

WESTERN AUSTRALIA

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# STAMP AMENDMENT ACT 1994

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No. 39 of 1994

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**AN ACT to amend the *Stamp Act 1921*.**

[Assented to 26 August 1994.]

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Stamp Amendment Act 1994*.

### **Commencement**

2. This Act comes into operation on 1 September 1994.

### **Principal Act**

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

[\* *Reprinted as at 21 March 1989.*

*For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 196-8 and Act No. 6 of 1994.]*

**PART 2 — AMENDMENTS RELATING TO CHESS  
SCHEME**

**Section 9 amended**

**4. Section 9 of the principal Act is amended —**

- (a) by inserting after subsection (1b) the following subsection —

“

(1c) The Commissioner or any person authorized in writing by the Commissioner may communicate to SCH (as defined in section 112A) any information acquired in or in connection with the administration of Division 4 of Part IVA.

”;

and

- (b) in subsection (2) (a) by deleting “subsection (1a)” and substituting the following —

“ subsection (1a), (1b) or (1c) ”.

**Section 20 amended**

**5. Section 20 of the principal Act is amended —**

- (a) in subsection (5a) by inserting after “memorandum,” the following —

“ report, ”; and

(b) in subsection (5b) —

(i) in paragraph (b) by inserting after “in respect of” the following —

“ or with ”; and

(ii) by inserting after “the duty payable on” the following —

“ or with ”.

### **Section 31B amended**

6. Section 31B of the principal Act is amended by inserting after subsection (5) the following subsection —

“

(5a) Nothing in this section applies to the making or effecting of a disposition of a marketable security or right in respect of shares to which Part IVAB applies by a person to whom that Part applies.

”.

### **Section 32 amended**

7. Section 32 (6) of the principal Act is amended by inserting after “purported to be made” the following —

“ , or direction given or purported to be given, ”.

### **Section 39 amended**

8. Section 39 (2) of the principal Act is amended by deleting “subsections (1) and (1a) and section 31A (3), together with any penalty with which conviction of an offence referred to in

subsection (1a) (c) and section 31A (3)” and substituting the following —

“  
    subsections (1) and (1a), section 31A (3) and section 112F (3) and (5), together with any penalty with which conviction of an offence referred to in subsection (1a) (c), section 31A (3) and section 112F (6)  
”.

### **Section 84A repealed**

9. Section 84A of the principal Act is repealed.

### **Part IVA repealed and a Part substituted**

10. Part IVA of the principal Act is repealed and the following Part is substituted —

“  
    **PART IVA — MARKETABLE SECURITIES AND  
    RIGHTS IN RESPECT OF SHARES**

#### ***Division 1 — Interpretation***

#### **Interpretation**

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

“**broker**” means a person who is a member of a prescribed stock exchange;

“**corresponding broker**” means a broker (other than a WA broker) to whom provisions in a corresponding law which correspond with sections 112FB and 112FC apply —

(a) who has nominated a declared State to be that broker’s home State

pursuant to the Articles of the Australian Stock Exchange Limited;  
or

- (b) whose principal place of business is located in another State or a Territory of the Commonwealth prescribed for the purposes of this paragraph;

**“corresponding law”** means a law in force in a State other than this State or in a Territory of the Commonwealth that is declared by proclamation to be a corresponding law for the purposes of Division 3;

**“dealer”** means a WA broker or a corresponding broker;

**“declared State”** means a State or a Territory of the Commonwealth declared by order to be a declared State for the purposes of Division 3;

**“error transaction”** means —

- (a) an SCH-regulated transfer made to reverse an SCH-regulated transfer that was made mistakenly; and
- (b) the SCH-regulated transfer so reversed;

**“identification code”** has the same definition as in section 1097 (1) of the Corporations Law;

**“odd lot”** means a parcel of marketable securities or rights in respect of shares that is, under the rules of the stock exchange on

which the sale or purchase is effected, required to be bought or sold through an odd lot specialist;

**“odd lot specialist”** means a broker who is approved by the Commissioner on the recommendation of a prescribed stock exchange of which the broker is a member as an odd lot specialist for the purposes of Division 3;

**“prescribed stock exchange”** means —

- (a) the Australian Stock Exchange Limited;
- (b) any other stock exchange prescribed as a stock exchange for the purposes of this Act;

**“proper SCH transfer”** has the same definition as in section 9 of the Corporations Law;

**“relevant company”** means —

- (a) a WA company; or
- (b) a foreign company with a registered office under the Corporations Law that is situated in this State;

**“relevant SCH participant”**, in relation to an SCH-regulated transfer, means —

- (a) the SCH participant who is a party to the transfer; or
- (b) if there is more than one SCH participant, the SCH participant who is the transferee or who controls the transferee's holding;

**"SCH"** means the securities clearing house registered by the Commissioner under Division 5;

**"SCH business rules"** has the same definition as in section 9 of the Corporations Law;

**"SCH participant"** has the same definition as in section 9 of the Corporations Law;

**"SCH-regulated transfer"** has the same definition as in section 9 of the Corporations Law;

**"transfer document"** has the same definition as in section 1097 (1) of the Corporations Law;

**"transfer identifier"**, in relation to an SCH-regulated transfer, means the distinctive code assigned to the transfer as required by SCH;

**"transfer value"** means —

- (a) in the case of a transfer on sale — the amount or value of total consideration for the sale or the unencumbered market value of the marketable security or right in respect of shares transferred at the date of the sale, whichever is the greater; or
- (b) in any other case — the unencumbered market value of the marketable security or right at the date of the transfer;



**“WA broker” means a broker —**

- (a) who has nominated Western Australia as that broker’s home State under the Articles of the Australian Stock Exchange Limited; or
- (b) in any other case (other than the case of a broker who has nominated a declared State to be that broker’s home State under those Articles) — whose principal place of business is located in Western Australia.

(2) For the purposes of this Part and of item 4A of the Second Schedule —

- (a) a marketable security that is sold or purchased is, subject to subsection (3), short-dated if on the day of its sale or purchase —
  - (i) having been issued for a fixed term which has not expired, it is, at or after the expiration of that term, repayable less than 24 months after its sale or purchase without notice or at the request of the purchaser, or subsequent holder, of the marketable security;
  - (ii) having been issued for a fixed term which has expired, it is repayable without notice but has not been repaid; or
  - (iii) having been issued for a fixed term which has expired or not having been issued for a fixed term, it is repayable

at the request of the purchaser, or subsequent holder, of the marketable security;

- (b) **“fixed term”** in relation to a marketable security, means the period commencing on the day of its issue and ending on the day specified in the terms of its issue as the day on which it matures or, if there is more than one such day specified in the terms of its issue, the last such day;
- (c) a marketable security that is repayable at the request of its holder shall be deemed to be repayable at the expiration of the period, if any, during which the person liable to repay would be entitled to delay repayment if the holder of the marketable security requested repayment or, if there is no such period, on the day of request; and
- (d) a marketable security that is short-dated as referred to in paragraph (a) (ii), or a marketable security that, having been issued for a fixed term which has expired or not having been issued for a fixed term, is repayable forthwith upon the request of the purchaser, or subsequent holder, of the marketable security shall be deemed to be repayable one month after its sale or purchase.

(3) The Minister may, by instrument in writing published in the *Government Gazette*, declare that a class of marketable security is not short-dated for the purposes of this Part and item 4A of the Second Schedule.

***Division 2 — General***

**Certain marketable securities etc. to be treated as if situated in W.A.**

**112B.** Despite section 1085 (3) of the Corporations Law or any other law, unless otherwise provided in this Act —

- (a) a marketable security, or a right in respect of shares, of a WA company shall be treated for the purposes of this Act as if it is situated in this State, irrespective of where the register on which it is registered by the corporation is situated; and
- (b) a marketable security, or right in respect of shares, of a company incorporated under the Corporations Law of another State or Territory, if registered on a register in this State, shall not, for the purposes of this Act, be treated as if it is situated in this State.

**Prohibition of registration of transfers unless in proper form and duly stamped**

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

- (a) in the case of a transfer (other than an SCH-regulated transfer) to give effect to a sale and purchase or other disposition of that security or that right otherwise than through the agency of a broker unless —
  - (i) a proper instrument of transfer has been delivered to that corporation

and, in the case of a transfer by way of sale, the consideration for the transfer is expressed in the instrument in terms of money and the actual date of the sale and the date of the execution by the transferor, or the transferor and the transferee where both are required to execute the instrument, are set out in the instrument; and

- (ii) if the instrument is chargeable with duty under this Act, the instrument is duly stamped;
- (b) in the case of a transfer (other than an SCH-regulated transfer) to give effect to the sale and purchase of that security or that right through the agency of a broker —
  - (i) a proper instrument of transfer has been delivered to the corporation; and
  - (ii) if the instrument is chargeable with duty, the transfer is by virtue of section 112FD (4) deemed to have been duly stamped;

and

- (c) in the case of an SCH-regulated transfer, unless the transfer document is by virtue of section 112FD (4) or 112FL (1) deemed to have been duly stamped.

(2) If an instrument of transfer of a marketable security or of any right in respect of shares (other than an SCH-regulated transfer) is chargeable with duty under this Act, or would be if it were not exempt from duty under this Act, the corporation shall retain

the instrument of transfer for at least 5 years after the date on which it is registered or recorded.

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

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

### **Time limit for certain SCH-regulated transfers**

**112D.** (1) Where —

- (a) an instrument has been properly executed to give effect to the sale or purchase or other disposition of a marketable security or right in respect of shares; and
- (b) no duty has been paid in respect of that instrument,

an SCH participant shall not make an SCH-regulated transfer to transfer the marketable security or right in respect of shares more than 30 days after the day of the first execution of the instrument.

(2) Where an SCH-regulated transfer is made in accordance with subsection (1) and duty is paid in accordance with Division 4 the relevant SCH participant shall endorse the instrument referred to in subsection (1) (a) with the transfer identifier and the amount of duty paid.

(3) An instrument that is endorsed under subsection (2) is deemed to be duly stamped under this Act.

(4) A person who contravenes subsection (1) or (2) commits an offence against this Act.

(5) The right or title of a transferee or subsequent holder of a marketable security or right in respect of shares is not invalidated by reason only that the transfer of that security or that right was made in contravention of a provision of this section.

### **Entrepôt and other accounts — exemption**

**112E.** (1) Duty shall not be charged on a transfer of a marketable security or right in respect of shares if —

- (a) the transfer is to or from a nominee company established by a member of the Australian Stock Exchange Limited; and
- (b) the transfer is made solely for the purpose of facilitating settlement of a sale or purchase of a marketable security or right in respect of shares under Division 3.

(2) Duty shall not be charged on an SCH-regulated transfer to which Division 4 applies if —

- (a) the transfer is to a nominee company established by an SCH participant;
- (b) the transfer is made solely for the purpose of facilitating settlement of a transaction relating to marketable securities or rights in respect of shares entered into in the ordinary course of business; and
- (c) the transfer does not cause a change in the beneficial ownership of the marketable security or right in respect of shares transferred.

(3) Duty shall not be charged on a transfer of a marketable security or right in respect of shares made to or from SECH Nominees Pty Limited solely for the purpose of facilitating settlement of a transaction between brokers to which Division 3 applies.

(4) Where a transfer (other than an SCH-regulated transfer) —

- (a) is exempt from duty under subsection (1), the broker who makes the relevant sale or purchase; or
- (b) is exempt from duty under subsection (3), the Australian Stock Exchange Limited,

shall endorse the transfer with the statement that no duty is payable, the day of endorsement and, in the case of an endorsement by a broker, that broker's stamp.

(5) A person required to endorse a transfer under subsection (4) shall keep or cause to be kept sufficient records to identify the transfer as a transfer exempt from duty under this section.

(6) A person shall keep available for inspection the records referred to in subsection (5) for a period of not less than 5 years from the last day of the month in which the transfer is made.

(7) A person who contravenes subsection (4), (5) or (6) commits an offence against this Act.

### **Securities lending arrangement — exemption**

**112F.** (1) Subject to this section, duty shall not be charged on —

- (a) a transfer of a marketable security or right in respect of shares made by a broker to

effect settlement of a sale or purchase of a marketable security or right in respect of shares under Division 3; or

- (b) an SCH-regulated transfer to which Division 4 applies and which is made to effect settlement of a transaction relating to marketable securities or rights in respect of shares,

if the transfer is —

- (c) of a kind referred to in subsection (3) (a) (i) of section 26BC of the *Income Tax Assessment Act 1936* (Cwlth) made solely for the purpose of a securities lending arrangement intended to qualify for relief under that subsection; or
- (d) of a kind referred to in subsection (3) (a) (ii) of section 26BC of the *Income Tax Assessment Act 1936* (Cwlth) made solely for the purpose of a securities lending arrangement which qualifies for relief under that subsection.

(2) If a securities lending arrangement referred to in subsection (1) (c) does not qualify for relief under subsection (3) of section 26BC of the *Income Tax Assessment Act 1936* (Cwlth) the transferee shall, not later than 3 months after the expiry of the reacquisition time within the meaning of that subsection, prepare and lodge with the Commissioner a statement in the prescribed form in respect of the transfer made for the purposes of that arrangement.

(3) A statement prepared under subsection (2) shall, subject to section 31A, be deemed to be an instrument effecting or evidencing the transaction to which it relates and is chargeable with duty in



accordance with item 4A (1) of the Second Schedule on the unencumbered market value of the marketable security or right in respect of shares or the amount of moneys paid as a result of the transfer, whichever is greater at the time the marketable security or right in respect of shares was transferred.

(4) The transferee is liable to pay the duty referred to in subsection (3).

(5) A transferee who is liable to pay duty under subsection (3) is also liable to pay a fine equal to the amount of the duty assessed.

(6) The amounts payable under subsections (3) and (5), except so far as the fine is remitted under subsection (7), shall be payable at the time the statement is lodged under subsection (2) and if they are not so paid the transferee —

(a) commits an offence; and

(b) is, in addition to those amounts, liable to pay a fine calculated as provided in section 20 (3).

(7) The Commissioner may remit wholly or in part any fine levied under subsection (5) or (6).

(8) A person who —

(a) contravenes subsection (2); or

(b) lodges or makes under subsection (2) a statement which is false in a material particular,

commits an offence against this Act.

(9) Where a transfer of a marketable security or of a right in respect of shares (other than an SCH-regulated transfer) is exempt from duty under subsection (1) the broker who makes the relevant sale or purchase shall endorse the transfer with the statement required under section 112FD (1) (a), the day of endorsement and that broker's stamp.

(10) A broker required to endorse a transfer under subsection (9) shall keep or cause to be kept sufficient records to identify the transfer as a transfer exempt from duty under subsection (1).

(11) A broker shall keep available for inspection the records referred to in subsection (10) for a period of not less than 5 years from the last day of the month in which the transfer is made.

(12) A broker who contravenes subsection (9), (10) or (11) commits an offence against this Act.

### ***Division 3 — Sales and purchases by brokers***

#### **Application of Division 3**

**112FA.** This Division, and the duty payable as calculated on the return referred to in section 112FC, in accordance with item 4A (2) of the Second Schedule, apply to the sale and purchase of a marketable security or a right in respect of shares only if —

- (a) the consideration for the sale and purchase is in money or money's worth of not less than the unencumbered value of the security or the right; and
- (b) the security or the right is listed for quotation on the stock market of, or

permission to deal in the shares on a stock market has been granted by, any stock exchange.

## **Records**

**112FB.** (1) Subject to subsection (3), after a sale or purchase of a marketable security or right in respect of shares is made, or deemed to have been made, whether in or outside the State —

- (a) pursuant to an order lodged with a broker in the State;
- (b) by a WA broker on his or her own account or behalf; or
- (c) pursuant to an order lodged with a WA broker outside the State and all declared States and transmitted to that broker in the State for the purpose of effecting the sale and purchase,

being a sale or purchase to which this Division applies, that broker shall forthwith enter such details of the sale or purchase in a record to be kept by the broker in such form as is prescribed.

(2) For the purposes of subsection (1) —

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

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

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

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

in a return required to be lodged with the Commissioner under section 112FC, but those details shall be entered in the record kept by the broker under subsection (1).

(4) When the Minister has under subsection (3) (c) designated any Crown instrumentality, agent of the Crown or Government authority, the Minister may by notice published in the *Government Gazette* amend or revoke that designation.

(5) Subsection (1) also applies to a sale or purchase of —

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

(6) A broker who contravenes subsection (1) commits an offence against this Act.

## Returns

**112FC.** (1) A broker shall, from the details entered in the record referred to in section 112FB (1), make a return in such form as the Commissioner requires in writing and lodge or cause to be lodged that return with the Commissioner within a period of 15 days after the end of the month to which that return relates, together with a remittance for the amount of the duty payable on the sales and purchases to which that return relates in accordance with this Act.

(2) Subject to subsection (3), when a broker who has made a return under subsection (1) has not made or is not deemed to have made any sale or purchase referred to in section 112FB (1) during any month after the making of that return, that broker shall lodge or cause to be lodged with the Commissioner a nil return in respect of that month.

(3) A broker to whom subsection (2) applies and who does not expect to be liable to make any further returns under subsection (1) may lodge a notice with the Commissioner advising the Commissioner that the broker does not expect to be liable to make any further returns under subsection (1) and the broker thereupon ceases to be obliged to comply with subsection (2) until such time as the broker lodges a further return under subsection (1).

(4) A broker who —

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

commits an offence against this Act and is liable not only to the penalty referred to in section 116 but also to pay a penalty equal to double the amount of duty that would have been payable in respect of the return concerned had that return been lodged in accordance with this section or that is payable in accordance with the particulars given in the return concerned after correction of any false particular in the return, as the case may be.

### **Endorsement of transfer as to payment of duty**

**112FD.** (1) After recording the details of a sale or purchase as required under section 112FB (1) or making a sale or purchase to which section 112FB (1) applies by virtue of section 112FB (5) —

- (a) a WA broker or corresponding broker shall, if the transfer on the sale or purchase is not an SCH-regulated transfer, endorse the

transfer with a statement that stamp duty has been or will be paid by that broker or that no duty is payable, as the case may be, and affix that broker's stamp and the day of endorsement;

- (b) a WA broker or corresponding broker shall, if the transfer on the sale or purchase is an SCH-regulated transfer and the broker is an SCH participant, include the broker's identification code, and a code to indicate that the transfer is an on-market transaction, in the transfer document;
- (c) a broker (other than a WA broker or a corresponding broker) may, if the Commissioner so approves, endorse the transfer as specified in paragraph (a) or include the information specified in paragraph (b), as the case requires, subject to such terms and conditions as the Commissioner considers appropriate.

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

(3) A broker who —

- (a) endorses an instrument of transfer, or includes information in a transfer document, as required by subsection (1) in respect of a sale or purchase to which section 112FB (1) applies, before entering the details of the sale or purchase in the record required to be kept by the broker under that section; or
- (b) fails to so endorse an instrument of transfer or include information in a

transfer document in respect of a sale or purchase to which section 112FB (1) applies by virtue of section 112FB (5), forthwith after the making of the sale or purchase,

commits an offence against this Act.

(4) Where under subsection (1) or a corresponding law —

- (a) an instrument of transfer is endorsed; or
- (b) a transfer document has the broker's identification code included in it in accordance with the SCH business rules,

it is deemed to be duly stamped under this Act.

**Power to broker to recover duty paid on account of vendor or purchaser**

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

- (a) recover that amount from the vendor or the purchaser for whom the broker has made or is deemed to have made the sale or purchase, as a civil debt due to the broker in a court of competent jurisdiction; or
- (b) in reimbursement of that amount retain any money in the broker's hands that belongs to that vendor or that purchaser.



**Saving**

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

***Division 4 — Certain SCH-regulated transfers***

**Application of Division 4**

**112FG.** This Division applies to an SCH-regulated transfer of a marketable security or right in respect of shares only where —

- (a) the transfer is a proper SCH transfer;
- (b) the transfer is made otherwise than on a sale or purchase of a marketable security or right in respect of shares to which Division 3 applies;
- (c) the security is —
  - (i) a share, or a right in respect of a share, of a relevant company; or
  - (ii) a unit of a unit trust scheme the principal register of which is situated in this State;and
- (d) the body approved as the securities clearing house under section 779B of the Corporations Law is registered by the Commissioner under Division 5.

**SCH participant liable to pay duty**

**112FH.** (1) Where duty is chargeable in respect of an SCH-regulated transfer of a marketable security or right in respect of shares to which this Division applies, the relevant SCH participant is liable to pay the duty.

(2) Where the SCH participant who has paid duty in respect of an SCH-regulated transfer is not the transferee under the transfer, that SCH participant may —

- (a) recover from the transferee the amount of the duty paid as a civil debt due to the SCH participant in a court of competent jurisdiction; or
- (b) in reimbursement of that amount, retain any money in the SCH participant's hands that belongs to the transferee.

**Record of SCH-regulated transfers**

**112FI.** (1) Before the making of an SCH-regulated transfer of a marketable security or right in respect of shares to which this Division applies the relevant SCH participant to the transfer shall make a record in accordance with this section.

(2) The record shall show —

- (a) the date of the transfer;
- (b) the transfer identifier of the transfer;

- (c) the name of the transferee and, unless another SCH participant controls the transferor's holding, the name of the transferor;
- (d) the identification code of the SCH participant making the record and the identification code of the other party to the transfer if that party is an SCH participant;
- (e) the quantity and a full description of the marketable securities or rights in respect of shares transferred;
- (f) if duty is chargeable in respect of the transfer, the transfer value of the marketable security or right in respect of shares or, if more than one, of each marketable security or right in respect of shares and the total transfer value of all of them;
- (g) the amount of duty chargeable in accordance with the Second Schedule in respect of the transfer;
- (h) if duty is not chargeable in respect of the transfer, a statement of the grounds on which duty is not chargeable and the duty-type category of the transfer;
- (i) in the case of an error transaction to reverse an earlier transfer that was made mistakenly, the transfer identifier of that earlier transfer; and
- (j) any other particulars prescribed for the purposes of this section.

(3) Where an SCH participant makes a statement under subsection (1) (h), that SCH participant shall keep or cause to be kept sufficient records to substantiate the statement.

(4) An SCH participant may, in any record made in accordance with this section, incorporate additional information for the participant's own use.

(5) Any record made or required to be kept under this section shall be kept by the SCH participant in a legible written form, or so as to be readily convertible into such a form, for a period of not less than 5 years from the date of transfer.

(6) An SCH participant who —

- (a) fails to make or keep a record as required by this section;
- (b) makes a record under this section which is false in any material particular,

commits an offence against this Act.

### **Exemption where duty paid on another instrument**

**112FJ.** (1) When duty has been paid on a contract or agreement for sale, or on an instrument of transfer, of a marketable security or right in respect of shares and a subsequent SCH-regulated transfer of the same marketable security or right in respect of shares is made to or for the benefit of the same transferee, the subsequent SCH-regulated transfer shall not be liable to duty.

(2) When duty has been paid in accordance with subsection (1), the relevant SCH participant shall endorse, or cause to be endorsed, a copy of the

stamped instrument with the relevant transfer identifier, and the transfer document shall be deemed to be duly stamped.

(3) The relevant SCH participant shall retain a copy of an instrument endorsed under subsection (2) for a period of not less than 5 years from the date of transfer.

(4) An SCH participant who fails to comply with subsection (3) commits an offence against this Act.

**Particulars to be included in transfer document**

**112FK.** (1) Subject to section 112FL (2), the relevant SCH participant shall include, or cause to be included on his or her behalf, in the transfer document of an SCH-regulated transfer to which this Division applies —

- (a) the particulars required by the Commissioner under the conditions of registration of SCH; and
- (b) any other particulars prescribed for the purposes of this section.

(2) A person who —

- (a) contravenes subsection (1); or
- (b) includes particulars in a transfer document which are false in a material particular,

commits an offence against this Act.

**Effect of inclusion of identification code**

**112FL.** (1) Where the identification code of the relevant SCH participant is included in the transfer document of an SCH-regulated transfer to which this Division applies, the transfer document is deemed to be duly stamped.

(2) An SCH participant shall not include in a transfer document the identification code of that participant before a record of the transfer is made under section 112FI.

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

**Report to be made and duty paid**

**112FM.** (1) An SCH participant shall, not more than 7 days after the end of a month in which that SCH participant is a relevant SCH participant to an SCH-regulated transfer on which duty is chargeable —

(a) make a report to SCH in respect of the transfer in the form and containing the particulars required by the Commissioner under the conditions of registration of SCH; and

(b) pay the duty to SCH.

(2) Section 31A applies in respect of a report required to be made under this section and duty required to be paid to SCH in the same way as it applies in respect of a return required to be lodged with the Commissioner and duty required to be paid to the Commissioner.

(3) Where the Commissioner is satisfied that an SCH participant has paid an amount in excess of the duty chargeable in respect of an SCH-regulated transfer the Commissioner may —

- (a) refund the excess amount; or
- (b) retain the amount and credit that amount against other duty payable by the SCH participant in respect of an SCH-regulated transfer.

(4) An SCH participant who fails to make a report as required under this section commits an offence against this Act.

### **Failure to pay duty**

**112FN.** (1) If an SCH participant fails to pay duty in accordance with section 112FM, the Commissioner may direct the SCH participant in writing not to pay duty under this Division during the period specified in the notice.

(2) The Commissioner shall advise the SCH participant of the reasons for giving a direction under subsection (1).

(3) A direction under subsection (1) does not affect the liability of the SCH participant to pay duty that is chargeable under this Act.

(4) The Commissioner shall, at the time of giving a direction under subsection (1), notify SCH of the direction.

(5) SCH shall not allow an SCH participant in respect of whom a direction is in force under subsection (1) to make an SCH-regulated transfer for which duty is chargeable under this Act.

(6) Where an SCH participant in respect of whom a direction is in force under subsection (1) makes an SCH-regulated transfer for which duty is chargeable under this Act, and the transfer is made more than 7 days after SCH has received notification under subsection (4), the SCH participant and SCH are jointly liable for payment of the duty.

### ***Division 5 — Securities Clearing House***

#### **Registration**

**112FO.** (1) The Commissioner, shall, on application in a form approved by the Commissioner by the body approved as the securities clearing house under section 779B of the Corporations Law, register the body under this Division.

(2) The registration is subject to conditions determined by the Commissioner from time to time and notified to SCH in writing.

(3) Subject to subsection (5), the Commissioner may by order in writing suspend the registration for a specified period if SCH contravenes, or fails to comply with, a provision of this Division or a condition of registration.

(4) Before suspending the registration, the Commissioner shall give SCH 7 days written notice specifying the grounds on which the Commissioner proposes to suspend the registration and the proposed period of suspension.

(5) SCH may within 7 days of the receipt of a notice under subsection (4) apply to the Commissioner for a review of the proposed decision.



(6) The Commissioner shall not suspend the registration unless —

- (a) the period of 7 days notice referred to in subsection (4) has elapsed; and
- (b) SCH has been given an opportunity to make submissions on the matter.

(7) The registration continues in force —

- (a) until cancelled on the application of the body registered; and
- (b) subject to an order for suspension made under subsection (3).

### **Monthly return**

**112FP.** (1) SCH shall, on or before the 15th day of each month —

- (a) lodge with the Commissioner a return in the form approved, and containing the particulars required, by the Commissioner under the conditions of registration of SCH; and
- (b) pay to the Commissioner any duty paid to SCH under this Act on or before the 7th day of that month in respect of an SCH-regulated transfer.

(2) Notwithstanding section 31A (3) (a), SCH does not commit an offence if it fails to pay an assessment made under section 31A in respect of an amount payable under this section.

**Particulars reported by participants to be kept by SCH**

**112FQ.** SCH shall keep —

- (a) the particulars reported to SCH by an SCH participant under Division 4; and
- (b) a record of the data contained in each transfer document,

for a period of not less than 5 years from the date on which the report, or SCH-regulated transfer, as the case may be, is made.

”

**Part IVBA repealed**

**11.** Part IVBA of the principal Act is repealed.

**Second Schedule amended**

**12.** (1) The Second Schedule to the principal Act is amended in item 4 by deleting subitems (3), (3a), (4) and (4a).

(2) The Second Schedule is amended by inserting after item 4 the following item —

“

**4A. CONVEYANCE OR TRANSFER OF  
MARKETABLE SECURITY OR RIGHT  
IN RESPECT OF SHARES**

(1) Conveyance or transfer of any  
marketable security or right in  
respect of shares —

The purchaser

- (a) of a WA company;

- (b) of a foreign company, if the marketable security or right in respect of shares is registered on any register kept within this State by that corporation, or if no register exists in Australia and the registered office of the company is in the State;
- (c) where the security is a unit of a unit trust scheme the principal register of which is kept within this State;
- (d) where the security is a unit of a unit trust scheme in relation to which no register exists in Australia and —

having as the manager of the scheme a relevant company or a natural person principally resident in this State; or

not having a manager but with a trustee that is a relevant company or a natural person principally resident in this State; or

- (e) in any other case,

not being a transfer of a marketable security or right in respect of shares that is made or executed to perfect a sale or purchase thereof to which the provisions of Division 3 or 4 of Part IVA apply and which is deemed to be duly stamped in accordance with those provisions or a relevant transaction within the meaning of Part IVAB the particulars of which are required to be included in a return lodged with the Commissioner under s.112GD —

- (f) unless paragraph (g) applies 0.60 for every \$100 and also for any fractional part of \$100 of the amount or value of consideration

- (g) where the marketable security transferred is sold for a consideration in money or moneys worth for not less than market value and is a marketable security which is, on the day of its sale, short-dated —

in respect of each month and also for any fractional part of a month of the period commencing on the day on which the marketable security is sold and ending —

- (i) where the marketable security was issued for a fixed term which has not expired — on the earliest day on which it is repayable at or after the expiration of the fixed term; or

- (ii) where the marketable security was issued for a fixed term which has expired or where the marketable security was not issued for a fixed term — on the earliest day on which it is repayable .....

0.025 for every \$100 and also for every fractional part of \$100 of the amount or value of consideration for the sale

- (2) Conveyance or transfer of any marketable security or right in respect of shares sold and purchased to which a return lodged with the Commissioner under s.112FC relates an amount

The broker

calculated on the consideration of each of those sales and purchases —

- (a) unless paragraph (b) applies 0.30 for every \$100 and also for every fractional part of \$100 of the sale price or the purchase price as the case may be

- (b) where the conveyance or transfer of the marketable security sold and purchased is short-dated —

in respect of each month and also for any fractional part of a month of the period commencing on the day on which the marketable security is sold or purchased and ending —

- (i) where the marketable security was issued for a fixed term which has not expired — on the earliest day on which it is repayable at or after the expiration of the fixed term; or

- (ii) where the marketable security was issued for a fixed term which has expired or where the marketable security was not issued for a fixed term — on the earliest day on which it is repayable ..... 0.0125 for every \$100 and also for every fractional part of \$100 of the

amount or  
value of  
consideration  
for the sale

- (3) Transfer document for an SCH-regulated transfer of a marketable security or right in respect of shares to which Division 4 of Part IVA applies —

The SCH  
participant  
liable under  
s.112FH

- (a) unless paragraph (b) applies

..... 0.60 for every  
\$100 and also  
for every  
fractional part  
of \$100 of the  
transfer value

- (b) where the SCH-regulated transfer is short-dated —

in respect of each month  
and also for any  
fractional part of a  
month of the period  
commencing on the day  
on which the marketable  
security is sold or  
purchased and  
ending —

- (i) where the  
marketable  
security was  
issued for a fixed  
term which has  
not expired — on  
the earliest day on  
which it is  
repayable at or  
after the  
expiration of the  
fixed term; or

- (ii) where the  
marketable  
security was  
issued for a fixed  
term which has  
expired or where  
the marketable  
security was not  
issued for a fixed  
term — on the  
earliest day on  
which it is  
repayable .....

0.025 for every  
\$100 and also

for every  
fractional part  
of \$100 of the  
transfer value

- (4) The duty payable in respect of a relevant transaction on a return under and for the purposes of s.112GD shall be —

The person  
declared under  
s. 112GB

- (a) for every \$100 and also for every fractional part of \$100 of the amount or value of consideration ..... 0.60

- (b) where a relevant transaction is made —

- (i) by a person to whom Part IVAB applies as trustee for a broker to himself as trustee for a jobber; or

- (ii) by a person to whom Part IVAB applies as trustee for a jobber to

himself as trustee for a broker,

the amount payable under paragraph (a) in respect of that relevant transaction shall be one-half of the amount that would otherwise be payable.

”.

### Third Schedule amended

13. The Third Schedule to the principal Act is amended in item 2 by deleting subitem (12) and substituting the following subitems —

“

- (12) An error transaction in respect of a marketable security or right in respect of shares to which Division 4 of Part IVA applies.

- (13) An SCH-regulated transfer of a marketable security or right in respect of shares which, had the transfer not been made as an SCH-regulated transfer, would have been liable for duty in accordance with item 6 of Schedule 2.

”.

**Minor amendments**

**14.** The provisions of the principal Act referred to in Column 1 of Schedule 1 are amended in the manner set out opposite them in Column 2.



**PART 3 — OTHER AMENDMENTS**

**Section 4 amended**

**15.** Section 4 (1) of the principal Act is amended —

- (a) by inserting in the appropriate alphabetical positions the following definitions —

“

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

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

**“record”** means any thing or process —

- (a) upon or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

**“WA company”** means a company incorporated or taken to be incorporated under the Corporations Law of Western Australia.

”;

and

- (b) in the definition of “the Crown” by deleting “the State.” and substituting the following —

“ the State; ”.

### **Section 7 amended**

**16. Section 7 of the principal Act is amended —**

- (a) in subsection (1) —

- (i) in paragraph (a) by deleting “books, documents and other papers” and substituting the following —

“ records ”;

- (ii) in paragraph (b) by deleting “books, documents and other papers” and substituting the following —

“ records ”; and

- (iii) in paragraph (c) by deleting “books, documents or other papers” and substituting the following —

“ records ”;

and

- (b) in subsection (2) by deleting “instruments, books, documents or other papers” in both places where it occurs and substituting in each case the following —

“ instruments or records ”.

**Section 7A amended**

17. Section 7A (1) (b) of the principal Act is amended by deleting “instruments, books, documents and other papers” and substituting the following —

“ instruments and records ”.

**Section 27 amended**

18. Section 27 (2) (a) of the principal Act is amended by inserting after “section 31B (1) (a)” the following —

“ or (aa) ”.

**Section 31B amended**

19. Section 31B of the principal Act is amended —

- (a) in subsection (1) by inserting after paragraph (a) the following paragraph —

“  
    (aa) which causes a change in the  
        beneficial ownership of a marketable  
        security or a right in respect of  
        shares;  
”;  
and

- (b) in subsection (1a) —

- (i) by deleting “or” after paragraph (a); and  
(ii) by inserting after paragraph (a) the following paragraph —

“  
    (aa) 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

”.

### **Third Schedule amended**

**20.** The Third Schedule to the principal Act is amended —

(a) in item 2 by adding the following subitems —

“

(14) The transfer of a marketable security or right in respect of shares upon a bonus issue where —

(a) as a consequence of a duly stamped transfer of a marketable security or right in respect of shares in a corporation included in the official list of a stock exchange, the transferee in that transfer is, upon a bonus issue subsequent to that transfer, entitled to the marketable security or right in respect of shares so issued and registered in the name of the transferor; and

(b) the transferee pays the amount, if any, necessary to take up the bonus marketable security or right in respect of shares.

(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.

”;

- (b) in item 6 by inserting after subitem (2) the following subitem —

“

- (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.

”;

and

- (c) in item 7 by inserting after subitem (11) the following subitem —

“

- (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.

”.

### **Miscellaneous amendments**

**21.** (1) The provisions of the principal Act referred to in Column 1 of Schedule 2 are amended in the manner set out opposite them in Column 2.

(2) The provisions of the principal Act listed in the Table to this subsection are amended by deleting “the company” wherever it occurs in those provisions and substituting the following —

“ the WA company ”.

## TABLE

|                                       |                     |                |
|---------------------------------------|---------------------|----------------|
| s.76 (1) (definition<br>of "acquire") | s.76AI (3) (e)      | s.76AK (3)     |
| s.76A (2)                             | s.76AI (4) (b)      | s.76AL (1)     |
| s.76AC (1)                            | s.76AI (4) (c)      | s.76AL (2)     |
| s.76AG (4)                            | s.76AI (4) (d)      | s.76AL (3) (a) |
| s.76AH (2)                            | s.76AJ (1) (a) (ii) | s.76AL (3) (b) |
| s.76AI (1)                            | s.76AJ (1) (b)      | s.76AL (4) (a) |
| s.76AI (2)                            | s.76AJ (2)          | s.76AL (4) (b) |
| s.76AI (3) (c)                        | s.76AK (1)          | s.76AL (5)     |
|                                       | s.76AK (2)          |                |

(3) The provisions of the principal Act listed in the Table to this subsection are amended by deleting "a company" wherever it occurs and substituting the following —

" a WA company ".

## TABLE

|                                       |                |                     |
|---------------------------------------|----------------|---------------------|
| s.75B (1)                             | s.76AI (3)     | s.76AL (2)          |
| s.76 (1) (definition<br>of "acquire") | s.76AI (4)     | s.76AL (4)          |
| s.76A (1)                             | s.76AJ (1) (a) | s.76AL (5)          |
| s.76AC (1)                            | s.76AJ (2)     | s.76AM (2)          |
| s.76AG (1)                            | s.76AK (1)     | s.76AP (1)(a)(i)(B) |
| s.76AI (1)                            | s.76AK (2)     | s.76AP (1)(a)(ii)   |
|                                       | s.76AK (3)     |                     |

**SCHEDULE 1**

[Section 14]

**MINOR AMENDMENTS**

| <u>Column 1</u>  | <u>Column 2</u>   |
|------------------|---|
| s. 69 (2)        | Insert after "item 4" the following —<br>" or 4A (1) ".                                 |
| s. 75 (2) (a)    | Insert after "item 4" the following —<br>" or 4A (1), as the case requires, ".          |
| s. 75AC (1)      | Insert after "item 4" the following —<br>" or 4A (1), as the case requires, ".          |
| s. 75AD (1)      | Insert after "item 4" the following —<br>" or 4A (1), as the case requires, ".          |
| s. 76AH (2)      | Delete "paragraph (a) of item 4 (3)" and substitute the following —<br>" item 4A (1) ". |
| s. 76AH (3)      | Delete "item 4 (3)" and substitute the following —<br>" item 4A (1) ".                  |
| s. 76AO (2)      | Delete "paragraph (a) of item 4 (3)" and substitute the following —<br>" item 4A (1) ". |
| s. 76AO (3)      | Delete "item 4" and substitute the following —<br>" item 4A (1) ".                      |
| s. 82 (1)        | Insert after "item 4" the following —<br>" or 4A (1), as the case requires, ".          |
| s. 82 (2)        | Delete "item 4" and substitute the following —<br>" items 4 and 4A (1) ".               |
| s. 112GD (1) (b) | Delete "Item 4 (3a)" and substitute the following —<br>" item 4A (4) ".                 |

- Second Schedule,  
item 6      Insert after “item 4” the following —  
“      or 4A, as the case requires,      ”.
- Second Schedule,  
item 14A      Insert after “item 4” in both places where it occurs  
the following —  
“      or 4A, as the case requires,      ”.
- Second Schedule,  
item 17      Insert after “item 4” the following —  
“      or 4A (1), as the case requires,      ”.
- Second Schedule,  
item 19      Insert after “item 4” in the first place where it  
occurs the following —  
“      or 4A (1), as the case requires,      ”.  
Delete “item 4” in the second place where it occurs  
and substitute the following —  
“      items 4 and 4A (1)      ”.



**SCHEDULE 2**  
**MISCELLANEOUS AMENDMENTS**

[Section 21]

| <u>Column 1</u>   | <u>Column 2</u>  |
|-------------------|--|
| s. 4 (1)          | <p>In the definition of “marketable security” delete “any municipal or other corporation” in the 2 places where it occurs and substitute the following —</p> <p>“       any corporation or municipal corporation       ”.</p>  |
| s. 63 (2) (a)     | <p>Delete the paragraph and substitute the following paragraph —</p> <p>“       (a)   has not been approved for the purposes of Division 5 of Part 7.12 of the Corporations Law;       ”.</p>  |
| s. 63 (4) (a) (i) | <p>Delete the subparagraph and substitute the following subparagraph —</p> <p>“       (i)   another corporation that is a related body corporate (as defined in section 9 of the Corporations Law);       ”.</p>   |
| s. 73E (1)        | <p>Delete the definition of “corporation”.</p> <p>Delete the definition of “officer” and substitute the following definition —</p> <p>“       “<b>officer</b>”, in relation to a corporation, has the same definition as in section 9 of the Corporations Law;       ”.</p> <p>Delete the definition of “stock exchange” and substitute the following definition —</p> <p>“       “<b>stock exchange</b>” means a local stock exchange as defined in section 9 of the Corporations Law.       ”.</p> |
| s. 75 (2a) (a)    | <p>Delete “, within the meaning in the <i>Companies (Western Australia) Code</i>,”.</p>  |
| s. 75 (2a) (b)    | <p>Delete “, as defined in paragraph (a),”.</p>  |

s. 75B (1) Delete "with the Commissioner for Corporate Affairs, pursuant to section 113 (3) of the *Companies (Western Australia) Code*" and substitute the following —

" in accordance with section 187 (3) of the Corporations Law "

s. 75B (2) Repeal the subsection.

s. 76 (1) Delete paragraph (e) (iii) of the definition of "acquire" and substitute the following subparagraph —

" (iii) the making of a compromise or arrangement under Part 5.1 of the Corporations Law which has been approved by the court; "

Delete the definition of "*Companies Code*".

Delete the definition of "company" and "corporation".

Delete the definition of "director" and substitute the following definition —

" "**director**" has the same definition as in section 9 of the Corporations Law; "

Delete the definition of "related corporation" and substitute the following definition —

" "**related corporation**" means a related body corporate (as defined in section 9 of the Corporations Law); "

s. 76 (4) (c) Delete "section 136 of the *Companies Code*" and substitute the following —

" section 708 of the Corporations Law "

s. 76AI (2) Delete "A company" and substitute the following —

" A WA company "

s. 76AI (3) (d) Delete the paragraph and substitute the following paragraph —

“ (d) where by virtue of Division 6 of Part 1.2 of the Corporations Law a corporation is a subsidiary of the WA company, the shareholding of that WA company in the subsidiary corporation, but without limiting subsection (4); ”.

s.76AI (3) (f) Delete “the company’s” and substitute the following —

“ the WA company’s ”.

s. 76AI (4) (a) Delete the paragraph and substitute the following paragraph —

“ (a) a subsidiary corporation by virtue of Division 6 of Part 1.2 of the Corporations Law; ”.

s. 76AP (1) (a) (i) Delete item (A) and substitute the following item —

“ (A) within paragraphs (a) to (d) of section 66A (4) of the Corporations Law; or ”.

s. 76AR (4) (a) Delete the paragraph and substitute the following paragraph —

“ (a) means a corporation —  
    (i) that is an ultimate holding company as defined in section 9 of the Corporations Law; or  
    (ii) of which a body corporate is a subsidiary by virtue of Division 6 of Part 1.2 of the Corporations Law; ”.

s. 92 In the definition of “person resident in the State” delete paragraph (a) and substitute the following paragraph —

“ (a) which is a corporation; or ”.

s. 111J (2)

Repeal the subsection and substitute the following subsection —

“ (2) In this section “**officer**”, in relation to a body corporate, includes a person who is an officer (as defined in section 9 of the Corporations Law) of the body corporate. ”.

Third  
Schedule

In item 1 (4) (b), delete “R&I Bank of Western Australia Ltd” and substitute the following —

“Bank of Western Australia Ltd”.

Delete item 7 (7) and substitute the following subitem —

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

- (a) a corporation which is an excluded corporation as defined in section 9 of the Corporations Law;
- (b) a society registered under the *Building Societies Act 1976*; or
- (c) a permanent building society registered under the *Financial Institutions (Western Australia) Act 1992*.

”.