf of or at the request of a person;
 - (c) the forbearing to require payment of moneys owing on any account whatsoever; and
 - (d) the effecting of a transaction (whatever its terms or form) which in substance effects a loan of moneys.

(9) In subsection (1) —

“business licence” has the same meaning as in section 73F;

“instrument chargeable with *ad valorem* duty” means —

- (a) in the case of a transaction which causes the change referred to in subsection (1)(a) an instrument chargeable with such duty at the rate which would be applicable to an instrument of conveyance of the beneficial ownership of an estate or interest in the property to which the change relates;
- (b) in the case of a transaction which causes the change referred to in subsection (1)(aa) an instrument chargeable with such duty at the rate which would be applicable to an instrument of transfer of the beneficial ownership of a marketable security or right in respect of shares; or
- (c) in the case of any other transaction, an instrument chargeable with such duty at the rate applicable to an instrument effecting or evidencing that transaction.

[Section 31B inserted by No. 98 of 1986 s. 10; amended by No. 41 of 1989 s. 10; No. 39 of 1994 s. 6 and 19; No. 41 of 1995 s. 5; No. 20 of 1996 s. 20; No. 22 of 1998 s. 32 and 55; No. 53 of 1999 s. 31; No. 2 of 2003 s. 19.]

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

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

Penalty: \$20 000.

s. 33

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

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

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

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

33. Valuation of land or other property

- (1) When determining the value of any land or other property for the purpose of a stamp Act —
 - (a) the existence of any overriding power of revocation or reconveyance is to be disregarded;
 - (b) the value of an undivided share in the land or other property, whether held jointly or in common, is to be ascertained by multiplying the total value of the land or other property by the share expressed as a fraction; and
 - (c) when applying the ordinary principles of valuation —
 - (i) it is to be assumed that a hypothetical purchaser would, when negotiating the price of the land or other property, have knowledge of all existing information relating to the land or other property; and
 - (ii) no account is to be taken of any amount that a hypothetical purchaser would have to expend to reproduce, or otherwise acquire a permanent right of access to and use of, existing information relating to the land or other property.

- (2) When determining the unencumbered value of any land or other property for the purposes of a stamp Act —
- (a) an encumbrance on the land or other property is to be disregarded; and
 - (b) an interest, agreement or arrangement (not being an encumbrance) that —
 - (i) has the effect of reducing the value of the land or other property; and
 - (ii) was granted or made on or after 27 December 1996,is, subject to subsection (3), to be disregarded.
- (3) An interest, agreement or arrangement is not to be disregarded if, in the Commissioner's opinion —
- (a) it was not granted or made for the purpose of reducing the value of the land or other property; and
 - (b) it was not granted to or made in favour of —
 - (i) the taxpayer;
 - (ii) in the case of an instrument chargeable under item 19 of the Second Schedule — the person on whom the land or other property is settled or agreed to be settled, or to whom the land or other property is given or agreed to be given, or for whom it is declared to be held in trust;
 - (iii) in the case of a relevant acquisition to which Division 3 of Part IIIA applies — the person who acquired the majority interest or further interest; or
 - (iv) a person who is associated with, or related to (within the meaning of section 76), a person referred to in subparagraph (i), (ii) or (iii).

s. 34

(4) In this section —

“land” includes an estate or interest in —

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

or any buildings on, or fixtures annexed to, or to buildings on, any such land, Crown lease or mining tenement.

[Section 33 inserted by No. 2 of 2003 s. 22.]

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

34. Duplicates and counterparts

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

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

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

35. Unlodged transfers — independent person’s obligations

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

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

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

the person must lodge the instrument, or notify the Commissioner about the instrument, as soon as practicable after the person becomes aware, or ought reasonably to have become

aware, that the instrument has not been lodged before the end of the period within which it is required to be lodged under a stamp Act.

Penalty: \$20 000.

- (3) A notification under subsection (2) must set out, to the extent that the information can be ascertained from the transfer or is otherwise known to the person —
- (a) the nature of the transfer;
 - (b) the names of the parties to the transfer;
 - (c) the date on which the transfer was first executed;
 - (d) a summary of the principal terms of the transfer (such as the property to which it relates and the consideration paid or payable); and
 - (e) any prescribed information.

- (4) In this section —

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

“transfer” includes conveyance.

[Section 35 inserted by No. 2 of 2003 s. 22.]

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

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

- (a) any money in any currency other than the currency of Australia; or
 - (b) any marketable security or right in respect of shares,
- the duty shall be calculated on the value of the money in the currency of Australia according to the current rate of exchange in Western Australia on the date of the instrument, or of the

s. 38

marketable security or right in respect of shares according to the average price thereof on that date.

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

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

38. Instruments held in escrow

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

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

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

[40-44. Repealed by No. 37 of 1979 s. 30.]

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

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

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

Part IIIA — Bills of exchange and promissory notes

[Heading inserted by No. 37 of 1979 s. 33.]

49. Interpretation in Part IIIA

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

“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;
- (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

s. 49A

- (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.

[Section 49 inserted by No. 37 of 1979 s. 34.]

49A. Exempt cheques

Duty shall not be charged on —

- (a) cheques or orders for the withdrawal of moneys deposited in any financial institution, drawn or issued by a body in respect of which the Commissioner has granted a certificate 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
- (b) cheques drawn by persons specified in item 1(4) of the Third Schedule in the circumstances set out in that subitem.

[Section 49A inserted by No. 37 of 1979 s. 35; amended by No. 22 of 1998 s. 51; No. 2 of 2003 s. 25.]

50. Stamping of bills

- (1) A person must not draw, make, issue, accept, endorse, transfer, negotiate, present for payment or pay any bill of exchange or promissory note which is liable to duty and is not stamped.
Penalty: \$20 000.
- (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) is not entitled to recover thereon or to make the same available for any purpose whatever until it is stamped.

[Section 50 inserted by No. 37 of 1979 s. 36; amended by No. 2 of 2003 s. 26.]

[50A. Repealed by No. 2 of 2003 s. 27.]

50B. One bill in set only to be stamped

- (1) When a bill of exchange is drawn in a set and one of the set is 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 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.

[Section 50B inserted by No. 37 of 1979 s. 36; amended by No. 2 of 2003 s. 28.]

50C. Duties on foreign bills

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.

[Section 50C inserted by No. 37 of 1979 s. 36.]

50D. Provision for stamping foreign bills

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 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 stamped.

[Section 50D inserted by No. 37 of 1979 s. 36; amended by No. 2 of 2003 s. 29.]

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

s. 50D

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

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

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

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

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

Part IIIB — Conveyances and transfers

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

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

63. Interpretation in Part IIIB

(1) In this Part —

“conveyance on sale” includes —

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

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

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

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

“unit trust scheme” means a private unit trust scheme within the meaning in subsection (2).

(1a) In sections 63AE and 63AF —

“disposition” has the same meaning as it has in section 73D.

(1b) In sections 63AB, 63AC, 63AD, 63AE and 63AF —

“unit” has the same meaning as it has in section 73D.

s. 63

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

- (4) For the purposes of subsection (2)(a)(ii) and (b)(ii) one person shall be treated as being beneficially entitled to all units held by a person and any related person namely —
- (a) where the first-mentioned person is a corporation —
 - (i) another corporation that is a related corporation;
 - (ii) a person who is beneficially entitled to more than one-half of the issued share capital of the corporation;
 - or
 - (b) a trustee of any trust (including a unit trust scheme) if —
 - (i) in the case of a discretionary trust as defined in section 76, the first-mentioned person may benefit from that trust; or
 - (ii) the share or interest of the first-mentioned person in the trust, whether vested or contingent, constitutes more than one-half of the trust property or of the issued units in the unit trust scheme,
- and subparagraph (i) shall be construed in accordance with section 76(6).

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

63AA. Registered unit trust schemes

- (1) A unit trustee may apply to the Commissioner in an approved form for registration of a unit trust scheme.

s. 63AB

- (2) The Commissioner may register the unit trust scheme as a pooled investment trust or an equity trust with effect from the date of the application if the Commissioner is satisfied that —
 - (a) the unit trust scheme is eligible for registration under section 63AB(2) as a pooled investment trust or section 63AB(3) as an equity trust; and
 - (b) registration is not being used and is not likely to be used as part of a scheme or arrangement with the collateral purpose of avoiding or reducing the duty that otherwise would be or might become payable.
- (3) For the purpose of being satisfied as to a matter referred to in subsection (2)(b), the Commissioner may take into account any matter that the Commissioner considers to be relevant.
- (4) The Commissioner shall advise the unit trustee whether or not he has registered the unit trust scheme as a pooled investment trust or an equity trust.
- (5) If the Commissioner decides not to register a unit trust scheme as a pooled investment trust or an equity trust he must give the unit trustee reasons for his decision.
- (6) If the Commissioner decides not to register a unit trust scheme as a pooled investment trust or an equity trust, the unit trustee may challenge the validity or correctness of that decision in accordance with Part 4 of the *Taxation Administration Act 2003* as if the unit trustee were a taxpayer and the decision were a decision affecting the trustee's liability to pay duty.

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

63AB. Criteria for registration of a unit trust scheme

- (1) In this section —
“**land**” has the same definition as in section 76.

- (2) For the purposes of section 63AA(2), a unit trust scheme is eligible for registration as a pooled investment trust if it meets all of the following criteria —
- (a) not less than 5 persons are holders of units under the scheme;
 - (b) no person beneficially entitled to units under the scheme is entitled to more than 40% of the total issued units under the scheme;
 - (c) no combination of 3 or fewer persons beneficially entitled to units under the scheme is entitled to 75% or more of the total issued units under the scheme;
 - (d) the unit trustee, as trustee of the scheme, holds directly or indirectly an interest in not less than 2 parcels of land, and at least 2 of those interests each have an unencumbered value of \$10 000 000 or more;
 - (e) each unit holder in the scheme —
 - (i) holds the unit in its capacity as a trustee of a complying superannuation fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;
 - (ii) holds the unit in its capacity as a trustee of a complying approved deposit fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;
 - (iii) holds the unit in its capacity as a trustee or manager of a fund that is part of a public sector superannuation scheme within the meaning given to that term by the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;
 - (iv) is a life company that holds the unit solely for the purpose of investing assets of its statutory fund;

s. 63AB

- (v) holds the unit in its capacity as a trustee of a unit trust that is not a unit trust scheme; or
 - (vi) holds not more than 5% of the total issued units under the scheme;
 - (f) the fund or scheme referred to in paragraph (e)(i), (ii) or (iii) has not less than 100 members;
 - (g) if more than one unit holder in the scheme is a unit holder referred to in paragraph (e)(vi), those unit holders do not hold more than 10% of the total issued units under the scheme;
 - (h) if the unit trustee is a corporation, no 2 persons either directly or indirectly have appointed or have power or hold sufficient shares in the trustee to enable them to pass a resolution to appoint a majority of directors of the corporation;
 - (i) the scheme is open to further subscription from new members;
 - (j) the initial subscription of each of the unit holders under the scheme is not less than \$1 000 000.
- (3) For the purposes of section 63AA(2), a unit trust scheme is eligible for registration as an equity trust if it meets all of the following criteria —
- (a) the unit trustee, as trustee of the scheme, does not hold, and is not empowered or able to hold, any thing other than —
 - (i) shares in a company or corporation that is not a company to which section 76AI or a corporation to which section 76AP applies;
 - (ii) units in a unit trust that are marketable securities;
 - (iii) property that the Commissioner is satisfied is necessary for the administration of the scheme but which is not and cannot be used for the purpose of investment;

- (iv) cash or money in an account at call;
 - (v) negotiable instruments, and money on deposit with any person;
 - (b) not less than 5 persons are holders of units under the scheme;
 - (c) no person beneficially entitled to units under the scheme, other than the Government of the Commonwealth, a State or a Territory or a corporation of which such a Government is a majority shareholder, is entitled to more than 40% of the total issued units under the scheme.
- (4) For the purpose of determining whether the criteria referred to in subsection (2)(b) and (c) and (3)(c) have been satisfied, one person shall be treated as being beneficially entitled to all units held by the person and any other person namely —
 - (a) a related person within the meaning of subsection (5);
 - (b) if the person is a corporation —
 - (i) a director or secretary of the corporation or a related corporation; and
 - (ii) a person who is entitled to any shareholding in the corporation or a related corporation;
 - (c) a relative of any natural person referred to in paragraph (a) or (b); and
 - (d) a corporation in which the first-mentioned person or any person referred to in paragraph (b) or (c) is entitled to any shareholding.
- (5) For the purposes of this section the following persons are related —
 - (a) natural persons who are spouses, or de facto partners, of each other or between whom the relationship is that of parent and child;
 - (b) related corporations;

s. 63AB

- (c) a natural person and a trustee if the natural person is a beneficiary under the trust of which the trustee is a trustee, whether the person has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (d) a natural person and a corporation if the natural person is a majority shareholder, director or secretary of the corporation or a related corporation;
 - (e) a corporation and a trustee if —
 - (i) the corporation, a majority shareholder, director or secretary of the corporation is a beneficiary of the trust of which the trustee is a trustee; or
 - (ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,

whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust.
- (6) For the purpose of subsection (4)(c) the following persons are relatives —
- (a) a child or remoter lineal descendant of the person or his spouse or de facto partner;
 - (b) a parent or remoter lineal ancestor of the person or his spouse or de facto partner;
 - (c) a brother or a sister of the person or his spouse or de facto partner;
 - (d) the spouse or de facto partner of the person;
 - (e) the spouse or de facto partner of a person referred to in paragraph (a), (b), or (c).
- (7) For the purposes of subsections (5) and (6) —
- (a) an illegitimate person shall be treated as the legitimate child of that person's parents;

- (b) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by a written law; and
 - (c) a majority shareholder in relation to a corporation is a person who would have a substantial holding in the corporation under the definition of “substantial holding” in section 9 of the Corporations Act even if the reference in that definition to 5% were a reference to 50%.
- (8) An application for registration of a unit trust scheme as a pooled investment trust shall be accompanied by a statement in an approved form concerning the unencumbered value of the interest in the parcels of land referred to in subsection (2)(d).

[Section 63AB inserted by No. 36 of 2001 s. 27; amended by No. 2 of 2003 s. 34; No. 28 of 2003 s. 188.]

63AC. Interim registration

- (1) A unit trustee may apply to the Commissioner in an approved form for interim registration of a unit trust scheme not later than one year after the day on which the first units under the scheme are issued.
- (2) The Commissioner may grant the unit trust scheme interim registration as a pooled investment trust or an equity trust, as the case may be, for a period of one year beginning on the day on which the first units under the scheme are issued (the “**start up period**”) if —
 - (a) the Commissioner is satisfied that the scheme satisfies the criteria for registration set out in section 63AB(2)(e), (f), (g), (h), (i) and (j) or (3)(a), as the case requires; and
 - (b) the trustee gives the Commissioner an undertaking that units in the scheme will be issued so that at the end of the start up period the scheme will also comply with the criteria referred to in section 63AB(2)(a), (b), (c) and (d) or (3)(b) and (c), as the case requires, and the

s. 63AD

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

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

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

63AD. Cancellation of registration or interim registration

- (1) In this section and section 63AE a disqualifying event occurs if —
 - (a) a unit trust scheme that has been registered under section 63AA(2) ceases to comply with a criterion that is applicable to it referred to in section 63AB(2) or (3);
 - (b) during the start up period, a unit trust scheme that has been granted interim registration ceases to comply with a criterion that is applicable to it referred to in section 63AB(2)(e), (f), (g), (h), (i) and (j) or (3)(a); or
 - (c) on the day on which the start up period ends, a unit trust scheme that has been granted interim registration does not comply with a criterion that is applicable to it referred to in section 63AB(2)(a), (b), (c) and (d) or (3)(b) and (c).

- (2) If a disqualifying event occurs, the unit trustee shall, within 14 days after the day on which the disqualifying event occurs, give the Commissioner notice about the disqualifying event.
- (3) When the Commissioner receives a notice under subsection (2) —
- (a) in the case of a unit trust scheme registered under section 63AA(2), the registration is cancelled and the cancellation is taken to have had effect on and from immediately before the occurrence of the event; and
 - (b) in the case of a unit trust scheme granted interim registration under section 63AC(2), the interim registration is cancelled and the cancellation is taken to have had effect on and from immediately before the first units under the scheme were issued.
- (4) If the Commissioner has not been notified of the occurrence of a disqualifying event but he is satisfied that a disqualifying event has occurred, the Commissioner shall —
- (a) in the case of a unit trust scheme registered under section 63AA(2), cancel the registration;
 - (b) in the case of a unit trust scheme granted interim registration under section 63AC(2), cancel the interim registration; and
 - (c) notify the unit trustee of the cancellation and the date on which the cancellation takes effect.
- (5) Cancellation under subsection (4) is taken to have had effect —
- (a) in the case of a unit trust scheme registered under section 63AA(2), on and from immediately before the occurrence of the disqualifying event; or
 - (b) in the case of a unit trust scheme granted interim registration under section 63AC(2), on and from immediately before the first units under the scheme were issued.

s. 63AE

- (6) If the Commissioner is satisfied that a unit trust scheme registered under section 63AA(2) or granted interim registration under section 63AC(2) is being used as part of a scheme or arrangement with the collateral purpose of avoiding or reducing the duty that otherwise would be or might become payable the Commissioner shall —
- (a) cancel the registration or interim registration; and
 - (b) notify the unit trustee of the cancellation and the date on which the cancellation takes effect.
- (7) For the purpose of being satisfied as to a matter referred to in subsection (6), the Commissioner may take into account any matter that the Commissioner considers to be relevant.

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

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

- (1) If a disqualifying event occurs in relation to a unit trust scheme, the unit trustee of the scheme shall prepare a dutiable statement.
Penalty: \$20 000.
- (2) The dutiable statement must —
- (a) be in an approved form;
 - (b) in relation to the occurrence of a disqualifying event, contain details of the disqualifying event;
 - (c) in the case of the cancellation of the registration of a unit trust scheme, contain details of transfers and dispositions in relation to the scheme that occurred in the period commencing immediately before the occurrence of the disqualifying event and ending on the day on which the Commissioner is given notice of the event or the day on which the Commissioner is satisfied that the event occurred and which would have been

chargeable with duty under section 73D had the scheme not been registered; and

- (d) in the case of the cancellation of the interim registration of a unit trust scheme, contain details of transfers and dispositions in relation to the scheme that occurred in the period commencing immediately before the first units under the scheme were issued and ending on the day on which the Commissioner is given notice of the event or the day on which the Commissioner is satisfied that the event occurred and which would have been chargeable with duty under section 73D had the scheme not been granted interim registration.

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

63AF. Duty chargeable on the dutiable statement

- (1) A dutiable statement prepared under section 63AE is taken to be an instrument effecting or evidencing the transfers and dispositions details of which are included in the dutiable statement under section 63AE(2)(c) or (d) and is chargeable with duty accordingly.
- (2) Duty chargeable under subsection (1) shall be reduced by the amount of any duty specified in the Second Schedule item 4A(1) that has been paid in respect of a conveyance or transfer disclosed in the statement.
- (3) Duty is payable by the unit trustee.

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

63A. Duty on certain decrees and orders

- (1) *Ad valorem* duty on a decree or order referred to in the definition of “conveyance on sale” in section 63 shall not exceed the duty on a sum equal to the value of the property to which that decree or order relates and, when that decree or order

s. 64

states that value, then despite section 33 and sections 21 and 22 of the *Taxation Administration Act 2003*, that statement shall be conclusive for the purpose of determining the amount of duty.

- (2) When *ad valorem* duty has been paid on a decree or order referred to in subsection (1), any conveyance or transfer following on that decree or order shall not be liable to duty.

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

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

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

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

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

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

(c) during any life or lives,

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

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

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

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

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

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

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

A conveyance on sale made for any consideration in respect whereof it is chargeable with *ad valorem* duty and in further

s. 69

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

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

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

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

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

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

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

[Section 69 inserted by No. 33 of 1987 s. 17; amended by No. 39 of 1994 s. 14; No. 2 of 2003 s. 43.]

70. Certain transfers of chattels dutiable

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

“arrangement” means an instrument or an unwritten arrangement;

“chargeable with duty” means chargeable with duty under —

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

“chattels” means goods, wares or merchandise, other than exempt chattels, and includes an estate or interest in them;

“estate or interest in land” includes a mining tenement (as defined in section 76);

“exempt chattels” means —

- (a) chattels referred to in item 2(7), (7a) or (7b) of the Third Schedule; or
- (b) a vehicle the transfer of the licence of which is chargeable with duty under Part IIIC and item 14 or 6 of the Second Schedule or is exempt under item 9 of the Third Schedule;

“farming land” has the same definition as in section 75D(1);

“land” means land, other than farming land, and includes an estate or interest in land;

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

(2) If an instrument —

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

s. 70

- (b) is chargeable with duty in respect of the land,
the instrument is chargeable with duty in respect of the
unencumbered value of the land plus the unencumbered value of
the chattel.
- (3) If —
- (a) an instrument —
- (i) transfers, or is or includes an agreement to
transfer, or evidences the transfer of, a chattel;
and
- (ii) is one of 2 or more arrangements that together
form, or arise from, substantially one transaction,
or one series of transactions, relating to chattels
and to land;
- and
- (b) at least one of the other arrangements mentioned in
paragraph (a)(ii) transfers, or is or includes an agreement
to transfer, or evidences the transfer of, land and is
chargeable with duty,
- the instrument mentioned in paragraph (a) is chargeable with
duty in respect of the unencumbered value of the land plus the
unencumbered value of the chattel.
- (4) The duty payable on an instrument referred to in
subsection (3)(a) is to be reduced by any duty paid in respect of
the arrangement referred to in subsection (3)(b).
- (5) For the purposes of subsection (3)(a)(ii), if a person enters into
arrangements —
- (a) within, or apparently within, 12 months of each other;
and

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

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

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

71. Duty charged for 2 or more instruments of conveyance

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

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

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

72. Transfer or assignment of mortgages for value

- (1) In this section —
“**sale**”, in relation to a mortgage, means sale for a consideration in money or money's worth for not less than market value;
“**transfer or assignment**”, in relation to a mortgage, means the transfer or assignment of the mortgage by way of sale.
- (2) Where, on the transfer or assignment of any mortgage, there are 2 or more instruments to complete the transferee's title to the mortgage, the principal instrument only is to be charged with duty under item 13(3)(a) of the Second Schedule.
- (3) A contract or agreement for the sale of any mortgage shall be charged with the same duty under item 13(3)(a) of the Second

s. 73

Schedule to be paid by the purchaser as if it were an instrument actually setting out the transfer or assignment of the mortgage contracted or agreed to be sold.

- (4) When, in relation to any mortgage, duty has been paid on a principal instrument or a contract or agreement in accordance with subsection (2) or (3), any other instrument setting out the transfer or assignment of the mortgage to the transferee is not chargeable with duty.
- (5) Where an instrument, contract or agreement applies to 2 or more mortgages, duty is chargeable under item 13(3) of the Second Schedule in respect of each mortgage.

[Section 72 inserted by No. 20 of 1996 s. 23; amended by No. 2 of 2003 s. 47.]

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

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

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

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

73A. Conveyance subject to an option

- (1) Where any property or estate or interest therein (“**the property**”) is agreed to be conveyed or transferred, or is

conveyed or transferred, to any person subject to the exercise of an option to purchase the property, whether the option is exercisable in writing or otherwise, the agreement or the conveyance or transfer, as the case may be, is chargeable with duty as a conveyance or transfer of the property and the consideration for such conveyance or transfer shall be deemed to be an amount equal to the sum of —

- (a) the amount paid by way of consideration for the granting of the option; and
 - (b) the amount payable in the event of the option being exercised.
- (2) Each of the parties to an agreement, conveyance or transfer referred to in subsection (1) is liable to pay the duty with which it is chargeable.
- (3) Section 73AA does not apply to a conveyance or transfer referred to in subsection (1).
- (4) Where *ad valorem* duty has been duly paid in conformity with subsection (1) on an agreement the conveyance or transfer made in conformity with the agreement shall be chargeable with duty under item 6 of the Second Schedule.
- (5) Where, after *ad valorem* duty has been paid in conformity with subsection (1), the Commissioner is satisfied —
 - (a) that the option referred to in that subsection has not been exercised and that the time within which that option may be exercised has expired; and
 - (b) where the property was conveyed or transferred to the person to whom the option was granted —
 - (i) that the property has been reconveyed or retransferred to the person from whom it was conveyed or transferred or to a person to whom his rights have been transmitted on death or bankruptcy; and
 - (ii) that the person to whom the option was granted did not, prior to the reconveyance or retransfer of

s. 73AA

the property, exercise or receive any right or benefit in respect of the property being a right or benefit of a kind normally exercisable or receivable only by the beneficial owner of property,

then —

- (c) the duty chargeable on the agreement or the conveyance or transfer (as the case may be) is reduced to the amount of duty that would have been payable if the consideration had been the amount referred to in subsection (1)(a) only; and
 - (d) any reconveyance or retransfer referred to in paragraph (b) is chargeable with duty under item 6 of the Second Schedule.
- (5a) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.
- (5b) For the purposes of subsection (5a), section 17 of the *Taxation Administration Act 2003* applies as if the original assessment had been made —
- (a) when the reconveyance or retransfer referred to in subsection (5)(b)(i) occurred; or
 - (b) on the expiry, referred to in subsection (5)(a), of the time within which the option could have been exercised,
- whichever is later.
- (6) Where *ad valorem* duty has been duly paid in conformity with subsection (1) any agreement made in pursuance of and by the exercise of the option referred to in that subsection shall not be chargeable with any further duty.

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

73AA. Duty on conveyance not passing a beneficial interest

- (1) A conveyance or transfer —
- (a) made for effectuating the appointment of a new trustee, or the retirement of a trustee, whether the trust is expressed or implied;
 - (b) made to a beneficiary by a trustee or by another person in a fiduciary capacity, except a discretionary trustee or a unit trustee, under any trust whether express or implied;
 - (c) made to a beneficiary by a discretionary trustee under any trust whether express or implied otherwise than in the exercise of any power of appointment;
 - (d) made by a discretionary trustee, in the exercise of a power of appointment over the property conveyed or transferred, to a beneficiary who is an individual for his own use and benefit, if —
 - (i) at the time when the discretionary trustee acquired the property conveyed or transferred the beneficiary was named or described in the instrument which created the power of appointment as a beneficiary or as a member of a class of beneficiaries in whose favour the discretionary trustee was empowered by that instrument to appoint the property; and
 - (ii) evidence of the acquisition by the discretionary trustee, as such trustee, of the property conveyed or transferred is produced to the Commissioner with that conveyance or transfer;
 - (e) made to the holder of a unit in a unit trust scheme by a unit trustee if —
 - (i) evidence of the acquisition by the unit trustee, as trustee of that unit trust scheme, of the property conveyed or transferred is produced to the

s. 73AA

Commissioner with that conveyance or transfer;
and

- (ii) the Commissioner is satisfied that —
 - (I) the conveyance or transfer has the effect of reducing the rights of the holder of the unit in respect of the property held by the unit trustee to the extent of the property, or the value of the property, conveyed or transferred; and
 - (II) the conveyance or transfer does not have the effect of varying, abrogating or altering the rights of the holder or holders of other units under the unit trust scheme in respect of the remaining property held by the unit trustee;

or

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

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

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

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

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

73B. Conveyance agreement subject to unilateral determination

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

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

- (2) The person to whom property is to be conveyed or transferred under an agreement referred to in subsection (1) is liable to pay the duty with which the agreement is chargeable.
- (3) When, after *ad valorem* duty has been duly paid in conformity with subsection (1), the Commissioner is satisfied that the person referred to in that subsection (“**the determiner**”) determined the agreement concerned before the final payment had become due and payable under that agreement, the amount of duty payable on the agreement is reduced to the amount of duty that would have been payable if the consideration had been

s. 73C

equal to the amount of the payment or payments paid or due and payable by the determiner when the determination was made.

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

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

73C. Option to purchase with right to renew

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

before the occurrence of the final occasion referred to in the instrument the amount of duty payable on the instrument is reduced to the amount of duty that would have been payable if the consideration had been equal to the amount paid or payable

in respect of any occasion or occasions referred to in the instrument that have occurred before the person exercised the option or failed to renew the right of option.

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

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

73D. Disposition of units in unit trust schemes

- (1) In this section —

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

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

- (a) a transfer or other disposition of the unit;
- (b) the allotment or issue of the unit;
- (c) the redemption, surrender or cancellation of the unit;
- (d) the variation, abrogation or alteration of a right pertaining to the unit with respect to the capital of the unit trust scheme; and
- (e) any means by which a unit is disposed of or the rights of its holder are diminished;

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

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

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

s. 73D

- (2) A person shall not make, accept, give effect to, recognise, or register, record, or enter in the books or records of a unit trust scheme a disposition in relation to a unit unless —
- (a) a transfer or an instrument effecting or evidencing the disposition is executed and delivered to him; and
 - (b) the transfer or the instrument, as the case may be, is stamped.

Penalty: \$20 000.

[(3) repealed]

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

pertaining to the other issued units under the unit trust scheme, the instrument effecting or evidencing the disposition shall be chargeable with duty under item 6 of the Second Schedule.

(5a) Where a disposition, or a series of dispositions —

- (a) has effect in relation to the number of units held by all holders of units in proportion to the number of units respectively held by them immediately prior to the disposition or dispositions taking effect; and
- (b) does not have the effect of varying, abrogating or altering the rights of any holder of units as against the rights of any other holder of units with respect to the capital of the unit trust scheme,

the instrument effecting or evidencing the disposition, and each instrument effecting or evidencing a disposition in a series of dispositions, shall be chargeable with duty under item 6 of the Second Schedule.

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

(6a) Subject to subsection (6c), in addition to the duty chargeable on a transfer or an instrument under subsection (4), the transfer or instrument shall each be chargeable with duty at the rate provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of any ascribed chattels, but duty shall not be charged in respect of —

- (a) any of the chattels in respect of which duty has been paid under section 31B or 70 by a person liable under subsection (7) to pay the duty with which the transfer or instrument is chargeable under subsection (4);
- (b) any of the chattels in respect of which interstate duty has been paid by such a person; or

s. 73D

- (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in Western Australia.
- (6b) Chattels are ascribed chattels for the purpose of subsection (6a) if, within the 12 months preceding the date of the disposition evidenced by the transfer or instrument —
 - (a) the unit trustee, as trustee of the unit trust scheme, held them or any interest (including any beneficial interest) in them; and
 - (b) a person liable under subsection (7) to pay the duty with which the transfer or instrument is chargeable under subsection (4) acquired them, directly or indirectly, from the unit trustee.
- (6c) The transfer or instrument is not chargeable with duty under subsection (6a) if the Commissioner is satisfied that no transaction by means of which the ascribed chattels were transferred from the unit trustee to the person referred to in subsection (6b)(b) was effected for the collateral purpose of reducing the duty that otherwise would be chargeable on the transfer or instrument.
- (7) Each of the holders of a unit under a unit trust scheme is liable to pay the duty with which a transfer of the unit or an instrument effecting or evidencing a disposition in relation to the unit is chargeable.
- (8) A unit trustee shall, where a transfer of a unit or an instrument effecting or evidencing a disposition in relation to a unit has been delivered to him, retain the transfer or instrument, as the case may be, in accordance with section 87 of the *Taxation Administration Act 2003*.
- [(9) repealed]*
- (10) A right or obligation arising out of a disposition in relation to a unit shall not be invalidated by reason only that the unit trustee made, accepted, gave effect to, or recognised the disposition or

registered, recorded or entered the disposition in the books or records of the unit trust scheme in contravention of subsection (2).

- (11) Subject to subsection (12), this section does not apply to a disposition of a unit in a unit trust scheme during any period that the unit trust scheme is —
- (a) registered under section 63AA(2); or
 - (b) granted interim registration under section 63AC(2).
- (12) If the registration or interim registration of a unit trust scheme is cancelled, this section is taken to have applied to the unit trust scheme from the time the cancellation was taken to have effect unless duty is chargeable under section 63AF.

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

73DA. Holdings of majority interest unit trustee

- (1) For the purposes of section 73D(4), a unit trustee who has a majority interest in a company that is beneficially entitled to land and chattels (as defined in section 76) situated in Western Australia is taken to hold an undivided share in the land and chattels to the extent provided in subsection (2).
- (2) The extent of the undivided share in land and chattels referred to in subsection (1) is the same proportion of the value of the land and chattels situated in Western Australia to which the company is beneficially entitled as the proportion of the property of the company which the trustee would be entitled to claim in a distribution of property, as provided in section 76(5), if the company were to be wound up at the time of the disposition effected or evidenced by the relevant transfer or instrument.

s. 73E

(3) For the purposes of this section —

- (a) **“company”** means a company to which Division 2 of Part IIIBA applies or a corporation to which Division 3 of that Part applies; and
- (b) a unit trustee has a majority interest in a company if he would be entitled, if the company were to be wound up at the time of the disposition effected or evidenced by the relevant transfer or instrument, to participate (otherwise than as a creditor, or other person to whom the company is liable) in a distribution of the property of the company, as provided in section 76(5), to an extent greater than 50% of the value of the property distributable otherwise than to creditors, or other persons to whom the company is liable.

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

73E. Disposition of shares in discretionary trustee companies

(1) In this section —

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

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

- (a) a transfer or other disposition of the share;
- (b) the allotment or issue of the share;
- (c) the redemption, surrender or cancellation of the share; and
- (d) the variation, abrogation or alteration of a right pertaining to the share with respect to voting, whether at meetings of the company or the directors or otherwise,

but does not include a disposition by which the personal representative of a deceased person disposes of a share to a

beneficiary in the administration of the estate of the deceased;

“**officer**”, in relation to a corporation, has the same definition as in section 9 of the Corporations Act;

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

- (2) A company which is resident or domiciled in Western Australia or which carries on business in Western Australia as a discretionary trustee and an officer of such a company shall not make, accept, give effect to, recognise, or register, record or enter in the books or records of the company a disposition in relation to a share unless —
- (a) a transfer or an instrument effecting or evidencing the disposition is executed and delivered to the company; and
 - (b) the transfer or the instrument, as the case may be, is stamped.

Penalty: \$20 000.

[(3) repealed]

- (4) Subject to subsections (5) and (6), a transfer of a share and an instrument effecting or evidencing a disposition in relation to a share shall each be chargeable with duty as if it were a conveyance free of encumbrances of an undivided share, equivalent to the proportion of the total issued capital of the company represented by the share, in the property held by the discretionary trustee as trustee of the discretionary trust.
- (5) Subsection (4) shall not apply to a transfer or instrument if the Commissioner is satisfied that it is not made in contemplation of the passing of a beneficial interest in any property held by the company as discretionary trustee and is not part of, or made pursuant to, a scheme whereby any beneficial interest, vested or contingent, in any property held by the company as

s. 73E

discretionary trustee has passed or will or may pass to any person.

(6) Where —

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

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

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

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

(9) A company shall, where a transfer of a share or an instrument effecting or evidencing a disposition in relation to a share has been delivered to it, retain the transfer or instrument, as the case may be, in accordance with section 87 of the *Taxation Administration Act 2003*.

[(10) repealed]

(11) A right or obligation arising out of a disposition in relation to a share shall not be invalidated by reason only that the company or an officer of the company made, accepted, gave effect to or

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

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

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

(1) In this section —

“**business licence**” means —

- (a) a licence, permit or authority which is issued, granted or given under a written law and which is required by a written law to be held by a person carrying out an activity for gain or reward; or
 - (b) a licence, permit or authority which is issued, granted or given under a law of the Commonwealth and which is required by a law of the Commonwealth to be held by a person carrying out an activity in Western Australia for gain or reward.
- (2) This section applies to a transaction by which a person (“**the licensee**”) who holds a business licence —
- (a) disposes of the business licence to another person;
 - (b) agrees to the business licence being transferred to another person; or
 - (c) agrees to relinquish the business licence, or agrees not to apply for a renewal of the business licence, so that it, or another business licence in respect of the same kind of activity, can be issued, granted or given to another person.
- (3) Where this section applies to a transaction the business licence to which the transaction relates is property situated in Western Australia and the transaction is a transaction by which that property is transferred by the licensee and becomes the property of the other person referred to in subsection (2).

s. 74

- (4) Where this section applies to a transaction relating to a business licence issued, granted or given under a law of the Commonwealth, duty can only be charged to the extent of —
- (a) the value of the business licence so far as it authorises the carrying out of an activity in Western Australia; or
 - (b) the portion of the consideration for the transaction that relates to the carrying out of an activity in Western Australia under the authority of the business licence,
- whichever is the greater amount.

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

74. Certain contracts to be chargeable as conveyances on sale

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

(c) the contract or agreement of sale concerned is stamped, the same duty as is payable under item 6 of the Second Schedule shall be payable on the subsequent conveyance or transfer.

(3a) Notwithstanding subsections (2) and (3), where —

- (a) a person named as purchaser in a contract or agreement to purchase property entered into the contract or agreement with the intention that the property be transferred to a corporation which the person intended to be incorporated;
- (b) at the time the contract or agreement was entered into action was being taken to incorporate the corporation; and
- (c) duty has been paid on the contract or agreement under subsection (1),

a conveyance or transfer of the property by the vendor under the contract to the corporation after it has been incorporated shall be charged with duty under item 6 of the Second Schedule.

(4) When duty has been paid in accordance with subsection (1), the conveyance or transfer concerned made to the purchaser shall not be liable to duty.

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

74A. Duty chargeable on certain conveyances of corporation property

- (1) A conveyance or transfer of any property —
 - (a) by a corporation to any of its shareholders in the course of a distribution of assets on a reduction of its capital, including a conveyance or transfer of property in consideration of or pursuant to a surrender, redemption or cancellation of any shareholding;

s. 74A

- (b) by the liquidator of a corporation to any of its shareholders pursuant to a right attaching to any of its shares to select or receive any particular property of it; or
 - (c) by the liquidator of a corporation to any of its shareholders in the course of a distribution of its assets as a consequence of its winding up, not being a conveyance or transfer to which paragraph (b) applies,
- shall be chargeable with duty in accordance with item 4 or 4A(1), as the case requires, of the Second Schedule and —
- (d) the unencumbered value of the property shall be taken to be the consideration paid; and
 - (e) the shareholder shall be liable to pay the amount of duty charged.
- (2) If in a case to which subsection (1)(c) applies, the Commissioner is satisfied that the corporation is not being wound up as part of an arrangement or scheme designed with the collateral purpose of reducing the duty otherwise payable on the conveyance or transfer of the property, the Commissioner may deduct from the unencumbered value of the property an amount calculated under subsection (4) but in any event not greater than the unencumbered value of the property.
- (3) In considering whether or not he or she is satisfied for the purpose of subsection (2), the Commissioner may have regard to —
- (a) the duration of the shareholder's shareholding in the corporation;
 - (b) whether or not the shareholder held shares in a related corporation of the corporation that owned the property before it was owned by the corporation;
 - (c) the period for which the property has been owned by the corporation or a related corporation of the corporation;

- (d) any dealing in shares of the corporation or a related corporation of the corporation —
- (i) by the shareholder or a related corporation of the shareholder; or
 - (ii) by a previous owner of the property;
- (e) whether there is any commercial efficacy to an arrangement or scheme of transactions involving any one or more of —
- (i) the corporation;
 - (ii) the shareholder;
 - (iii) a related corporation of the corporation or the shareholder;
 - (iv) a person who has a substantial holding (as defined in the Corporations Act) in a person referred to in subparagraph (i), (ii) or (iii), in relation to the winding up, other than to reduce the duty otherwise payable on the conveyance or transfer; and
- (f) any other matters he or she considers relevant.
- (4) The deduction to be made under subsection (2) shall be calculated as follows:

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

where:

- A is the value of the shareholder's entitlement in the undistributed assets of the corporation as determined under subsection (5);
- B is the unencumbered value of all the assets that are, or are to be, distributed to the shareholder in the course of the distribution; and
- C is the unencumbered value of the property that is the subject of the conveyance or transfer that is chargeable with duty.

s. 75

- (5) In subsection (4) the value of the shareholder's entitlement in the undistributed assets of the corporation is the amount (if any) by which the value of the shareholder's entitlement in the undistributed assets of the corporation immediately before the conveyance or transfer exceeds the sum of —
- (a) any amount owed by the corporation to the shareholder as a creditor at the date of the conveyance or transfer;
 - (b) any amount owed by the corporation to the shareholder as a creditor that the shareholder, in the year ending on the date of the conveyance or transfer, has released the corporation from paying; and
 - (c) the amount of any liability of the corporation that the shareholder, in the year ending on the date of the conveyance or transfer, has, or has caused to be, assumed or discharged on behalf of the corporation.

[Section 74A inserted by No. 13 of 1997 s. 37; amended by No. 10 of 2001 s. 169; No. 2 of 2003 s. 59.]

75. Duty chargeable on conveyance for less than full consideration

- (1) Subject to subsection (2), every conveyance or transfer or instrument chargeable as a conveyance operating as a voluntary disposition *inter vivos* shall be chargeable with duty under item 19 of the Second Schedule in respect of the unencumbered value of the property disposed of.
- (2) Notwithstanding subsection (1), every conveyance or transfer, or instrument chargeable as a conveyance, that confers a benefit on the person to whom the property is conveyed or transferred because the unencumbered value of the property exceeds the consideration payable in respect of that property, or because of other circumstances, shall be chargeable with duty under item 4 or 4A(1), as the case requires, of the Second Schedule as if that unencumbered value were the consideration paid.

- (3) A conveyance or transfer —
- (a) for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied;
 - (b) made to a beneficiary by a trustee or by another person in a fiduciary capacity, except a discretionary trustee or a unit trustee, under any trust whether express or implied;
 - (c) made to a beneficiary by a discretionary trustee under any trust, whether express or implied, otherwise than in the exercise of any power of appointment;
 - (d) made by a discretionary trustee, in the exercise of a power of appointment over the property conveyed or transferred, to a beneficiary who is an individual for his own use and benefit, if —
 - (i) at the time when the discretionary trustee acquired the property conveyed or transferred the beneficiary was named or described in the instrument which created the power of appointment as a beneficiary or as a member of a class of beneficiaries in whose favour the discretionary trustee was empowered by that instrument to appoint the property; and
 - (ii) evidence of the acquisition by the discretionary trustee, as such trustee, of the property conveyed or transferred is produced to the Commissioner with that conveyance or transfer;
 - (e) made to the holder of a unit in a unit trust scheme by a unit trustee if —
 - (i) evidence of the acquisition by the unit trustee, as trustee of that unit trust scheme, of the property conveyed or transferred is produced to the Commissioner with that conveyance or transfer; and

s. 75A

- (ii) the Commissioner is satisfied that —
 - (I) the conveyance or transfer has the effect of reducing the rights of the holder of the unit in respect of the property held by the unit trustee to the extent of the property, or the value of the property, conveyed or transferred; and
 - (II) the conveyance or transfer does not have the effect of varying, abrogating, or altering the rights of the holder or holders of other units under the unit trust scheme in respect of the remaining property held by the unit trustee;

or

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

shall not be charged with duty under this section.

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

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

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

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

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

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

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

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

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

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

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

s. 75ABA

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

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

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

75AC. Exchange of property

Any instrument or instruments effecting an exchange of any property for any other property shall be chargeable with duty as if the exchange involved —

- (a) the conveyance or transfer of the first-mentioned property for consideration equal to the unencumbered value of that property; and
- (b) the conveyance or transfer of the second-mentioned property for consideration equal to the unencumbered value of that property.

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

75AD. Duty chargeable on partition of property

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

amount or on the value of that consideration under item 4 or 4A(1), as the case requires, of the Second Schedule.

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

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

75AE. Concessional rates for certain residential or business property

- (1) A conveyance or transfer of residential property or business property is chargeable with duty under item 4(5) of the Second Schedule if —
- (a) duty on the conveyance or transfer would, but for this section, be chargeable under item 4(1) of the Second Schedule;
 - (b) the value of the property does not exceed \$135 000; and
 - (c) the property is conveyed or transferred to —
 - (i) one person who is an eligible purchaser;
 - (ii) in the case of business property — 2 or more purchasers all of whom are eligible purchasers; or
 - (iii) in the case of residential property — 2 or more purchasers —
 - (I) at least one of whom is an eligible purchaser; and
 - (II) all of whom are either eligible purchasers or government bodies.

s. 75AF

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

(3) In this section —

“business property” means property that is or includes a business undertaking;

“eligible purchaser” means —

(a) in relation to a residential property, an individual who —

- (i) occupies, or after purchasing the property will occupy, the dwellinghouse on the property as his or her principal place of residence;
- (ii) intends to so occupy the dwellinghouse for an indefinite period; and
- (iii) is not acquiring, and does not intend to hold, the property as agent, trustee or otherwise on behalf of another person;

and

(b) in relation to a business property, a person who —

- (i) is not a government body;
- (ii) after purchasing the property will carry on the business undertaking that is or is part of the property; and
- (iii) intends to carry on that business for an indefinite period;

“residential property” means property that includes a dwellinghouse.

[Section 75AE inserted by No. 2 of 2003 s. 64.]

75AF. Computation of duty for 2 or more instruments

(1) Where 2 or more instruments to which this section applies together form, or arise from, substantially one transaction, or

one series of transactions, those instruments shall be chargeable with *ad valorem* duty calculated upon the sum of the amounts by reference to which *ad valorem* duty on each of those instruments would, but for this subsection, have been calculated, and that duty shall be apportioned to the various instruments as determined by the Commissioner.

- (2) Where, by instruments to which this section applies that have been, or appear to have been, executed within 12 months of each other, a person conveys or transfers, or agrees to convey or transfer, property or properties to the same person (whether that person takes alone or with the same or different persons), it shall be presumed, unless the Commissioner is satisfied to the contrary, that the instruments arose out of one transaction or one series of transactions.
- (3) This section does not operate to reduce the duty payable on any instrument.
- (4) This section applies to conveyances or transfers of property and other instruments chargeable with duty under item 4(1), item 17 or item 19 of the Second Schedule.

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

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

- (1) The duty payable under item 4(1), 4(5) or 19 of the Second Schedule on the conveyance or transfer of residential property is reduced in accordance with subsection (2) if —
 - (a) each of the persons (other than government bodies) to whom the property is conveyed or transferred —
 - (i) intends to occupy the dwellinghouse as his or her principal place of residence; or
 - (ii) is a trustee holding the property on trust for a person who it is intended will occupy the dwellinghouse as his or her principal place of residence;

s. 75AG

- (b) at least one of the persons to whom the property is conveyed or transferred is —
 - (i) a first home owner; or
 - (ii) a trustee holding the property on trust for a first home owner;
 - and
 - (c) the value of the property does not exceed —
 - (i) if the property is situated north of the 26th parallel of south latitude — \$202 500; or
 - (ii) otherwise — \$135 000.
- (2) The duty payable on the conveyance or transfer is reduced by an amount equal to R in the formula —

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

where —

- A is the combined interest in the property, expressed as a percentage, of all the people to whom the property is conveyed or transferred who are —
 - (i) first home owners; or
 - (ii) trustees holding the property on trust for first home owners;
 - B is the combined interest in the property, expressed as a percentage, of all the people (including first home owners and trustees) to whom the property is conveyed or transferred who are not government bodies; and
 - C is the lesser of —
 - (i) \$500; and
 - (ii) the amount of duty that would, but for this section, be payable on the conveyance or transfer.
- (3) A refund, calculated in accordance with subsection (4), of duty paid under item 4(1), 4(5) or 19 of the Second Schedule on the

conveyance or transfer of land to a first home owner or to a trustee who holds the land on trust for a first home owner is payable if —

- (a) either —
 - (i) the land is vacant land; or
 - (ii) the land is residential property but since the date of the conveyance or transfer the first home owner has not occupied the dwellinghouse;
 - (b) within 48 months after the date of the conveyance or transfer construction commences on the land of —
 - (i) where the land is vacant land, a dwellinghouse; or
 - (ii) where the land is residential property, a new dwellinghouse;
 - (c) each of the persons (other than government bodies) who own the land —
 - (i) intends to occupy the dwellinghouse referred to in paragraph (b) as his or her principal place of residence; or
 - (ii) is a trustee holding the land on trust for a person who it is intended will occupy the dwellinghouse referred to in paragraph (b) as his or her principal place of residence;
- and
- (d) the value of the vacant land or residential property at the time of the conveyance or transfer did not exceed \$52 000.

- (4) The refund is an amount equal to R in the formula —

$$R = \frac{D}{E} \times C$$

s. 75AG

where —

- D is the interest in the land, expressed as a percentage, of the first home owner or trustee (as the case requires) as at the building date;
 - E is the combined interest in the land, expressed as a percentage, of all the people (including the first home owner or trustee) who are owners of the land as at the building date other than government bodies; and
 - C is lesser of —
 - (i) \$500; and
 - (ii) the amount of duty paid on the conveyance or transfer of the vacant land to the first home owner or trustee (as the case requires).
- (5) If the conveyance or transfer is or was chargeable with duty under item 19 of the Second Schedule, this section does not apply unless the Commissioner is satisfied that the duty was or will be (as the case requires) paid by a person to whom the property is conveyed or transferred who is a first home owner.
- (6) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.
- (7) In this section —
- “first home owner”**, in relation to the conveyance or transfer of property, means an individual who, immediately before the conveyance or transfer —
- (a) does not own, and has not previously owned, any residential property, except as a trustee; and
 - (b) is not, and has not been, the beneficiary of a trust of any residential property where —
 - (i) the individual is or was entitled to occupy the dwellinghouse on the property as his or her principal residence; and

- (ii) if the property is in Australia, the conveyance or transfer of the property to the trustee was chargeable with duty under item 4(1), 4(5) or 19 of the Second Schedule or a corresponding law of another State or Territory;

and

- (c) where the property is conveyed or transferred to the individual, he or she is not acquiring the property as a trustee;

“residential property” means property (whether in Western Australia or elsewhere) that includes a dwellinghouse;

“trustee” —

- (a) includes an executor, an administrator, a guardian, a receiver, a liquidator, a person acting in any other fiduciary capacity and a person who in any other capacity has possession, control, or management of the property of a person who is under a legal disability; and
- (b) does not include a discretionary trustee or a unit trustee;

“vacant land” means land on which there is not a dwellinghouse.

[Section 75AG inserted by No. 2 of 2003 s. 66.]

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

75C. Power to exempt for certain conveyances between spouses

- (1) Upon application made in the manner provided in subsection (3), the Commissioner may exempt from duty any instrument chargeable with duty under item 4(1) or 19 of the Second Schedule where —
 - (a) the person from whom, and the person to whom, the property is conveyed or transferred, or agreed to be

s. 75C

- conveyed or transferred, are married to each other or are de facto partners of 2 years;
- (b) the property conveyed or transferred, or agreed to be conveyed or transferred, by the instrument includes a dwellinghouse which, at the time of the execution of the instrument was used solely or principally as the ordinary place of residence of the persons referred to in paragraph (a);
 - (c) the lot on which the dwellinghouse referred to in paragraph (b) is erected is used principally or solely for residential purposes associated with that dwellinghouse;
 - (d) the person from whom the property is conveyed or transferred, or agreed to be conveyed or transferred, is the sole owner of the property; and
 - (e) the result of the conveyance or transfer is or will be that the property is owned solely by the persons referred to in paragraph (a) as joint tenants.
- (2) Where an instrument referred to in subsection (1) does not relate only to a dwellinghouse and lot described in that subsection the exemption provided by that subsection extends only to the amount of the aggregate value of all property to which the instrument relates that the Commissioner is satisfied is the amount of the value of the dwellinghouse and lot.
- (3) An application under subsection (1) in respect of an instrument shall be made to the Commissioner by the persons referred to in subsection (1)(a) in an approved form.
- (3a) If on such an application the Commissioner is satisfied that the instrument is an instrument of the kind described in subsection (1), he shall exempt it from duty in accordance with this section.

(4) In this section —

“lot” means —

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

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

Part IIIBAA — Certain transfers of farming property²

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

75D. Interpretation in Part IIIBAA

(1) In this Part —

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

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

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

- (a) a child or remoter lineal descendant of the person;
- (b) a parent or remoter lineal ancestor of the person;
- (c) a brother or sister of the person or remoter lineal descendant of a brother or sister of the person;
- (d) an aunt or uncle of the person;
- (e) the spouse, former spouse, de facto partner of 2 years or former de facto partner of 2 years of the person; or
- (f) the spouse or de facto partner of 2 years of a person referred to in paragraph (a), (b), (c) or (d),

or more than one of them;

“**farming company**” means a corporation —

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

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

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

“farming property” means —

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

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

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

but does not include a Part IIIBA statement;

“land” includes an estate or interest in —

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

“primary production” means —

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

s. 75E

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

- (1a) For the purposes of this Part a person controls a discretionary trust if —
- (a) the person is in a position to influence, either directly or indirectly, the vesting of the whole or any part of the capital of the trust property, or of the whole or any part of the income from that trust property; or
 - (b) in a case where a corporation is in a position to influence, either directly or indirectly, the vesting of the whole or any part of the capital of the trust property, or of the whole or any part of the income from that trust property, the person is beneficially entitled to a share, or an interest in a share, in that corporation or a related corporation or to act as a director or secretary of that corporation or related corporation.
- (2) For the purposes of this Part —
- (a) an illegitimate person shall be treated as the legitimate child of that person’s parents; and
 - (b) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by a written law.

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

75E. Application of this Part

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

- (b) of an interest in a farming partnership to a family member of the transferor;
 - (c) of a share in a farming company to a family member of the transferor;
 - (d) of —
 - (i) farming property;
 - (ii) an interest in a farming partnership; or
 - (iii) a share in a farming company,
to a trustee where after the transfer or conveyance the subject of the instrument, the beneficial owner of the trust property will be a family member of the transferor; or
 - (e) of —
 - (i) farming property;
 - (ii) an interest in a farming partnership; or
 - (iii) a share in a farming company,
to a discretionary trustee of a discretionary trust,
where —
 - (iv) all the persons who have a share or interest in the trust property, whether vested or contingent, or who may benefit from the discretionary trust are family members of the transferor; and
 - (v) the transferor does not control the discretionary trust.
- (2) This Part —
- (a) applies if the transfer or conveyance the subject of the instrument of conveyance referred to in subsection (1) is made by a transferor to any combination of the persons referred to in that subsection; and
 - (b) does not apply to a transfer or conveyance the subject of the instrument of conveyance referred to in subsection (1) if the transferees include a person who is not one of the persons referred to in that subsection.

s. 75E

- (3) This Part applies only where the family member, partnership, company, trustee or discretionary trustee, referred to in subsection (1), to whom the farming property is conveyed or in which an interest or share is conveyed, as the case requires, intends to continue to use the farming property in the business of primary production.
- (4) In relation to an instrument of conveyance referred to in subsection (1)(a), (b) or (c), this Part applies only where the relevant family member does not intend to hold the farming property, interest or share, as the case requires, as agent, trustee or otherwise on behalf of any other person.
- (5) Where an exemption has been granted under this Part in relation to an instrument of conveyance of farming property, an interest in a farming partnership or a share in a farming company, to a person (or to a trustee on behalf of a person) (“**the initial instrument**”), this Part does not apply to a subsequent instrument of conveyance by that person or trustee made within 5 years of the initial instrument if the Commissioner is of the opinion that the subsequent instrument of conveyance relates to the same farming property, interest in partnership or share which was the subject of the exemption.
- (6) Where —
 - (a) an exemption has been granted under this Part in relation to an instrument of conveyance to a discretionary trustee of a discretionary trust referred to in subsection (1)(e) (“**the initial transfer**”); and
 - (b) part or all of the farming property, interest in the farming partnership or share in the farming company the subject of that instrument is subsequently conveyed or transferred to a beneficiary of that discretionary trust and duty in accordance with item 6 of the Second Schedule is charged on the relevant conveyance or transfer,

this Part does not apply to an instrument of conveyance by that beneficiary made within 5 years of the initial transfer if the

Commissioner is of the opinion that the instrument of conveyance relates to the same farming property, interest in a farming partnership or share in a farming company that was the subject of the exemption.

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

75F. Power to exempt for farming property

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

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

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

75G. Partial exemption of duty

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

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

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

- (d) the Commissioner shall assess duty on the unencumbered value of the farming property, interest in

s. 75G

the partnership or share in the company as determined in accordance with section 33 and sections 21 and 22 of the *Taxation Administration Act 2003*;

- (e) the farming property shall be deemed to have no value; and
 - (f) in making the valuation referred to in paragraph (d) the Commissioner shall only have regard to an apportioned liability.
- (2) When assessing the duty referred to in subsection (1) —
- (a) duty shall be charged on the instrument referred to in that subsection at the rate of duty provided for in item 4 or item 4A of the Second Schedule, as the case requires; and
 - (b) the person liable to pay that duty shall be the person who, if not for the operation of this Part, would have been so liable.
- (3) In this section the “**apportioned liability**”, in relation to a partnership or company referred to in subsection (1)(b) or (c), shall be calculated as follows —

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

where —

- A is the value of the farming property (as determined in accordance with section 33 and sections 21 and 22 of the *Taxation Administration Act 2003*) comprised in the assets of the partnership or company, as the case requires;
- B is the total value of the assets of the partnership or company, as the case requires;

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

L is the apportioned liability.

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

75H. Application for exemption

- (1) An application for an exemption under section 75F is to be made in an approved form by the person acquiring the farming property, interest or share or, if there is more than one such person, by all of them.
- (2) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on an instrument to which this Part applies on the basis that an exemption under section 75F should have been, but was not, granted in relation to the instrument cannot be made more than 12 months after the day on which the instrument was stamped.

[Section 75H inserted by No. 2 of 2003 s. 72.]

75HA. Subsequent liability for duty in certain circumstances

- (1) In this section —

“current exempted property” means, when a taxable event occurs in relation to a discretionary trust, that part of —

- (a) a farming property;
- (b) an interest in a farming partnership; or
- (c) a share in a farming company,

as the case requires, conveyed by an instrument of conveyance the subject of a farming exemption that is, at the date of the taxable event, vested in the discretionary trustee as trustee of the discretionary trust;

“entitled share”, in relation to a farming company, means a share that would entitle the holder of that share, if the property of the farming company were to be distributed

s. 75HA

after the share was acquired (on the basis of a winding up) to participate (otherwise than as a creditor or other person to whom the farming company is liable) in the distribution of the property of the farming company;

“farming exemption” means an exemption or partial exemption granted by the Commissioner under this Part;

“relevant proportion” means the proportion that the shares in a farming company that are current exempted property bear to the total number of entitled shares in the farming company;

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

- (2) For the purposes of this section a taxable event occurs in relation to a discretionary trust when —
- (a) a person who is not a family member of the relevant transferor —
 - (i) becomes entitled to a share or interest in the trust property of the discretionary trust, whether that share or interest is vested or contingent; or
 - (ii) otherwise benefits from the discretionary trust;or
 - (b) the relevant transferor gains control of the discretionary trust.
- (3) Where a farming exemption has been granted in relation to an instrument of conveyance referred to in section 75E(1)(e) and during the life of the transferor a taxable event occurs, the discretionary trustee of the relevant discretionary trust shall, unless subsection (4) applies, within a period of one month after the date of the taxable event, prepare a dutiable statement in respect of the taxable event.

Penalty: \$20 000.

- (3a) A dutiable statement is to be in an approved form.

- (4) A discretionary trustee is not required to prepare a dutiable statement if —
- (a) a dutiable statement in respect of the farming exemption has previously been prepared under this section and lodged with the Commissioner;
 - (b) there is no current exempted property.
- (5) If a dutiable statement is prepared in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(i) or (ii), the dutiable statement is taken to be an instrument operating as a voluntary disposition under section 75(1) of the current exempted property and is chargeable with duty accordingly.
- (6) If —
- (a) a dutiable statement is required to be prepared under this section in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(iii);
 - (b) a section 76AG statement is required to be prepared in respect of the acquisition that is the subject of the instrument of conveyance; and
 - (c) at the date of the taxable event the relevant farming company is beneficially entitled to all or part of the farming land to which the section 76AG statement relates,

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

- (7) If —
- (a) a dutiable statement is required to be prepared under this section in respect of a farming exemption for an

s. 75I

instrument of conveyance referred to in section 75E(1)(e)(iii); and

- (b) either —
- (i) a section 76AG statement was not required to be prepared in respect of the acquisition that is the subject of the instrument of conveyance; or
 - (ii) a section 76AG statement was required to be prepared, but at the date of the taxable event the relevant farming company is not beneficially entitled to any part of the farming land to which the section 76AN statement relates,

then the dutiable statement prepared under this section is taken to be an instrument operating as a voluntary disposition under section 75(1) of the current exempted property and is chargeable with duty accordingly.

- (8) The amount of duty payable in respect of a dutiable statement prepared in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(ii) or (iii) is reduced (up to the amount of duty payable in respect of the dutiable statement) by the amount of any duty previously paid on the instrument of conveyance.

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

75I. Part IIIBA companies

- (1) Where —
- (a) the Commissioner is satisfied that an instrument of conveyance of a share in a farming company referred to in section 75E(1)(c), (d)(iii) or (e)(iii) is an instrument to which this Part applies; and
 - (b) the transaction to which that instrument relates gives rise to a liability to prepare a section 76AG statement,

the Commissioner may —

- (c) if the land to which the section 76AG statement relates comprises only farming land in Western Australia — exempt the section 76AG statement from duty; or
 - (d) if the land to which the section 76AG statement relates does not only comprise farming land in Western Australia — partially exempt the section 76AG statement from duty.
- (2) The amount of a partial exemption is the amount equal to R in the formula —

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

where —

- A is the value of the farming property in Western Australia;
- B is the value of all the land and chattels the subject of the section 76AG statement; and
- C is the amount of the duty —
 - (a) that would be chargeable on the section 76AG statement; or
 - (b) where section 76AH(3) applies, that would ultimately be chargeable on the section 76AG statement,

if this Part did not apply to it.

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

[Section 75I inserted by No. 2 of 2003 s. 74.]

Part IIIBAAA — Exemptions for corporate reconstructions

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

75J. Interpretation in Part IIIBAAA

- (1) In this Part, unless the contrary intention appears —
- “**body corporate**” does not include a corporation sole;
- “**dormant**”, in relation to a body corporate, has the meaning given by section 75JAA;
- “**foreign person**” means —
- (a) an individual who does not ordinarily reside in Australia; or
 - (b) a corporation or a foreign company —
 - (i) at least 80% of the issued share capital of which is owned by individuals who do not ordinarily reside in Australia or by foreign companies; and
 - (ii) in respect of which individuals who do not ordinarily reside in Australia or foreign companies are in a position to cast or control the casting of at least 80% of the maximum number of votes that might be cast at a general meeting of the corporation or foreign company (excluding any power to vote by any person by virtue of the provisions of any debentures or a trust deed securing the issue of such debentures);
- “**section 31B or 31C statement**” means a dutiable statement prepared under section 31B or 31C;
- “**shares**” includes stock.

- (2) In this Part, unless the contrary intention appears —
- (a) 2 bodies corporate are associated if —
 - (i) one of them beneficially owns (directly or indirectly) at least 90% of the issued share capital of, and has voting control over, the other; or
 - (ii) a third body corporate beneficially owns (directly or indirectly) at least 90% of the issued share capital of each body corporate and has voting control over each body corporate;
 - (b) a body corporate (“A”) has voting control over another body corporate (“B”) if A is in a position to cast or control the casting of at least 90% of the maximum number of votes that might be cast at a general meeting of B (excluding any power to vote by any person by virtue of the provisions of any debentures or a trust deed securing the issue of such debentures);
 - (c) if the claw-back applies —
 - (i) in the case of an instrument, section 75JE applies; or
 - (ii) in the case of a Part IIIBA statement, section 75JF applies.

- (3) In this Part, other than section 75JA, unless the contrary intention appears —

“issued share capital” means issued share capital that carries the right to unlimited participation in the distribution of income and capital of a body corporate.

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

s. 75JAA

75JAA. Meaning of dormant body corporate

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

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

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

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

75JA. Corporate reconstructions: exemptions

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

s. 75JA

- (e) immediately after the acquisition at least 90% of the issued share capital of the transferee consists of shares issued in consideration for the acquisition of shares in the target or, if there are 2 or more targets, for the acquisition of shares in all the targets.
- (1a) This section applies if in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate —
- (a) a foreign company (“**the transferee**”) acquires at least 90% of the issued share capital of —
 - (i) a body corporate; or
 - (ii) each of 2 or more bodies corporate that were associated with one another immediately prior to the acquisition,
 (“**the target**”);
 - (b) the transferee has been dormant from when it was incorporated until it resolves to make the acquisition;
 - (c) the transferee, within 6 months after the acquisition, will be listed on a recognised financial market situated in the country where the transferee is incorporated;
 - (d) neither the target nor any of the targets (if there are 2 or more of them) is a WA company to which Division 2 of Part IIIBA applies or a corporation to which Division 3 of Part IIIBA applies;
 - (e) at least 50% of the issued share capital of the target or, if there are 2 or more targets, of each target is owned by a foreign person or foreign persons;
 - (f) at least 90% of the consideration for the acquisition of the target, or if there are 2 or more targets, each target, consists of the issue of shares in the transferee to the holders of shares in the target or targets in exchange for those shares;

- (g) each holder of shares in the target or targets whose shares are acquired receives consideration equal in value to the value of those shares; and
 - (h) immediately after the acquisition at least 90% of the issued share capital of the transferee consists of shares issued in consideration for the acquisition of shares in the target or, if there are 2 or more targets, for the acquisition of shares in all the targets.
- (2) If on an application under section 75JD, it is shown to the satisfaction of the Commissioner that this section applies because of subsection (1), then —
- (a) the Commissioner shall exempt an instrument executed on or after 1 October 1996 for or in connection with the transfer of the shares acquired by the transferee in the target or targets from duty under item 4A of the Second Schedule; and
 - (b) if the acquisition is a relevant acquisition under Part IIIBA that occurs on or after 1 October 1996 — the Commissioner shall exempt a Part IIIBA statement prepared in respect of the relevant acquisition from duty chargeable under section 76AH or 76AO.
- (2a) If on an application under section 75JD, it is shown to the satisfaction of the Commissioner that this section applies because of subsection (1a), the Commissioner shall exempt an instrument executed after the date on which subsection (1a) was inserted in this Act that is for or in connection with the transfer of the shares acquired by the transferee in the target or targets from duty under item 4A of the Second Schedule.
- (3) If a Part IIIBA statement is exempted under subsection (2)(b) and within 5 years after the date of the occurrence of the relevant acquisition to which the Part IIIBA statement relates —
- (a) the transferee issues or cancels any shares or varies the rights of any of its shares; or

s. 75JB

- (b) the beneficial interest in any share in the transferee issued in the circumstances described in subsection (1)(c) is transferred from the person to whom the share was issued,

then —

- (c) the transferee shall notify the Commissioner in an approved form within one month after the relevant event; and
- (d) the claw-back applies unless, in a case where paragraph (b) applies, the Commissioner is satisfied that the transfer is in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate.

(4) If —

- (a) this section applies because of subsection (1a) and an instrument is exempted under subsection (2a); and
- (b) within 6 months after the acquisition the transferee has not become listed as required by subsection (1a)(c),

the claw-back applies.

(5) A decision by the Commissioner under subsection (3) is a non-reviewable decision.

(6) In this section —

“instrument” does not include a section 31B or 31C statement.

[Section 75JA inserted by No. 48 of 1996 s. 42; amended by No. 51 of 1997 s. 6; No. 53 of 1999 s. 22; No. 2 of 2003 s. 76; No. 21 of 2003 s. 28(1).]

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

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

s. 75JB

- (f) the instrument was not made pursuant to or in connection with an arrangement under which —
 - (i) the consideration, or any part of it, for the conveyance, transfer or assignment was to be provided or received, directly or indirectly, by a person other than A or B or a body corporate that at the time the instrument was executed was associated with either A or B; or
 - (ii) A or B or a body corporate associated with either of them is to be enabled to provide any of the consideration or is to dispose of any of the consideration by or in consequence (wholly or partially) of the carrying out of a transaction involving a payment or other disposition by a person other than A or B or a body corporate associated with either of them at the time the instrument was executed.
- (2) In subsection (1)(d) the qualifying period is the shorter of 3 years or —
 - (a) if prior to A acquiring the beneficial interest, the interest was owned by bodies corporate associated with A — the period while the interest was continuously owned by A and those associated bodies corporate;
 - (b) if the beneficial interest came into the ownership of A or of a body corporate associated with A by means of an instrument on which *ad valorem* duty or interstate duty has been paid — the period since that instrument was executed; or
 - (c) in any other case — the period since A acquired the beneficial interest.
- (3) If on an application under section 75JD it is shown to the satisfaction of the Commissioner that this section applies, then —
 - (a) the Commissioner shall exempt an instrument executed on or after 1 October 1996 to which this section applies

from duty under item 4, 4A, 13(3) or 19 of the Second Schedule; and

- (b) if the conveyance, transfer or assignment effected by an instrument to which this section applies is a relevant acquisition under Part IIIBA that occurs on or after 1 October 1996 — the Commissioner shall exempt a Part IIIBA statement prepared in respect of the relevant acquisition from duty chargeable under section 76AH or 76AO.
- (4) If within 5 years after the execution of the instrument or the date of the relevant acquisition —
- (a) A and B cease to be associated;
 - (b) B, being a body corporate that became associated with A in the circumstances described in section 75JA(1)(a) to (e) or (1a)(a) to (h), issues or cancels any shares or varies the rights of any of its shares;
 - (c) the beneficial interest in any share in B issued in the circumstances described in section 75JA(1)(c) or (1a)(f) is transferred from the person to whom the share was issued; or
 - (d) B's assets are distributed on a liquidation,

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

- (5) If within 5 years after the execution of the instrument or the date of the relevant acquisition A and B cease to be associated then the claw-back applies.
- (5a) The claw-back under subsection (5) does not apply if A and B cease to be associated in circumstances where A has no assets or no assets other than cash or money in an account at call or on deposit with any person or a negotiable instrument.
- (5b) If A is liquidated a reference in subsection (5a) to its assets is a reference to them at the time of the appointment of the

s. 75JB

liquidator and at all subsequent times until they are distributed to the shareholders.

(5c) In subsections (5c) to (5j) —

“controlling body” means —

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

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

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

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

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

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

- (a) the association between A and B which satisfied the requirement of subsection (1)(c) was a prescribed relationship for the whole or a part of the qualifying period; or

- (b) the association between A and B which prevents the claw-back under subsection (5) from applying is a prescribed relationship.
- (5f) If the relevant circumstances have occurred and, on or after 25 May 2000 and within 5 years after the execution of the instrument or the date of the relevant acquisition, the parent body —
 - (a) ceases to beneficially own (directly or indirectly) at least 90% of the issued share capital of B; or
 - (b) ceases to have control (within the meaning of section 75J(2)(b)) over B,then —
 - (c) the parent body and B shall notify the Commissioner in an approved form within one month after the relevant event; and
 - (d) the claw-back applies.
- (5g) Despite subsection (5f)(d), the Commissioner may, on an application under this subsection, waive the claw-back if —
 - (a) a body corporate approved by the Commissioner (being a controlling body) continues to own and control B; and
 - (b) the Commissioner is satisfied that waiving the claw-back would not be inconsistent with the objects of this section.
- (5h) The application shall be in an approved form.
- [(5i) repealed]*
- (5j) If the claw-back is waived under subsection (5g) —
 - (a) subsection (5f) then applies as if references in it to the parent body were references to the body corporate approved under subsection (5g); and

s. 75JB

- (b) a reference in this Part to subsection (5f)(c) is to be read as a reference to that provision as applied by paragraph (a).
- (6) If within 5 years after the execution of the instrument or the date of the relevant acquisition B's assets are distributed to its shareholders on a liquidation, then the claw-back applies.
- (7) If A and B became associated in the circumstances described in section 75JA(1)(a) to (e) or (1a)(a) to (h) and within 5 years after the execution of the instrument or the date of the relevant acquisition A and B cease to be associated in circumstances where the claw-back does not apply under subsection (5) and —
 - (a) B issues or cancels any shares or varies the rights of any of its shares;
 - (b) the beneficial interest in any share in B issued in the circumstances described in section 75JA(1)(c) or (1a)(f) is transferred from the person to whom the share was issued; or
 - (c) B's assets are distributed to its shareholders on a liquidation,then the claw-back applies unless, in a case where paragraph (b) applies, the Commissioner is satisfied that the transfer is in connection with a scheme for the reconstruction of a body corporate or the amalgamation of bodies corporate.
- (8) If the claw-back applies under subsection (7), A shall not be liable to pay any duty or penalty tax under section 75JE or 75JF.
- (9) A decision by the Commissioner under subsection (7) is a non-reviewable decision.

[Section 75JB inserted by No. 48 of 1996 s. 42; amended by No. 51 of 1997 s. 7; No. 29 of 2000 s. 6(1); No. 3 of 2001 s. 19; No. 2 of 2003 s. 77.]

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

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

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

75JC. Corporate reorganisations: application for pre-determination

- (1) A person acting on behalf of a body corporate that proposes to be party to a transaction or transfer that would give rise to —
 - (a) an instrument which, if executed; or

s. 75JD

- (b) an obligation to prepare a section 31B or 31C statement or a Part IIIBA statement which, if finalised, might be exempt from duty under section 75JA or 75JB, may request the Commissioner to determine whether a draft of that instrument or statement, if executed or finalised, would be so exempt.
- (2) The request shall be in an approved form.
- (3) The Commissioner may require the person making the request to provide a copy of the draft instrument or statement and any information and evidence that the Commissioner needs to make the determination.
- (4) If the Commissioner is given sufficient information to do so the Commissioner shall make the requested determination.
- (5) If the Commissioner determines that an exemption would be granted then, on an application under section 75JD for an exemption, the Commissioner shall grant the exemption unless —
- (a) the executed instrument or the finalised section 31B or 31C statement or Part IIIBA statement, differs in a material particular to the draft provided;
 - (b) circumstances relating to the executed instrument, the section 31B or 31C statement or the Part IIIBA statement and relevant for the purposes of sections 75JA and 75JB differ materially from those that related to the draft provided; or
 - (c) the Commissioner is of the opinion that in relation to the request for a determination there was not a full and true disclosure of relevant information and evidence.

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

75JD. Corporate reorganisations: application for exemption

- (1) An application for an exemption under section 75JA or 75JB must be made in an approved form.
- (2) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on —
 - (a) an instrument referred to in section 75JA(2)(a) or (2a) or 75JB(3)(a); or
 - (b) a Part IIIBA statement referred to in section 75JA(2)(b) or 75JB(3)(b),

on the basis that an exemption under section 75JA or 75JB (as the case requires) should have been, but was not, granted in relation to the instrument or statement cannot be made more than 12 months after the date of execution of the instrument or the occurrence of the relevant acquisition.

- (3) Subject to section 17(2), (3) and (4) of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to sections 75JA and 75JB.
- (4) If any information given to the Commissioner in relation to an exempted instrument or Part IIIBA statement is false in a material particular or any material information is not given to the Commissioner the claw-back applies and the penalty tax under section 75JE(b) or 75JF(b) is to be calculated to the date an assessment notice is issued by the Commissioner.

[Section 75JD inserted by No. 48 of 1996 s. 42; amended by No. 2 of 2003 s. 80.]

75JDA. Exemption may be withheld in certain cases

- (1) In this section —

“duty avoidance arrangement” means an arrangement —

 - (a) avoiding or circumventing the operation of the provisions of this Part so far as they make the availability and continued effect of an exemption

s. 75JE

under section 75JB dependent on bodies corporate having been associated for a particular period or remaining associated for a particular period; or

- (b) having as its purpose, or one of its purposes, the reduction of duty that might otherwise become payable.
- (2) Without limiting section 75JC, the Commissioner may determine under that section that an exemption under section 75JB would not be granted in respect of an instrument or a Part IIIBA statement if the Commissioner considers that the instrument or Part IIIBA statement would, if executed or finalised, relate or be likely to relate to a duty avoidance arrangement.
- (3) Even if on an application under section 75JD it is shown to the satisfaction of the Commissioner that section 75JB applies, the Commissioner may refuse to grant an exemption under section 75JB(3) in respect of an instrument or a Part IIIBA statement if the Commissioner considers that the instrument or Part IIIBA statement relates or is likely to relate to a duty avoidance arrangement.
- (4) Despite subsection (3), if the Commissioner is required under section 75JC(5) to grant an exemption in respect of an instrument or a Part IIIBA statement, the exemption is to be granted even if the Commissioner considers that the instrument or Part IIIBA statement relates or is likely to relate to a duty avoidance arrangement.

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

75JE. Claw-back (instruments)

If this section applies to an instrument —

- (a) the instrument shall be deemed not to have been exempted;

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

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

s. 75JF

75JF. Claw-back (Part IIIBA statements)

If this section applies to a Part IIIBA statement —

- (a) the Part IIIBA statement shall be deemed not to have been exempted;
- (b) the Part IIIBA statement shall be charged with penalty tax equal to 20% per annum of the duty chargeable on the Part IIIBA statement calculated from the date of the relevant acquisition to the date the Commissioner is notified under section 75JA(3)(c) or 75JB(4) or (5f)(c), or if the Commissioner is not so notified, to the date an assessment notice is issued by the Commissioner;
- (c) the duty and penalty tax shall be paid within one month after an assessment notice is issued by the Commissioner;
- (d) these persons are jointly and severally liable to pay the duty and penalty tax —
 - (i) in the case of a section 76AG statement — the parties to the instrument that gave rise to the relevant acquisition;
 - (ii) in the case of a section 76AN statement — the parties to the instrument that gave rise to the relevant acquisition and the corporation that is required to prepare the section 76AN statement;
- (e) if a body corporate that is liable to pay the duty and penalty tax has been wound up voluntarily, its directors at the time of the resolution to wind-up shall be jointly and severally liable to pay the duty and penalty tax unless the Commissioner is satisfied that —
 - (i) the winding-up was a creditors' voluntary winding-up (as defined in the Corporations Act); and
 - (ii) no creditor was an associate (as defined in the Corporations Act) of the body corporate;and

- (f) on payment of the duty and penalty tax the Part IIIBA statement shall be deemed to be, and always to have been, stamped.

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

75JG. Offences and recovery of duty etc.

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

Penalty:

- (a) \$20 000; and
 - (b) an amount equal to the duty chargeable on the instrument or Part IIIBA statement had it not been exempted under section 75JA or 75JB.
- (2) If a body corporate contravenes section 75JA(3)(c) or 75JB(4) or (5f)(c) and the Commissioner is for any reason unable to recover the duty or penalty tax referred to in section 75JE or 75JF, each officer (as defined in section 9 of the Corporations Act) of the body corporate at the time of the contravention who is knowingly a party to the contravention shall be liable for the duty or penalty tax, as the case may be.
- (3) If in connection with a request under section 75JBA or 75JC or an application under section 75JB(5g) or 75JD, a person gives the Commissioner information knowing that it is false in a material particular or knowingly does not give the Commissioner all material information, the person commits an offence.

Penalty:

- (a) \$20 000; and

s. 75JG

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

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

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

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

Division 1 — Provisions applicable to Divisions 2 and 3

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

76. Interpretation in Part IIIBA

- (1) In this Part, unless the contrary intention appears —
- “**acquire**”, in relation to an interest in a WA company or a corporation, means to acquire beneficially in any manner or by any means and includes the increasing of an existing interest, but does not include an acquisition —
- (a) that is chargeable with duty under section 73E(4);
 - (b) that occurs solely as the result of —
 - (i) the appointment of a receiver or trustee in bankruptcy;
 - (ii) the appointment of a liquidator;
 - (iii) the making of a compromise or arrangement under Part 5.1 of the Corporations Act —
 - (I) which has been made with the corporation’s creditors or a class of them;
 - (II) which has been approved by the court;
 - (III) which does not involve a cancellation of shares, or a variation, abrogation or alteration of the rights of shares, to which section 112HA applies; and
 - (IV) in respect of which the Commissioner is satisfied that it is not an arrangement having as its purpose, or

one of its purposes, the defeat of the object of this Part;

or

(iv) the distribution of the estate of a deceased person, including an acquisition that occurs as the result of —

(I) a will, a codicil or an order of a court varying or modifying the provisions of a will or codicil; or

(II) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of the provisions of a law relating to the distribution of the assets of persons who die intestate;

or

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

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

(a) goods, wares or merchandise referred to in item 2(7), (7a) or (7b) of the Third Schedule;

(b) a vehicle the transfer of the licence of which is exempt under item 9 of the Third Schedule; or

(c) goods, wares or merchandise that are usually situated on farming land (as defined in section 75D(1)),

and includes an estate or interest in them;

“discretionary trust” means —

(a) a trust under which the vesting of the whole or any part of the capital of the trust property, or the whole or any part of the income from that capital, or both —

(i) is required to be determined by a person either in respect of the identity of the beneficiaries,

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

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

or

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

but does not include —

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

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

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

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

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

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

“mining tenement” means —

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

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

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

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

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

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

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

- (1a) For the purpose of this Division a reference to the acquisition of an interest includes a reference to the acquisition of a majority interest or a further interest within the meaning of section 76AK or 76AR.
- (2) For the purposes of sections 76AI(3)(c) and 76AP(3)(c) the following —
 - (a) are associated persons in relation to a corporation —
 - (i) a related corporation;
 - (ii) a related person within the meaning in subsection (3);
 - (iii) a director or secretary of the corporation or a related corporation;

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

- (e) an individual and a trustee if the individual is a beneficiary under the trust of which the trustee is a trustee, whether the person has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (f) a corporation and a trustee if —
 - (i) the corporation, a majority shareholder, director or secretary of the corporation is a beneficiary of the trust of which the trustee is a trustee; or
 - (ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,

whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust; and
 - (g) persons who acquire interests in a corporation by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions.
- (4) For the purposes of subsections (2) and (3) —
- (a) an illegitimate person shall be treated as the legitimate child of that person's parents;
 - (b) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by a written law; and
 - (c) a majority shareholder in relation to a corporation is a person who would have a substantial holding in the corporation under the definition of "substantial holding" in section 9 of the Corporations Act even if the reference in that definition to 5% were a reference to 50%.
- (4a) For the purposes of this Part, a reference to entitlement to property of a corporation or trust, or to participate in a distribution of property of a corporation or trust, is a reference to entitlement otherwise than as a creditor or other person to

whom the corporation or trust is liable, and a reference to distributable property is a reference to property distributable to persons otherwise than as creditors or other persons to whom the corporation or trust is liable.

- (5) For the purposes of this Part, the entitlement that a person would have at a particular time to participate in the distribution of the property of a corporation on a winding up of the corporation is an entitlement to an amount calculated —
- (a) as if the winding up were carried out at that time in accordance with the rules of the corporation and any law relevant to the winding up, as the rules and law then exist; or
 - (b) as if the person had, immediately prior to the winding up, exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the corporation —
 - (i) to effect or compel an alteration to the rules;
 - (ii) to vary the rights conferred by shares in the corporation; or
 - (iii) to effect or compel the substitution or replacement of shares in the corporation with other shares in the corporation,in such manner as to maximise that amount,

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

- (5a) If the extent of a person's entitlement to participate in a distribution of the property of a corporation is unascertainable or uncertain, that entitlement shall be determined for the purposes of this Part as being the greatest entitlement that the person could derive from the distribution.

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations

Division 1 Provisions applicable to Divisions 2 and 3

s. 76A

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

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

76A. Relevant acquisitions by trustees

- (1) Subject to subsection (2) if by a relevant acquisition a person, in the person's capacity as a trustee, acquires a majority interest or a further interest in a WA company or a corporation, this Part applies as if the person had acquired the interest beneficially.
- (2) If the combined interest in the WA company or corporation of a beneficiary and any person related to the beneficiary is greater

than the combined interest of the trustee and any person related to the trustee —

- (a) the relevant acquisition is taken to have been made by the beneficiary;
- (b) the section 76AG statement or section 76AN statement prepared by the trustee in relation to the relevant acquisition is taken to have been prepared by the beneficiary; and
- (c) the section 76AG statement or section 76AN statement is chargeable with duty accordingly.

(3) In this section —

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

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

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

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

[Section 76A inserted by No. 2 of 2003 s. 86.]

76AA. Assessment in the absence of a dutiable statement

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

- (a) the corporation were a corporation to which Division 3 applies;

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations

Division 2 Companies taken to be registered in Western Australia

s. 76AG

- (b) an acquisition had occurred; and
- (c) the acquisition resulted in a person having an entitlement referred to in section 76AR(1) to such an extent as the Commissioner may determine.

[Section 76AA inserted by No. 2 of 2003 s. 86.]

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

Division 2 — Companies taken to be registered in Western Australia

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

76AG. Preparation of dutiable statement

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

the person shall prepare a dutiable statement in respect of that acquisition.

Penalty: \$20 000.

- (2) If a requirement under subsection (1) arises in circumstances where a person acquires a majority interest or a further interest by reason of acquisitions by him and a related person or related persons being aggregated, one of such persons shall prepare a dutiable statement under that subsection of all acquisitions on behalf of all such persons.
- (3) A dutiable statement must be in an approved form.

- (4) The dutiable statement shall include the following information —
- (a) the name and address of the person who has acquired a majority interest or a further interest and of any related person referred to in subsection (2);
 - (b) the date of the acquisition;
 - (c) particulars of the interest acquired and all interests previously acquired by the person or a related person in the WA company;
 - (d) the person's estimate of the unencumbered value of all land and chattels in Western Australia to which the WA company is entitled as at the date of the acquisition;
 - (da) particulars of any chattels, whether situated in Western Australia or not, to which the WA company was entitled in the 12 months preceding the date of the acquisition and acquired, directly or indirectly, by the person or a related person in that period;
 - (db) the person's estimate of the unencumbered value of those chattels;
 - (e) the person's estimate of the unencumbered value of the property of the WA company as at the date of the acquisition; and
 - (f) if the dutiable statement is prepared because of subsection (1)(b), a notation to that effect and such information relating to the goods, wares and merchandise referred to in subsection (1)(b), and their ownership and acquisition, as the approved form requires to be provided.
- (5) A dutiable statement prepared under subsection (1) is taken to be an instrument evidencing the relevant acquisition and is chargeable with duty accordingly.

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations

Division 2 Companies taken to be registered in Western Australia

s. 76AH

- (5a) If, in the case of a dutiable statement prepared because of subsection (1)(b), the Commissioner is satisfied that the entitlement to, and valuation of, the goods, wares and merchandise referred to in subsection (1)(b) were not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Division, the Commissioner may determine that subsection (5) does not apply to the dutiable statement.
- (5b) In deciding whether or not to make a determination under subsection (5a) the Commissioner may have regard to —
- (a) the source of the goods, wares and merchandise and the source of funding for their acquisition;
 - (b) their nature and their relevance to any business carried on by the WA company or any subsidiary;
 - (c) the period for which they have been and are likely to remain the property of the WA company or any subsidiary; and
 - (d) any other matter that the Commissioner considers relevant.
- (5c) A determination made under subsection (5a) has effect according to its terms and the Commissioner is to give notice of it to the person who prepared the dutiable statement.
- (5d) If the person who prepared the dutiable statement requests the Commissioner to give reasons why the Commissioner has not made a determination under subsection (5a), the Commissioner is to give reasons to the person.

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

76AH. Statement chargeable with duty

- (1) A section 76AG statement is chargeable, in accordance with section 76AL, with duty at the rate provided for in item 4(1) of the Second Schedule calculated as follows —
- (a) where the section 76AG statement relates to a relevant acquisition within section 76AJ(1)(a), the duty shall be calculated on the dutiable value determined under section 76AL(2); and
 - (b) where the section 76AG statement relates to a relevant acquisition within section 76AJ(1)(b), the duty —
 - (i) shall be calculated on the dutiable value determined under section 76AL(3)(a); but
 - (ii) shall be reduced by the amount of duty determined on the dutiable value calculated under section 76AL(3)(b).
- (2) Notwithstanding item 4(1) of the Second Schedule, where the value of the land and chattels under section 76AL(4) does not exceed \$1 500 000 the duty chargeable under this section shall be calculated as follows, and where paragraph (b) of subsection (1) applies shall be so calculated in terms of subparagraphs (i) and (ii) of that paragraph —

$$\frac{A - \$1\,000\,000}{\$500\,000} \times B + \left[1 - \left[\frac{A - \$1\,000\,000}{\$500\,000} \right] \right] \times C$$

where —

- A is the value of the land and chattels situated in Western Australia to which the WA company is entitled as provided in section 76AL(4) at the time of the relevant acquisition;

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations

Division 2 Companies taken to be registered in Western Australia

s. 76AH

- B is the duty calculated under item 4(1) of the Second Schedule on the dutiable value determined under section 76AL; and
 - C is the duty calculated under item 4A(1) of the Second Schedule on the value of the shares comprised in the relevant acquisition had the acquisition been effected by an instrument chargeable under that paragraph.
- (2a) Subsection (2) does not apply unless —
- (a) the acquisition referred to in section 76AJ(1)(a)(i) or (ii) or (b), as the case may be, consists of the acquisition of a shareholding in a corporation; and
 - (b) the shareholding acquired confers an entitlement to participate in a distribution of the property of the corporation (if the corporation were to be wound up) that bears the same relationship to the value of the distributable property as the shareholding acquired bears to the total shareholding in the corporation.
- (3) There shall be deducted from the duty chargeable on a section 76AG statement, any duty paid under item 4A(1) of the Second Schedule in respect of any instrument effecting or evidencing the acquisition of any interest which is taken into account in determining liability under section 76AG to prepare that statement, except any duty previously deducted under this subsection in respect of a section 76AG statement previously prepared in relation to the acquisition.
- (4) Subject to subsection (5), if a section 76AG statement contains particulars of any chattels as required by section 76AG(4)(da), then, in addition to the duty chargeable under subsection (1), the section 76AG statement is chargeable with duty at the rate provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of the chattels, but duty shall not be charged in respect of —
- (a) any of the chattels in respect of which duty has been paid under section 31B, 31C or 70 by the person who

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

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

76AI. Companies to which this Division applies

- (1) This Division applies to a WA company if it is a land-holder within the meaning in subsection (2) unless —
 - (a) it is listed on a recognised financial market; and
 - (b) the Commissioner is satisfied that its listing was not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Part.
- (1a) For the purposes of subsection (1)(b) the Commissioner may take into account any matter that the Commissioner considers is relevant but must take into account —
 - (a) how long the WA company has been listed on a recognised financial market;
 - (b) any conditions or exemptions that apply to the approval of the listing of the company;
 - (c) who owns the company's shares;

Stamp Act 1921

Part III BA Duty on change of control of certain land-owning corporations

Division 2 Companies taken to be registered in Western Australia

s. 76AI

- (d) what proportion of the company's shares are available to be traded on the market; and
 - (e) the turnover of the company's shares on the market.
- (2) A WA company is a land-holder for the purposes of this Division if at the time of a relevant acquisition —
- (a) it is entitled to land situated in Western Australia and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in Western Australia as a co-owner of the freehold or of a lesser estate in the land and the value of the whole of the freehold or lesser estate is not less than \$1 000 000; and
 - (b) the value of all land to which the WA company is entitled, whether situated in Western Australia or elsewhere, is 80% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (3),

or if the Commissioner determines that paragraphs (a) and (b) would have applied to the WA company at the time of the relevant acquisition but for a transaction, or series of transactions, which in the Commissioner's opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.

- (2a) If the Commissioner makes a determination under subsection (2) —
- (a) the Commissioner is to give notice of it to the person who made the relevant acquisition;
 - (b) the notice is to contain reasons for the determination; and
 - (c) for the purposes of section 76AG(5)(b) the relevant acquisition is taken to have occurred when the notice is given.
- (3) The following property of a WA company, or of any subsidiary within the meaning in subsection (4), shall not be included for

the purpose of calculating the value of property under subsection (2)(b) —

- (a) cash or money in an account at call;
- (b) negotiable instruments, and money on deposit with any person;
- (ba) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;
- (c) money lent by the WA company or a subsidiary to —
 - (i) any person who in relation to the WA company is an associated person; or
 - (ii) any person at call or in terms that require or allow full repayment to the WA company within 12 months after the money is lent;
- (d) where by virtue of Division 6 of Part 1.2 of the Corporations Act a corporation is a subsidiary of the WA company, the shareholding of that WA company in the subsidiary corporation, but without limiting subsection (4);
- (e) in the case of the WA company, property consisting of a share or interest in a trust referred to in subsection (4);
- (ea) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —
 - (i) locate, extract, process, transport or market minerals; or
 - (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
- (eb) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the WA company or a related person;

- (ec) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
 - (ed) any property prescribed for the purposes of this subsection; and
 - (f) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner's satisfaction that a reason for ownership by the WA company or the subsidiary within the meaning in subsection (4) is not for the purpose of defeating the object of this Division.
- (3a) In forming an opinion for the purposes of subsection (3)(f) the Commissioner may have regard to —
- (a) the source of the property and the source of funding for its acquisition;
 - (b) its nature and its relevance to any business carried on by the WA company or the subsidiary;
 - (c) the period for which it has been and is likely to remain the property of the WA company or the subsidiary; and
 - (d) any other matter that the Commissioner considers relevant.
- (4) Without limiting the meaning of “entitled”, a WA company is deemed to be entitled to land or property to the extent that a subsidiary is entitled to that land or property, and for the purposes of this subsection a subsidiary is —
- (a) a subsidiary corporation by virtue of Division 6 of Part 1.2 of the Corporations Act, or any other corporation where the WA company would be entitled if the corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the corporation to an extent greater than 50% of the value of the distributable property;

- (b) the trustee of any trust where the WA company or a subsidiary corporation of the WA company, as defined in paragraph (a) —
 - (i) is entitled to a share or interest in the trust, whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust;
 - (c) any corporation, where the trustee of a trust in which the WA company or a subsidiary corporation —
 - (i) is entitled to a share or interest, whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust,

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

- (6) In determining the entitlement of an entity to property other than land for the purposes of this section —
- (a) if the entity has contracted or agreed to dispose of an interest in such property, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to acquire an interest in such property but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.

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

76AJ. Meaning of “relevant acquisition”

- (1) An acquisition is a relevant acquisition for the purposes of this Division —
- (a) if by that acquisition a person acquires a majority interest in a WA company by acquiring an interest —
 - (i) that is itself a majority interest in the WA company; or
 - (ii) that is, when taken with each previous acquisition of an interest in the WA company made by the person on or after the relevant day for that acquisition, a majority interest in the WA company;
- or
- (b) if by that acquisition a person acquires a further interest in the WA company.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.

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

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

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

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

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

were to be wound up to participate further in a distribution of the property of the WA company.

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

76AL. How dutiable value is determined

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

related person, would have been entitled, as provided in subsection (5), at the time of the immediately preceding relevant acquisition by that person, or a related person.

- (4) For the purposes of subsections (2) and (3), the unencumbered value of the land and chattels to which a WA company is entitled at any time is the sum of —
- (a) in the case of land and chattels to which the WA company is entitled without reference to subsection (4) of section 76AI, the unencumbered value of the land and chattels at that time; and
 - (b) in the case of land and chattels to which a subsidiary is entitled as mentioned in that subsection, the amount to which, if the property of a subsidiary or of all subsidiaries in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same, the WA company would be entitled in respect of the unencumbered value at that time of land and chattels to which the subsidiary is, or all subsidiaries are, entitled.
- (5) For the purposes of subsections (2) and (3), the property of a WA company to which a person, or the person and any related person, would be entitled is the property to which the person, or the person and any related person, would be entitled if the WA company were to be wound up after the acquisition.

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

76AM. Liability for duty

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

Division on the section 76AG statement prepared in relation to the acquisition.

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

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

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

76AN. Preparation of dutiable statement

- (1) Where by a relevant acquisition a person acquires a majority interest or a further interest in —
 - (a) a corporation to which this Division applies; or
 - (b) a corporation to which this Division would apply if the reference to the value of land in section 76AP(2)(b) were a reference to the value of land, goods, wares and merchandise,the corporation shall prepare a dutiable statement in respect of that acquisition.
Penalty: \$20 000.
- (2) A dutiable statement must be in an approved form.
- (3) The dutiable statement shall include the following information —
 - (a) the name and address of the person who has acquired a majority interest or a further interest, and of any related person if the acquisition is required to be aggregated with an acquisition by such person;
 - (b) the date of the acquisition;

Stamp Act 1921

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

s. 76AN

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

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

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

76AO. Statement chargeable with duty

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

Stamp Act 1921

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

s. 76AO

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

$$\frac{A - \$1\,000\,000}{\$500\,000} \times B + \left[1 - \frac{A - \$1\,000\,000}{\$500\,000} \right] \times C$$

where —

- A is the value of the land and chattels situated in Western Australia to which the corporation is entitled as provided in section 76AS(4) at the time of the relevant acquisition;
- B is the duty calculated under item 4(1) of the Second Schedule on the dutiable value determined under section 76AS; and
- C is the duty calculated under item 4A(1) of the Second Schedule on the value of the shareholding or entitlement comprised in the relevant acquisition had the acquisition been effected by an instrument chargeable under that paragraph.

-
- (2a) Subsection (2) does not apply unless —
- (a) the acquisition referred to in section 76AQ(1)(a)(i) or (ii) or (b), as the case may be, consists of the acquisition of a shareholding in a corporation; and
 - (b) the shareholding acquired confers an entitlement to participate in a distribution of the property of the corporation (if the corporation were to be wound up) that bears the same relationship to the value of the distributable property as the shareholding acquired bears to the total shareholding in the corporation.
- (3) There shall be deducted from the duty chargeable on a section 76AN statement, any duty paid under item 4A(1) of the Second Schedule in respect of any instrument effecting or evidencing the acquisition of any interest which is taken into account in determining liability under section 76AN to prepare that statement, except any duty previously deducted under this subsection in respect of a section 76AN statement previously prepared in relation to the acquisition.
- (4) Subject to subsection (5), if a section 76AN statement contains particulars of any chattels as required by section 76AN(3)(da), then, in addition to the duty chargeable under subsection (1), the section 76AN statement is chargeable with duty at the rate provided for in item 4(1) of the Second Schedule calculated on the unencumbered value of the chattels, but duty shall not be charged in respect of —
- (a) any of the chattels in respect of which duty has been paid under section 31B, 31C or 70 by the person who made the relevant acquisition to which the section 76AN statement relates or by a related person;
 - (b) any of the chattels in respect of which *ad valorem* duty has been paid by that person, or a related person, in another jurisdiction; or

Stamp Act 1921

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

s. 76AP

- (c) any of the chattels that, in the opinion of the Commissioner, are usually not situated in Western Australia.
- (5) The section 76AN statement is not chargeable with duty under subsection (4) if the Commissioner is satisfied that no transaction by means of which the chattels were transferred from the corporation to the person who made the relevant acquisition, or a related person, was effected for the collateral purpose of reducing the duty that otherwise would be chargeable in respect of the relevant acquisition.

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

76AP. Corporations to which this Division applies

- (1) This Division applies to a corporation if —
 - (a) it is —
 - (i) a body corporate that is taken to be registered outside Western Australia (for the purposes of the Corporations Act) or that is otherwise formed or incorporated outside Western Australia, not being a body corporate that is —
 - (A) within paragraphs (a) to (d) of section 66A(4) of the Corporations Law; or
 - (B) a subsidiary, within the meaning in section 76AI(4), of a WA company to which Division 2 applies;
 - or
 - (ii) a WA company that would be a subsidiary, within the meaning in section 76AI(4), of a body corporate referred to in subparagraph (i) if that body corporate were a WA company;
 - and

[(b) deleted]

(c) it is a land-holder within the meaning in subsection (2),

unless —

(d) it is listed on a recognised financial market; and

(e) the Commissioner is satisfied that its listing was not part of an arrangement or scheme having as its purpose, or one of its purposes, the defeat of the object of this Part.

(1a) For the purposes of subsection (1)(e) the Commissioner may take into account any matter that the Commissioner considers is relevant but must take into account —

(a) how long the corporation has been listed on a recognised financial market;

(b) any conditions or exemptions that apply to the approval of the listing of the corporation;

(c) who owns the corporation's shares;

(d) what proportion of the corporation's shares are available to be traded on the market; and

(e) the turnover of the corporation's shares on the market.

(2) A corporation is a land-holder for the purposes of this Division if at the time of a relevant acquisition —

(a) it is entitled to land situated in Western Australia and the unencumbered value of the land is not less than \$1 000 000, or it is entitled to land situated in Western Australia as a co-owner of the freehold or of a lesser estate in the land and the value of the whole of the freehold or lesser estate is not less than \$1 000 000; and

(b) the value of all land to which the corporation is entitled, whether situated in Western Australia or elsewhere, is 80% or more of the value of all property to which it is entitled, other than property directed to be excluded by subsection (3),

Stamp Act 1921

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

s. 76AP

or if the Commissioner determines that paragraphs (a) and (b) would have applied to the corporation at the time of the relevant acquisition but for a transaction, or series of transactions, which in the Commissioner's opinion had as its purpose, or one of its purposes, the defeat of the object of this Division.

- (2a) If the Commissioner makes a determination under subsection (2) —
- (a) the Commissioner is to give notice of it to the corporation;
 - (b) the notice is to contain reasons for the determination; and
 - (c) for the purposes of section 76AN(4)(b) the relevant acquisition is taken to have occurred when the notice is given.
- (3) The following property of a corporation, or of a trustee or another corporation referred to in subsection (4), shall not be included for the purpose of calculating the value of property under subsection (2)(b) —
- (a) cash or money in an account at call;
 - (b) negotiable instruments, and money on deposit with any person;
 - (ba) property consisting of rights or interests under a sales contract (including a forward sales contract) relating to minerals, primary products or other commodities;
 - (c) money lent by the corporation or a trustee or a related corporation referred to in subsection (4) to —
 - (i) any person who in relation to the corporation is an associated person; or
 - (ii) any person at call or in terms that require or allow full repayment to the corporation within 12 months after the money is lent;

-
- (d) in the case of the corporation, property consisting of a shareholding in another corporation referred to in subsection (4) or of a share or interest or entitlement under a trust referred to in that subsection;
 - (da) a licence or patent or other intellectual property (including knowledge or information that has a commercial value) relating to any process, technique, method, design or apparatus to —
 - (i) locate, extract, process, transport or market minerals; or
 - (ii) grow, rear, breed, maintain, produce, harvest, collect, process, transport or market primary products;
 - (db) stores, stockpiles or holdings of minerals or primary products (whether processed or unprocessed) produced by the corporation or a related person;
 - (dc) future tax benefits (whether in the nature of tax losses, capital losses, foreign losses or foreign tax credits) under the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* of the Commonwealth or similar benefits under the laws of another jurisdiction;
 - (dd) any property prescribed for the purposes of this subsection; and
 - (e) any other property, whether of the same nature as or a different nature from the foregoing, in respect of which it is not shown to the Commissioner's satisfaction that a reason for ownership by the corporation or the trustee or other corporation referred to in subsection (4) is not for the purpose of defeating the object of this Division.
- (3a) In forming an opinion for the purposes of subsection (3)(e) the Commissioner may have regard to —
- (a) the source of the property and the source of funding for its acquisition;

Stamp Act 1921

Part III BA

Duty on change of control of certain land-owning corporations

Division 3

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

s. 76AP

- (b) its nature and its relevance to any business carried on by the corporation or the trustee or other corporation;
 - (c) the period for which it has been and is likely to remain the property of the corporation or the trustee or other corporation; and
 - (d) any other matter that the Commissioner considers relevant.
- (4) Without limiting the meaning of “entitled”, a corporation is deemed to be entitled to land or property where —
- (a) the trustee of a trust is entitled to that land or property and the corporation —
 - (i) has a share or interest in the trust whether vested or contingent; or
 - (ii) in the case of a discretionary trust, may benefit from that trust,but an entitlement under subparagraph (i) is limited to the extent of that share or interest;
 - (b) in a case where the entitlement to participate referred to in section 76AR(2) or (3), (whichever is applicable to the relevant acquisition) relates to the corporation itself, any of the following corporations is entitled to that land or property —
 - (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the corporation;
 - (ii) any other corporation where the corporation would be entitled if the other corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the other corporation to an extent greater than 50% of the value of the distributable property;
- or

-
- (c) in a case where the entitlement to participate referred to in section 76AR(2) or (3), (whichever is applicable to the relevant acquisition) relates to a holding corporation (as defined in section 76AR(4)(a)) of the corporation, any of the following corporations is entitled to that land or property —
- (i) a corporation that is a subsidiary (as defined in the Corporations Act) of the holding corporation;
 - (ii) any other corporation where the holding corporation would be entitled if the other corporation were to be wound up, after the time of the relevant acquisition, to participate in a distribution of the property of the other corporation to an extent greater than 50% of the value of the distributable property.
- (5) In determining the entitlement of an entity to land for the purposes of this section or section 76AS —
- (a) if the entity has contracted or agreed to acquire an interest in land, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and
 - (b) if the entity has contracted or agreed to dispose of an interest in land but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.
- (6) In determining the entitlement of an entity to property other than land for the purposes of this section —
- (a) if the entity has contracted or agreed to dispose of an interest in such property, that contract or agreement is to be regarded as having been completed even if it has not yet been completed; and

Stamp Act 1921

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

s. 76AQ

- (b) if the entity has contracted or agreed to acquire an interest in such property but that contract or agreement has not yet been completed, that contract or agreement is to be disregarded.

[Section 76AP inserted by No. 33 of 1987 s. 22; amended by No. 39 of 1994 s. 21; No. 53 of 1999 s. 24; No. 60 of 2000 s. 15; No. 3 of 2001 s. 26; No. 10 of 2001 s. 178; No. 2 of 2003 s. 96; No. 21 of 2003 s. 28.]

76AQ. Meaning of “relevant acquisition”

- (1) An acquisition is a relevant acquisition for the purposes of this Division —
 - (a) if by that acquisition a person acquires a majority interest in a corporation by acquiring an interest —
 - (i) that is itself a majority interest in the corporation;
or
 - (ii) that is, when taken with each previous acquisition of an interest in the corporation made by the person on or after the relevant day for that acquisition, a majority interest in the corporation;
or
 - (b) if by that acquisition a person acquires a further interest in the corporation.
- (2) If subsection (1)(b) applies to an acquisition, subsection (1)(a)(ii) does not apply to it.
- (3) For the purposes of subsection (1)(a)(ii), if a person acquires an interest in a corporation (the “**earlier acquisition**”) and, after that acquisition, that person acquires another interest in the corporation (the “**later acquisition**”) because of an arrangement that was entered into during the relevant period, the earlier acquisition is to be regarded as having been made on or after the relevant day for the later acquisition even if it was not so made.

(4) In this section —

“relevant day” for an acquisition means —

- (a) if the acquisition was or is made on or after 10 August 2000 but before 11 August 2002 — 10 August 1999; or
- (b) if the acquisition is made on or after 11 August 2002 — the day that is 3 years before the day of the acquisition.

(5) In subsection (3) —

“relevant period” means —

- (a) if the earlier acquisition was made before 10 August 1999 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is one year after the day of that acquisition;
- (b) if the earlier acquisition was made on or after 10 August 1999 but before 10 August 2000 — the period beginning on the day that is one year before the day of that acquisition and ending on the day that is 3 years after the day of that acquisition; or
- (c) if the earlier acquisition was or is made on or after 10 August 2000 — the period beginning on the relevant day for that acquisition and ending on the day that is 3 years after the day of that acquisition.

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

[Section 76AQ inserted by No. 60 of 2000 s. 16.]

Stamp Act 1921

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

s. 76AR

76AR. Meaning of “acquiring an interest”, “majority interest” or “further interest”

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

winding up) to participate further in a distribution of the property of the corporation or holding corporation.

- (4) In this section **“holding corporation”** in relation to a corporation —
- (a) means a corporation —
 - (i) that is an ultimate holding company as defined in section 9 of the Corporations Act; or
 - (ii) of which a body corporate is a subsidiary by virtue of Division 6 of Part 1.2 of the Corporations Act;and
 - (b) is deemed to include —
 - (i) any trust if the trustee of the trust would be entitled if the corporation or a holding corporation (as defined in paragraph (a)) were to be wound up to participate in a distribution of the property of the corporation or holding corporation to an extent greater than 50% of the value of the distributable property;
 - (ii) a corporation, if in respect of any trust referred to in subparagraph (i) that corporation —
 - (I) is entitled to a share or interest in the trust whether vested or contingent; or
 - (II) in the case of a discretionary trust, may benefit from that trust;and
 - (iii) any other corporation, or the trustee of any other trust that would by an application of this subsection be a holding corporation of a corporation that is a holding corporation of the corporation.

[Section 76AR inserted by No. 60 of 2000 s. 16; amended by No. 10 of 2001 s. 179.]

Stamp Act 1921

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

s. 76AS

76AS. How dutiable value is determined

- (1) Where section 76AO(1) applies, duty is chargeable in accordance with this section on the basis of the value free of encumbrances (“**the dutiable value**”) of the land and chattels situated in Western Australia to which the corporation is entitled.
- (2) Where by a relevant acquisition a person acquires a majority interest in a corporation the dutiable value is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and any related person, would be entitled, as provided in subsection (5), after the acquisition.
- (3) Where the relevant acquisition is within section 76AQ(1)(b) the dutiable value —
 - (a) for the purposes of section 76AO(1)(b)(i), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would be entitled, as provided in subsection (5), after the acquisition of the further interest;
 - (b) for the purposes of section 76AO(1)(b)(ii), is the same proportion of the value of the land and chattels situated in Western Australia to which the corporation is entitled, as provided by subsection (4), at the time of the acquisition, as the proportion of the property of the corporation to which the person, or the person and a related person, would have been entitled, as provided in subsection (5), at the time of the immediately preceding relevant acquisition by that person, or a related person.

- (4) For the purposes of subsections (2) and (3), the unencumbered value of the land and chattels to which a corporation is entitled at any time is the sum of —
- (a) in the case of land and chattels to which the corporation is entitled without reference to subsection (4) of section 76AP, the unencumbered value of the land and chattels at that time; and
 - (b) in the case of land and chattels to which a trustee or a corporation is entitled as mentioned in that subsection, the amount to which, if the property of a trust or corporation referred to in that subsection or all such trusts and corporations in the chain of relationships were to be distributed at that time (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same, the corporation would be entitled in respect of the unencumbered value at that time of land and chattels to which all such trusts and corporations are entitled.
- (5) For the purposes of subsections (2) and (3), the property of a corporation to which a person, or the person and any related person, would be entitled is the property to which the person, or the person and any related person, would be entitled if the property of the corporation and all holding corporations, as defined in section 76AR(4), in the chain of relationships were to be distributed after the acquisition (in the case of a corporation, on the basis of a winding up), without having regard to any liabilities of the same.

[Section 76AS inserted by No. 33 of 1987 s. 22; amended by No. 22 of 1998 s. 38; No. 60 of 2000 s. 17; No. 2 of 2003 s. 97.]

[76AT. Repealed by No. 2 of 2003 s. 98.]

Division 4 — Reassessment of liability for duty

[Heading inserted by No. 60 of 2000 s. 19.]

76AU. Reassessment where deeming provision applied

- (1) If, on the application of a person who has paid, or is liable to pay, duty on a Part III BA statement, the Commissioner is satisfied that —
 - (a) but for the operation of a deeming provision in relation to a contract or agreement —
 - (i) the duty would not have been chargeable; or
 - (ii) the amount of the duty would have been less;and
 - (b) the contract or agreement has been —
 - (i) if a deeming-in provision applied — rescinded, annulled or otherwise terminated without being completed; or
 - (ii) if a deeming-out provision applied — completed,

the duty chargeable on the Part III BA statement is the duty that would have been payable had the deeming provision not applied to the contract or agreement.
- (2) In a case where a deeming-in provision applied, subsection (1) does not apply if the Commissioner is not satisfied that the rescission, annulment or other termination of the contract or agreement was not part of a scheme or arrangement under which the object of the contract or agreement has been or may be achieved in another way.
- (3) This section is in addition to the provisions of the *Taxation Administration Act 2003* relating to the reassessment of duty and does not affect the operation of those provisions.
- (4) In this section —

“deeming-in provision” means section 76AI(5)(a), 76AI(6)(a), 76AP(5)(a) or 76AP(6)(a);

“deeming-out provision” means section 76AI(5)(b),
76AI(6)(b), 76AP(5)(b) or 76AP(6)(b);

“deeming provision” means a deeming-in provision or a
deeming-out provision.

[Section 76AU inserted by No. 2 of 2003 s. 99.]

[76AV-76AY. Repealed by No. 2 of 2003 s. 99.]

Part IIIC — Vehicle licences

[Heading inserted by No. 2 of 2003 s. 100.]

76B. Interpretation in Part IIIC

(1) In this Part —

“**Commonwealth Act**” means the *Interstate Road Transport Act 1985* of the Commonwealth;

“**corresponding State law**” means a law of any other State or a Territory corresponding to the *Road Traffic Act 1974*;

“**dealer**” means a person who —

- (a) carries on the business of selling new vehicles;
- (b) is the holder of a dealer’s licence under the *Motor Vehicle Dealers Act 1973*;
- (c) carries on the business of acquiring new or used vehicles for resale or disposal under hire purchase or leasing agreements; or
- (d) in the course of the person’s business, takes possession of vehicles that are the subject of hire purchase or leasing agreements and resells them;

“**Director General**” means the chief executive officer of the department of the Public Service principally assisting in the administration of the provisions of the *Road Traffic Act 1974* that section 5 of that Act defines as the “licensing provisions of this Act”;

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

“**eligible vehicle**” means a motor vehicle (as defined in the *Road Traffic Act 1974* but not including a trailer, semi-trailer or caravan) —

- (a) that is constructed or designed, or has been modified, to include or have permanently affixed to it, specialised equipment; and

- (b) that is designed to be driven or controlled by a person carried in or on the vehicle;

“grant”, in relation to a licence, includes renew;

“heavy vehicle” means a vehicle with a gross vehicle mass of more than 4.5 tonnes;

“licence” means a vehicle licence granted under Part III of the *Road Traffic Act 1974*, but does not include a duplicate licence or a certified copy of a licence granted under that Act;

“net value”, in relation to the grant or transfer of the licence for an eligible vehicle, means the market value of the vehicle as if the specialised equipment attached to it at the time the application for the grant or transfer was made was not attached to it;

“non-beneficial”, in relation to a change of ownership of a vehicle, has the meaning given in section 76C(1);

“purchase price”, in relation to a vehicle, includes any amount —

- (a) allowed by the seller on a trade-in or an exchange of any article;
- (b) paid to the seller for anything included with or incorporated into the vehicle; or
- (c) paid to the seller for the preparation of the vehicle for delivery to the purchaser;

“specialised equipment” means —

- (a) a crane;
- (b) an excavator, road roller, road grader, bulldozer, mechanical shovel, plough, rotary hoe or similar plant;
- (c) hoisting equipment for lifting, partial lifting or towing other vehicles;
- (d) bitumen spraying equipment;
- (e) a cement agitator;

s. 76C

- (f) garbage collection equipment;
- (g) road sweeping equipment;
- (h) a refrigeration unit;
- (i) a stock crate;
- (j) a tank for transporting liquids;
- (k) equipment to make the vehicle habitable by a person in the course of a journey; or
- (l) any similar plant or equipment;

“trustee” does not include a discretionary trustee or a unit trustee;

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

“unit trust scheme” means a private unit trust scheme within the meaning in section 63(2);

“vehicle” means a vehicle that is required to be licensed under the *Road Traffic Act 1974*.

- (2) For the purposes of this Part, a vehicle is taken to be used solely for the purpose mentioned in section 76D(4) or (5) if it is used only for that purpose and for minor incidental purposes.

[Section 76B inserted by No. 2 of 2003 s. 100.]

76C. Non-beneficial change of ownership

- (1) On application by a person to whom the licence for a vehicle has been or is to be transferred the Commissioner may authorise duty to be charged on the transfer in accordance with section 76D(2) if the Commissioner is satisfied that —
 - (a) the change in the legal ownership of the vehicle to which the licence relates that necessitated, or will necessitate, the transfer of the licence did not, or will not, change the beneficial ownership of the vehicle; and

- (b) the transferor of the licence —
 - (i) acquired the legal ownership of the vehicle in his or her capacity as trustee, discretionary trustee or unit trustee (as the case requires); and
 - (ii) paid duty on the grant or transfer to him or her of the licence.
- (2) An application for an authorisation is to be made to the Commissioner in an approved form.
- (3) For the purposes of subsection (1)(a), a change in the legal ownership of a vehicle does not change the beneficial ownership of the vehicle if —
 - (a) the change in the legal ownership of the vehicle is made to effect the appointment of a new trustee, or the retirement of a trustee, whether the trust is expressed or implied;
 - (b) the legal ownership of a vehicle passes to a beneficiary from a trustee or a person in any other fiduciary capacity (except a discretionary trustee or a unit trustee), under a trust, whether express or implied;
 - (c) the legal ownership of the vehicle passes to a beneficiary under a discretionary trust (whether express or implied) from the discretionary trustee otherwise than as a result of the exercise by the trustee of a power of appointment;
 - (d) the legal ownership of the vehicle passes to a beneficiary under a discretionary trust from the discretionary trustee as a result of the exercise by the trustee of a power of appointment if —
 - (i) the beneficiary is an individual;
 - (ii) the beneficiary acquires the vehicle for his or her own use and benefit; and
 - (iii) at the time the trustee acquired the vehicle the beneficiary was named or described in the instrument which created the power of

s. 76D

appointment as a beneficiary or as a member of a class of beneficiaries in whose favour the discretionary trustee was empowered by that instrument to appoint the vehicle;

- (e) the legal ownership of the vehicle passes to the holder of a unit in a unit trust scheme from the unit trustee if the change in the legal ownership of the vehicle —
 - (i) has the effect of reducing the rights of the transferee in respect of the trust property to the extent of the vehicle or the value of the vehicle; and
 - (ii) does not have the effect of varying, abrogating or altering the rights of the holder or holders of other units under the unit trust scheme in respect of the remaining trust property;

or

- (f) the change in the legal ownership of the vehicle —
 - (i) does not pass a beneficial interest in the vehicle;
 - (ii) is not made in contemplation of the passing of a beneficial interest in the vehicle; and
 - (iii) is not part of, or made pursuant to, a scheme whereby any beneficial interest in the vehicle, whether vested or contingent, has passed or will or may pass.

[Section 76C inserted by No. 2 of 2003 s. 100.]

[76CA, 76CB. Repealed by No. 2 of 2003 s. 100.]

76D. Duty on the grant or transfer of a vehicle licence

- (1) Subject to this section, duty is payable on the grant or transfer of a licence in accordance with item 14 of the Second Schedule.

- (2) Subject to this section, duty is payable on the transfer of a licence in accordance with item 6 of the Second Schedule if —
- (a) the vehicle to which the licence relates is transferred under a testamentary instrument or on an intestacy to a person entitled to it under the instrument or on the intestacy; or
 - (b) the Commissioner has granted an authorisation in respect of the transfer of the licence under section 76C(1) or 112UE(2).
- (3) Duty is not payable on —
- (a) the grant of a licence if no fee is payable under the *Road Traffic Act 1974* for the grant of the licence; or
 - (b) the transfer of a licence if no fee would be payable under the *Road Traffic Act 1974* for the grant of the licence if it was granted to the transferee on the date of the transfer.
- (4) Duty is not payable on the transfer of a licence to a dealer, if —
- (a) the dealer has acquired the vehicle to which the licence relates solely for the purpose of reselling it to another person;
 - (b) the resale is in the ordinary course of the dealer's business; and
 - (c) the application for the transfer of the licence is accompanied by a certificate certifying that while the applicant holds the licence the vehicle will be used solely for the purpose referred to in paragraph (a).
- (5) Duty is not payable on the grant of a licence to a dealer if —
- (a) the dealer acquired the vehicle to which the licence relates solely for the purpose of —
 - (i) selling it to another person in the ordinary course of that business; or

s. 76D

- (ii) demonstrating it to prospective purchasers;
 - and
 - (b) the application for the grant of the licence is accompanied by a certificate certifying that while the applicant holds the licence the vehicle will be used solely for the purposes referred to in paragraph (a).
- (6) The duty payable on the grant or transfer of a licence for an eligible vehicle (“**vehicle B**”) is to be calculated on the net value of the vehicle if —
 - (a) the applicant holds, or previously held, the licence for another eligible vehicle (“**vehicle A**”);
 - (b) the applicant is the last person to hold a licence for vehicle A;
 - (c) the duty paid by the applicant on the grant or transfer of the licence for vehicle A was assessed on the market value of vehicle A including the specialised equipment that was then attached to it (“**original equipment**”);
 - (d) the original equipment has been removed from vehicle A and attached to vehicle B; and
 - (e) the application for the grant or transfer of the licence for vehicle B is accompanied by a certificate certifying that while the applicant holds the licence for vehicle B —
 - (i) vehicle B will not be used if the original equipment has been removed from it; or
 - (ii) if the original equipment is removed from vehicle B and vehicle B is used with different equipment, the original equipment will not be attached to any other vehicle for which the applicant intends to become the licence holder.
- (7) A certificate for the purposes of subsection (4)(c), (5)(b) or (6)(e) must be in an approved form and be signed by the applicant for the grant or transfer of the licence.

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

[Section 76D inserted by No. 2 of 2003 s. 100.]

76E. Determination of value and assessment of duty

- (1) When an application is made for the grant or transfer of a licence the Director General must assess the amount of duty payable on it.
- (2) For the purpose of making the assessment, if duty is payable on the grant or transfer in accordance with item 14 of the Second Schedule the Director General must determine —
- (a) the market value; or
 - (b) if section 76D(6) applies, the net value,
- of the vehicle to which the licence relates.
- (3) For the purpose of determining the market value or net value of the vehicle the Director General may, by notice given to the applicant, require the applicant to provide, within a period stated in the notice, evidence of the market value of the vehicle and the applicant must comply with that requirement.
- Penalty: \$20 000.
- (4) An assessment made under subsection (1) is an official assessment for the purposes of the *Taxation Administration Act 2003*.

[Section 76E inserted by No. 2 of 2003 s. 100.]

76F. Payment of duty

Duty payable on the grant or transfer of a licence and any penalty tax is payable —

- (a) to the Director General in accordance with the *Road Traffic Act 1974*; or

s. 76G

- (b) if the assessment or a reassessment is made by the Commissioner, in accordance with the *Taxation Administration Act 2003*.

[Section 76F inserted by No. 2 of 2003 s. 100.]

76G. Applicant's statement of value in application

A person who applies under the *Road Traffic Act 1974* for the grant or transfer of a licence (other than a transfer chargeable with duty under section 76D(2)) must include in the application a statement signed by the applicant setting out —

- (a) the applicant's estimate of the market value of the vehicle to which the licence relates at the time of the application; and
- (b) if the applicant is a purchaser of the vehicle, the purchase price paid for the vehicle.

Penalty: \$20 000.

[Section 76G inserted by No. 2 of 2003 s. 100.]

76H. Seller's obligation to notify purchase price

- (1) A person who ceases to be the owner of a vehicle and is required under the *Road Traffic Act 1974* to notify the Director General of the new owner must (unless the transfer of the licence for the vehicle is, or will be, chargeable with duty under section 76D(2)) include in that notice a statement signed by the person setting out —
 - (a) the purchase price (if any) received for the vehicle to which the licence relates; and
 - (b) the person's estimate of the market value of the vehicle at the time the person ceased to be the owner of it.

Penalty: \$20 000.

-
- (2) A dealer who sells a new vehicle must, within 7 days after the sale, give to the Director General a statement signed by the dealer setting out —
- (a) the purchase price received for the vehicle; and
 - (b) the dealer's estimate of the market value of the vehicle at the time the vehicle was sold.

Penalty: \$20 000.

- (3) If —
- (a) a person understates, in a statement under this section, the purchase price or estimated market value of a vehicle; and
 - (b) the duty payable on the grant or transfer of the licence for that vehicle is initially assessed on a value for the vehicle that is less than the proper market value,

the person is jointly and severally liable with the purchaser to pay the difference between the amount of duty as initially assessed and the amount of duty assessed on the vehicle's proper market value.

[Section 76H inserted by No. 2 of 2003 s. 100.]

76I. Use of dealer registered vehicle for other purposes

- (1) If under section 76D(4) or (5) no duty was payable on the grant or transfer of a licence to a dealer, then while the dealer remains the licensee of the vehicle to which the licence relates the dealer must not use, or allow any other person to use, the vehicle for a purpose other than the purpose mentioned in section 76D(4) or (5) (as the case may be).

Penalty: \$20 000.

- (2) If a dealer contravenes subsection (1) —
- (a) the grant or transfer of the licence is taken not to be, and never to have been, exempt from duty under section 76D(4) or (5) (as the case may be);

s. 76J

- (b) the grant or transfer of the licence is chargeable with penalty tax of an amount equal to the amount of duty chargeable on the grant or transfer of the licence; and
- (c) the duty and penalty tax is due for payment within one month after an assessment notice is issued in respect of the grant or transfer of the licence.

[Section 76I inserted by No. 2 of 2003 s. 100.]

76J. Use of specialised equipment on another vehicle

(1) If —

- (a) under section 76D(6) duty on the grant or transfer of a licence for an eligible vehicle to a person is calculated on the net value of the vehicle; and
- (b) while that person holds the licence for that vehicle it is used with specialised equipment other than the equipment that was attached to it at the time the application for the grant or transfer of the licence was made (“**original equipment**”),

the person must not attach the original equipment to any other vehicle for which the licensee intends to become the licence holder.

Penalty: \$20 000.

(2) If a licensee contravenes subsection (1) —

- (a) the grant or transfer of the licence is taken to be, and always to have been, chargeable with duty on the market value of the eligible vehicle including the specialised equipment attached to it;
- (b) the grant or transfer of the licence is chargeable with penalty tax of an amount equal to the amount of duty chargeable on the grant or transfer of the licence; and

- (c) the duty and penalty tax is due for payment within one month after an assessment notice is issued in respect of the grant on transfer of the licence.

[Section 76J inserted by No. 2 of 2003 s. 100.]

76K. Failure to apply for transfer of licence

- (1) For the purposes of section 26 of the *Taxation Administration Act 2003*, a failure by a person to apply for the transfer of a licence when required by the *Road Traffic Act 1974* to do so is taken to be a contravention of a taxation Act.
- (2) If it appears to the Commissioner that a person has failed to apply for the transfer of a licence when required by the *Road Traffic Act 1974* to do so, section 20 of the *Taxation Administration Act 2003* applies as if —
- (a) the transfer were an instrument required to be lodged under a taxation Act; and
- (b) an application for the transfer had been made as required by the *Road Traffic Act 1974*.

[Section 76K inserted by No. 2 of 2003 s. 100.]

76L. Powers of Director General and Commissioner

- (1) For the purposes of this Part the Director General has the functions of the Commissioner under sections 26 and 29 of the *Taxation Administration Act 2003*.
- (2) The Commissioner has all of the functions of the Director General under this Part.
- (3) For the purposes of the *Taxation Administration Act 2003* anything done by the Director General in the exercise of a function conferred by subsection (1) is taken to have been done by the Commissioner.

[Section 76L inserted by No. 2 of 2003 s. 100.]

s. 76M

76M. Duty to be remitted to Commissioner

The Director General must, in accordance with any agreement between the Director General and the Commissioner —

- (a) provide to the Commissioner details of licences granted or transferred and the duty and any penalty tax paid in relation to them; and
- (b) remit that duty and penalty tax to the Commissioner.

[Section 76M inserted by No. 2 of 2003 s. 100.]

[Part IIICA repealed by No. 13 of 1997 s. 39.]

Part IIID — Leases

[Heading inserted by No. 37 of 1979 s. 56.]

77. Agreement for any lease to be charged as a lease

- (1) An agreement for a lease, or with respect to the letting of any lands or tenements for any term, is to be charged with duty under item 12 of the Second Schedule as if it were an actual lease made for the term and consideration mentioned in the agreement.
- (2) A lease made subsequently to and in conformity with an agreement referred to in subsection (1) shall not be liable to duty.

[Section 77 amended by No. 113 of 1965 s. 8(1); No. 37 of 1979 s. 57; No. 2 of 2003 s. 101.]

78. Leases: how to be charged in respect of produce, etc.

- (1) Where the consideration or any part of the consideration for which any lease is granted or agreed to be granted does not consist of money, but consists of any produce or other goods, the value of such produce or goods is to be deemed a consideration in respect of which the lease or agreement is chargeable with *ad valorem* duty. And where it is stipulated that the value of such produce or goods is to amount at least to, or is not to exceed a given sum, or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of such produce or goods is, for the purpose of assessing the *ad valorem* duty, to be estimated at such given sum or according to such permanent rate.
- (2) A lease or agreement for a lease made either entirely or partially for any such consideration, if it contains a statement of the value of such consideration, and is stamped in accordance with such statement, is, so far as regards the subject matter of such statement, to be deemed stamped, unless or until it is otherwise shown that such statement is incorrect, and that it is in fact not stamped.

[Section 78 amended by No. 2 of 2003 s. 102.]

79. Directions as to duty in certain cases

- (1) A lease or agreement for a lease, or with respect to any letting, is not to be charged with any duty in respect of any penal rent or increased rent in the nature of a penal rent thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease or agreement of or relating to the same subject matter.
- (2) No lease or agreement for a lease made for any consideration or considerations in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease or agreement for a lease; is to be charged with any duty in respect of such further consideration.

Provided that this subsection shall not apply as respects any further consideration in the lease or agreement for a lease consisting of a covenant which if it were contained in a separate deed would be chargeable with *ad valorem* duty, and accordingly the lease or agreement for a lease shall in any such case be charged with duty in respect of any such further consideration under section 19.

- (3) An instrument, whereby the rent reserved by any other instrument chargeable with duty and stamped is increased, is not to be charged with duty otherwise than as a lease in consideration of the additional rent thereby made payable.
- (4) If the amount of rent payable under a lease, or to be payable under a lease the subject of an agreement for a lease, is —
 - (a) nil;
 - (b) a nominal amount;

- (c) less than the amount considered by the Commissioner to be the fair market rent; or
- (d) unascertainable at the time of granting or entering into the lease or agreement for a lease,

the Commissioner may —

- (e) determine the amount that the Commissioner considers to be the fair market rent for the property that is, or is to be, the subject of the lease; and
- (f) assess the duty payable on the lease or agreement for a lease as if the amount so determined was the rent payable, or to be paid, under the lease.

[(5) *repealed*]

- (6) For the purposes of determining the rent reserved or payable under a Homeswest lease entered into on or after 1 September 1992, the rent is to be taken to be, and since that date is to be taken always to have been, the rent payable after taking into account any subsidization of the rent by The State Housing Commission.

- (7) In subsection (6) —

“Homeswest lease” means a lease, or an agreement for a lease, of any lands or tenements for use as a dwellinghouse from The State Housing Commission.

[Section 79 amended by No. 37 of 1979 s. 58; No. 20 of 1996 s. 37; No. 2 of 2003 s. 103.]

80. Duty on periodic re-appraisal of rent

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 as an actual lease for the term stated therein and shall in addition be charged with

s. 80A

duty under subitem (5) of that item in respect of each re-appraisalment of the rent.

[Section 80 inserted by No. 37 of 1979 s. 59; amended by No. 18 of 1998 s. 11.]

80A. Power to exempt instruments made for charitable or similar purposes

Where the Commissioner is satisfied that any lease or agreement for a lease has been made for the purpose of a university or for charitable or similar public purposes, he may exempt from duty that lease or agreement for a lease.

[Section 80A inserted by No. 14 of 1983 s. 3; amended by No. 2 of 2003 s. 104.]

Part IIIE — Mortgages and other securities

[Heading inserted by No. 37 of 1969 s. 60.]

81. Interpretation in Part IIIE

- (1) 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 forborne 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.

- (2) The term “**title deeds**” includes documents of title over any kind of property.

[Section 81 amended by No. 37 of 1979 s. 61; No. 52 of 1991 s. 4.]

82. Duty chargeable on certain transfers or conveyances by way of security

- (1) Subject to this section, an instrument of mortgage which by itself or in conjunction with another instrument effects a conveyance or transfer of any estate or interest in —
- (a) freehold land registered under the *Transfer of Land Act 1893*;
 - (b) a Crown lease registered under that Act;
 - (c) a mining tenement registered under the *Mining Act 1978*; or

s. 83

- (d) a marketable security or right in respect of shares, is chargeable with duty under item 4 or 4A(1), as the case requires, of the Second Schedule as a conveyance or transfer of that estate or interest.
- (2) References in items 4 and 4A(1) of the Second Schedule to consideration shall, for the purposes of this section, be construed as references to the amount or value of the estate or interest conveyed or transferred.
- (3) The mortgagor or obligor under an instrument of mortgage referred to in subsection (1) is liable to pay duty with which it is chargeable.
- (4) Subsection (1) does not apply to or in relation to an instrument of mortgage which is, in the opinion of the Commissioner, a *bona fide* instrument of mortgage.

[Section 82 inserted by No. 81 of 1984 s. 28; amended by No. 39 of 1994 s. 14; No. 48 of 1996 s. 34.]

83. Security for future advances, how to be charged

- (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 as a security for the amount so limited.
 - (1a) Where —
 - (a) a security, or a deemed instrument of security under subsection (3), for the payment or repayment of an amount in excess of \$35 000 is given or made for the purpose of securing the payment or repayment of money that is being, is to be, or has been, used wholly in or towards the cost of —
 - (i) purchasing any property which includes a dwellinghouse used or intended to be used as the principal place of residence of the mortgagor or

obligor, being property used solely or principally for residential purposes associated with that dwellinghouse;

- (ii) erecting a dwellinghouse which the mortgagor or obligor uses or intends to use as his principal place of residence;
- (iii) effecting improvements or additions to a dwellinghouse occupied or intended to be occupied by the mortgagor or obligor as his principal place of residence; or
- (iv) repaying moneys which have been used wholly in or towards the cost of —
 - (A) purchasing any property which includes a dwellinghouse used by the mortgagor or obligor as his principal place of residence, being property used solely or principally for residential purposes associated with that dwellinghouse; or
 - (B) erecting, or effecting improvements or additions to, a dwellinghouse used by the mortgagor or obligor as his principal place of residence;

and

- (b) the mortgagor or obligor is an individual,

the instrument concerned is —

- (c) in the case of a security referred to in subsection (1), or a deemed instrument of security under subsection (3), chargeable with *ad valorem* duty at the rate set out under item 13(1a) of the Second Schedule; and
- (d) in the case of a security referred to in subsection (2), chargeable with *ad valorem* duty at the rate set out under item 13(1a) of the Second Schedule on —
 - (i) the total amount secured or to be ultimately recoverable thereunder; or

- (ii) the amount of \$2 000,
whichever is the greater.
- (1b) Where a security, or deemed instrument of security under subsection (3), for the payment or repayment of an amount in excess of \$35 000 is given or made for the purpose of securing the payment or repayment of money that is being, is to be, or has been, used partly in or towards the cost of the matters described in subsection (1a)(a)(i), (ii), (iii) or (iv), and the mortgagor or obligor is an individual —
 - (a) the instrument concerned is chargeable with *ad valorem* duty at the rate set out under item 13(1a) of the Second Schedule to the extent of that part; and
 - (b) the instrument concerned is chargeable with *ad valorem* duty in accordance with subsection (1) or (2), as the case requires, to the extent of the balance as if that balance were a new and separate instrument of security.
- (2) Subject to subsections (1a) and (1b), when the total amount secured or to be ultimately recoverable by or under an instrument of security is not in any way limited, the instrument concerned shall be chargeable with *ad valorem* duty at the rate set out under item 13(2) of the Second Schedule on —
 - (a) the total amount secured or to be ultimately recoverable thereunder; or
 - (b) an amount of \$2 000,
whichever is the greater.
- (3) A security referred to in subsection (2) shall be available only for the amount in respect of which duty is denoted on that instrument, 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 chargeable with additional *ad valorem* duty in respect of the excess or increase and the additional advance or loan or indebtedness is, for the purpose of duty, deemed to be a new

and separate instrument of security first executed in Western Australia on the day on which that advance or loan is made or that indebtedness is increased and is chargeable with duty accordingly.

- (3a) Notwithstanding subsection (3), where an advance or loan is made in excess of the amount in respect of which duty is denoted on an instrument referred to in subsection (2), or indebtedness secured by an instrument referred to in subsection (2) is increased, *ad valorem* duty in respect of that excess or increase is, subject to subsections (1a) and (1b), chargeable —
- (a) at the rate set out under item 13(2)(a) of the Second Schedule to the extent that the sum of —
 - (i) the amount in respect of which duty is denoted on that instrument; and
 - (ii) the amount of the advance or loan, or the advance or loan and one or more additional advances or loans, or the total amount of the increase in indebtedness,does not exceed \$35 000; and
 - (b) at the rate set out under item 13(2)(b) of the Second Schedule in subparagraph (ii) of the column headed “Duty payable” to the extent that the sum referred to in paragraph (a) exceeds \$35 000.
- (4) Each mortgagor or obligor and each mortgagee or obligee under an instrument of security referred to in subsection (2) or a deemed instrument of security under subsection (3) is liable to pay duty with which the instrument or the deemed instrument, as the case may be, is chargeable.
- (5) If a security referred to in subsections (2) and (3) 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 section 6(4) of the *Bills of Sale Act 1899*.

s. 84

- (6) Additional duty referred to in subsection (3) may be paid as further advances or loans are made or as the indebtedness is increased.
- (7) When the original security concerned is deposited in the Department within the meaning of the *Transfer of Land Act 1893* 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 (3) and that stamping shall have the same effect as if the original instrument had been stamped with the additional duty.
- (8) 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.

[Section 83 amended by No. 9 of 1974 s. 10; No. 37 of 1979 s. 63; No. 81 of 1984 s. 29; No. 109 of 1984 s. 6; No. 41 of 1989 s. 20; No. 81 of 1996 s. 153(2); No. 2 of 2003 s. 105.]

84. Charges secured on property outside Western Australia

- (1) Where money to be paid or repaid, or which is ultimately recoverable, under an instrument of security is secured wholly or in part on property outside Western Australia duty shall, subject to this section, be payable as provided under this Part and item 13 of the Second Schedule on the full amount of such money.
- (2) If the Commissioner is satisfied that interstate duty has been paid on the instrument, or any other instrument that secures the same money, the duty calculated under subsection (1) shall be reduced by —

- (a) the same proportion of the duty payable under subsection (1) as the value of the property situated in that other State or Territory bears to the aggregate value of all property to which the instrument relates; or
- (b) the actual amount of the interstate duty,

whichever is the lesser.

- (2a) If the Commissioner is satisfied that the instrument, or any other instrument that secures the same money, is an exempt instrument in another State or Territory the duty calculated under subsection (1) shall be reduced by —

- (a) the same proportion of the duty payable under subsection (1) as the value of the property situated in that other State or Territory bears to the aggregate value of all property to which the instrument relates; or
- (b) the actual amount of the interstate duty that would have been payable in that other State or Territory if the instrument or other instrument had not been exempt,

whichever is the lesser.

- (2b) If the Commissioner is satisfied —

- (a) that the instrument, or any other instrument that secures the same money, is an exempt instrument in another State or Territory, or would have been an exempt instrument in another State or Territory if the instrument had related to property in that State or Territory; and
- (b) that in another State or Territory (not being the State or Territory referred to in paragraph (a)) no interstate duty is payable in respect of instruments,

the duty calculated under subsection (1) shall be reduced by the same proportion of the duty payable under subsection (1) as the value of the property situated in the State or Territory referred to in paragraph (b) bears to the aggregate value of all property to which the instrument relates.

s. 84

- (2c) For the purposes of subsections (2a) and (2b) an instrument is an exempt instrument in a State or Territory if, under a prescribed provision of a law of that State or Territory, it is exempt from interstate duty that would otherwise be payable under a law of that State or Territory.
- (2d) Notwithstanding subsection (2c), regulations may declare that instruments of a class specified in the regulations are not exempt instruments for the purposes of subsections (2a) and (2b).
- (3) Where a reduction is allowed under subsection (2), (2a) or (2b) the Commissioner shall denote on the instrument the amount of the reduction that has been allowed, the date of the allowance, and the duty payable.
- (4) Notwithstanding subsection (2), where an instrument referred to in subsection (1) is produced to the Commissioner and the person liable to pay the duty thereon gives notice to the Commissioner that he intends to pay or cause to be paid interstate duty on the instrument, or any other instrument securing the same money, the following provisions shall apply —
 - (a) the instrument may be stamped under subsection (2) as if the interstate duty had been paid and may be released for that purpose to the person who produced it;
 - (b) the Commissioner is to make an assessment of the difference between the amount of duty payable under subsection (1) and the duty paid under paragraph (a), and issue an assessment notice for that amount;
 - (c) if the instrument is produced to the Commissioner within 3 months after the assessment notice was issued, together with proof of payment of the interstate duty, the Commissioner is to cancel the assessment notice and endorse the instrument accordingly;

-
- (d) if paragraph (c) is not complied with —
- (i) the duty and any penalty tax is payable within 3 months after the assessment notice was issued;
 - (ii) no reduction shall be allowed for any interstate duty paid; and
 - (iii) the instrument is available only for the amount in respect of which duty has been paid under paragraph (a) as if the instrument related to property only in Western Australia until the duty and penalty tax is paid in full.

[Section 84 inserted by No. 33 of 1987 s. 23; amended by No. 100 of 1987 s. 6; No. 41 of 1989 s. 21; No. 2 of 2003 s. 106.]

[84A. Repealed by No. 39 of 1994 s. 9.]

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

87. Collateral, additional or substituted securities

- (1) Where an instrument of security for moneys (“**the stamped instrument**”) is stamped under item 13 of the Second Schedule and duty is chargeable under item 13 on another instrument that is security for some or all of the same moneys, that duty is to be calculated —
- (a) where it is chargeable at an *ad valorem* rate that is the same as the *ad valorem* rate that was applied to the stamped instrument — by deducting from the amount chargeable under item 13 an amount equal to the amount of duty that was paid on the stamped instrument in respect of moneys for which the other instrument is security;
 - (b) where it is chargeable at an *ad valorem* rate (“**the new rate**”) that is different from the *ad valorem* rate that was applied to the stamped instrument — by deducting from the amount chargeable under item 13 an amount equal to

s. 88

the amount of duty that would have been charged on the stamped instrument in respect of moneys for which the other instrument is security if duty on the stamped instrument had been charged at the new rate.

- (1a) Where a reduction of duty was allowed under section 84 in respect of the stamped instrument, no reduction of duty is to be allowed under subsection (1) in respect of the other instrument unless the person liable to pay duty on the other instrument provides the Commissioner with the necessary information, in an approved form, to enable an assessment of duty to be made.
- (1b) Subsection (1)(b) does not apply if the difference in *ad valorem* rates results from duty on the other instrument being chargeable under item 13(1)(b) of the Second Schedule whereas duty on the stamped instrument was charged under item 13(1)(a), (1a) or (2).
- (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 stamped under item 13 of the Second Schedule, any conveyance or transfer of any estate or interest in property, other than that described in section 82(1)(a), (b), (c) and (d), apparently absolute but intended only as security pursuant to that deed or other instrument shall not be chargeable with any further duty.

[Section 87 inserted by No. 37 of 1979 s. 65; amended by No. 93 of 1982 s. 6; No. 81 of 1984 s. 30; No. 109 of 1984 s. 8; No. 33 of 1987 s. 24; No. 52 of 1991 s. 5; No. 2 of 2003 s. 107.]

[87A. Repealed by No. 37 of 1979 s. 66.]

88. Instruments that can become securities on a future act or event

- (1) If an instrument is not an instrument of security when it is executed but it will become an instrument of security, or evidence of the terms of a security, if —
 - (a) a deposit of title deeds occurs; or

- (b) any other matter, thing or event is done or happens, the instrument is deemed for the purposes of this Part to be an instrument of security for the payment or repayment of money and is chargeable with duty under item 13 of the Second Schedule as an instrument of that kind.
- (2) Where the matter, thing or event mentioned in subsection (1)(b) is the exercising of an option or right —
- (a) it does not matter whether the option or right is granted before, at the time of, or after the execution of the instrument; but
- (b) if the option or right is granted after the execution of the instrument, the instrument is taken to have been first executed on the day on which the option or right was granted.

[Section 88 inserted by No. 52 of 1991 s. 6; amended by No. 2 of 2003 s. 108.]

88A. Instruments held outside Western Australia that become securities

- (1) Where —
- (a) section 88(1) does not extend and apply to an instrument held in some place outside Western Australia because the instrument does not necessarily relate to property situate in Western Australia or to any matter or thing to be done in Western Australia; but
- (b) the instrument becomes an instrument of security, or evidence of the terms of a security, on —
- (i) the deposit (in Western Australia or elsewhere) of title deeds to property situate in Western Australia; or
- (ii) the doing of any matter or thing in Western Australia,

this Part applies and extends to the instrument as an instrument of security for the payment or repayment of money and the

s. 89

instrument is chargeable with duty under item 13 of the Second Schedule as an instrument of that kind as if it had been first executed on the day on which it became an instrument of security.

[(2) repealed]

[Section 88A inserted by No. 52 of 1991 s. 6; amended by No. 2 of 2003 s. 109.]

89. Contingent securities

- (1) If an instrument of security —
- (a) secures the performance of financial obligations that are directly or indirectly related to financial obligations under another transaction; or
 - (b) will, if any matter, thing or event is done or happens, secure the performance of financial obligations that are directly or indirectly related to financial obligations under another transaction,

the provisions of this Part and item 13 of the Second Schedule apply to the instrument of security as if —

- (c) the total amount secured or payable or to be ultimately recoverable or payable under the other transaction were secured or ultimately recoverable under the instrument of security; and
 - (d) any advances, loans, indebtedness or money made, arising or payable from time to time under the other transaction were advances, loans or indebtedness made or recoverable under the instrument of security.
- (2) It does not matter whether the parties to the other transaction are, or are not, the same persons as the parties to the instrument of security.

- (3) A reference in this section to another transaction includes a reference to —
- (a) one or more instruments or agreements forming part of a transaction that includes the instrument of security; or
 - (b) a series of other transactions.

[Section 89 inserted by No. 52 of 1991 s. 6.]

90. Limits on application of sections 88 to 89

- (1) Sections 88 and 88A do not apply to an instrument that is executed by a person for the purpose of conducting the person's money market trading operations.
- (2) Regulations may exempt instruments of a specified class from the operation of any or all of sections 88 to 89.

[Section 90 inserted by No. 52 of 1991 s. 6.]

90A. Power to exempt certain instruments of security made for charitable or similar purposes from duty

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

[Section 90A inserted by No. 37 of 1979 s. 67; amended by No. 81 of 1984 s. 31; No. 2 of 2003 s. 110.]

[91 and heading. Repealed by No. 96 of 1976 s. 6.]

Part IIIF — Policies of insurance

[Heading inserted by No. 37 of 1979 s. 68.]

92. Interpretation in Part IIIF

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

“**insurance company**” includes the Insurance Commission of Western Australia continued under the *Insurance Commission of Western Australia Act 1986*;

“**person resident in Western Australia**” includes any body corporate —

- (a) which is a corporation; or
- (b) which carries on business in Western Australia;

“**policy of insurance**” includes every certificate, receipt or declaration concerning the existence of any instrument of guarantee or indemnity or any agreement for any insurance or any instrument whereby any contract of insurance is made and which operates in Western Australia wholly or in part as an insurance, whether issued in or outside Western Australia, and includes a policy of insurance against accident;

“**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.

[Section 92 inserted by No. 37 of 1979 s. 69; amended by No. 10 of 1982 s. 28; No. 41 of 1989 s. 23; No. 49 of 1992 s. 29; No. 39 of 1994 s. 21; No. 45 of 1996 s. 38; No. 2 of 2003 s. 111.]

92A. Dutiable statement required if policy issued outside Western Australia

- (1) Every person resident in Western Australia who effects —
- (a) a policy of life insurance; or
 - (b) any insurance in respect of —
 - (i) property in Western Australia; or
 - (ii) any liability, loss or damage occurring or brought about by the happening of any event within Western Australia,

for which insurance a policy of insurance is or is to be issued or renewed outside Western Australia shall within one month after effecting the insurance prepare and lodge with the Commissioner a dutiable statement in respect of the insurance.

Penalty: \$20 000.

- (2) A dutiable statement is to be in an approved form.
- (3) A dutiable statement prepared under subsection (1) is taken to be a policy of insurance in respect of the insurance to which it relates and is chargeable with duty accordingly.
- (4) The duty payable on a dutiable statement prepared under subsection (1) is payable —
- (a) by the person who effected the insurance; and
 - (b) within one month after the insurance was effected.

s. 92B

- (5) Subsections (1) to (4) do not apply if, before a dutiable statement prepared under subsection (1) is stamped, a policy of insurance for the insurance referred to in subsection (1) is stamped.
- (6) A person resident in Western Australia must not accept payment of, or agree to have allowed on account, any money on or in respect of any insurance the policy for which is or is to be issued or renewed outside Western Australia unless the policy, or a dutiable statement in respect of the insurance, has been stamped.

Penalty: \$20 000.

[Section 92A inserted by No. 2 of 2003 s. 112.]

[92AA. Repealed by No. 2 of 2003 s. 113.]

92B. Statements to be made in respect of certain insurance

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

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

Penalty: \$20 000.

- (2) A statement required to be furnished to the Commissioner under subsection (1) —
- (a) shall be furnished within a period of 15 days after the end of the month to which that statement relates;
 - (b) may contain particulars of more than one policy of insurance or renewal of a policy of insurance; and
 - (c) shall, when no insurance referred to in that subsection has been effected during the month to which that statement relates, be a nil statement.

[(3), (4) repealed]

- (5) A statement furnished to the Commissioner under this section is admissible in evidence in any proceedings under section 92A or section 94 and is evidence of the facts stated therein.

[Section 92B inserted by No. 54 of 1968 s. 6; amended by No. 32 of 1972 s. 6; No. 37 of 1979 s. 71; No. 61 of 1983 s. 4; No. 2 of 2003 s. 114.]

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

94. Penalty for not making out policy

- (1) A person who receives or takes credit for any premium or consideration for any contract of insurance must, within 3 months after receiving or taking credit for such premium or consideration, make out, execute and have stamped, a policy of such insurance.

Penalty: \$20 000.

- (1a) A person must not make, execute, or deliver out, or pay or allow in account, or agree to pay or allow in account, any money on or in respect of any policy of insurance which is not stamped.

Penalty: \$20 000.

s. 95

- (2) Any person who in consideration of any premium, sum of money, or other valuable consideration, paid, furnished or provided by any person in Western Australia, makes, enters into or renews any contract of insurance for or on behalf of any insurer outside Western Australia must notify the Commissioner, in an approved form, that the contract of insurance has been made, entered into or renewed.

Penalty: \$20 000.

[(3) repealed]

- (3a) Where a person satisfies the Commissioner that he cannot, with reasonable diligence, ascertain the premium paid in respect of a policy of insurance or renewal thereof issued outside Western Australia, the Commissioner may approve of the policy, or document stampable as such or the renewal, as the case may be, being stamped with the duty payable under item 16(2) of the Second Schedule, and the stamping of the policy, document or renewal in accordance with this subsection within one month after it is received in Western Australia constitutes sufficient compliance with the provisions of this section relating to the stamping of, and payment of duty upon, the policy, stampable document or renewal.

- (4) Where duty has been paid under section 92A on a dutiable statement and the policy of insurance or renewal thereof, in respect of the insurance to which the dutiable statement relates is thereafter received in Western Australia, the duty so paid shall be allowed as a set off against any duty payable under this section in respect of the policy or the renewal.

[Section 94 amended by No. 113 of 1965 s. 8(1); No. 54 of 1968 s. 7; No. 32 of 1972 s. 7; No. 37 of 1979 s. 73; No. 22 of 1998 s. 55; No. 2 of 2003 s. 115.]

95. Policies of reinsurance to be exempt from duty

No duty shall be chargeable on any policy upon the face whereof it is expressed that such policy is a policy of

reinsurance, and whereby any insurance company, or underwriter, or association of underwriters effects an insurance the subject matter of which, at the time of such reinsurance, is insured under a policy that has been stamped.

[Section 95 amended by No. 2 of 2003 s. 116.]

[95A. Repealed by No. 2 of 2003 s. 117.]

96. No duty chargeable on amount received on account of duty

- (1) This section applies in relation to a policy of insurance referred to in item 16(1) or (3)(a) of the Second Schedule.
- (2) The amount that is chargeable with duty under item 16(1) or (3)(a) of the Second Schedule shall be calculated by ascertaining the total amount paid to the person with whom the policy of insurance is effected in respect of the issue or renewal of the policy.
- (3) Where a policy of insurance or a renewal certificate in respect of a policy of insurance shows an amount that represents the amount payable on account of duty in respect of the issue or renewal of the policy that amount shall be disregarded for the purposes of the calculation under subsection (2).
- (4) In the case of a policy of insurance to which item 16(3)(a) of the Second Schedule applies the reference in subsection (3) to a policy of insurance includes a reference to a statement of account in respect of a policy of insurance.

[Section 96 inserted by No. 41 of 1989 s. 24; amended by No. 11 of 2002 s. 10; No. 2 of 2003 s. 118 .]

[97. Repealed by No. 2 of 2003 s. 119.]

[98, 99. Repealed by No. 102 of 1970 s. 2.]

[99A. Repealed by No. 102 of 1970 s. 7.]

[99B. Repealed by No. 102 of 1970 s. 8.]

s. 96

[99C. Repealed by No. 102 of 1970 s. 9.]

[99D. Repealed by No. 102 of 1970 s. 2.]

[101A. Repealed by No. 102 of 1970 s. 11.]

Part IV — Unlisted WA securities

[Heading inserted by No. 2 of 2003 s. 120.]

100. Interpretation in Part IV

In this Part —

“**issuer**”, in relation to an unlisted WA security, means the body that issued the security;

“**overseas transfer**” means a transfer of an unlisted WA security that —

- (a) is quoted on a financial market that is situated outside Australia and is not a recognised financial market; and
- (b) is registered outside Australia on a branch register of the WA company;

“**register**”, when used as a verb in relation to an overseas transfer, means register in a register kept under Chapter 2C of the Corporations Act;

“**security**” means a marketable security or right in respect of shares;

“**unlisted WA security**” means a security that —

- (a) is situated in Western Australia; and
- (b) is not quoted on a recognised financial market.

[Section 100 inserted by No. 2 of 2003 s. 120.]

101. Share buy-back

For the purposes of this Part a buy-back by a company of its own shares or stocks in accordance with —

- (a) Division 4B of Part 2.4 of the Corporations Law as in force immediately before the commencement of Schedule 1 to the *Company Law Review Act 1998* of the Commonwealth; or

s. 102

(b) Division 2 of Part 2J.1 of the Corporations Act,
is taken to be a transfer of shares or stocks.

[Section 101 inserted by No. 2 of 2003 s. 120.]

102. Securities situated in Western Australia

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

[Section 102 inserted by No. 2 of 2003 s. 120.]

103. Prohibition on registration of unstamped transfer

- (1) The issuer of an unlisted WA security must not register a transfer of the security, other than an overseas transfer, unless the issuer is given an instrument of transfer —
 - (a) that sets out —
 - (i) the consideration given for the transfer;
 - (ii) if the transfer is to give effect to a sale of the security, the date of the sale; and
 - (iii) the date on which the instrument was executed by each party to it;
 - and
 - (b) that has been stamped or is not chargeable with duty.

Penalty: \$20 000.

- (2) The right or title of a transferee or subsequent holder of an unlisted WA security is not invalidated only because a transfer of the security was registered in contravention of this section.

[Section 103 inserted by No. 2 of 2003 s. 120.]

104. Registration of an overseas transfer

- (1) Nothing in this Part prevents a WA Company from registering an overseas transfer —
 - (a) whether or not there is an instrument of transfer; and
 - (b) whether or not duty has been paid on the transfer.
- (2) Before a WA Company registers an overseas transfer for which there is not an instrument of transfer, the WA company must prepare a dutiable statement in respect of the transfer.
- (3) A dutiable statement is to be in an approved form.
- (4) A dutiable statement prepared under subsection (2) is taken to be an instrument of transfer of the unlisted WA securities the subject of the overseas transfer.

s. 105

- (5) If a WA company registers an overseas transfer in respect of which duty has not been paid, the WA company is liable to pay the duty chargeable on the instrument of transfer or the dutiable statement prepared under subsection (2) (as the case may be).
- (6) Duty payable by a WA company under subsection (4) is to be paid in accordance with section 105.

[Section 104 inserted by No. 2 of 2003 s. 120.]

105. Return of overseas transfers and payment of duty

- (1) Within 15 days after the end of a month in which a WA company registers an overseas transfer, the WA company must —
 - (a) lodge with the Commissioner a return in an approved form of all overseas transfers registered by the WA company in that month other than those that are exempt from duty; and
 - (b) when lodging the return, pay to the Commissioner the amount of duty payable on the instrument of transfer for, or the dutiable statement prepared under section 104 in respect of, each transfer to which the return relates.

Penalty: \$20 000.

- (2) On payment of duty under subsection (1) in respect of an overseas transfer, the instrument of transfer or the dutiable statement (as the case may be) is taken to have been stamped.
- (3) The right or title of a transferee or subsequent holder of a security is not invalidated by reason only that the issuer contravened subsection (1).

[Section 105 inserted by No. 2 of 2003 s. 120.]

106. Valuing an unlisted WA security

- (1) The value of an unlisted WA security is to be determined —
 - (a) as if the constitution or governing rules of the issuer satisfied any requirements of the Australian Stock

Exchange Limited that must be satisfied before the security could be quoted on the Australian Stock Exchange Limited; and

- (b) disregarding a provision in the constitution or governing rules of the issuer providing for the valuation of the security.
- (2) Despite subsection (1), the Commissioner may determine the value of an unlisted WA security to be the amount the Commissioner considers would be received by the holder of the security if the issuer were to be voluntarily wound up on the day of the transfer.

[Section 106 inserted by No. 2 of 2003 s. 120.]

107. Retention of instruments of transfer

An issuer must retain an instrument of transfer for, or a dutiable statement prepared under section 104 in respect of, the transfer of an unlisted WA security for at least 5 years after the transfer is registered by the issuer.

Penalty: \$20 000.

[Section 107 inserted by No. 2 of 2003 s. 120.]

[Part IVAA (s. 108-112) repealed by No. 6 of 2000 s. 5.]

*[Part IVA: s. 112A, 112D-112F repealed by No. 53 of 1999 s. 31;
Div. 3, 4, 5 (s. 112FA-112FQ) repealed by No. 53 of 1999 s. 31;
balance repealed by No. 2 of 2003 s. 120.]*

[Part IVAB (s. 112GA-112GG) repealed by No. 53 of 1999 s. 31.]

Part IVAC — Capital reductions by WA companies

[Heading inserted by No. 57 of 1996 s. 8.]

112H. Interpretation in Part IVAC

- (1) In this Part, unless the contrary intention appears —
“**voting share**” has the same definition as in section 9 of the Corporations Act.
- (2) In this Part, unless the contrary intention appears, a person is entitled to a voting share if the person has a relevant interest in the share within the meaning of the Corporations Act.

[Section 112H inserted by No. 57 of 1996 s. 8; amended by No. 10 of 2001 s. 183.]

112HA. Certain capital reductions dutiable

- (1) This section applies if a taxable event occurs because a WA company reduces its share capital by cancelling any of its shares (“**the capital reduction**”).
- (2) This section applies if —
 - (a) a taxable event occurs because a WA company varies or abrogates the voting rights of any of its voting shares (“**the rights alteration**”); and
 - (b) within 6 months after doing so the WA company reduces its share capital by cancelling those shares (“**the share cancellation**”).
- (3) A taxable event occurs if —
 - (a) a person who immediately prior to the capital reduction or the rights alteration —
 - (i) was not entitled to any voting shares in the company; or

- (ii) was entitled to less than 50% of the voting shares in the company,
becomes entitled to at least 50% of the voting shares of the company; or
 - (b) a person who immediately prior to the capital reduction or the rights alteration was entitled to at least 50% of the voting shares of the company becomes entitled to at least 5% more of the voting shares.
- (4) If this section applies the WA company must prepare a dutiable statement in relation to the capital reduction or the rights alteration and share cancellation, unless the capital reduction, or the rights alteration and the share cancellation, also result in a relevant acquisition occurring under Part IIIA.
Penalty: \$20 000.
- (5) A dutiable statement must be in an approved form.
- (6) A dutiable statement prepared under this section is taken to be an instrument evidencing the capital reduction or the rights alteration and share cancellation and is chargeable with duty at the rate provided for in item 4A of the Second Schedule on the dutiable value.
- [(7) repealed]*
- (8) The dutiable value is the greater of —
 - (a) the unencumbered value of the cancelled shares immediately prior to the company's resolution for the capital reduction or for the rights alteration (as the case requires); or
 - (b) the amount, or value at the date of the resolution, of the consideration payable to the holders of the cancelled shares by the company or any other person.
- (9) If under section 74A(1) duty is charged on the conveyance or transfer of any property to a shareholder of the company that is made on or pursuant to the capital reduction or the share

s. 112HA

cancellation, the dutiable value shall be reduced by the unencumbered value of the property conveyed or transferred.

[(10) repealed]

- (11) The company and its directors at the time of the company's resolution for the capital reduction or for the rights alteration (as the case requires) are jointly liable to pay the duty charged on the dutiable statement.

[Section 112HA inserted by No. 57 of 1996 s. 8; amended by No. 13 of 1997 s. 23 and 42; No. 26 of 1999 s. 103(2); No. 53 of 1999 s. 29; No. 10 of 2001 s. 184; No. 2 of 2003 s. 121.]

[112HB. Repealed by No. 10 of 2001 s. 185.]

[Part IVBA repealed by No. 39 of 1994 s. 11.]

Part IVB — Rental business

[Heading inserted by No. 113 of 1969 s. 10; amended by No. 61 of 1983 s. 5.]

112I. Interpretation in Part IVB

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

“customer” means a person to whom rights to use goods are granted, being rights the granting of which involves the carrying on of rental business;

“goods” includes —

- (a) all chattels personal;
- (b) a fixture which is severable from the realty; and
- (c) a fixture which is not severable from the realty, but which is treated by an arrangement between the owner of the realty and any other person, made in connection with a grant of the right to use the fixture, as if it were not a part of the realty,

but does not include money, livestock and things in action;

“registered person” means a person who is registered, or required to be 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 of the Commissioner, properly attributable to the cost of maintaining in a serviceable condition the goods which are the subject of the rental business.

s. 112J

- (1a) For the purposes of this Part, the total amount received in respect of rental business includes —
- (a) any amount received from a customer as or on account of duty; and
 - (b) any amount received from a customer that is for GST.
- (1b) In subsection (1a) —
- “**GST**” has the same meaning as it has in the Commonwealth *A New Tax System (Goods and Services Tax) Act 1999* except that it includes notional GST of the kind for which payments may be made under the *State Entities (Payments) Act 1999* by a person that is a State entity as defined in that Act.
- (2) This Part does not apply to any rental business in the course of which the right to use any goods is granted to a person who is engaged in the trade or business of selling goods, or of carrying on rental business in goods, of the same nature or description as those goods.

[Section 112I inserted 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; No. 47 of 1979 s. 4; No. 81 of 1981 s. 4; No. 10 of 1982 s. 28; No. 15 of 1982 s. 3; No. 93 of 1982 s. 7; No. 112 of 1982 s. 10; No. 61 of 1983 s. 6; No. 81 of 1984 s. 35; No. 100 of 1987 s. 7; No. 73 of 1990 s. 45; No. 6 of 1994 s. 13; No. 14 of 1995 s. 44; No. 20 of 1996 s. 41; No. 57 of 1997 s. 113(4); No. 53 of 1999 s. 34; No. 2 of 2003 s. 122.]

112J. Persons carrying on rental business required to be registered

- (1) Subject to subsection (5), a person who receives the total amount of \$2 000 or more during any month in respect of any rental business carried on by him in Western Australia is required to be registered under this Part within 15 days after the end of the month that he receives that amount, whether or not he carries on any other business and whether the head office or

principal place of business of that person is in Western Australia or elsewhere.

Penalty: \$20 000.

- (2) A person who in the course of any business undertakes negotiations in Western Australia with the object of transacting any rental business shall be deemed to carry on rental business in Western Australia, whether he has an established place of business in Western Australia or not.
- (3) Application for registration shall be made to the Commissioner in an approved form.
- (3a) On receiving an application made under subsection (3), the Commissioner shall —
 - (a) register the applicant; and
 - (b) issue to the applicant a certificate of registration in respect of each address in Western Australia at which the registered person wishes to carry on any rental business.
- (4) Where the Commissioner is satisfied that a person is not, and in the future is not likely to be, required to be registered under this Part he shall cancel the registration of that person and inform the person concerned of that cancellation and the date from which it takes effect.
- (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 rental business.

[Section 112J inserted by No. 113 of 1969 s. 11; amended by No. 37 of 1979 s. 88; No. 61 of 1983 s. 7; No. 100 of 1987 s. 8; No. 2 of 2003 s. 123.]

s. 112K

112K. Returns to be lodged with the Commissioner by registered persons

(1) A registered person —

(a) shall lodge with the Commissioner each month a return in an approved form within 15 days after the end of the month to which the return relates showing —

(i) the total amount received by him during the last preceding month in respect of his rental business other than rental business to which subparagraph (iii) applies; and

(ia) the prescribed amount; and

(ii) an amount equal to 1.8% of the amount arrived at by deducting service costs and the prescribed amount from the total amount referred to in subparagraph (i), as set out in the return; and

(iii) the total amount received by him or her during the last preceding month in respect of his or her rental business on which interstate duty has been paid if the rate of interstate duty is less than the rate specified in subparagraph (ii); and

(iv) an amount determined by deducting the amount of the interstate duty from the sum equal to 1.8% of the sum arrived at by deducting service costs from the total amount referred to in subparagraph (iii) as set out in the return;

and

(b) at the time of lodging the return referred to in paragraph (a) with the Commissioner, shall pay to the Commissioner as duty the amounts referred to in subparagraphs (ii) and (iv) of paragraph (a) as set out in the return.

Penalty: \$5 000.

- (1a) Notwithstanding anything in subsection (1), when a person who is registered under this Part has not during the relevant month carried on any rental business, he shall lodge with the Commissioner a nil return.

Penalty: \$5 000.

[(1b) repealed]

- (1c) In subsection (1) “**prescribed amount**” means 1.769% of the amount arrived at by deducting service costs from the total amount referred to in subsection (1)(a)(i), as set out in the return lodged under that subsection.

- (2) Where the total amount received by a registered person during the last preceding 12 months in respect of his rental business did not exceed \$50 000 after deduction of service costs, that person may instead of complying with subsection (1), elect —

- (a) to lodge with the Commissioner not later than 31 August in each year an annual return showing the amounts referred to in subsection (1)(a) but instead of being in relation to the total amount received by him during the last preceding month in respect of his rental business, the amounts shall be in relation to the total amount received by him during the last financial year in respect of his rental business (not including any amount previously included in a monthly return lodged with the Commissioner pursuant to that subsection); and
- (b) to pay to the Commissioner as duty the amount of duty that would be payable on that return if it were lodged by him with the Commissioner under subsection (1)(b).

Penalty: \$5 000.

- (2a) A notice of election under subsection (2) shall be in an approved form.
- (3) Subject to section 112KA, a registered person who has given to the Commissioner a notice of election under subsection (2), is liable to pay and shall pay to the Commissioner at the time the

s. 112KA

return is lodged with the Commissioner, the amount of duty on the return in accordance with the notice of election.

Penalty: \$20 000.

- (4) An election made by a registered person pursuant to subsection (2) may be cancelled, with effect from and in relation to the financial year next following, by notice under the hand of the registered person given to the Commissioner or by notice 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 \$60 000 after deduction of service costs, in any period of 12 months.

[Section 112K inserted by No. 113 of 1969 s. 12; amended by No. 102 of 1970 s. 13; No. 37 of 1979 s. 89; No. 81 of 1981 s. 5; No. 61 of 1983 s. 8; No. 109 of 1984 s. 9; No. 98 of 1986 s. 18; No. 100 of 1987 s. 9; No. 41 of 1989 s. 26; No. 53 of 1999 s. 35; No. 2 of 2003 s. 124.]

112KA. Exemption from duty

A registered person is exempt from duty under this Part in respect of a financial year if —

- (a) he was a registered person for the whole of the financial year and the total amount received by him during the financial year in respect of his rental business does not exceed \$25 000, after deducting service costs; or
- (b) he was a registered person for only a part of the financial year and the proportion that the total amount received by him in respect of his rental business during that part of the financial year, after deducting service costs, bears to the amount referred to in paragraph (a) does not exceed the proportion that the part of the financial year bears to a whole financial year.

[Section 112KA inserted by No. 100 of 1987 s. 10; amended by No. 2 of 2003 s. 125.]

112L. Amounts to be included in return

In calculating any total amount received for the purposes of sections 112J, 112K and 112KA, the total amount shall include, in relation to —

[(a)-(c) deleted]

- (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 Western Australia; 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 Western Australia; or
 - (iii) the goods were delivered in Western Australia to the person to whom the right to use the goods was granted.

[Section 112L inserted by No. 113 of 1969 s. 13; amended by No. 61 of 1983 s. 9; No. 100 of 1987 s. 11; No. 2 of 2003 s. 126.]

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

112N. Matters not required to be included in return

- (1) In calculating any total amount received for the purposes of sections 112J, 112K and 112KA, no amount shall be included in respect of —

[(a)-(e) deleted]

- (f) rental business in respect of which interstate duty has been paid at a rate that is not less than the rate specified in section 112K(1)(a)(ii);
- (fa) any rental business transacted with —
- (i) the Crown; or

s. 112O

- (ii) any Crown instrumentality, agent of the Crown or Government authority designated by the Minister as an exempt instrumentality for the purposes of this subsection pursuant to subsection (1a),
or any person acting on behalf of or for the benefit of the Crown or any body so designated;
- (g) any business transacted by him outside Western Australia where —
 - (i) none of the negotiations leading to the transaction of the business took place in Western Australia; and
 - (ii) the goods obtained by the other party to the transaction were obtained for the purpose of being wholly used outside Western Australia.
- (1a) The Minister may by order published in the *Government Gazette* designate any Crown instrumentality, agent of the Crown or Government authority as an exempt instrumentality for the purposes of subsection (1)(fa)(ii).
- (1b) An order under subsection (1a) may be varied or revoked by the Minister by a further order published in the *Government Gazette*.

[(2) *repealed*]

[Section 112N inserted by No. 113 of 1969 s. 15; amended by No. 37 of 1979 s. 91; No. 1 of 1982 s. 2; No. 99 of 1982 s. 4; No. 61 of 1983 s. 10; No. 109 of 1984 s. 3 and 10; No. 100 of 1987 s. 12; No. 2 of 2003 s. 127.]

112O. Registered persons to keep records

- (1) A registered person shall make, or cause to be made, and retain in Western Australia sufficient books and records to enable all amounts required to be set out in a return to be lodged by him with the Commissioner under section 112K to be accurately calculated.

- (2) A registered person shall make available for inspection the books and records referred to in subsection (1).
- (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 return of a registered person required to be lodged under section 112K, the Commissioner may agree to accept from the registered person returns 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 returns to be lodged by the registered person in each month, he may agree to accept returns at such times and relating to such periods as the Commissioner thinks fit.
- (4) Where, pursuant to subsection (3), the Commissioner agrees to accept from a registered person a return —
- (a) in which an amount is calculated in a manner or on a basis different from that required under section 112K; 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 return with the Commissioner, pay to him the amount of duty that would be payable if the return were lodged by him with the Commissioner in accordance with that section.

- (5) The Commissioner may, by notice served on a registered person, cancel any agreement made pursuant to subsection (3), 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.

[Section 112O inserted by No. 113 of 1969 s. 16; amended by No. 37 of 1979 s. 92; No. 2 of 2003 s. 128.]

s. 112P

112P. Preparation of dutiable statement for transactions with unregistered persons

- (1) Where any person domiciled or resident in Western Australia transacts or offers to transact any business with a person who is not registered under this Part and who —
- (a) is required to be so registered; or
 - (b) is carrying on any rental business outside Western Australia,

the person is to prepare a dutiable statement in relation to the transaction or offer.

Penalty: \$20 000.

- (2) A dutiable statement must be in an approved form.
- (3) A dutiable statement prepared under subsection (1) is taken to be an instrument evidencing the transaction or offer and is chargeable with duty —
- (a) at the rate of 1.8% of the amount that is or will be payable for the use of the goods; or
 - (b) where that amount is not capable of being determined, of an amount of —
 - (i) \$20; and
 - (ii) on 31 August in each year further duty of an amount equal to 1.8% of the amount paid in respect of the use of the goods during the year ending on the preceding 30 June.

[(4), (5) repealed]

- (6) Notwithstanding anything contained in this section, a person domiciled or resident in Western Australia is not required to prepare a dutiable statement of any business transacted or offered to be transacted —

[(a), (b) deleted]

- (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 \$100 or the grant of the right to the use of the goods is for a period of 14 days or less;
- (d) with a person carrying on business outside Western Australia if —
 - (i) none of the negotiations leading to the transaction of or to the offer to transact the business were carried out in Western Australia; and
 - (ii) the goods obtained by him were obtained for the purpose of being wholly used outside Western Australia;
- (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 the grant of the right to use goods.

[Section 112P inserted by No. 113 of 1969 s. 17; amended by No. 3 of 1971 s. 4; No. 37 of 1979 s. 93; No. 81 of 1981 s. 6; No. 14 of 1983 s. 5; No. 61 of 1983 s. 11; No. 100 of 1987 s. 13; No. 20 of 1996 s. 42; No. 46 of 2002 s. 9; No. 2 of 2003 s. 129.]

Part IVC — Exemptions in relation to aged or disabled persons

[Heading inserted by No. 13 of 1997 s. 41(1)]

112Q. Certain residential agreements with charitable bodies exempt

- (1) Notwithstanding anything in a stamp Act, duty shall not be charged on an agreement between —
 - (a) a charitable body or a body established for similar public purposes; and
 - (b) a qualified person,

and for the purpose of granting the qualified person the right to occupy residential accommodation that is not available to a non-qualified person.

- (2) In subsection (1) —

“**qualified person**” means a person —

- (a) with a disability within the meaning of section 3 of the *Disability Services Act 1993*; or
- (b) who is 55 or over, or who is or was the spouse of such a person, or who is a de facto partner of 2 years, or a former de facto partner of 2 years, or is a surviving de facto partner of 2 years, of the person.

[Section 112Q inserted by No. 13 of 1997 s. 41(1); amended by No. 2 of 2003 s. 130; No. 28 of 2003 s. 193.]

112R. Certain aged care agreements exempt

- (1) Notwithstanding anything in a stamp Act, duty shall not be charged on an agreement under the *Aged Care Act 1997* of the Commonwealth between an approved provider and a person relating to aged care services for the person.

(2) In subsection (1) —

“aged care service” has the same meaning as in the *Aged Care Act 1997* of the Commonwealth;

“approved provider” has the same meaning as in the *Aged Care Act 1997* of the Commonwealth.

[Section 112R inserted by No. 22 of 1998 s. 27; amended by No. 2 of 2003 s. 131.]

112S. Instruments not required to be lodged

An agreement referred to in section 112Q or 112R does not have to be lodged with the Commissioner for assessment.

[Section 112S inserted by No. 13 of 1997 s. 41(1).]

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

[112U. Repealed by No. 61 of 1983 s. 12.]

Part IVD — Maintenance agreements and orders

[Heading inserted by No. 45 of 1982 s. 3.]

112UA. Interpretation in Part IVD

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

“**de facto relationship**” means a de facto relationship which the Commissioner is satisfied comes within section 205Z(1)(a), (b) or (c) of the *Family Court Act 1997*;

“**Family Court Act**” means the *Family Court Act 1997* of Western Australia;

“**Family Law Act**” means the *Family Law Act 1975* of the Commonwealth and any Act of the Commonwealth amending or in substitution for that Act;

“**maintenance agreement**” means an agreement in writing with respect to any one or more of the following, namely —

- (a) the maintenance of one of the parties to the agreement;
- (b) the conveyance or transfer of property (whether real or personal) of the parties to the agreement or either of them to one of the parties or to a dependent child of the parties or of either of them or to both a dependent child of one of the parties and one of them;
- (c) the maintenance of a dependent child of the parties or either of them;

“**order**” means a sealed copy of an order made by a court exercising federal or non-federal jurisdiction in any proceeding under the *Family Court Act* or the *Family Law Act* with respect to one or both of the following, namely —

- (a) the conveyance or transfer of real or personal property;
- (b) the vesting of property;

“**property**” includes an interest in property.

- (2) A reference in this Part to persons who are married to each other or have been married to each other includes persons who are married to each other or who have been married to each other by a marriage that is void under the Family Law Act.

[Section 112UA inserted by No. 45 of 1982 s. 3; amended by No. 41 of 1997 s. 37; No. 25 of 2002 s. 52; No. 2 of 2003 s. 132.]

112UB. Application of Part IVD

- (1) Sections 112UC and 112UD do not apply to or in relation to —
- (a) an order; or
 - (b) a maintenance agreement between parties who are married to each other or have been married to each other,

or in relation to an instrument of conveyance or transfer of property pursuant to such an order or agreement unless the parties referred to in the order or the agreement are separated or divorced from each other.

- (1a) Sections 112UC and 112UD do not apply to or in relation to —
- (a) an order under Part 5A of the *Family Court Act 1997*; or
 - (b) a maintenance agreement between de facto partners,
- or in relation to an instrument of conveyance or transfer of property pursuant to such an order or agreement unless the de facto relationship between the de facto partners that are referred to in the order or agreement has ended.

- (2) Where —
- (a) one of the parties referred to in a maintenance agreement, an order, or an instrument of conveyance or transfer effected pursuant to a maintenance agreement or order is a person who is not entitled to or liable to provide maintenance under the Family Court Act or the Family Law Act; and
 - (b) the maintenance agreement, order, or instrument of conveyance or transfer in addition to being a

s. 112UC

maintenance agreement, order, or instrument of conveyance or transfer for the purposes of the Family Court Act or the Family Law Act relates to one or more distinct matters between any party or parties other than a person who is entitled to or liable to provide maintenance under the Family Court Act or the Family Law Act which would, but for this Part, be chargeable with duty,

the maintenance agreement, order, or instrument of conveyance or transfer is chargeable with duty in respect of those other matters in accordance with this Act other than this Part.

- (3) A statement in a maintenance agreement to the effect that —
- (a) the parties to a marriage are separated or divorced from each other; or
 - (b) the de facto relationship between de facto partners has ended,

is conclusive evidence of the fact stated, in the absence of evidence to the contrary.

[Section 112UB inserted by No. 45 of 1982 s. 3; amended by No. 25 of 2002 s. 52; No. 2 of 2003 s. 133.]

112UC. Duty on maintenance agreements and orders

Notwithstanding anything in a stamp Act but subject to section 112UB —

- (a) a maintenance agreement that is entered into for the purposes of the Family Court Act or the Family Law Act; or
- (b) an order,

except a sale, shall be charged with duty in accordance with item 8 of the Second Schedule.

[Section 112UC inserted by No. 45 of 1982 s. 3; amended by No. 2 of 2003 s. 134.]

112UD. Duty on conveyance or transfer under maintenance agreement or order

Notwithstanding anything in a stamp Act but subject to section 112UB an instrument of conveyance or transfer that is effected pursuant to a maintenance agreement or an order that has been stamped is not to be charged with any duty higher than the duty set out in item 6 of the Second Schedule.

[Section 112UD inserted by No. 45 of 1982 s. 3; amended by No. 2 of 2003 s. 135.]

Part IVE — Managed investment schemes

[Heading inserted by No. 24 of 1999 s. 6.]

112UE. Duty on certain instruments for the purpose of managed investment schemes

(1) In this section —

“old public unit trust” means an undertaking, together with the prescribed interests to which it relates and the trustee or representative and the management company in relation to those interests, to which Division 11 (sections 1451 to 1465) of Part 11.2 of the Corporations Law applied by reason of section 1452 of that Law.

(2) Upon application the Commissioner may authorise duty at the rate specified in item 6 of the Second Schedule to be charged on —

- (a) a conveyance or transfer;
- (b) a deed of settlement or deed of gift; or
- (c) the transfer of a licence for a vehicle,

in respect of which *ad valorem* duty would otherwise be payable if the Commissioner is satisfied that it is one to which subsection (4) applies.

(3) Upon application the Commissioner may authorise duty at the rate specified in item 6 of the Second Schedule to be charged on an instrument in respect of which *ad valorem* duty would otherwise be payable, other than one referred to in subsection (2), if the Commissioner is satisfied that —

- (a) the instrument is one to which subsection (4) applies;
- (b) the instrument replaces another instrument; and
- (c) the terms and conditions of the instrument are the same as the instrument it replaces.

- (4) This subsection applies to an instrument described in subsection (2) or (3) —
- (a) if the instrument is entered into on or after 6 April 1999 for the purpose of, or as a consequence of, an old public unit trust becoming, in accordance with Division 11 (sections 1451 to 1465) of Part 11.2 of the Corporations Law, a managed investment scheme that is registered under section 601EB of that Law; and
 - (b) if, after the instrument is executed, the members of the managed investment scheme have the same beneficial interests in the scheme's property as they had in the old public unit trust's property before the instrument was executed.
- (5) An application is to be made to the Commissioner in an approved form.

[Section 112UE inserted by No. 24 of 1999 s. 6; amended by No. 10 of 2001 s. 186; No. 2 of 2003 s. 136.]

Part V — Miscellaneous

[112V. Repealed by No. 2 of 2003 s. 137.]

[112W. Repealed by No. 37 of 1979 s. 99.]

113. Commissioner may impound unstamped documents

If it appears to the Commissioner that an instrument in the Commissioner's possession or control (regardless of how it came to be in the Commissioner's possession or control) is chargeable with duty but has not been stamped, the Commissioner may impound the instrument until the duty and any penalty tax payable in respect of the instrument have been paid.

[Section 113 inserted by No. 2 of 2003 s. 137.]

114. Commissioner may destroy instruments

- (1) The Commissioner may destroy any instrument in the Commissioner's possession or control if —
 - (a) 6 years have elapsed since the original assessment of the amount of duty payable in respect of the instrument was made; and
 - (b) any amount that remains unpaid under a stamp Act in respect of the instrument has been written off under the *Taxation Administration Act 2003*.
- (2) Neither the Commissioner, nor any person acting under the Commissioner's authority, is liable in tort for any act done under subsection (1).

[Section 114 inserted by No. 2 of 2003 s. 137.]

[115-118. Repealed by No. 2 of 2003 s. 137.]

119. Certain exemptions where the State of Western Australia etc. is a party

(1) In this section —

“**exempt body**” means —

- (a) the State of Western Australia or the Crown in right of Western Australia;
 - (b) an agent or instrumentality of the Crown, or a government authority, declared to be an exempt body by the Minister by notice published in the *Gazette*; or
 - (c) a local government, except when it acts in its capacity as the trustee of a superannuation fund.
- (2) If an exempt body is the only party that would be liable to pay the duty that would, but for this subsection, be chargeable on an instrument, the instrument is exempt from duty.
- (3) If an exempt body is not the only party liable to pay the duty on an instrument the Commissioner shall apportion the duty chargeable on the instrument between those parties in accordance with subsection (4) or (5) (as the case requires).
- (4) If the instrument is chargeable with duty under item 4 or 4A of the Second Schedule, the portion of the duty payable by a party shall bear the same proportion to the whole of the duty chargeable as the interest in the property acquired by the party bears to the whole of the interest acquired by the parties liable to pay the duty on the instrument.
- (5) If the instrument is chargeable with duty under an item of the Second Schedule other than item 4 or 4A, the portion of the duty payable by a party shall be as determined by the Commissioner.
- (6) An instrument referred to in subsection (3) is exempt from that portion of the duty chargeable on it that would, but for this subsection, be payable by an exempt body.

[(7) *repealed*]

s. 120

- (8) An exempt body is not liable to pay the duty charged on an instrument referred to in subsection (3).
- (9) This section does not apply to an instrument to which section 83(2) applies if an exempt body is a mortgagee or obligee of the instrument.

[Section 119 inserted by No. 20 of 1996 s. 43; amended by No. 57 of 1997 s. 113(5); No. 2 of 2003 s. 138.]

120. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by a stamp Act to be prescribed or are necessary or convenient to be prescribed to give effect to a stamp Act.
- (2) Regulations may be made in relation to any or all of the following matters —
 - (a) the fees payable under a stamp Act;
 - (b) the records required to be kept for the purposes of a stamp Act.
- (3) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding \$5 000.

[Section 120 inserted by No. 2 of 2003 s. 139.]

121. Application of section 1070A of the Corporations Act limited

The following matter is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to section 1070A(1)(a) of that Act — interests in registered schemes within the meaning of that Act.

[Section 121 inserted by No. 21 of 2003 s. 32.]

[First Schedule repealed by No. 2 of 2003 s. 140.]

Duties payable on instruments

Second Schedule

Second Schedule

[Section 16(1)]

Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
[1, 1A.	<i>deleted</i>		
2.	BILL OF EXCHANGE OR PROMISSORY NOTE		
	(1) Bill of exchange (excluding cheque within the meaning of the <i>Cheques Act 1986</i> (Cwlth)) or promissory note payable on demand, at sight or on presentation	0.10	The drawer or maker. (See section 50)
	(2) Cheque within the meaning of the <i>Cheques Act 1986</i> (Cwlth) drawn against an account maintained in Western Australia	0.10	The drawer. (See section 50)
3.	CATTLE SALES STATEMENT		The vendor
	(1) Any statement written out or caused to be written out by the owner or his agent, pursuant to the <i>Cattle Industry Compensation Act 1965</i> in respect of the sale of any cattle or carcasses of cattle, whether payment of the purchase money therefor is or is not made in full at the time of the sale or is to be made by instalments or is otherwise deferred — for every \$1 and also for any fractional part of \$1 — (a) of the amount of the purchase money in respect of one animal or one carcass sold singly	5/12 cent	
	or (b) of the total amount of the purchase money in respect of any number of cattle or carcasses, as the case may be, sold in one lot	5/12 cent	
	or such amount, not being more than 5/12 of a cent, as the Governor may, from time to time, by proclamation declare.		

Second Schedule Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(2)	Notwithstanding the provisions of subitem (1), the duty in respect of the amount of the purchase money of any one animal, or any one carcass, whether sold singly or as part of a lot, shall not exceed the sum of 50 cents or such lesser sum as the Governor may, from time to time, by proclamation declare.		
4.	CONVEYANCE OR TRANSFER ON SALE OF PROPERTY		
(1)	Transfer of land under the <i>Transfer of Land Act 1893</i> on a sale thereof or conveyance or transfer of any other property (except any marketable security or right in respect of shares) — Where the amount or value of the consideration —		The purchaser
(a)	does not exceed \$80 000	\$2.30 for every \$100 of the amount or value of the consideration and every fractional part of \$100	
(b)	exceeds \$80 000 but does not exceed \$100 000	\$1 840 and \$3.45 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$80 000	

Duties payable on instruments Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(c)	exceeds \$100 000 but does not exceed \$250 000	\$2 530 and \$4.75 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$100 000	
(d)	exceeds \$250 000 but does not exceed \$500 000	\$9 655 and \$5.90 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$250 000	
(e)	exceeds \$500 000	\$24 405 and \$6.30 for every \$100 of the amount or value of the consideration and every fractional part of \$100 by which the consideration exceeds \$500 000	
<i>[(2)-(4) and (4a) deleted]</i>			
(5)	Transfer of land under the <i>Transfer of Land Act 1893</i> on a sale thereof or conveyance or transfer of any other property where the conveyance or transfer is chargeable under section 75AE with duty under this subitem —		The purchaser
(a)	where the amount or value of the consideration does not exceed \$100 000.....	\$1.50 for every \$100 of the amount or value of the consideration and every fractional part of \$100	

Second Schedule Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
	(b) where the amount or value of the consideration exceeds \$100 000	\$1 500 and \$5.50 for every \$100 and every fractional part of \$100 by which the amount or value of the consideration exceeds \$100 000	
4A.	CONVEYANCE OR TRANSFER OF UNLISTED WA SECURITY Conveyance or transfer of an unlisted WA security	0.60 for every \$100 and every fractional part of \$100 of the amount or value of the consideration	The transferee, or in the case of an overseas transfer, the issuer (s. 104)
5.	CONVEYANCE OR TRANSFER (1) Conveyance or transfer of a lot by the responsible authority for a town planning scheme, including the Metropolitan Region Scheme, to a person who on the date of the coming into operation of the scheme was the owner of — (a) the land comprised in the lot; or (b) land comprised in the scheme and to whom the lot is conveyed or transferred in substitution or exchange for that land or part thereof, where the lot is comprised in the scheme and the conveyance or transfer is made in order to carry out or facilitate the carrying out of the scheme	20.00	The transferee
	(2) Expressions used in this item have the same meaning as they respectively have in the <i>Town Planning and Development Act 1928</i> , or the <i>Metropolitan Region Town Planning Scheme Act 1959</i> , as the case requires.		

Duties payable on instruments Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
6.	CONVEYANCE OR TRANSFER Conveyance or transfer of any kind not described elsewhere in this Schedule and not being — (a) a settlement; (b) a deed of gift; (c) an exchange; or (d) a conveyance or transfer of a marketable security, or right in respect of shares, that is quoted on a recognised financial market	The lesser of — (a) \$20; and (b) the duty that would be payable under item 4 or 4A (as the case may be) if the conveyance or transfer was chargeable with duty under that item	The transferee
[7.	<i>deleted</i>		
8.	DEED OR DECLARATION (1) Deed of any kind not otherwise chargeable with duty (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	20.00 20.00	The parties thereto The person making the declaration
9.	DUPLICATE OR COUNTERPART Duplicate or counterpart of a stamped instrument	\$5.00 or the same duty as the original if less than \$5.00	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.	<i>deleted</i>		

Second Schedule Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
12.	LEASE OR AGREEMENT FOR LEASE		
(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)	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 —		The lessee
(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	0.35	
(b)	for a period exceeding one year, for every \$100 of the total rent payable and also for every fractional part of \$100 thereof	0.35	
(c)	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	0.70	
(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 and the duty payable on a lease or agreement for a lease for the rent under subitem (2)	The lessee
(4)	A lease of any lands or tenements of any other kind whatsoever not herein before described, or an agreement for such a lease	20.00	The lessee
(5)	Re-appraisalment of rent (s. 80)	5.00	The lessee

Duties payable on instruments Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
13.	MORTGAGE (LEGAL OR EQUITABLE), BOND, DEBENTURE, COVENANT, BILL OF SALE, GUARANTEE, LIEN OR INSTRUMENT OF SECURITY OF ANY OTHER KIND WHATSOEVER		
	(1) An instrument referred to in the heading to this item for the payment or repayment of any sum or sums of money at stated periods, being neither interest for any principal sum secured by a stamped instrument nor wages or salary —		
	(a) for a definite and certain period so that the total amount ultimately payable can be ascertained — Where the total amount —		Mortgagor or obligor
	(i) does not exceed \$35 000	0.25 for every \$100 and also for every fractional part of \$100	
	(ii) exceeds \$35 000	\$87.50 and 0.40 for every \$100, and also for every fractional part of \$100, by which the amount exceeds \$35 000;	
	(b) for a term of life or any other indefinite period — for every \$100, and also for every fractional part of \$100, of the amount payable annually	4.25	
	(1a) An instrument referred to in the heading to this item to which section 83(1a) or (1b) applies — for every \$100, and also for every fractional part of \$100, of the amount payable	0.25	Mortgagor or obligor

Second Schedule Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(2)	An instrument referred to in the heading to this item for the payment or repayment of money — Where the total amount —		Mortgagor or obligor; and see sections 82(3) and 83(4)
	(a) does not exceed \$35 000	0.25 for every \$100, and also for every fractional part of \$100, of the amount payable	
	(b) exceeds \$35 000	(i) \$87.50; and (ii) 0.40 for every \$100, and also for every fractional part of \$100, by which the amount payable exceeds \$35 000	
(3)	An instrument setting out the transfer or assignment of any mortgage —		
	(a) by way of sale for a consideration in money or money's worth for not less than market value.....	20.00	Transferee
	(aa) by way of sale, other than a sale to which paragraph (a) of this subitem applies.....	See item 4	Transferee
	(b) by way of gift.....	See item 19	Donor
	(c) by way of security.....	See subitem (1) or (2)	Transferor
	(d) of any other kind.....	20.00	Transferee
14.	VEHICLE LICENCES, GRANT OR TRANSFER		
	(1) On the grant or transfer of a licence for a vehicle that is not a heavy vehicle —		The person in whose name the licence is granted or the transferee; and see section 76H(2)
	(a) where the market value of the vehicle does not exceed \$15 000	2.75% of the market value	

Duties payable on instruments Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
	(b) where the market value of the vehicle exceeds \$15 000 but does not exceed \$40 000	$\left[2.75 + \left(\frac{MV - 15\ 000}{6\ 666.66} \right) \right] \%$ (rounded to 2 decimal places) of the market value (MV)	
	(c) where the market value of the vehicle exceeds \$40 000	6.5% of the market value	
(2)	On the grant of a licence for a heavy vehicle that has not previously been used nor registered under the <i>Road Traffic Act 1974</i> or a corresponding State law	The lesser of — (a) 3% of the market value; and (b) \$12 000	
(3)	On the grant or transfer of a licence for any other heavy vehicle —		
	(a) where the market value of the vehicle does not exceed \$15 000	2.5% of the market value	
	(b) where the market value of the vehicle exceeds \$15 000 but does not exceed \$40 000	$\left[2.5 + \left(\frac{MV - 15\ 000}{10\ 000} \right) \right] \%$ (rounded to 2 decimal places) of the market value (MV)	
	(c) where the market value of the vehicle exceeds \$40 000	The lesser of — (a) 5% of the market value; and (b) \$20 000	
			The duty payable under item 14 is to be rounded down to the nearest 5 cents

Second Schedule Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
14A.	ORDER TO WHICH SECTION 112UB(2) APPLIES	See item 4 or 4A, as the case requires. Property transferred or vested under an order. On the value of the property referred to the same duty as that set out in item 4 or 4A, as the case requires, references to consideration in that item being construed as references to the amount or value of the property concerned	Transferee or the person in whom the property is ordered to be vested
15.	PARTITION		
	(1) Any instrument effecting a partition of any property	20.00	The parties thereto
	(2) Any instrument setting out any amount required to achieve equality	See section 75AD	
16.	POLICY OF INSURANCE		
	(1) Any instrument evidencing a policy of insurance, other than life insurance —		The person issuing the policy and see sections 92A(4)(a) and 94
	(a) against an employer’s liability to pay compensation under the <i>Workers’ Compensation and Rehabilitation Act 1981</i> —		
	(i) if, in the 12 months immediately preceding the cover period of the policy the employer —		
	(A) was liable to pay pay-roll tax under the <i>Pay-roll Tax Assessment Act 2002</i> ; or		

Duties payable on instruments Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
	(B) paid wages that under section 39 or 40 of that Act were not liable to pay-roll tax and employed an average of 15 (or such other number as is prescribed) full time equivalent employees or more —	5% of the amount calculated under section 96(2)	
	(ii) in any other case —	3% of the amount calculated under section 96(2)	
	(b) issued under the <i>Motor Vehicle (Third Party Insurance) Act 1943</i>	10% of the amount calculated under section 96(2)	
	(c) in any other case	10% of the amount calculated under section 96(2)	
(1a)	The average referred to in subitem (1)(a)(i)(B) is to be calculated on the basis of the number of full time and part time employees as at the last day of each calendar month with part time employees being taken into account as an appropriate fraction of full time employees		
(2)	On a policy of insurance, other than life insurance (undisclosed premium) — for every \$100, and also for every fractional part of \$100, of the sum insured	0.10	Insured

Second Schedule Duties payable on instruments

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
(3)	On a policy of life insurance —		The person issuing the policy and see sections 92A(4)(a) and 94
	(a) in the case of temporary or term assurance	5% of the amount calculated under section 96(2) or 5% of the amount so calculated in respect of the first year if the assurance continues for more than one year	
	(b) in a case other than of temporary or term assurance —		
	(i) where the sum insured does not exceed \$2 000 — for every \$100, and every fractional part of \$100, of the sum insured	0.05	
	(ii) where the sum insured exceeds \$2 000	\$1.00 and \$0.10 for every \$100, and every fractional part of \$100 of the part of the sum insured in excess of \$2 000	
17.	RELEASE OR RENUNCIATION OF ANY PROPERTY OR OF ANY RIGHT OR INTEREST IN ANY PROPERTY An instrument of release or renunciation referred to in the heading to this item —		
	(a) by way of sale	See item 4 or 4A(1), as the case requires	Purchaser
	(b) by way of gift	See item 19	Donor
18.	RENTAL BUSINESS	See section 112K	Payable by registered person

Duties payable on instruments Second Schedule

Item	Nature of instrument	Duty payable \$	Person liable to pay duty
19.	SETTLEMENT, DEED OF, OR DEED OF GIFT	See item 4 or 4A(1), as the case requires	The settlor or donor
	(1) Any instrument, whether voluntary or upon any good or valuable consideration other than a <i>bona fide</i> pecuniary consideration whereby any property is settled or agreed to be settled in any manner whatsoever, or is given or agreed to be given in any manner whatsoever.	References to consideration in items 4 and 4A(1) being construed as references to the amount or value of the property concerned	
	(2) Any instrument declaring that the property vested in the person executing the same shall be held in trust for the person or persons mentioned therein.		

[Second Schedule inserted by No. 37 of 1979 s. 108; amended by No. 81 of 1981 s. 8 and 9; No. 45 of 1982 s. 4; No. 93 of 1982 s. 8; No. 99 of 1982 s. 5; No. 14 of 1983 s. 6; No. 61 of 1983 s. 13; No. 81 of 1984 s. 37; No. 19 of 1985 s. 22; No. 85 of 1985 s. 3; No. 98 of 1986 s. 20; No. 16 of 1989 s. 4; No. 58 of 1990 s. 6; No. 42 of 1993 s. 5; No. 39 of 1994 s. 12 and 14; No. 22 of 1995 s. 4; No. 20 of 1996 s. 44; No. 48 of 1996 s. 37; No. 13 of 1997 s. 23 and 28; No. 57 of 1997 s. 113(6); No. 18 of 1998 s. 12; No. 22 of 1998 s. 53; No. 25 of 1999 s. 7(1); No. 53 of 1999 s. 30; No. 6 of 2000 s. 7; No. 4 of 2001 s. 8; No. 11 of 2002 s. 4, 7 and 11; No. 46 of 2002 s. 10; No. 2 of 2003 s. 141; No. 21 of 2003 s. 33; 44 of 2003 s. 4(2)-(6) and 5.]

Third Schedule

[Section 16(2)]

Exemptions from duty

- | Item | Nature of instrument |
|-------------|--|
| 1. | BILL OF EXCHANGE OR PROMISSORY NOTE <ol style="list-style-type: none">(1) Draft or order drawn by any financial institution in Western Australia on any other financial institution in Western Australia not payable to bearer or order, and used solely for the purpose of settling or clearing any account between those financial institutions.(2) Letter written by a financial institution in Western Australia to any other financial institution in Western Australia directing the payment of any sum of money, the same not being payable to bearer or to order, and that letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf.(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 financial institution, drawn or issued by —<ol style="list-style-type: none">(a) a corporation that is a friendly society within the meaning of section 16C of the <i>Life Insurance Act 1995</i> of the Commonwealth;[(b) <i>deleted</i>](c) the United Kingdom Government for the purpose of paying any person pensions, superannuation, retiring allowances or gratuities; or(d) any body in respect of which the Commissioner has granted a certificate referred to in section 49A. |
| 2. | CONVEYANCE OR TRANSFER ON SALE OF PROPERTY: <ol style="list-style-type: none">(1) A transfer of any marketable securities of —<ol style="list-style-type: none">(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 Minister by notice published in the <i>Government Gazette</i> (any such notice being subject to amendment, substitution or revocation in like manner by the Minister). <p>[(2)-(4) <i>repealed</i>]</p> |

Item	Nature of instrument
(5)	Conveyance, transfer or surrender of the fee simple or other less estate in land to the Crown.
(6)	A conveyance or transfer of the fee simple in — <ul style="list-style-type: none"> <li data-bbox="512 472 1171 528">(a) Crown land by way of exchange where the decision to exchange the land is given effect under clause 4; <li data-bbox="512 544 1230 571">(b) Crown land the subject of a licence referred to in clause 21; <li data-bbox="512 586 1206 613">(c) Crown land the subject of a lease referred to in clause 22; <li data-bbox="512 629 1272 685">(d) Crown land the subject of a conditional purchase lease referred to in clause 26; <li data-bbox="512 701 1272 757">(e) Crown land the subject of a conditional purchase lease referred to in clause 27; <li data-bbox="512 772 1054 799">(f) war service land referred to in clause 30; or <li data-bbox="512 815 1066 862">(g) Crown land referred to in clause 32, of Schedule 2 to the <i>Land Administration Act 1997</i>.
(6a)	A transfer of the fee simple in Crown land — <ul style="list-style-type: none"> <li data-bbox="512 913 1051 940">(a) pursuant to a request under section 45A; or <li data-bbox="512 956 1217 1079">(b) granted under section 80, of the <i>Public Works Act 1902</i>⁴ as in force immediately before the commencement of the <i>Acts Amendment (Land Administration) Act 1997</i>⁵.
(6b)	A grant of a mining tenement under the <i>Mining Act 1978</i> .
(6c)	A conveyance of the fee simple in Crown land under section 87 of the <i>Land Administration Act 1997</i> to complete a land exchange under section 11(1)(b) of that Act.
(6d)	A conveyance, grant or transfer of the fee simple or other less estate in Crown land pursuant to — <ul style="list-style-type: none"> <li data-bbox="512 1294 890 1321">(a) a request under section 212; <li data-bbox="512 1337 938 1364">(b) an agreement under section 255; <li data-bbox="512 1379 922 1406">(c) an award under section 256; or <li data-bbox="512 1422 914 1489">(d) section 257, of the <i>Land Administration Act 1997</i>.
(7)	A conveyance or transfer of any estate or interest in any real or personal property locally situated out of Western Australia.
(7a)	A conveyance or transfer of any estate or interest in goods, wares or merchandise that are — <ul style="list-style-type: none"> <li data-bbox="512 1641 1206 1664">(a) stock-in-trade held or used in connection with a business;

Third Schedule Exemptions from duty

Item Nature of instrument

- (b) held for use in, or are under, manufacture; or
- (c) prescribed to be exempt.
- (7b) A conveyance or transfer of any estate or interest in any ship or vessel, or part interest or share or property of or in any ship or vessel.
- (7c) The conveyance or transfer of any estate or interest in goods, wares or merchandise not referred to in subitems (7a) and (7b), except as provided in sections 70(2) and (3) and 31B(1)(ca) and (cb).
- (8) An agreement under which an option is given or taken for consideration to purchase or sell any marketable security at a future time at a certain price.
- (9) A transfer of the whole or any part of, or any interest in, a corporate debt security that is a marketable security.
- [(10) *repealed*]
- (11) A transfer to a person of the whole or any part of, or an interest in —
 - (a) a trade debt;
 - (b) cash or money in an account at call;
 - (c) money on deposit with any person;
 - (d) a negotiable instrument;
 - (e) choses in action with respect to work in progress; or
 - (f) goodwill to which section 31B(1)(d) applies, except to the extent that actual consideration is given therefor.
- [(12)-(14) *repealed*]
- (15) A conveyance or transfer of property to the representative in Australia of the Government of another country, a foreign consul, or a trade commissioner of another country, if that property is intended for official use.
- [(16), (17) *repealed*]
- (18) Any of the following matters under the *Strata Titles Act 1985* —
 - (a) the passing of any property that occurs by operation of section 21I, 21M or an order under section 103P;
 - (b) a transfer or other document or a disposition statement referred to in section 21V or 31H;
 - (c) anything that occurs by operation of section 21W, 21Y, 31G, 31J or an order under section 103P; or

- | Item | Nature of instrument |
|-------------|--|
| | <p>(d) anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III,</p> <p>but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property.</p> |
| 3. | <p>DEED OR DECLARATION:</p> <p>(1) Any instrument for the purpose of —</p> <p>(a) discharging or releasing any stamped instrument of security which discharge or release is not made to effect a voluntary disposition <i>inter vivos</i> or a conveyance or transfer on sale; or</p> <p>(b) extending the terms of repayment of the amount secured by a stamped security.</p> <p>(2) Any instrument or undertaking given by a society registered under the <i>Housing Societies Act 1976</i> to the Treasurer where the instrument is associated with a guarantee given by the Treasurer securing advances to the society.</p> <p>(3) Any instrument executed on or after 1 July 1992 granting a power of attorney.</p> <p>(4) An instrument described in item 8(1) of the Second Schedule to which an exempt body (as defined in section 119) is a party.</p> <p>(5) Any of the following matters under the <i>Strata Titles Act 1985</i> —</p> <p>(a) anything that occurs by operation of section 21W, 21Y, 31G or 31J; or</p> <p>(b) anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III,</p> <p>but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property.</p> |
| 4. | <p>DUPLICATE OR COUNTERPART:</p> <p>Duplicates or counterparts of insurance policies.</p> |
| [5. | <i>Deleted</i> |
| 6. | <p>LEASE OR AGREEMENT FOR LEASE:</p> <p>(1) All leases or agreements for leases from —</p> <p>(2) Any lease or agreement for lease of land and tenements for use as a dwellinghouse where the total ascertainable rent payable for the term of the lease or agreement is equivalent to an amount not exceeding \$125 for each week of that term.</p> |

Third Schedule Exemptions from duty

- | Item | Nature of instrument |
|-------------|---|
| | (3) A lease or an agreement for a lease to the representative in Australia of the Government of another country, a foreign consul, or a trade commissioner of another country, if the property subject to the lease or agreement is intended for official use. |
| 7. | MORTGAGE (LEGAL OR EQUITABLE), BOND, DEBENTURE, COVENANT, BILL OF SALE, GUARANTEE, LIEN OR INSTRUMENT OF SECURITY OF ANY OTHER KIND WHATSOEVER: |
| | (1) Any instrument for — |
| | (a) the hiring of any goods, wares or merchandise; |
| | (b) the hiring, construction or installation of any machinery or plant; |
| | (c) the execution of any building works; or |
| | (d) works or services of a 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 Western Australia 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. |
| | (7) Any instrument acknowledging the receipt of money deposited with or lent to — |
| | (a) a corporation which is — |
| | (i) an Australian ADI (within the meaning of the Corporations Act); or |
| | (ii) registered under the <i>Life Insurance Act 1995</i> of the Commonwealth; |
| | or |
| | (b) a society registered under the <i>Housing Societies Act 1976</i> . |
| | (8) Any charter-party agreement. |
| | (9) Any hire purchase agreement or credit purchase agreement. |

- | Item | Nature of instrument |
|------|--|
| (10) | Any instrument of annuity. |
| (11) | Any instrument charging the assets of a society registered under the <i>Housing Societies Act 1976</i> in favour of the Treasurer where the instrument is associated with a guarantee given by the Treasurer securing advances to the society. |
| (12) | Any instrument securing the repayment of moneys borrowed for the purchase by, or lease to, the representative in Australia of the Government of another country, a foreign consul, or a trade commissioner of another country, if the property purchased or leased is intended for official use. |
| (13) | <p>Any of the following matters under the <i>Strata Titles Act 1985</i> —</p> <ul style="list-style-type: none"> <li data-bbox="512 741 1174 801">(a) the passing of any property that occurs by operation of section 21I, 21M or an order under section 103P; <li data-bbox="512 808 1262 869">(b) a transfer or other document or a disposition statement referred to in section 21V or 31H; <li data-bbox="512 875 1241 936">(c) anything that occurs by operation of section 21W, 21Y, 31G, 31J or an order under section 103P; or <li data-bbox="512 943 1270 1003">(d) anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III, <p>but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property.</p> |
| 8. | POLICY OF INSURANCE: |
| (1) | Any policy of reinsurance. (See section 95.) |
| (2) | Any policy of insurance in respect of goods in the course of being transported, whether by rail, road, air or sea, and whether within Western Australia or elsewhere. |
| (3) | Any policy of insurance in respect of a marine hull used primarily for commercial purposes. |
| (3a) | Any policy of insurance effected by an exempt body (as defined in section 119) on or after 30 June 1989. |
| (4) | Any policy of insurance of a class or description prescribed by regulations made under section 120. |
| 9. | VEHICLE LICENCE |
| (1) | <i>deleted</i> |
| (2) | <p>A licence granted to a person for a vehicle which was, before the grant of that licence, last licensed in that person's name under —</p> <ul style="list-style-type: none"> <li data-bbox="512 1644 874 1673">(a) the <i>Road Traffic Act 1974</i>; |

Third Schedule Exemptions from duty

- | Item | Nature of instrument |
|------|--|
| | (b) a law of any other country corresponding to the <i>Road Traffic Act 1974</i> ; or |
| | (c) a corresponding State law,
but this subitem does not apply to a licence granted to a person for a heavy vehicle which was, before the grant of that licence, last licensed in the person's name under a corresponding State law if the vehicle was registered in that person's name under the Commonwealth Act on or after 16 January 1997. |
| (3) | A licence granted for a vehicle that is in a prescribed class of vehicles to a member of a prescribed class of persons where the vehicle is used for a purpose prescribed for the purposes of this subitem. |
| (4) | A licence granted to a person for a heavy vehicle if —
(a) the vehicle was, immediately before 16 January 1997, registered in that person's name under the Commonwealth Act; and
(b) since 16 January 1997, no licence has been granted under the <i>Road Traffic Act 1974</i> or a corresponding State law for the vehicle in any other person's name. |
| (5) | A licence granted to a person for a vehicle —
(a) that was modified and that was, before the grant of the licence, last licensed in that person's name under —
(i) the <i>Road Traffic Act 1974</i> ;
(ii) a law of any other country corresponding to the <i>Road Traffic Act 1974</i> ; or
(iii) a corresponding State law;
or
(b) that was part of a vehicle that was modified and that was, before the grant of the licence, last licensed in that person's name under —
(i) the <i>Road Traffic Act 1974</i> ;
(ii) a law of any other country corresponding to the <i>Road Traffic Act 1974</i> ; or
(iii) a corresponding State law. |
| (6) | The exemption in subitem (5) applies whether or not a vehicle that results from the modification needs to meet a standard or requirement before it can be licensed that is different to the one that the original vehicle had to meet. |

[Third Schedule inserted by No. 37 of 1979 s. 109; amended by No. 63 of 1980 s. 3; No. 10 of 1982 s. 28; No. 14 of 1983 s. 7; No. 61 of 1983 s. 14; No. 81 of 1984 s. 38; No. 109 of 1984 s. 3 and 12; No. 84 of 1985 s. 11; No. 98 of 1986 s. 21; No. 100 of 1987 s. 14; No. 3 of 1989 s. 8; No. 41 of 1989 s. 27; No. 73 of 1990 s. 45; No. 52 of 1991 s. 14; No. 39 of 1994 s. 13, 20 and 21; No. 79 of 1994 s. 5(1); No. 14 of 1995 s. 44; No. 14 of 1996 s. 4; No. 20 of 1996 s. 45; No. 48 of 1996 s. 30(1) and 38; No. 61 of 1996 s. 40; No. 13 of 1997 s. 30 and 47; No. 31 of 1997 s. 82 and 141; No. 22 of 1998 s. 43 and 54; No. 58 of 1998 s. 8; No. 2 of 1999 s. 23; No. 26 of 1999 s. 103(3); No. 53 of 1999 s. 31; No. 29 of 2000 s. 4 and 16; No. 10 of 2001 s. 187; No. 12 of 2001 s. 51; No. 11 of 2002 s. 8; No. 2 of 2003 s. 142.]

Notes

¹ This reprint is a compilation as at 12 September 2003 of the *Stamp Act 1921* and includes the amendments made by the other written laws referred to in the following table⁶⁻¹¹. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Stamp Act 1921</i>	10 of 1922	31 Jan 1922	1 Apr 1922 (see s. 1 and <i>Gazette</i> 17 Mar 1922 p. 479)
<i>Stamp Act Amendment Act 1923</i>	53 of 1923	22 Dec 1923	22 Dec 1923
<i>Stamp Act Amendment Act 1924</i>	23 of 1924	31 Dec 1924	31 Dec 1924
<i>Ministers' Titles Act 1925</i> s. 2	8 of 1925	24 Sep 1925	24 Sep 1925
<i>Stamp Act Amendment Act 1925</i>	47 of 1925	31 Dec 1925	31 Dec 1925
<i>Stamp Act Amendment Act 1926</i>	17 of 1926	6 Nov 1926	6 Nov 1926
<i>Stamp Act Amendment Act 1927</i>	10 of 1927	6 Dec 1927	6 Dec 1927
<i>Stamp Act Amendment Act 1928</i>	22 of 1928	21 Dec 1928	21 Dec 1928
<i>Stamp Act Amendment Act 1929</i>	5 of 1929	7 Oct 1929	7 Oct 1929
<i>Stamp Act Amendment Act (No. 3) 1930</i>	11 of 1930	19 Nov 1930	19 Nov 1930
<i>Stamp Act Amendment Act (No. 1) 1930</i>	12 of 1930	19 Nov 1930	19 Nov 1930
<i>Stamp Act Amendment Act 1931</i>	39 of 1931	26 Nov 1931	1 Dec 1931 (see s. 2 and <i>Gazette</i> 27 Nov 1931 p. 2499)
Reprint of the <i>Stamp Act 1921</i> in Appendix to session Volume 1933-34 ¹² (includes amendments listed above)			
<i>Stamp Act Amendment Act 1941</i>	35 of 1941	19 Dec 1941	19 Dec 1941

Short title	Number and year	Assent	Commencement
<i>Stamp Act Amendment Act 1942</i>	40 of 1942	23 Dec 1942	23 Dec 1942
<i>Stamp Act Amendment Act 1944</i>	20 of 1944	23 Dec 1944	23 Dec 1944
Reprint of the Stamp Act 1921 approved 3 Apr 1950 in Volume 5 of Reprinted Acts (includes amendments listed above)			
<i>Stamp Act Amendment Act 1950</i>	11 of 1950	17 Nov 1950	17 Nov 1950
<i>Stamp Act Amendment Act 1954</i>	5 of 1954	25 Aug 1954	25 Aug 1954
<i>Betting Control Act 1954</i> s. 3(2)	63 of 1954	30 Dec 1954	1 Aug 1955 (see s. 2 and <i>Gazette</i> 29 Jul 1955 p. 1767)
<i>Stamp Act Amendment Act 1957</i>	70 of 1957	6 Dec 1957	1 Feb 1958 (see s. 2 and <i>Gazette</i> 24 Jan 1958 p. 129)
Reprint of the Stamp Act 1921 approved 1 May 1958 in Volume 12 of Reprinted Acts (includes amendments listed above)			
<i>Stamp Act Amendment Act (No. 2) 1959</i>	64 of 1959	10 Dec 1959	21 Dec 1959 (see s. 2 and <i>Gazette</i> 18 Dec 1959 p. 3337)
<i>Stamp Act Amendment Act 1959</i>	72 of 1959	14 Dec 1959	1 Jan 1960 (see s. 2 and <i>Gazette</i> 24 Dec 1959 p. 3457)
<i>Stamp Act Amendment Act 1960</i>	22 of 1960	11 Oct 1960	13 Mar 1961 (see s. 2 and <i>Gazette</i> 10 Mar 1961 p. 653)
<i>Stamp Act Amendment Act (No. 2) 1960</i>	41 of 1960	3 Nov 1960	1 Jul 1961 (see s. 2 and <i>Gazette</i> 5 May 1961 p. 1069)
<i>Stamp Act Amendment Act 1961</i>	21 of 1961	30 Oct 1961	30 Oct 1961
<i>Stamp Act Amendment Act 1962</i>	20 of 1962	1 Oct 1962	1 Oct 1962
<i>Stamp Act Amendment Act (No. 2) 1962</i>	60 of 1962	30 Nov 1962	1 Jan 1963 (see s. 2)
<i>Stamp Act Amendment Act (No. 3) 1962</i>	69 of 1962	30 Nov 1962	30 Nov 1962
Reprint of the Stamp Act 1921 approved 22 Apr 1963 (not in a Volume) (includes amendments listed above)			

Stamp Act 1921

Short title	Number and year	Assent	Commencement
<i>Stamp Act Amendment Act 1963</i>	7 of 1963	15 Oct 1963	15 Oct 1963
<i>Stamp Act Amendment Act (No. 2) 1963</i>	37 of 1963	19 Nov 1963	31 Dec 1963 (see s. 2 and <i>Gazette</i> 31 Dec 1963 p. 4055)
<i>Stamp Act Amendment Act (No. 3) 1963</i>	57 of 1963	17 Dec 1963	17 Dec 1963
<i>Stamp Act Amendment Act (No. 4) 1963</i>	58 of 1963	17 Dec 1963	1 Jul 1964 (see s. 2 and <i>Gazette</i> 5 Jun 1964 p. 2335)
<i>Stamp Act Amendment Act 1965</i>	72 of 1965	25 Nov 1965	s. 7, 8, 16(d), (h)(i), (j)(i)-(iii), (v) and (o): 1 Dec 1965 (see s. 2(2)); balance other than s. 3, 14 and 16(c): 1 Jan 1966 (see s. 2(1)); s. 3, 14 and 16(c): 14 Feb 1966 (see s. 2(2))
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
Reprint of the Stamp Act 1921 approved 14 Feb 1966 in Volume 19 of Reprinted Acts (includes amendments listed above)			
<i>Stamp Act Amendment Act 1966</i>	67 of 1966	12 Dec 1966	s. 1, 2, 4 and 15(a), (b) and (f): 1 Jan 1967 (see s. 2(2)); balance: 1 Feb 1967 (see s. 2(1))
<i>Stamp Act Amendment Act (No. 2) 1966</i>	90 of 1966	12 Dec 1966	1 Jan 1967 (see s. 2)
<i>Stamp Act Amendment Act (No. 3) 1966</i>	93 of 1966	12 Dec 1966	1 Jul 1967 (see s. 2 and <i>Gazette</i> 23 Jun 1967 p. 1691)
<i>Stamp Act Amendment Act 1967</i>	50 of 1967	24 Nov 1967	1 Dec 1967 (see s. 2)
Reprint of the Stamp Act 1921 approved 27 Aug 1968 (not in a Volume) (includes amendments listed above)			
<i>Stamp Act Amendment Act 1968</i>	54 of 1968	13 Nov 1968	1 Jan 1969 (see s. 2 and <i>Gazette</i> 13 Dec 1968 p. 3809)
<i>Stamp Act Amendment Act 1969</i>	113 of 1969	28 Nov 1969	1 Jan 1970 (see s. 2 and <i>Gazette</i> 16 Dec 1969 p. 4077)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Commissioner of State Taxation) Act 1970 Pt. VI</i>	21 of 1970	8 May 1970	1 Jul 1970 (see s. 2 and <i>Gazette</i> 26 Jun 1970 p. 1831)
<i>Stamp Act Amendment Act 1970</i>	102 of 1970	8 Dec 1970	s. 12(a), (c)-(e): 1 Jul 1970 (see s. 2(3)); s. 5-11 and 15(b): 1 Oct 1970 (see s. 2(2)); s. 3, 4, 12(b), 13, 14, and 15(a): 1 Jan 1971 (see s. 2(1)(c))
<i>Stamp Act Amendment Act 1971</i>	3 of 1971	13 Sep 1971	13 Sep 1971
<i>Stamp Act Amendment Act (No. 2) 1971</i>	29 of 1971	1 Dec 1971	1 Jan 1972 (see s. 2 and <i>Gazette</i> 10 Dec 1971 p. 5169)
<i>Stamp Act Amendment Act 1972</i>	32 of 1972	16 Jun 1972	1 Jul 1972 (see s. 2 and <i>Gazette</i> 30 Jun 1972 p. 2100)
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19 of 1973 s. 4)	4 Dec 1972	Relevant amendments (see Second Sch. ¹³) took effect on 1 Jul 1973 (see s. 4(2) and <i>Gazette</i> 22 Jun 1973 p. 2379)
<i>Stamp Act Amendment Act 1974</i>	9 of 1974	27 Sep 1974	s. 1, 2 and 7: 27 Sep 1974 (see s. 2(1)); s. 5, 6 and 9: 1 Dec 1974 (see s. 2(2)); s. 3, 4, 8 and 10: 1 Jan 1975 (see s. 2(2) and <i>Gazette</i> 22 Nov 1974 p. 5089)
<i>Stamp Act Amendment Act (No. 2) 1974</i>	46 of 1974	18 Nov 1974	1 Dec 1974 (see s. 2 and <i>Gazette</i> 29 Nov 1974 p. 5167)
Reprint of the Stamp Act 1921 approved 20 Feb 1976 (includes amendments listed above)			
<i>Stamp Act Amendment Act 1976</i>	96 of 1976	12 Nov 1976	1 Jan 1977 (see s. 2)
<i>Stamp Act Amendment Act 1977</i>	63 of 1977	23 Nov 1977	23 Nov 1977

Stamp Act 1921

Short title	Number and year	Assent	Commencement
<i>Stamp Act Amendment Act 1979</i>	37 of 1979	18 Oct 1979	s. 1, 2, 42 and 61: 18 Oct 1979 (see s. 2(2)); balance: 1 Jan 1980 (see s. 2(1) and <i>Gazette</i> 7 Dec 1979 p. 3769)
<i>Credit Unions (Consequential Provisions) Act 1979 Pt. 1</i>	47 of 1979	7 Nov 1979	1 Jul 1980 (see s. 2)
Reprint of the Stamp Act 1921 approved 25 Mar 1980 (includes amendments listed above except those in the <i>Credit Unions (Consequential Provisions) Act 1979</i>)			
<i>Stamp Amendment Act 1980</i>	63 of 1980	26 Nov 1980	4 Nov 1980 (see s. 1(4))
<i>Stamp Amendment Act 1981</i> ¹⁴	81 of 1981	9 Nov 1981	Act other than s. 3 and 8: 1 Dec 1981 (see s. 2(1)); s. 3 and 8: 1 Jan 1982 (see s. 2(2))
<i>Acts Amendment (Traffic Board) Act 1981 Pt. VIII</i>	106 of 1981	4 Dec 1981	2 Feb 1982 (see s. 2)
<i>Stamp Amendment Act 1982</i>	1 of 1982	8 Apr 1982	8 Apr 1982
<i>Companies (Consequential Amendments) Act 1982 s. 28</i>	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Stamp Amendment Act (No. 2) 1982</i>	15 of 1982	14 May 1982	Act other than s. 4: 8 Apr 1982 (see s. 2(1)); s. 4: 14 May 1982 (see s. 2(2))
<i>Stamp Amendment Act (No. 3) 1982</i>	45 of 1982	26 Aug 1982	24 Dec 1981 (see s. 2)
<i>Stamp Amendment Act (No. 4) 1982</i>	93 of 1982	22 Nov 1982	Act other than s. 3-6, 7(1) and 8: 22 Nov 1982 (see s. 2(1)); s. 3-6, 7(1) and 8: 1 Jan 1983 (see s. 2(2))
<i>Stamp Amendment Act (No. 5) 1982</i>	99 of 1982	24 Nov 1982	1 Jan 1983 (see s. 2)
<i>Stamp Amendment Act (No. 6) 1982</i>	112 of 1982	8 Dec 1982	26 Oct 1982 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Stamp Amendment Act 1983</i>	14 of 1983	31 Oct 1983	Act other than s. 6(d): 1 Nov 1983 (see s. 2(2)); s. 6(d): 1 Dec 1983 (see s. 2(1) and <i>Gazette</i> 25 Nov 1983 p. 4649)
<i>Stamp Amendment Act (No. 2) 1983</i>	61 of 1983	13 Dec 1983	s. 1-4: 13 Dec 1983 (see s. 2(1)); balance: 1 Jan 1984 (see s. 2(2))
<i>Stamp Amendment Act 1984</i>	81 of 1984	7 Dec 1984	1 Jan 1985 (see s. 2 and <i>Gazette</i> 28 Dec 1984 p. 4197)
<i>Stamp Amendment Act (No. 2) 1984</i>	109 of 1984	19 Dec 1984	1 Jan 1985 (see s. 2)
<i>Acts Amendment (Lotteries) Act 1985 Pt. V</i>	19 of 1985	19 Apr 1985	19 Apr 1985 (see s. 2(1))
Reprint of the Stamp Act 1921 as at 9 Jun 1985 (includes amendments listed above)			
<i>Stamp Amendment Act 1985</i>	84 of 1985	4 Dec 1985	1 Jan 1986 (see s. 2)
<i>Stamp Amendment Act (No. 2) 1985</i>	85 of 1985	4 Dec 1985	1 Jan 1986 (see s. 2)
<i>Stamp Amendment Act 1986</i> ¹⁵	98 of 1986	11 Dec 1986	s. 4-10: 11 Nov 1986 (see s. 2(2)); s. 13-18, 20, 21(1)(a)(i) and 22: 11 Dec 1986 (see s. 2(1)); s. 21(1)(b) and (2): 1 Jan 1987 (see s. 2(4) and <i>Gazette</i> 19 Dec 1986 p. 4859); s. 11 and 19: 8 Jan 1987 (see s. 2(3)); s. 12 and 21(1)(a)(ii): 1 Feb 1987 (see s. 2(4) and <i>Gazette</i> 19 Dec 1986 p. 4859)
<i>Stamp Amendment Act 1987</i> ¹⁶	33 of 1987	30 Jun 1987	Act other than s. 5, 15 and 19: 30 Jun 1987 (see s. 2(1)); s. 5, 15 and 19: 24 Jul 1987 (see s. 2(2) and <i>Gazette</i> 24 Jul 1987 p. 2813)
<i>Stamp Amendment Act (No. 2) 1987</i> ¹⁷	100 of 1987	18 Dec 1987	1 Jan 1988 (see s. 2)
Reprint of the Stamp Act 1921 as at 21 Mar 1989 (includes amendments listed above)			

Stamp Act 1921

Short title	Number and year	Assent	Commencement
<i>Stamp Amendment Act (No. 2) 1989</i>	3 of 1989	20 Apr 1989	20 Apr 1989 (see s. 2)
<i>Stamp Amendment Act (No. 4) 1989</i>	16 of 1989 (as amended by No. 41 of 1989 s. 28)	16 Nov 1989	s. 4(2): 1 Nov 1989 (see s. 2(2) and <i>Gazette</i> 29 Dec 1989 p. 4665); s. 4(4): 1 Nov 1989 (see s. 2(4)); s. 4(1): 16 Nov 1989 (see s. 2(1)); s. 4(3): 1 Jul 1990 (see s. 2(3) and <i>Gazette</i> 8 Jun 1990 p. 2615)
<i>Taxation (Reciprocal Powers) Act 1989</i> s. 16	18 of 1989	1 Dec 1989	5 Oct 1990 (see s. 2 and <i>Gazette</i> 5 Oct 1990 p. 5122)
<i>Stamp Amendment Act (No. 3) 1989</i>	41 of 1989	21 Dec 1989	s. 27(3): 30 Jun 1989 (see s. 2(4)); s. 11, 13, 20(a) and (b), 24 and 26: 1 Nov 1989 (see s. 2(2)); s. 4, 10(a)-(c), 12, 20(c) and 27(1): 1 Dec 1989 (see s. 2(3)(b)); s. 1-9, 10(d), 12, 14-16, 18(b)-(e), 21-23, 25, 27(4) and 28: 21 Dec 1989 (see s. 2(5)); s. 17, 18(a), (f) and (g), 19 and 27(2): 1 Jul 1990 (see s. 2(1) and <i>Gazette</i> 8 Jun 1990 p. 2615)
<i>Stamp Amendment Act 1990</i>	20 of 1990	24 Jul 1990	24 Jul 1990 (see s. 2)
<i>Acts Amendment (Betting Tax and Stamp Duty) Act (No. 2) 1990</i> Pt. 2	58 of 1990	17 Dec 1990	1 Aug 1989 (see s. 2)
<i>R & I Bank Act 1990</i> s. 45(1)	73 of 1990	20 Dec 1990	1 Jan 1991 (see s. 2(2) and <i>Gazette</i> 28 Dec 1990 p. 6369)
<i>Stamp Amendment Act 1991</i> ¹⁸	52 of 1991	17 Dec 1991	s. 4 and 6: 29 Aug 1991 (see s. 2(2)); balance: 17 Dec 1991 (see s. 2(1))
<i>Stamp Amendment Act (No. 2) 1991</i>	53 of 1991	17 Dec 1991	17 Dec 1991 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>SGIO Privatisation Act 1992</i> s. 29	49 of 1992	9 Dec 1992	7 Jan 1993 (see s. 2(3) and <i>Gazette</i> 7 Jan 1993 p. 15)
<i>Stamp Amendment Act 1993</i>	42 of 1993	20 Dec 1993	Act other than s. 6 and Pt. 2: 20 Dec 1993 (see s. 2(1)); Pt. 2: 1 Jan 1994 (see s. 2(2)); s. 6: 11 Jan 1994 (see s. 2(3) and <i>Gazette</i> 11 Jan 1994 p. 43)
<i>R & I Bank Amendment Act 1994</i> s. 13	6 of 1994	11 Apr 1994	26 Apr 1994 (see s. 2 and <i>Gazette</i> 26 Apr 1994 p. 1743)
<i>Stamp Amendment Act 1994</i>	39 of 1994	26 Aug 1994	1 Sep 1994 (see s. 2)
<i>Stamp Amendment Act (No. 2) 1994</i> ^{2, 19}	79 of 1994	22 Dec 1994	22 Dec 1994 (see s. 2)
<i>Bank of Western Australia Act 1995</i> s. 44	14 of 1995	4 Jul 1995	1 Dec 1995 (see s. 2(3) and <i>Gazette</i> 29 Nov 1995 p. 5529)
<i>Road Traffic Amendment Act 1995</i> s. 14	21 of 1995	13 Jul 1995	25 Nov 1995 (see s. 2 and <i>Gazette</i> 24 Nov 1995 p. 5390)
<i>Stamp Amendment (Marketable Securities Duty) Act 1995</i> ²⁰	22 of 1995	13 Jul 1995	1 Jul 1995 (see s. 2)
<i>Stamp Amendment Act 1995</i> ^{21, 22}	41 of 1995	24 Oct 1995	24 Oct 1995 (see s. 2)
<i>Acts Amendment (Vehicle Licences) Act 1995</i> Pt. 3	57 of 1995	20 Dec 1995	20 Dec 1995 (see s. 2)
Reprint of the Stamp Act 1921 as at 23 Jan 1996 (includes amendments listed above)			
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act 1996</i> Pt. 5 ²³	20 of 1996	28 Jun 1996	28 Jun 1996 (see s. 2(1))
<i>Acts Amendment (ICWA) Act 1996</i> s. 38	45 of 1996	25 Oct 1996	1 Oct 1997 (see s. 2 and <i>Gazette</i> 23 Sep 1997 p. 5357)

Stamp Act 1921

Short title	Number and year	Assent	Commencement
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 1996 Pt. 5</i>	48 of 1996	25 Oct 1996	Div. 1-2: 30 Nov 1995 (see s. 2(2)); Div. 3: 15 Jul 1996 (see s. 2(3)); Div. 4: 1 Oct 1996 (see s. 2(4)); Div. 5: 25 Oct 1996 (see s. 2(1))
<i>Stamp Amendment Act 1996</i> ²⁴	57 of 1996	11 Nov 1996	20 Nov 1995 (see s. 2)
<i>Strata Titles Amendment Act 1996 s. 40</i>	61 of 1996	11 Nov 1996	20 Jan 1997 (see s. 2 and <i>Gazette</i> 17 Jan 1997 p. 405)
<i>Road Traffic Amendment Act 1996 Pt. 3 Div. 8</i>	76 of 1996	14 Nov 1996	1 Feb 1997 (see s. 2 and <i>Gazette</i> 31 Jan 1997 p. 613)
<i>Transfer of Land Amendment Act 1996 s. 153(1) and (2)</i>	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Revenue Laws Amendment (Assessment) Act 1997 Pt. 4</i> ²⁵⁻²⁸	13 of 1997	25 Jun 1997	Div. 2: 27 Dec 1996 (see s. 2(3)); Div. 3: 14 Jan 1997 (see s. 2(4)); Div. 4: 12 May 1997 (see s. 2(5)); Div. 1, 5-6: 25 Jun 1997 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997 Pt. 55 and s. 141</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2(1) and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Acts Amendment and Repeal (Family Court) Act 1997 s. 37</i>	41 of 1997	9 Dec 1997	26 Sep 1998 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 1997 Pt. 3</i>	51 of 1997	12 Dec 1997	12 Dec 1997 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 113</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Revenue Laws Amendment (Taxation) Act 1998 Pt. 3</i> ^{29, 30}	18 of 1998	30 Jun 1998	1 Jul 1998 (see s. 2(2) and also take note of s. 2(4) and (5))

Short title	Number and year	Assent	Commencement
<i>Revenue Laws Amendment (Assessment) Act 1998</i> Pt. 5, Pt. 6 Div. 4, and Pt. 7	22 of 1998	30 Jun 1998	Pt. 5 Div. 2: 1 Oct 1997 (see s. 2(1)); Pt. 5 Div. 1 and 3 and Pt. 7: 30 Jun 1998 (see s. 2(1)); Pt. 5 Div. 4: 1 Jul 1998 (see s. 2(1)); Pt. 6 Div. 4: 2 Jul 1998 (see s. 2(1))
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 1998</i> Pt. 3	58 of 1998	18 Dec 1998	s. 8: 30 Mar 1998 (see s. 2(2)); balance: 18 Dec 1998 (see s. 2(1))
<i>Friendly Societies (Western Australia) Act 1999</i> s. 23	2 of 1999	25 Mar 1999	24 May 1999 (see s. 2 and <i>Gazette</i> 21 May 1999 p. 1999)
<i>Revenue Laws Amendment (Assessment) Act 1999</i> Pt. 2	24 of 1999	29 Jun 1999	s. 4: 1 Jul 1998 (see s. 2(2)); s. 5 and 6: 29 Jun 1999 (see s. 2(1)); s. 7: 1 Jul 1999 (see s. 2(3))
<i>Revenue Laws Amendment (Taxation) Act 1999</i> Pt. 3 ³¹	25 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(4))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 103	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
Reprint of the Stamp Act 1921 as at 22 Oct 1999 (includes amendments listed above)			
<i>Financial Relations Agreement (Consequential Provisions) Act 1999</i> Pt. 5 ³²	53 of 1999	13 Dec 1999	Div. 1 and 3: 13 Dec 1999 (see s. 2(1)); Div 2: 1 Jul 2001 (see s. 2(2))
<i>Acts Amendment (Continuing Lotteries) Act 2000</i> Pt. 2 ³³	6 of 2000 (as amended by No. 45 of 2002 s. 6)	11 Apr 2000	1 Jul 2000 (see s. 2 and <i>Gazette</i> 23 Jun 2000 p. 3191)
<i>Stamp Amendment Act 2000</i>	28 of 2000	6 Jul 2000	6 Jul 2000 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act 2000</i> Pt. 2 ^{34,35}	29 of 2000	6 Jul 2000	6 Jul 2000 (see s. 2(1))

Stamp Act 1921

Short title	Number and year	Assent	Commencement
<i>Stamp Amendment Act (No. 3) 2000</i> ³⁶	60 of 2000	4 Dec 2000	10 Aug 2000 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act 2001 Pt. 4</i>	3 of 2001	26 Jun 2001	Div. 1 and 2: 26 Jun 2001 (see s. 2(1)); Div. 3: 30 Jun 2001 (see s. 2(4)); Div. 4: 1 Jul 2001 (see s. 2(6))
<i>Revenue Laws Amendment (Taxation) Act 2001 Pt. 3</i>	4 of 2001	26 Jun 2001	30 Jun 2001 (see s. 2(4))
<i>Corporations (Consequential Amendments) Act 2001 Pt. 48</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwllth Gazette</i> 13 Jul 2001 No. S285)
<i>Building Societies Amendment Act 2001 s. 51</i>	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)
Reprint of the Stamp Act 1921 as at 3 Aug 2001 (includes amendments listed above) (Correction to reprint in <i>Gazette</i> 23 Nov 2001 p. 6030)			
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 2001 Pt. 5 and 6</i>	36 of 2001	7 Jan 2002	7 Jan 2002 (see s. 2(1))
<i>Revenue Laws Amendment (Taxation) Act (No. 2) 2001 Pt. 4 (s. 13-15)</i>	37 of 2001	7 Jan 2002	s. 13: 7 Jan 2002 (see s. 2(1)); s. 14: 7 Jan 2002 (see s. 2(4)); s. 15: 7 Jan 2002 (see s. 2(5))
<i>Machinery of Government (Planning and Infrastructure) Amendment Act 2002 s. 65</i>	7 of 2002	19 Jun 2002	1 Jul 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037)
<i>Stamp Amendment (Budget) Act 2002</i> ³⁷⁻³⁹	11 of 2002	28 Jun 2002	1 Jul 2002 (see s. 2)
<i>Family Court Amendment Act 2002 s. 52</i>	25 of 2002	25 Sep 2002	1 Dec 2002 (see s. 2 and <i>Gazette</i> 29 Nov 2002 p. 5651)
<i>Taxation Administration (Consequential Provisions) (Taxing) Act 2002 Pt. 3</i> ⁴⁰	46 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Stamp Amendment Act 2003</i>	2 of 2003	20 Mar 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)

Short title	Number and year	Assent	Commencement
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 14 ⁴¹	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and Cwlth Gazette 24 Oct 2001 No. GN42)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 55	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and Gazette 30 Jun 2003 p. 2579)
<i>Stamp Amendment (Budget) Act 2003</i> ⁴²	44 of 2003	30 Jun 2003	s. 4: 1 Jul 2003 (see s. 2(2)); s. 5: 1 Jul 2003, but in relation to certain policies of insurance it comes into operation 8 May 2003 (see s. 2(3))

Reprint 14: The Stamp Act 1921 as at 12 Sep 2003 (includes amendments listed above)

² The *Stamp Amendment Act (No. 2) 1994* s. 4(2) reads as follows:

“

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

”

³ Repealed by the *Mining Act 1978*.

⁴ Formerly referred to the *Land Administration and Public Works Act 1902* the short title of which was changed to the *Public Works Act 1902* by the *Acts Amendment (Land Administration) Act 1997* s. 39. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

⁵ The *Acts Amendment (Land Administration) Act 1997* came into operation 30 Mar 1998.

⁶ The *Taxation Administration (Consequential Provisions) Act 2002* s. 3 and 4 and Pt. 4 Div. 1, 2 and 6 read as follows:

“

3. Relationship with other Acts

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

4. Meaning of terms used in this Act

The Glossary at the end of the *Taxation Administration Act 2003* defines or affects the meaning of some of the words and

expressions used in this Act and also affects the operation of other provisions.

Part 4 — Transitional provisions

Division 1 — Interpretation

33. Definitions

In this Part —

“**commencement day**” means the day on which the *Taxation Administration Act 2003* comes into operation;

“**old Act**” means —

- (a) an Act repealed by section 5;
- (b) the old Stamp Act; or
- (c) section 41 of the *Metropolitan Region Town Planning Scheme Act 1959* as in force immediately before the commencement day;

“**old Stamp Act**” means the *Stamp Act 1921* as in force immediately before the commencement day;

“**substantive provisions**”, in relation to an old Act, means the provisions of the old Act other than those dealing with matters dealt with in the *Taxation Administration Act 2003*.

Division 2 — General transitional provisions

34. General transitional arrangements

- (1) Section 37(1) of the *Interpretation Act 1984*, except paragraphs (a) and (b), does not apply in relation to the repeal of an old Act.
- (2) The repeal of an old Act does not, unless the contrary intention appears —
 - (a) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;
 - (b) affect any duty, obligation, liability, or burden of proof imposed, created, or incurred prior to the repeal;
 - (c) subject to section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995*, affect any penalty or forfeiture incurred or liable to be incurred in respect of an offence committed against the old Act; or
 - (d) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture.

- (3) Subject to subsections (4) and (5) —
- (a) a right, interest, title, power, privilege, duty, obligation, liability or burden of proof referred to in subsection (2)(a) or (b) may be exercised or enforced;
 - (b) a penalty or forfeiture referred to in subsection (2)(c) may be imposed and enforced; and
 - (c) an investigation, legal proceeding or remedy referred to in subsection (2)(d) may be instituted, continued, or enforced,
- as if the substantive provisions of the relevant old Act —
- (d) had not been repealed;
 - (e) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
 - (f) had been amended to make any modifications necessary for this section to have effect.
- (4) If an objection, appeal or other legal proceeding (the “**action**”) was instituted under an old Act and was not finally determined before the commencement day —
- (a) the action may be continued;
 - (b) any requirement to pay interest on an amount of tax determined in the action to have been overpaid applies and may be enforced;
 - (c) any penalty may be imposed and enforced; and
 - (d) any decision, order or determination made in the action has effect, and may be enforced,
- as if this Act and the taxation Acts had not commenced.
- (5) If the time limited by an old Act for doing anything is longer than the time limited by a taxation Act for doing the equivalent thing under that Act, then in relation to a matter to which subsection (3) applies, the time limited under the old Act applies in relation to the doing of the thing under the taxation Act.
- (6) If the time limited by an old Act for commencing proceedings in relation to an offence under that Act is shorter than the 5 year period limited by section 111 of the *Taxation Administration Act 2003*, then despite section 111, proceedings in relation to an offence under the old Act (including an offence under a provision of the old Act that is continued in force under this Part) cannot be commenced after the expiry of the shorter period provided for by the old Act.

- (7) In this section a reference, in relation to the *Stamp Act 1921*, to the repeal of the old Act is a reference to the amendment of the Act by the *Stamp Amendment Act 2003*.

35. Commissioner not to increase tax liability

Despite Part 3 Division 1 of the *Taxation Administration Act 2003*, the Commissioner must not make a reassessment that increases the amount of tax a person is liable to pay in relation to anything that happened before the commencement day if the reassessment could not have been made under the relevant old Act.

36. Delegations

A delegation made under an old Act and in force immediately before the commencement day continues in force on and after that day as a delegation made under section 10 of the *Taxation Administration Act 2003*.

Division 6 — Stamp duty

43. Adhesive stamps (*Stamp Act 1921*, s. 15, 21 and 23)

- (1) Despite its repeal by the *Stamp Amendment Act 2003*, section 15 of the old Stamp Act continues in force for 12 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
- (2) Despite their repeal by the *Stamp Amendment Act 2003*, sections 21 and 23 of the old Stamp Act continue in force for 3 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
- (3) If adhesive stamps affixed to an instrument have been cancelled in accordance with the old Stamp Act (including the provisions of the old Stamp Act continued in force by subsections (1) and (2)) the instrument is taken to have been endorsed in accordance with section 17C of the *Stamp Act 1921*.

44. Printing of “Stamp Duty Paid” on cheques (*Stamp Act 1921*, s. 52)

- (1) An authorisation of a financial institution granted under section 52 of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom an authorisation continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the authorisation

was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

45. First home owners — reassessment (*Stamp Act 1921, s. 75AG*)

Despite section 17(1) of the *Taxation Administration Act 2003*, if property that included a dwellinghouse was conveyed or transferred before the commencement day, an application for a reassessment of the duty payable on the conveyance or transfer on the basis that a rebate under section 75AG of the old Stamp Act should have been, but was not, allowed cannot be made more than 12 months after the date of the original assessment.

46. Reassessment of duty on grant or transfer of vehicle licences (*Stamp Act 1921, s. 76C(18) and (19), 76CA(3a) and 76CB(9)*)

- (1) This section applies in relation to a grant or transfer of a licence that occurred before the commencement day.
- (2) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should not have been paid because —
 - (a) in the case of a grant — no vehicle licence fee was payable under the *Road Traffic Act 1974* in respect of the licence; or
 - (b) in the case of a transfer — had the transferee applied for the licence on the date of the transfer no vehicle licence fee would have been payable under the *Road Traffic Act 1974*,

cannot be made more than 15 months after the licence was granted or transferred.

- (3) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty paid on the transfer of a licence on the basis that the duty should have been, but was not, charged in accordance with item 6 of the Second Schedule to the old Stamp Act because the transfer did not pass a beneficial interest, cannot be made more than 12 months after the licence was transferred.
- (4) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should have been, but was not, assessed on the net market value of the vehicle (as defined in section 76CB of the old Stamp Act), cannot be made more than 12 months after the licence was granted or transferred.

**47. Alternative to stamping individual insurance policies
(Stamp Act 1921, s. 95A)**

- (1) A permission granted under section 95A of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

48. Workers' compensation insurance (Stamp Act 1921, s. 97 and item 16 of the Second Schedule)

- (1) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the issue or renewal of a policy of insurance that occurred before the commencement day on the basis that the duty was assessed under item 16(1)(a)(i) of the Second Schedule to the old Stamp Act but should have been assessed under item 16(1)(a)(ii), cannot be made more than 2 years after the beginning of the insurance policy's cover period.
- (2) Despite the amendment of Schedule 2 item 16(1)(a) of the *Stamp Act 1921*, on and for 12 months after the commencement day —
 - (a) the reference in Schedule 2 item 16(1)(a)(i)(A) to the *Pay-roll Tax Assessment Act 2002* includes a reference to the *Pay-roll Tax Assessment Act 1971*; and
 - (b) the reference in Schedule 2 item 16(1)(a)(i)(B) to section 39 or 40 of the *Pay-roll Tax Assessment Act 2002* includes a reference to section 10 of the *Pay-roll Tax Assessment Act 1971*.

49. Payment of duty by returns (Stamp Act 1921, s. 112V)

- (1) A permission granted under section 112V of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject),

continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

⁷ The *Road Traffic Amendment Act 2000* Pt. 3 Div. 3 will not come into operation because it was repealed by *Taxation Administration (Consequential Provisions) Act 2002* s. 28(3).

⁸ Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7 this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002*. Pt. 1 and Pt. 7 Div. 1 of those regulations read as follows:

“

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002*.

2. Commencement

- (1) These regulations do not have effect unless an arrangement is in operation under section 5 of the Act.
- (2) When such an arrangement is in operation, these regulations and the modifications they prescribe are deemed to have taken effect on 6 October 1997.
- (3) If a State taxing law was repealed before these regulations take effect then, despite the repeal, when these regulations are deemed under subsection (2) to have taken effect, the repealed law is deemed to have been modified, in accordance with these regulations, on 6 October 1997.

3. Modification of State taxing laws

- (1) In its operation as an applied WA law, the Act is modified by omitting section 7.
- (2) For the purposes of section 7(2) of the Act, each State taxing law is taken to be modified to the extent necessary to give effect to subregulation (3).
- (3) If —
 - (a) a State taxing law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding applied law also applies, or could

apply, to any extent, to or in relation to the same event, state of affairs or transaction;

- (b) a person is required or permitted, or could be required or permitted, to take an action under both the State taxing law and the corresponding applied law in relation to the event, state of affairs or transaction;
- (c) the person has taken the action in accordance with the corresponding applied law; and
- (d) the Commissioner has enough information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the State taxing law or the corresponding applied law or both, as the case requires,

then —

- (e) the person is not required to take the action under the State taxing law; and
 - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the State taxing law in relation to the event, state of affairs or transaction.
- (4) The particular modifications set out in these regulations of certain State taxing laws have effect for the purposes of section 7(2) of the Act.

Part 7 — Stamp duty

Division 1 — The *Stamp Act 1921*

57. Modification of the *Stamp Act 1921*

This Division sets out modifications of the *Stamp Act 1921*.

58. Section 2 inserted

After section 1 the following section is inserted —

“

2. Application of Act in non-Commonwealth places

- (1) In this Act, unless the contrary intention appears —
 - (a) a reference to this Act is to be read as a reference to this Act in its application as a law of Western Australia;

- (b) a reference to the regulations is to be read as a reference to those regulations in their application as a law of Western Australia;
 - (c) a reference to the *Revenue Laws Amendment (Assessment) Act 2000* is to be read as a reference to that Act in its application as a law of Western Australia;
 - (d) a reference to the *Stamp Act Amendment Act 1979* is to be read as a reference to that Act in its application as a law of Western Australia;
 - (e) a reference to the *Taxation (Reciprocal Powers) Act 1989* is to be read as a reference to that Act in its application as a law of Western Australia;
 - (f) a reference (however expressed) to an Act administered by the Commissioner is to be read as including a reference to an Act administered by the Commissioner under an arrangement under section 5 of the *Commonwealth Places (Mirror Taxes Administration) Act 1999*.
- (2) This Act is to be read with the applied Stamp Act as a single body of law.
- (3) If this Act requires any duty paid or payable in another State or a Territory to be taken into account for the purpose of calculating the amount of duty payable under this Act, then any duty paid or payable under the applied Stamp Act must also be taken into account if it would have been taken into account under this Act if it were paid or payable solely under this Act.

”.

59. Section 4 modified

Section 4(1) is modified by inserting the following definitions in their appropriate alphabetical positions —

“

“applied interstate law” means a law of another State in its application as a law of the Commonwealth in or in relation to Commonwealth places in that State in accordance with the Commonwealth Mirror Taxes Act;

“applied Stamp Act” means the *Stamp Act 1921* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western

Australia in accordance with the Commonwealth Mirror Taxes Act;

“**Commonwealth Mirror Taxes Act**” means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

“**Commonwealth place**” means a Commonwealth place in or in relation to which the applied Stamp Act applies, or is taken to have applied, under the Commonwealth Mirror Taxes Act;

”.

60. Section 4AA inserted

After section 4 the following section is inserted —

“

4AA. Instruments subject to dual liability

- (1) If an instrument or 2 or more instruments is, are or may be liable for duty under both this Act and the applied Stamp Act, the amount of duty payable is calculated by reference to the amount equal to the sum of —
 - (a) the amount or amounts on which duty is payable under this Act; and
 - (b) the amount or amounts on which duty is payable under the applied Stamp Act.
- (2) The amount of duty payable on the instrument or instruments under this Act is the amount calculated under subsection (1) minus any amount paid or payable under the applied Stamp Act.

”.

61. Section 8 modified

- (1) Section 8 is modified by inserting before “The” the subsection designation “(1)”.
- (2) At the end of section 8 the following subsection is inserted —

“

- (2) The Commissioner may use for the purposes of any other Act administered by the Commissioner any information concerning the affairs of any other person acquired by the Commissioner, by reason of his or her office, under or for the purposes of this Act.

”.

62. Section 9 modified

Section 9(2) is modified as follows:

- (a) in paragraph (a) by inserting after “this Act” —
“ or the applied Stamp Act ”;
- (b) in paragraph (b) by inserting after “this Act” —
“ or the applied Stamp Act ”.

63. Section 31B modified

Section 31B(5) is modified by deleting “the law of another State or of a Territory” and inserting instead —

“

the applied Stamp Act or a law in force in another State or a Territory, including an applied interstate law

”.

64. Section 73D modified

Section 73D(6a)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“

under the applied Stamp Act or a law in force in another State or a Territory, including an applied interstate law

”.

65. Section 75AE modified

After subsection 75AE(2) the following subsection is inserted —

“

- (2a) For the purposes of subsection (2)(b), if duty is or may be payable on the instrument of conveyance or transfer of property both under this Act and the applied Stamp Act, the purchaser is entitled to a rebate only if the total value of the property conveyed or transferred by the instrument does not exceed \$135 000.

”.

66. Section 76AH modified

Section 76AH(4)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“

under the applied Stamp Act or a law in force in another State or a Territory, including an applied interstate law

”.

67. Section 76AO modified

Section 76AO(4)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“

under the applied Stamp Act or a law in force in another State or a Territory, including an applied interstate law

”.

68. Section 84 modified

After section 84(4) the following subsection is inserted —

“

(5) In this section —

(a) a reference to duty paid or payable in another State is to be read as including a reference to duty paid or payable under the applied Stamp Act or under an applied interstate law;

(b) a reference to an instrument that is exempt in another State is to be read as including a reference to an instrument that is exempt under the applied Stamp Act or under an applied interstate law.

”.

69. Section 87 modified

(1) Section 87(1) is modified by inserting after “Second Schedule” —

“

or item 13 of the Second Schedule to the applied Stamp Act

”.

(2) Section 87(1b) is modified by inserting after “or (2)” —

“

of the Second Schedule or item 13(1)(a), (1a) or (2) of the Second Schedule to the applied Stamp Act (as the case requires)

”.

70. Section 112A modified

Section 112A(1) is modified by deleting the definition of “corresponding law” and inserting the following definition instead —

“

“**corresponding law**” means —

- (a) the applied Stamp Act;
- (b) a law in force in another State or in a Territory that is declared by proclamation to be a corresponding law for the purposes of Division 3; or
- (c) an applied interstate law that corresponds to a law referred to in paragraph (b).

”

”

⁹ Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 8(2) of the Commonwealth, this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*. Pt. 1 and Pt. 7 Div. 1 of that notice read as follows:

“

Part 1 — Preliminary**1. Citation**

This notice may be cited as the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*.

2. Commencement

- (1) This notice does not have effect unless an arrangement is in operation under section 9 of the Commonwealth Places Mirror Taxes Act in relation to Western Australia.
- (2) When such an arrangement is in operation, this notice and the modifications it prescribes are deemed to have taken effect on 6 October 1997.
- (3) If an applied WA law was repealed before this notice takes effect then, despite the repeal, when this notice is deemed under subsection (2) to have taken effect, the repealed law is deemed to have been modified on 6 October 1997 as set out in this notice.

3. Definitions

In this notice —

“**applied WA law**” means the provisions of a State taxing law of Western Australia that apply or are taken to have applied in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

“**Commonwealth Mirror Taxes Act**” means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

“**WA taxing law**” means a State taxing law of Western Australia.

4. Modification of applied WA laws

(1) For the purposes of section 8 of the Commonwealth Mirror Taxes Act, each applied WA law is taken to be modified to the extent necessary to give effect to subregulation (2).

(2) If —

- (a) an applied WA law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding State taxing law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction;
- (b) a person is required or permitted, or could be required or permitted, to take an action under both the applied WA law and the corresponding State taxing law in relation to the event, state of affairs or transaction;
- (c) the person has taken the action in accordance with the corresponding State taxing law; and
- (d) the Commissioner has enough information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the applied WA law or the corresponding State taxing law or both, as the case requires,

then —

- (e) the person is not required to take the action under the applied WA law; and
 - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the applied WA law in relation to the event, state of affairs or transaction.
- (3) The particular modifications set out in this notice of certain applied WA laws have effect for the purposes of section 8 of the Commonwealth Mirror Taxes Act.

Part 7 — Stamp duty

Division 1 — The applied *Stamp Act 1921*

83. Modification of the applied Act

This Division sets out modifications of the *Stamp Act 1921* of Western Australia.

84. Section 2 inserted

After section 1 the following section is inserted —

“

2. Application of Act in Commonwealth places

- (1) In this Act, unless the contrary intention appears —
- (a) a reference to this Act is to be read as a reference to this Act in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;
 - (b) a reference to the regulations is to be read as a reference to the regulations in their application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;
 - (c) a reference (however expressed) to an Act administered by the Commissioner is to be read as a reference to —
 - (i) an Act of which the Commissioner has the general administration under an arrangement under section 9 of the Commonwealth Mirror Taxes Act; or
 - (ii) an Act administered by the Commissioner as a law of Western Australia;
 - (d) a reference to the *Taxation (Reciprocal Powers) Act 1989* is to be read as a reference to the applied Taxation (Reciprocal Powers) Act;
 - (e) a reference to the *Gazette* is to be read as a reference to the *Government Gazette* of Western Australia;
 - (f) a reference to the Supreme Court is to be read as a reference to the Supreme Court of Western Australia;

- (g) a reference to the Minister is to be read as a reference to the Minister of the Crown in right of Western Australia to whom the administration of the corresponding Stamp Act is for the time being committed by the Governor of Western Australia;
 - (h) a reference to the Treasurer is to be read as a reference to the Treasurer of Western Australia;
 - (i) a reference to any of the following Acts is to be read as a reference to the Act of that name of the Parliament of Western Australia —
 - (i) the *Acts Amendment (Continuing Lotteries) Act 2000*;
 - (ii) the *Building Societies Act 1976*;
 - (iii) the *Financial Sector (Transfer of Business) Act 1999*;
 - (iv) the *Gaming Commission Act 1987*;
 - (v) the *Housing Societies Act 1976*;
 - (vi) the *Local Government Act 1995*;
 - (vii) the *Mining Act 1978*;
 - (viii) the *Public Sector Management Act 1994*;
 - (ix) the *Transfer of Land Act 1893*;
 - (x) the *Workers' Compensation and Rehabilitation Act 1981*;and
 - (j) a reference to any of the following enactments is to be read as a reference to the enactment of that name of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act —
 - (i) the *Pay-roll Tax Assessment Act 1971*;
 - (ii) the *Revenue Laws Amendment (Assessment) Act 2000*;
 - (iii) the *Stamp Act Amendment Act 1979*;
 - (iv) the *Stamp Act Regulations 1966*.
- (2) This Act is to be read with the corresponding Stamp Act as a single body of law.

-
- (3) In addition to being modified as prescribed by the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*, this Act is deemed to be further modified to any extent that is necessary or convenient —
- (a) to enable this Act to operate effectively as a law of the Commonwealth; and
 - (b) to ensure that the combined liability of a taxpayer under this Act and the corresponding Stamp Act is as nearly as possible the same as the taxpayer’s liability would be under the corresponding Stamp Act alone if the Commonwealth places in Western Australia were not Commonwealth places.
- (4) If this Act requires any duty paid or payable in another State or a Territory, or any duty previously paid, to be taken into account for the purpose of calculating the amount of duty payable under this Act, then any duty paid, payable or previously paid under the corresponding Stamp Act must also be taken into account if it would have been taken into account under this Act if it were paid or payable solely under this Act.

”.

85. Section 2A modified

Section 2A(1) is repealed.

86. Section 4 modified

- (1) Section 4(1) is modified by inserting the following definitions in their appropriate alphabetical positions —

“

“Applied Taxation (Reciprocal Powers) Act” means the *Taxation (Reciprocal Powers) Act 1989* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

“applied interstate law” means a law of another State in its application as a law of the Commonwealth in or in relation to Commonwealth places in that State in accordance with the Commonwealth Mirror Taxes Act;

“Commonwealth Mirror Taxes Act” means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

“**Commonwealth place**” means a Commonwealth place in or in relation to which this Act applies or is taken to have applied under section 6 of the Commonwealth Mirror Taxes Act;

“**corresponding Stamp Act**” means the *Stamp Act 1921* of Western Australia in its application as a law of Western Australia;
”.

- (2) Section 4(1) is further modified as follows:
- (a) in the definition of “Commissioner” by deleting all the words after “office” and inserting instead —

“
of Commissioner of State Revenue of Western Australia
”;

- (b) by deleting the definition of “the Crown”.

87. Section 4AA inserted

After section 4 the following section is inserted —

“

4AA. Instruments subject to dual liability

- (1) If an instrument or 2 or more instruments is, are or may be liable for duty under both this Act and the corresponding Stamp Act, the total amount of duty payable is calculated by reference to the amount equal to the sum of —
- (a) the amount or amounts on which duty is payable under this Act; and
- (b) the amount or amounts on which duty is payable under the corresponding Stamp Act.
- (2) The amount of duty paid or payable on the instrument or instruments under this Act is the amount equal to the amount calculated under subsection (1) minus any amount paid or payable under the corresponding Stamp Act.

”.

88. Section 6 modified

After section 6(2) the following subsections are inserted —

“

- (3) If, under section 6 of the corresponding Stamp Act, the Commissioner has delegated a function under that Act to a

person, the corresponding function under this Act is taken to have been delegated to the person under this section.

- (4) A person who is authorised to perform a function under the corresponding Stamp Act is taken to be authorised to perform the corresponding function under this Act.

”.

89. Section 8 modified

- (1) Section 8 is modified as follows:

- (a) by inserting before “The” the subsection designation “(1)”;
- (b) by inserting after “this Act” —
“ or the corresponding Stamp Act ”;
- (c) by inserting before “any other Act” —
“ this Act or ”.

- (2) At the end of section 8 the following subsection is inserted —

“

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

”.

90. Section 9 modified

Section 9(2) is modified as follows:

- (a) in paragraph (a) by inserting after “this Act” —
“ or the corresponding Stamp Act ”;
- (b) in paragraph (b) by inserting after “this Act” —
“ or the corresponding Stamp Act ”.

91. Section 11 modified

Section 11 is modified by deleting “on behalf of the Crown”.

92. Section 15B modified

Section 15B(1)(b) is modified by deleting “*Financial Administration and Audit Act 1985*” and inserting instead —

“

Financial Management and Accountability Act 1997 of the Commonwealth

”.

93. Section 16 modified

Section 16(1) is modified by deleting “for the use of the Crown”.

94. Section 26 modified

- (1) Section 26(1) is modified by deleting “Crown” and inserting instead —

“ Commonwealth ”.

- (2) Section 26(1a) is modified by deleting “Crown” and inserting instead —

“ Commonwealth ”.

95. Section 31B modified

Section 31B(5) is modified by deleting “the law of another State or of a Territory” and inserting instead —

“

the corresponding Stamp Act or a law in force in another State or Territory, including an applied law within the meaning of the Commonwealth Mirror Taxes Act,

”.

96. Section 39A modified

Section 39A(1) is modified by deleting “Crown” and inserting instead —

“ Commonwealth ”.

97. Section 73D modified

Section 73D(6a)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“

under a law in force in another State or Territory

”.

98. Section 75AE modified

After section 75AE(2) the following subsection is inserted —

“

- (2a) For the purposes of subsection (2)(b), if duty is or may be payable on the instrument of conveyance or transfer of property both under this Act and the corresponding Stamp Act, the purchaser is entitled to a rebate only if the total

value of the property conveyed or transferred by the instrument does not exceed \$135 000.

”

99. Section 76AH modified

Section 76AH(4)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“

under a law in force in another State or Territory

”

100. Section 76AO modified

Section 76AO(4)(b) is modified by deleting “in another jurisdiction” and inserting instead —

“ under a law in force in another State or Territory ”.

101. Section 84 modified

After section 84(4) the following subsection is inserted —

“

(5) In this section —

- (a) a reference to duty payable in another State is to be read as including a reference to duty payable under the corresponding Stamp Act or duty payable under a law of another State that applies as a law of the Commonwealth in or in relation to Commonwealth places in the State in accordance with the Commonwealth Mirror Taxes Act; and
- (b) a reference to an instrument that is exempt in another State is to be read as including a reference to an instrument that is exempt under the corresponding Stamp Act or under a law of another State that applies as a law of the Commonwealth in or in relation to Commonwealth places in the State in accordance with the Commonwealth Mirror Taxes Act.

”

102. Section 87 modified

Section 87(1) is modified by inserting after “chargeable under item 13” —

“

of the second Schedule of this Act or the corresponding Stamp Act”.

103. Section 112A modified

Section 112A(1) is modified by deleting the definition of “corresponding law” and inserting the following definition instead —

“

“**corresponding law**” means —

- (a) the corresponding Stamp Act;
- (b) a law in force in another State or Territory that is declared by proclamation to be a corresponding law for the purposes of Division 3; or
- (c) an applied interstate law that corresponds to a law referred to in paragraph (b).

”.

104. Section 112K modified

After section 112K(1a) the following subsection is inserted —

“

- (1b) A reference in subsection (1) to an amount to be shown in a statement does not include a reference to any amount in respect of which stamp duty has been paid under the corresponding Stamp Act.

”.

105. Section 120 modified

Section 120(1)(f) is modified by deleting “Crown” and inserting instead —

“ Commonwealth ”.

”.

¹⁰ The *Road Traffic Amendment (Vehicle Licensing) Act 2001* Pt. 3 Div. 4 will not come into operation because it was repealed by the *Taxation Administration (Consequential Provisions) Act 2002* s. 29(3).

¹¹ The amendment in the *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 175(3) is not included because the section it sought to amend has been repealed by the *Stamp Amendment Act 2003* s. 7 before the amendment purported to come into operation.

¹² The renumbering of Parts, Divisions, sections, etc., effected in the 1934 reprint (in the appendix to the annual sessional volume of 1933-1934) and subsequent reprints has been retained. References to the original numbering are contained in those reprints.

¹³ The Second Schedule to the *Metric Conversion Act 1972* was inserted by the *Metric Conversion Act Amendment Act 1973*.

¹⁴ The *Stamp Amendment Act 1981* s. 5(2) reads as follows:

“

- (2) Where duty has been or is being paid under section 112K of this Act in respect of a loan, other than a loan upon an account current, at the rate provided for by that section as it was prior to the coming into operation of this section of this Act, section 112K(1)(b) shall continue to apply in respect of every such loan as if this section had not been enacted.

”

¹⁵ The *Stamp Amendment Act 1986* s. 21(2) reads as follows:

“

- (2) The exemptions provided for by subitems (2) and (3) inserted by paragraph (b) of subsection (1) apply to a policy of insurance, or a renewal, entered into after the commencement of that paragraph.

”

¹⁶ The *Stamp Amendment Act 1987* s. 4 reads as follows:

“

4. Retrospective application and transitional provisions

- (1) Section 76AG inserted in the principal Act by section 22 of this Act extends to any relevant acquisition of a majority interest or a further interest in a company to which Division 2 of Part IIIA of the principal Act applies that occurred on or after 19 January 1987, and the provisions of Divisions 1 and 2 of that Part and any regulations having effect for the purposes of those Divisions shall have effect accordingly.
- (2) Section 76AN inserted in the principal Act by section 22 of this Act extends to any relevant acquisition of a majority interest or a further interest in a corporation to which Division 3 of Part IIIA of the principal Act applies that occurred on or after 19 January 1987, and the provisions of Divisions 1 and 3 of that

Part and any regulations having effect for the purposes of those Divisions shall have effect accordingly.

- (3) Subsections (1) and (2) have effect notwithstanding that duty on an instrument effecting or evidencing an acquisition has already been paid under item 4(3) of the Second Schedule.
- (4) A statement required by subsection (1) or (2) shall be prepared and lodged not later than 3 months after the commencement of this section.
- (5) Notwithstanding subsection (1) or (2), a previous acquisition referred to in subparagraph (ii) of section 76AJ(1)(a) or subparagraph (ii) of section 76AQ(1)(a) of the principal Act shall not be taken into account for the purposes of that subparagraph if it occurred before 19 January 1987.
- (6) Regulations having retrospective effect to 19 January 1987 may be made under section 120(1) of the principal Act so far as it is necessary or expedient to do so to give effect to this section.
- (7) An expression used in this section in relation to a Division of Part IIIBA of the principal Act has the same meaning as it has for the purposes of that Division.

”

¹⁷ The *Stamp Amendment Act (No. 2) 1987* s. 9(2) reads as follows:

“

- (2) A notice of election given under section 112K(2) of the principal Act as in force before the commencement of this Act and not cancelled shall continue to have effect as if given under that subsection after the commencement of this Act.

”

¹⁸ The *Stamp Amendment Act 1991* s. 8(2) reads as follows:

“

- (2) Nothing in this section affects the approval of an odd lot specialist given under the principal Act before the coming into operation of this section and any odd lot specialist so approved shall be taken to have been approved as an odd lot specialist under the principal Act as amended by this Act.

”

¹⁹ The *Stamp Amendment Act (No. 2) 1994* s. 5(2) and (3) read as follows:

“

- (2) If before the commencement of this Act, duty has been paid under item 8(1) of the Second Schedule to the principal Act in respect of

an instrument that is exempt from duty because of the amendment to the Third Schedule made by subsection (1), the person by or on whose behalf the duty was paid may make written application to the Commissioner for the refund of the duty.

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

”

20 The *Stamp Amendment (Marketable Securities Duty) Act 1995* s. 5 reads as follows:

“

5. Saving provision

The principal Act as in force immediately before the commencement of this Act continues to operate in respect of conveyances and transfers of marketable securities and rights in respect of shares made or executed before 1 July 1995.

”

21 The *Stamp Amendment Act 1995* s. 4(2) reads as follows:

“

- (2) Subsection (3) as inserted in section 27 of the principal Act by this Act applies to an instrument or document executed before or after the commencement of this Act.

”

22 The *Stamp Amendment Act 1995* s. 6(2) reads as follows:

“

- (2) Section 73F is enacted to avoid doubt and does not limit the application of the principal Act as enacted before the commencement of this section to transactions entered into in relation to business licences (within the meaning of that section) before that commencement.

”

23 The *Revenue Laws Amendment (Assessment) Act 1996* s. 32(5) reads as follows:

“

- (5) Section 75E of the principal Act as amended by this Act applies to an instrument executed on or after the commencement of the *Revenue Laws Amendment (Assessment) Act 1996*.

”

²⁴ The *Stamp Amendment Act 1996* s. 9 reads as follows:

“

9. Transitional

- (1) If because of the amendments made by this Act to the *Stamp Act 1921*, a person is required under Division 2 of Part IIIA of that Act to lodge a statement in respect of a relevant acquisition that occurred on or after 20 November 1995 and before this Act receives the Royal Assent, then despite section 76AG(3) of that Act the statement shall be lodged within 3 months after the date on which this Act receives the Royal Assent.
- (2) If under section 112HA of the *Stamp Act 1921* as inserted by section 8 of this Act, a statement in respect of a capital reduction or a share cancellation is required to be lodged by that section before this Act receives the Royal Assent, then despite section 112HA of that Act the statement shall be lodged within 3 months after the date on which this Act receives the Royal Assent.

”

²⁵ The *Revenue Laws Amendment (Assessment) Act 1997* s. 36(2) reads as follows:

“

- (2) Section 27(3) as inserted in the principal Act by subsection (1) applies to an instrument or document executed before or after the day on which this section commences.

”

²⁶ The *Revenue Laws Amendment (Assessment) Act 1997* s. 39(2) and (3) read as follows:

“

- (2) Section 76D of the principal Act as it was in force immediately before the commencement day continues to have effect after the commencement day in relation to deeds made before the commencement day despite the repeal of Part IIIA by this Act.
- (3) In subsection (2) —
“**commencement day**” means the day on which this Act comes into operation.

”

²⁷ The *Revenue Laws Amendment (Assessment) Act 1997* s. 24 reads as follows:

“

24. Reassessment

- (1) This Division has effect notwithstanding that duty on an instrument has been assessed on or after 27 December 1996 and before the day on which this Act receives the Royal Assent (the “**original assessment**”).
- (2) If it appears to the Commissioner that the original assessment is for a lesser amount than would be assessed under the principal Act as amended by this Division, the Commissioner may make a reassessment of the duty chargeable.
- (3) The reassessment supersedes the original assessment.
- (4) The reassessment is taken to have been made under the principal Act and the provisions of the principal Act apply to and in relation to the reassessment as if it were an assessment under that Act.

”

²⁸ The *Revenue Laws Amendment (Assessment) Act 1997* s. 48 reads as follows:

“

48. Transitional

The Commissioner is to refund the amount of any duty paid on a vehicle licence if —

- (a) the licence was issued on or after 16 January 1997;
- (b) the Commissioner is satisfied that, because of the amendments made to the principal Act by this Division duty is not payable on that licence; and
- (c) an application is made in writing to the Commissioner for the refund within 12 months after the duty was paid.

”

²⁹ The *Revenue Laws Amendment (Taxation) Act 1998* s. 13 reads as follows:

“

13. Saving

Subject to section 2(4) and (5), and without limiting the operation of the *Interpretation Act 1984*, the provisions of the *Stamp Act 1921* as in force immediately before 1 July 1998 continue to have effect in relation to instruments executed before 1 July 1998.

”

³⁰ The *Revenue Laws Amendment (Taxation) Act 1998* s. 2(4) and (5) read as follows:

“

- (4) Section 12(11) is deemed to have come into operation on 30 April 1998 in relation to a policy of insurance that is effected on or after 30 April 1998 and before 1 July 1998 if —
 - (a) the period for which the policy is valid commences on or after 1 July 1998; or
 - (b) the period for which the policy is valid commences on or after 30 April 1998 and before 1 July 1998 and the policy replaces another policy with the same insurer that would otherwise have expired on or after 1 July 1998.
- (5) Section 12(11) is deemed to have come into operation on 30 April 1998 in relation to a policy of insurance that is renewed on or after 30 April 1998 and before 1 July 1998 if —
 - (a) the period for which the policy is renewed commences on or after 1 July 1998; or
 - (b) the policy being renewed would otherwise have expired on or after 1 July 1998.

”

³¹ The *Revenue Laws Amendment (Taxation) Act 1999* s. 7(2), (3) and (4) read as follows:

“

- (2) Subject to subsection (3), if an application for the issue or transfer of a motor vehicle licence is made to a licensing authority before this section commences, then the *Stamp Act 1921* as it was in force immediately before this section commences continues to operate in respect of the issue or transfer of the licence.
- (3) If —
 - (a) an application for the issue or transfer of a motor vehicle licence is made to a licensing authority on or after 1 July 1999; and
 - (b) stamp duty in respect of the issue or transfer is not paid before the day on which this section commences,then the *Stamp Act 1921* as amended by subsection (1) operates in respect of the issue or transfer of the licence.
- (4) If under section 76C(9), (10) or (10C) of the *Stamp Act 1921* duty is assessed before this section commences, then the *Stamp Act 1921* as it was in force immediately before this section

commences continues to operate in respect of any issue or transfer of a licence as a result of the assessment.

”

³² The *Financial Relations Agreement (Consequential Provisions) Act 1999* s. 3 and 32 read as follows:

“

3. Objectives

The main objectives of this Act are —

- (a) to record the intention of this State to comply with, and give effect to, the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*, a copy of which is set out in Schedule 1; and
- (b) to implement, in part, measures described in that agreement.

32. Savings

- (1) Subject to subsection (2), the former provisions continue to apply as if this Division were not enacted, to and in relation to —
 - (a) information referred to in section 9(1c) of those provisions that was acquired on or before 30 June 2001 or during the continued application under this section of Part IVA Division 4 of those provisions;
 - (b) instruments referred to in section 112D of those provisions that were executed on or before 30 June 2001 and the subsequent SCH-regulated transfers;
 - (c) transfers referred to in section 112E or 112F of those provisions that were made on or before 30 June 2001;
 - (d) sales and purchases referred to in Part IVA Division 3 of those provisions that were made or deemed to have been made on or before 30 June 2001;
 - (e) SCH-regulated transfers to which Part IVA Division 4 of those provisions applies that were made on or before 30 June 2001;
 - (f) matters referred to in Part IVA Division 5 of those provisions, until all instruments required to be endorsed under section 112D of those provisions have been so endorsed;
 - (g) relevant transactions referred to in Part IVAB of those provisions that were made or effected, or deemed to have been made or effected, on or before 30 June 2001;

- (h) the matters referred to in the Second Schedule item 4A of those provisions where the conveyances or transfers were made on or before 30 June 2001; and
 - (i) exemptions in the Third Schedule of those provisions where the conveyances, transfers, sales or purchases were made on or before 30 June 2001.
- (2) Regulations may be made under section 120 of the *Stamp Act 1921* that, subject to any condition that the regulations may impose, terminate an obligation that, because of subsection (1), would otherwise continue under —
- (a) section 112E(6) and (7) of the former provisions, in relation to a record referred to in section 112E(5) of the former provisions;
 - (b) section 112F(11) and (12) of the former provisions, in relation to a record referred to in section 112F(10) of the former provisions;
 - (c) section 112FI(5) and (6) of the former provisions, in relation to a record referred to in section 112FI(3) of the former provisions;
 - (d) section 112FJ(3) and (4) of the former provisions, in relation to a copy of an instrument endorsed under section 112FJ(2) of the former provisions;
 - (e) section 112FQ of the former provisions, in relation to the particulars and records referred to in that section; or
 - (f) section 112GF of the former provisions, in relation to books and records referred to in that section.
- (3) In this section —
- “**former provisions**” means the *Stamp Act 1921* as in force immediately before the coming into operation of this Division.

³³ The *Acts Amendment (Continuing Lotteries) Act 2000* Pt. 4 (as amended by No. 45 of 2002 s. 6) reads as follows:

“

Part 4 — Savings and transitional provisions

17. Interpretation

In this Part —

“**commencement day**” means the day on which this Act comes into operation;

“**Commission**” means the Gaming Commission of Western Australia, established under the *Gaming Commission Act 1987*;

“**Gaming Commission Act**” means the *Gaming Commission Act 1987* as amended by this Act;

“**Stamp Act**” means the *Stamp Act 1921* as in force immediately prior to the commencement day.

[Section 17 amended by No. 45 of 2002 s. 6.]

18. Licences

A licence issued under Part IVAA of the Stamp Act and in force immediately before the commencement day —

- (a) is taken to be a licence issued under Part V Division 7 of the Gaming Commission Act; and
- (b) subject to that Division, continues in force until —
 - (i) the day on which the licence would have expired under Part IVAA of the Stamp Act; or
 - (ii) 5 years after the commencement day,whichever is the earlier.

19. Cancellation of licence

For the purposes of section 104B(3)(c) of the Gaming Commission Act, the cancellation of a licence under Part IVAA of the Stamp Act is to be treated as if it were a cancellation under the Gaming Commission Act, Part V Division 7.

20. Pending appeals

- (1) Subject to subsection (2), an appeal commenced under section 111 of the Stamp Act before the commencement day, may be continued and dealt with as if the amendments in Parts 2 and 3 of this Act had not been passed.
- (2) For the purposes of continuing and dealing with pending appeals, if a Local Court wishes to exercise its power, under section 111(3)(b) of the Stamp Act, to remit a matter under appeal, it is to remit that matter to the Commission, instead of the Commissioner of State Revenue.

21. Continuing effect of approvals

Any approval granted under section 111B of the Stamp Act continues in force until that approval is varied or revoked by the Commission under section 104F(2) of the Gaming Commission Act.

22. Returns

If duty payable to the Commissioner of State Revenue under section 111B of the Stamp Act on a return lodged, or to be lodged, with the Commissioner of State Revenue under section 111B of the Stamp Act has not been paid prior to the commencement day then, despite this Act, the duty payable continues as a debt due to the Commissioner of State Revenue.

23. Refund of duty

Where a licensed supplier is entitled to a refund of duty from the Commissioner of State Revenue under section 111D of the Stamp Act, and that duty has not been refunded before or on the commencement day, then despite this Act, the licensed supplier is entitled to a refund of that amount of duty from the Commissioner of State Revenue.

24. Memoranda

- (1) Where the Commissioner of State Revenue was entitled to create a memorandum under section 111E of the Stamp Act, and that entitlement had not been exercised by the Commissioner of State Revenue before or on the commencement day, then on and from the commencement day the Commission is instead entitled to create that memorandum.
- (2) In addition to the entitlement under subsection (1), the Commission is entitled to assess the amount to be paid (including any fine), and to collect the outstanding amount, in relation to a memorandum created under subsection (1).

”

³⁴ The *Revenue Laws Amendment (Assessment) Act 2000* s. 6(2) reads as follows:

“

- (2) In the event of a cessation of ownership or control referred to in section 75JB(5f)(a) or (b) of the *Stamp Act 1921* as inserted by subsection (1) taking place on or after 25 May 2000 and before this Act receives the Royal Assent, the notification required by section 75JB(5f)(c) of that Act is to be given within one month after this Act receives the Royal Assent.

”

³⁵ The *Revenue Laws Amendment (Assessment) Act 2000* s. 8(2), (3) and (4) read as follows:

“

- (2) In subsections (3) and (4) —
“**transitional period**” means the period beginning on 25 October 1999 and ending when subsection (1) comes into operation.
- (3) If an exemption under section 75JB of the *Stamp Act 1921* has been granted during the transitional period and the Commissioner is of the opinion that it would not have been granted if subsection (1) had come into operation on 25 October 1999, the claw-back under Part IIIBAAA of that Act applies.
- (4) Section 75JDA(4) of the *Stamp Act 1921* does not apply to a requirement under section 75JC(5) of that Act if the determination under section 75JC was made during the transitional period.

”

³⁶ The *Stamp Amendment Act (No. 3) 2000* s. 21 reads as follows:

“

21. Transitional

- (1) In this section —
“**amended provisions**” means the provisions of Part IIIBA and sections 32, 73DA, 75HA, 75I and 75J of the *Stamp Act 1921* as enacted after the coming into operation of this Act;
“**existing provisions**” means the provisions of Part IIIBA and sections 32, 73DA, 75HA, 75I and 75J of the *Stamp Act 1921* as enacted before the coming into operation of this Act.
- (2) Subject to subsection (3), the existing provisions continue to apply to and in relation to an acquisition of an interest in a corporation that occurred before 10 August 2000 and the amended provisions do not apply to it.
- (3) Subsection (2) does not affect the operation of the amended provisions in relation to an acquisition of an interest that occurred before 10 August 2000 in so far as those provisions have effect for the purpose of determining whether an acquisition that occurred on or after 10 August 2000 is a relevant acquisition for the purposes of those provisions.
- (4) If —
 - (a) a legally enforceable agreement in writing was executed before 10 August 2000;

- (b) that agreement created before 10 August 2000 an entitlement to an interest in a corporation; and
- (c) that entitlement resulted or results in that interest being acquired on or after 10 August 2000 but before 1 January 2001,

the acquisition of that interest is to be regarded for the purposes of subsections (2) and (3) as having occurred before 10 August 2000.

- (5) Despite section 76AG(3) or 76AN(2), as the case may be, of the amended provisions, if —
 - (a) an acquisition of an interest in a corporation occurred on or after 10 August 2000 but before this Act receives the Royal Assent;
 - (b) a statement has to be lodged under section 76AG or 76AN in respect of that acquisition because of the operation of the amended provisions; and
 - (c) the existing provisions would not have required such a statement to be lodged,

the statement may be lodged at any time before the end of the period of 3 months after the day on which this Act receives the Royal Assent.

”

³⁷ Between 16 May 2002 and 30 June 2002, the amendments in Part 4 of the *Stamp Amendment (Budget) Act 2002* operated in relation to policies of insurance issued under the *Motor Vehicle (Third Party Insurance) Act 1943* that —

- (a) were effected or renewed on or after 16 May 2002 but before 1 July 2002; and
- (b) are valid for a period commencing on or after 1 July 2002.

See section 2(4) of the *Stamp Amendment (Budget) Act 2002*.

³⁸ The *Stamp Amendment (Budget) Act 2002* s. 5 reads as follows:

“

5. Transitional

Despite the amendments effected by this Part, the *Stamp Act 1921* as in force immediately before 1 July 2002 continues to apply to and in relation to instruments of a kind referred to in the Second Schedule item 4(1) to that Act that were executed before 1 July 2002.

”

³⁹ The *Stamp Amendment (Budget) Act 2002* s. 9 reads as follows:

“

9. Transitional

- (1) Despite the amendments effected by this Part, the *Stamp Act 1921* as in force immediately before the commencement day continues to apply to and in relation to the issue or transfer of a motor vehicle licence the application for which was made before the commencement day.
- (2) Despite subsection (1), if —
 - (a) the commencement day is after 1 July 2002;
 - (b) an application for the issue or transfer of a motor vehicle licence is made to a licensing authority on or after 1 July 2002; and
 - (c) stamp duty in respect of the issue or transfer of the licence is not paid before the commencement day,
 then the *Stamp Act 1921* as amended by this Part applies to and in relation to the issue or transfer of the licence.
- (3) If, under section 76C(9), (10) or (10C) of the *Stamp Act 1921*, the amount of duty payable in respect of the issue or transfer of a licence is assessed before the commencement day, then the *Stamp Act 1921* as in force immediately before that day continues to apply to and in relation to the issue or transfer of the licence and the assessment.
- (4) In this Part —
 “**commencement day**” means day on which this Part comes into operation.

”.

⁴⁰ The *Taxation Administration (Consequential Provisions) (Taxing) Act 2002* s. 3 and 4 read as follows:

“

3. Relationship with other Acts

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

4. Meaning of terms used in this Act

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

”.

⁴¹ The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

“

2. Commencement

- (1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.
- (2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

3. Interpretation

In this Part —

“**Financial Services Reform Act**” means the *Financial Services Reform Act 2001* of the Commonwealth;

“**FSR commencement time**” means the time when Schedule 1 to the Financial Services Reform Act comes into operation;

“**statutory rule**” means a regulation, rule or by-law.

4. Validation

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.
- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —
 - (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and

- (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,

is taken not to be valid, and to never have been valid.

”

⁴² The *Stamp Amendment (Budget) Act 2003* s. 4(7) reads as follows:

“

- (7) Despite the amendments made by this section, the *Stamp Act 1921* as in force immediately before 1 July 2003 continues to apply to and in relation to instruments of a kind referred to in the Second Schedule item 4(1) to that Act that were executed before 1 July 2003.

”

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
acquire.....	76(1)
aged care service	112R(2)
apportioned liability	75G(3)
approved provider	112R(2)
arrangement.....	70(1)
bankruptcy trustee	75ABA(2)
beneficiary	76A(3)
bill of exchange.....	49
bill of exchange payable on demand.....	49
body corporate	75J(1)
business licence.....	31B(9), 73F(1)
business property	75AE(3)
caveat	28(6)
chargeable with duty	70(1)
chattels	70(1), 73D(1), 76(1)
Commonwealth Act	76B(1)
company.....	73DA(3)(a), 73E(1)
controlling body	75JB(5c)
conveyance on sale	63(1)
corporation	4(1)
Corporations Act.....	4(1)
corresponding State law	76B(1)
current exempted property	75HA(1)
customer.....	112I(1)
de facto partner of 2 years.....	4(1)
de facto partners of 2 years	4(1)
de facto relationship.....	112UA(1)
dealer.....	76B(1)
deeming provision.....	76AU(4)
deeming-in provision	76AU(4)
deeming-out provision	76AU(4)
director	4(1)
Director General.....	76B(1)
discretionary trust.....	75D(1), 76(1)
discretionary trustee	63(1), 75D(1), 76B(1)
disposition	63(1a), 73D(1), 73E(1)
distributable property	76(1)
dormant	75J(1)
dutiable statement	4(1)
duty	4(1)

Defined Terms

duty avoidance arrangement	75JDA(1)
dwellinghouse	4(1)
earlier acquisition	76AJ(3), 76AQ(3)
eligible purchaser	75AE(3)
eligible vehicle	76B(1)
entitled	76(1)
entitled share	75HA(1)
entitlement	76(1)
estate or interest in land	70(1)
exempt body	119(1)
exempt chattels	70(1)
Family Court Act	112UA(1)
Family Law Act	112UA(1)
family member	75D(1)
farming company	75D(1)
farming exemption	75HA(1)
farming land	70(1), 75D(1)
farming partnership	75D(1)
farming property	75D(1)
financial institution	4(1)
financial market	4(1)
first home owner	75AG(7)
foreign company	4(1)
foreign person	75J(1)
former de facto partner of 2 years	4(1)
full duty	20(9)
further interest	76A(3)
goods	112I(1)
government body	4(1)
grant	76B(1)
GST	4A(4), 112I(1b)
heavy vehicle	76B(1)
holding corporation	76AR(4)
Homeswest lease	79(7)
independent person	20(9)
instrument	4(1), 75JA(6)
instrument chargeable with <i>ad valorem</i> duty	31B(9)
instrument of conveyance	75D(1)
instrument of transfer	35(4)
insurance company	92
interest	76A(3)
interstate duty	4(1)
issued share capital	75J(3)
issuer	100
land	33(4), 63AB(1), 70(1), 73D(1), 75D(1), 76(1)

Defined Terms

later acquisition	76AJ(3), 76AQ(3)
lease	4A(4)
leasing	4A(4)
licence	76B(1)
local government	4(1)
lot	75C(4)
maintenance agreement	112UA(1)
majority interest	76A(3), 76AK(2), 76AR(2)
marketable security	4(1)
minerals	76(1)
mining tenement	76(1)
money	4(1)
mortgage	81(1)
net value	76B(1)
non-beneficial	76B(1)
officer	73E(1)
old public unit trust	112UE(1)
order	112UA(1)
original equipment	76D(6)(c), 76J(1)(b)
overseas transfer	100
own and control	75JB(5c)
parent body	75JB(5c)
Part IIIBA statement	4(1)
party	20(9)
payment	4(1)
person resident in Western Australia	92
policy of insurance	92
policy of insurance against accident	92
policy of life insurance	92
premium	92
prescribed amount	112K(1c)
prescribed relationship	75JB(5d)
primary production	75D(1)
primary products	76(1)
promissory note	49
property	112UA(1)
purchase price	76B(1)
qualified person	112Q(2)
qualifying period	75JB(5c)
receiving body	31C(1)
recognised financial market	4(1)
register	100
registered person	112I(1)
registrar	28(6)
related corporation	4(1)

Defined Terms

relevant acquisition	76A(3), 76AJ, 76AQ
relevant circumstances	75JB(5e)
relevant day	76AJ(4), 76AQ(4)
relevant period	76AJ(5), 76AQ(5)
relevant proportion	75HA(1)
rental business	112I(1)
replacement transaction	20(9)
residential property	75AE(3), 75AG(7)
right in respect of shares	4(1)
rules	76(1)
sale	72(1)
section 31B or 31C statement	75J(1)
section 76AG statement	4(1)
section 76AN statement	4(1)
security	100
service costs	112I(1)
share	73E(1), 76(1)
shareholding	76(1)
shares	75J(1)
specialised equipment	76B(1)
stamp	4(1)
stamp Act	4(1)
start up period	63AC(2)
supply	4A(4)
surviving de facto partner of 2 years	4(1)
the capital reduction	112HA(1)
the determiner	73B(3)
the dutiable value	76AL(1), 76AS(1)
the initial instrument	75E(5)
the initial transfer	75E(6)(a)
the intermediary	69(1)(b)
the licensee	73F(2)
the new rate	87(1)(b)
the property	73A(1), 73B(1)
the rights alteration	112HA(2)(a)
the share cancellation	112HA(2)(b)
the stamped instrument	87(1)
the target	75JA(1)(a), 75JA(1a)(a)
the transferee	69(1)(a), 75JA(1)(a), 75JA(1a)(a)
the transferor	69(1)(a), 75E(1), 75HA(1)
the capital reduction	112HA(1)
title deeds	81(2)
transfer	35(4), 70(1), 73D(1)
transfer or assignment	72(1)

Defined Terms

transferring body	31C(1)
trust	76(1)
trustee.....	63(1), 75AG(7), 75D(1), 76B(1)
unit	63(1b), 73D(1)
unit trust scheme	63(1), 76B(1)
unit trustee.....	63(1), 76B(1)
unlisted WA security.....	100
vacant land	75AG(7)
vehicle.....	76B(1)
vehicle A	76D(6)(a)
vehicle B	76D(6)
voting share.....	112H(1)
WA company	4(1)