

WESTERN AUSTRALIA

STAMP AMENDMENT ACT 1996

No. 57 of 1996

AN ACT to amend the *Stamp Act 1921*.

[Assented to 11 November 1996.]

The Parliament of Western Australia enacts as follows:

Short title

- 1.** This Act may be cited as the *Stamp Amendment Act 1996*.

Commencement

2. This Act is deemed to have come into operation on 20 November 1995.

Principal Act

3. In this Act the *Stamp Act 1921** is referred to as the principal Act.

[* *Reprinted as at 23 January 1996.*
For subsequent amendments see Acts Nos. 4 and 20 of 1996.]

Section 4 amended

4. Section 4 (1) of the principal Act is amended by inserting after the definition of “die” the following definition —

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

Section 20 amended

5. (1) Section 20 (1) of the principal Act is amended —

- (a) by deleting “and” after paragraph (b);
- (b) by deleting the full stop after paragraph (c) and substituting the following —
 “ ; and ”; and

(c) by inserting the following paragraph —

“
(d) an instrument which is a statement prepared under section 112HA may be stamped without fine after that preparation if it is lodged within the time allowed under that section.
”.

(2) Section 20 (5a) of the principal Act is amended in the definition of “return” by deleting “or 112F (2)” and substituting the following —

“ , 112F (2) or 112HA (4) ”.

Section 75D amended

6. Section 75D (1) of the principal Act is amended by deleting the definition of “director”.

Section 76 amended

7. Section 76 (1) of the principal Act is amended —

- (a) by deleting the definition of “director”; and
- (b) in paragraph (e) (iii) of the definition of “acquire” by inserting after “court” the following —

“
that does not involve a cancellation of shares, or a variation, abrogation or alteration of the rights of shares, to which section 112HA applies
”.

s. 8**Part IVAC inserted**

8. After section 112GG of the principal Act the following Part is inserted —

“

**PART IVAC — CAPITAL REDUCTIONS BY
WA COMPANIES**

Interpretation

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

“voting share” has the same definition as in section 9 of the Corporations Law.

(2) In this Part, unless the contrary intention appears, a person is entitled to a voting share if under section 609 of the Corporations Law the person is entitled to the share.

Certain capital reductions dutiable

112HA. (1) This section applies if a taxable event occurs because a WA company, under section 195 of the Corporations Law, 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, under section 195 of the Corporations Law, 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 shall prepare and lodge a statement with the Commissioner unless the capital reduction, the rights alteration or the share cancellation also results in a relevant acquisition occurring under Part IIIIBA.

(5) The statement shall be in a form approved by the Commissioner and shall be lodged within 3 months after the later of —

- (a) the date when the capital reduction or the share cancellation has effect (as the case requires); or
- (b) if the capital reduction or the share cancellation requires the approval of a court, the date when under section 195 of the Corporations Law an office copy of the order of the Court is lodged with the Australian Securities Commission.

s. 8

(6) The statement shall be deemed, for the purposes of this Act, to be an instrument executed on the date when the capital reduction or the share cancellation has effect, as the case may be.

(7) The statement shall be charged with duty at the rate provided for in item 4A (1) (f) or (fa) of the Second Schedule, according to the nature of the cancelled shares, on the dutiable value.

(8) The dutiable value is the greater of —

- (a) the unencumbered market 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 75 (2a) 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 cancellation, the dutiable value shall be reduced by the unencumbered value of the property conveyed or transferred.

(10) The Commissioner —

- (a) may require the company to provide him with evidence in a form approved by him of the unencumbered market value of the cancelled shares or of the value of the consideration payable; and
- (b) either on the basis of that evidence or of a valuation obtained by him, may determine the dutiable value.

(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 statement.

(12) A WA company that contravenes subsection (4) or (5) or that lodges a statement that is false in a material particular commits an offence against this Act.

(13) A WA company that fails to comply with a requirement made under subsection (10) (a) commits an offence against this Act.

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Transitional

9. (1) If because of the amendments made by this Act to the *Stamp Act 1921*, a person is required under Division 2 of Part IIIBA 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.