

Western Australia

## **Stamp Amendment (Assessment) Act 2005**

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As at 12 Dec 2005

No. 36 of 2005

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## Stamp Amendment (Assessment) Act 2005

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Western Australia

## **Stamp Amendment (Assessment) Act 2005**

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**No. 36 of 2005**

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**An Act to amend the *Stamp Act 1921* and for related purposes.**

*[Assented to 12 December 2005]*

The Parliament of Western Australia enacts as follows:

**s. 1**

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**1. Short title**

This is the *Stamp Amendment (Assessment) Act 2005*.

**2. Commencement**

- (1) Subject to this section, this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Section 5 is deemed to have come into operation on 1 July 1997.
- (3) Sections 6 and 8 come into operation on a day fixed by proclamation.

**3. The Act amended**

The amendments in this Act are to the *Stamp Act 1921*\*.

[\* *Reprint 15 as at 3 June 2005.*]

**4. Section 33 amended**

Section 33(3)(b)(iv) is amended by deleting “subparagraph (i), (ii) (iii) or (iiia)” and inserting instead —

“ subparagraph (i), (ii), (iii) or (iiia) ”.

**5. Section 97 inserted**

After section 96 the following section is inserted in Part IIIF —

“

**97. Offshore risk policies exempt from duty**

- (1) In this section —

“**offshore risk insurance**” means any kind of insurance that is applicable to —

- (a) property outside Australia; or

- (b) any liability, loss or damage that arises or is brought about as a result of the occurrence of an event outside Australia.
- (2) Duty is not chargeable in respect of the issue or renewal of a policy of insurance to the extent that the policy effects offshore risk insurance.
- (3) If a policy of insurance effects both offshore risk insurance and other insurance and the proportion of the total amount paid to the person with whom the policy is effected (in respect of the issue or renewal) that is attributable to the offshore risk insurance is not ascertainable at the time of the issue or renewal, the proportion is the proportion calculated in accordance with the method of apportionment from time to time established as a practice of the Commissioner and published under section 127 of the *Taxation Administration Act 2003*.
- (4) However, if the Commissioner is not satisfied that the total amount has been appropriately apportioned, the Commissioner may —
  - (a) determine the appropriate proportions; and
  - (b) reassess the amount of duty payable in respect of the issue or renewal accordingly.
- (5) Any amount paid or payable to the person with whom the policy of insurance is effected on account of duty in respect of the issue or renewal of the policy shall be disregarded for the purpose of calculating the total amount paid to the person in respect of the issue or renewal.

”.

6. **Part IIIF replaced**

Part IIIF is repealed and the following Part is inserted instead —

“

**Part IIIF — Insurance**

**Division 1 — Interpretation in Part IIIF and connection to the State**

92. **Terms used in this Part**

In this Part, unless the contrary intention appears —

“**accident insurance**” means insurance for any payment agreed to be made on the death of any person only from accident or violence or otherwise than from a natural cause or as compensation for personal injury;

“**contract of insurance**” means a contract of insurance that effects general insurance (whether or not it also effects other kinds of insurance);

“**Defence Service Homes Insurance Scheme**” has the meaning given to that term in section 38 of the *Defence Service Homes Act 1918* of the Commonwealth;

“**Division 4 insurer**” has the meaning given to that term in section 95;

“**financial services licensee**” has the meaning given to that term in section 761A of the Corporations Act;

“**general insurance**” has the meaning given to that term in section 92A;

“**health insurance business**” has the meaning given to that term in section 67 of the *National Health Act 1953* of the Commonwealth;

“**instalment**” means a portion of a premium;



**“insurer”** means the Insurance Commission of Western Australia or a person who —

- (a) writes general insurance otherwise than as an intermediary of an insurer (including a Division 4 insurer); and
- (b) is either —
  - (i) authorised under the *Insurance Act 1973* of the Commonwealth; or
  - (ii) registered under the *Life Insurance Act 1995* of the Commonwealth;

**“intermediary”**, of an insurer, means —

- (a) a representative of the insurer; or
- (b) a financial services licensee, who is not otherwise a representative of the insurer, who arranges or effects insurance for or with the insurer;

**“life insurance”** means insurance provided under or in accordance with a policy of insurance or assurance on any life or lives or on any event or contingency relating to or depending on any life or lives, other than a policy of accident insurance;

**“offshore risk insurance”** means any kind of insurance that is applicable to —

- (a) property outside Australia; or
- (b) any liability, loss or damage that arises or is brought about as a result of the occurrence of an event outside Australia;

**“premium”** means the total consideration paid to an insurer (including a Division 4 insurer) by or on behalf of an insured person to effect insurance, without deductions for any amounts paid or payable, or allowed or allowable, by way of

commission or discount to an intermediary of the insurer, but does not include —

- (a) an amount paid to an intermediary of the insurer by the insured person as a fee if the amount can be clearly identified as a fee; or
- (b) an amount paid on account of duty under this Part or interstate duty;

**“registered insurer”** means an insurer who is registered under section 93A;

**“registered organisation”** has the meaning given to that term in section 4 of the *National Health Act 1953* of the Commonwealth;

**“reinsurance”** means the indemnification of one party by another against liability or payment arising under a contract or contracts of insurance or reinsurance;

**“representative”** has the meaning given to that term in section 910A of the Corporations Act;

**“return period”**, of a registered insurer, has the meaning given in section 94B.

**92A. Meaning of general insurance and connection to the State**

- (1) **“General insurance”** means any kind of insurance that is applicable to —
  - (a) property in Western Australia; or
  - (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, Western Australia,

or both.

- (2) General insurance does not include any of the following —
- (a) life insurance;
  - (b) insurance against an employer's liability to pay compensation under the *Workers' Compensation and Injury Management Act 1981*;
  - (c) reinsurance;
  - (d) insurance in respect of goods in the course of being transported, whether by rail, road, air or sea, and whether within Western Australia or elsewhere;
  - (e) insurance in respect of a marine hull used primarily for commercial purposes;
  - (f) insurance effected by an exempt body (as defined in section 119);
  - (g) insurance issued by a registered organisation in the course of its health insurance business;
  - (h) insurance under the Defence Service Homes Insurance Scheme;
  - (i) offshore risk insurance;
  - (j) insurance of a class prescribed by the regulations.

**92B. Additional insurance — life riders**

- (1) This section does not apply to a policy of life insurance unless the insured person's place of residence is in Western Australia.
- (2) If —
- (a) a policy of life insurance, in addition to providing the insurance referred to in the definition of "life insurance" in section 92, also

provides for the payment of a benefit on the happening of a contingency or event that does not relate to or depend on a life or lives (the “**additional insurance**”); and

- (b) an identifiable part of the premium payable in respect of the policy is attributable to the additional insurance,

then the additional insurance provided under or in accordance with the policy is to be taken to be general insurance and not life insurance.

- (3) Subsection (2) applies —
  - (a) whether or not the life insurance and the additional insurance are distinct matters for the purposes of section 19; and
  - (b) whether or not payment of a benefit under the additional insurance component of the policy —
    - (i) will or may reduce the benefit payable under the life insurance component of the policy; or
    - (ii) will or may terminate the policy.

**92C. Payment of premiums**

- (1) For the purposes of this Part, a premium, or an instalment, is paid when the first of the following events occurs —
  - (a) the premium or instalment is received by the insurer; or
  - (b) an account of the insurer is credited with the amount of the premium or instalment.
- (2) A premium, or an instalment (apart from the case where the premium or instalment is received directly

by an insurer) is taken to have been received by an insurer if it is received by another person on the insurer's behalf.

- (3) In this section, a reference to an insurer includes a reference to a Division 4 insurer.

## **Division 2 — Registration of insurers**

### **93. Insurers to be registered**

- (1) On becoming an insurer, the insurer must apply to be registered under section 93A.
- (2) An application for registration must be made in an approved form on or before the 21<sup>st</sup> day after the end of the month in which the insurer became an insurer.

Penalty: \$20 000.

### **93A. Registration of insurers**

- (1) The Commissioner must register an insurer that applies for registration.
- (2) The Commissioner must register an insurer that has not applied for registration if satisfied that the insurer ought to be registered for the purposes of this Part.
- (3) The Commissioner must give notice to an insurer of its registration.

### **93B. Cancelling registration of insurers**

- (1) The Commissioner may cancel the registration of an insurer on his or her own initiative or at the request of the insurer.
- (2) The Commissioner is not to cancel an insurer's registration unless satisfied that registration of the

insurer is no longer necessary for the purposes of this Part.

- (3) A cancellation has effect on and from the day specified in the notice of cancellation of registration, which may be a day that is earlier than the day on which the notice is issued.

### **Division 3 — Duty payable by insurers**

#### **94. Lodging returns and paying duty**

- (1) A registered insurer must —
  - (a) lodge a return in an approved form for each return period of the insurer; and
  - (b) pay the duty payable on the return (if any),on or before the 21<sup>st</sup> day after the end of the return period.  
Penalty: \$5 000.
- (2) The insurer must lodge the return even if no duty is payable on the return.
- (3) On becoming an insurer, the insurer must, for the month in which the insurer became an insurer and for each subsequent month until the month in which the insurer becomes a registered insurer or ceases to be an insurer —
  - (a) lodge a return in an approved form for the month; and
  - (b) pay the duty payable on the return (if any),on or before the 21<sup>st</sup> day after the end of the month.  
Penalty: \$5 000.
- (4) The month referred to in subsection (3) is to be treated as a return period for the purposes of this Part.

**94A. Calculating the amount of duty payable on a return**

- (1) The amount of duty payable on the return for a return period is 10% of the assessable amount.
- (2) The assessable amount for a return period of an insurer is the sum of each premium or instalment (to the extent to which the premium or instalment is attributable to general insurance) paid to the insurer in the return period in respect of contracts of insurance entered into by or on behalf of the insurer.
- (3) Section 96 has an effect on the extent to which the premium or instalment is attributable to general insurance.

**94B. Return period of an insurer**

The return period of a registered insurer is —

- (a) one month, if a special tax return arrangement is not in force; or
- (b) the return period provided in a special tax return arrangement in force under section 49 of the *Taxation Administration Act 2003*.

**Division 4 — Duty payable by insured persons****95. Meaning of insurer in this Division**

In this Division —

**“Division 4 insurer”** means a person, other than the Insurance Commission of Western Australia, who writes general insurance, otherwise than as an intermediary of an insurer (including a Division 4 insurer), but who is not authorised under the *Insurance Act 1973* of the Commonwealth and not registered under the *Life Insurance Act 1995* of the Commonwealth.

**95A. Insured person to lodge statement and pay duty**

- (1) If a person obtains, effects or renews general insurance with a Division 4 insurer, the person must —
  - (a) lodge a statement in an approved form; and
  - (b) pay the duty payable on the statement,on or before the 21<sup>st</sup> day after the end of the month, or each month, in which the person paid the premium or an instalment for the insurance.  
Penalty: \$5 000.
- (2) The amount of duty payable on the statement is 10% of the proportion of the premium or instalment that is attributable to general insurance.
- (3) Section 96 has an effect on the proportion of the premium or instalment that is attributable to general insurance.
- (4) This section does not require a separate statement to be prepared if the document evidencing the insurance contains all the information required in a statement, in which case, the document is taken to be the statement.

**95B. Insurer and intermediary to notify Commissioner of contracts of insurance**

- (1) A Division 4 insurer must, for each month in which the insurer is paid a premium or an instalment in respect of a contract of insurance entered into by or on behalf of the insurer, notify the Commissioner in the approved form, of —
  - (a) each such contract of insurance for which the insurer has been paid a premium or instalment in that month; and
  - (b) the amounts of those premiums or instalments,on or before the 21<sup>st</sup> day after the end of the month.



Penalty: \$5 000.

- (2) An intermediary of a Division 4 insurer must, for each month in which the intermediary receives a premium or an instalment in respect of a contract of insurance for a Division 4 insurer, notify the Commissioner in the approved form, of —
- (a) each contract of insurance for which the intermediary has received a premium or instalment for a Division 4 insurer; and
  - (b) the amounts of those premiums or instalments,
- on or before the 21<sup>st</sup> day after the end of the month.

Penalty: \$5 000.

- (3) If a person complies with a requirement in subsection (1) or (2) in respect of a contract of insurance then the requirement in the other subsection is to be taken to have been complied with.

### **Division 5 — General provisions**

#### **96. Apportionment of premiums and instalments**

- (1) This section applies to a contract of insurance that effects both general insurance and other insurance.
- (2) If the proportion of the premium that is attributable to general insurance is not ascertainable at the time the contract is entered into, the proportion is the proportion calculated in accordance with the applicable method of apportionment from time to time established as a practice of the Commissioner and published under section 127 of the *Taxation Administration Act 2003*.
- (3) A method of apportionment published under section 127 of the *Taxation Administration Act 2003* may, for a particular class of contracts of insurance,

have the effect that the proportion of the premium that is attributable to general insurance is zero.

- (4) If the Commissioner is satisfied that a premium or instalment has not been, or cannot be, appropriately apportioned under this section, the Commissioner may —
  - (a) determine the appropriate proportions; and
  - (b) if necessary — reassess the amount of duty payable in respect of the contract of insurance.
- (5) The extent to which an instalment is attributable to general insurance is the same as the extent to which the premium is attributable to general insurance under this section.

**96A. Refunds**

- (1) If —
  - (a) an insurer has paid duty in respect of a contract of insurance in accordance with section 94A; and
  - (b) the insurer has refunded some or all of the premium for the contract,the insurer is entitled to a refund of the duty paid to the extent to which the premium was refunded.
- (2) If —
  - (a) a person has paid duty in respect of a contract of insurance in accordance with section 95A(2); and
  - (b) the Division 4 insurer has refunded some or all of the premium for the contract,the person is entitled to a refund of the duty paid to the extent to which the premium was refunded.

- (3) For the purposes of this section, an insurer (including a Division 4 insurer) refunds an amount of a premium if the insurer or an intermediary of the insurer —
  - (a) repays the amount to the insured person; or
  - (b) otherwise provides a benefit to the insured person to the value of the amount refunded.

**96B. Records**

- (1) An insurer and a person who is liable to pay duty under Division 4 must keep —
  - (a) the records that are prescribed in the regulations for the purposes of this section (if any); and
  - (b) any other records necessary to enable the Commissioner to determine the insurer's or the person's liability to pay duty under this Part.

Penalty: \$20 000.

- (2) A person who is required to notify the Commissioner under section 95B (disregarding the effect of section 95B(3)) must keep the records necessary to enable the Commissioner to verify the information in the notice.

Penalty: \$20 000.

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**7. Transitional provisions — offshore risk policies**

- (1) This section applies to the issue or renewal of a policy of insurance that effects offshore risk insurance, or both offshore risk insurance and other insurance, where the issue or renewal was effected on or after 1 July 1997 but before this Act received the Royal Assent.
- (2) If the issue or renewal of the policy was effected before the commencement of the *Taxation Administration Act 2003*, that

Act applies to a reassessment as if the issue or renewal had been effected after the commencement of that Act.

- (3) Despite section 17 of the *Taxation Administration Act 2003*, the Commissioner may make a reassessment even if the respective original assessment was made more than 5 years before the reassessment.
- (4) However, a person is not entitled to apply for a reassessment more than 12 months after the day on which this Act receives the Royal Assent.
- (5) Where the policy of insurance effects both offshore risk insurance and other insurance then, despite section 35 of the *Taxation Administration (Consequential Provisions) Act 2002*, the Commissioner may make a reassessment even if the reassessment increases the amount of duty that a person is liable to pay in relation to the issue or renewal of the policy to the extent that it effects insurance other than offshore risk insurance.
- (6) In this section —
  - “duty”** means duty payable under the *Stamp Act 1921*;
  - “offshore risk insurance”** has the meaning given to that term in section 97 of the *Stamp Act 1921* as inserted by section 5 of this Act;
  - “original assessment”** has the meaning given to that term in the *Taxation Administration Act 2003*;
  - “policy of insurance”** has the meaning given to that term in Part IIIF of the *Stamp Act 1921* as in force immediately before this Act received the Royal Assent;
  - “reassessment”** means a reassessment as defined in the *Taxation Administration Act 2003*, being a reassessment of the amount of duty chargeable in respect of the issue or renewal of a policy of insurance to which this section applies.

**8. Transitional provisions — Part IIIF**

- (1) An expression used in this section that is given a meaning in the *Stamp Act 1921* (including old Part IIIF and new Part IIIF) has the meaning so given unless the contrary intention appears.
- (2) New Part IIIF does not apply to or in respect of premiums or instalments paid to an insurer after commencement in respect of which duty, under old Part IIIF, became payable before commencement.
- (3) A person who was an insurer (as defined in new Part IIIF) immediately before commencement is to be taken to have become an insurer on commencement for the purposes of new Part IIIF.
- (4) In this section —
  - “commencement”** means the time at which section 6 of this Act comes into operation;
  - “new Part IIIF”** means Part IIIF of the *Stamp Act 1921* as in force after commencement and, for the purposes of this section, is to be taken to include item 16 of the Second Schedule of the *Stamp Act 1921* as in force after commencement;
  - “old Part IIIF”** means Part IIIF of the *Stamp Act 1921* as in force immediately before commencement and, for the purposes of this section, is to be taken to include item 16 of the Second Schedule and item 8 of the Third Schedule of the *Stamp Act 1921*, as in force immediately before commencement.