

WESTERN AUSTRALIA

STAMP AMENDMENT ACT 1991

No. 52 of 1991

AN ACT to amend the *Stamp Act 1921*.

[Assented to 17 December 1991]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Stamp Amendment Act 1991*.

Commencement

2. (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 4 and 6 are deemed to have come into operation on 29 August 1991.

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 1990 Index to Legislation of Western Australia, pp. 147-9.]

PART 2—AMENDMENTS RELATING TO DUTY ON SECURITIES

Section 81 amended

4. Section 81 of the principal Act is amended—

- (a) by inserting after the section designation “81.” the subsection designation “(1)”; and
- (b) by inserting the following subsection—

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

Section 87 amended

5. Section 87 of the principal Act is amended by repealing subsection (1) and substituting the following subsections—

“ (1) Where an instrument of security for moneys (“the stamped instrument”) is duly 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 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 a form approved by the Commissioner, 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). ”.

Sections 88 to 90 inserted

6. After section 87 of the principal Act the following sections are inserted—

Instruments that can become securities on a future act or event

- “ 88. (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, section 20 applies to the instrument as if references in that section to the execution of the instrument were references to the granting of the option or right.

Instruments held outside the State that become securities

88A. (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 instrument is chargeable with duty under item 13 of the Second Schedule as an instrument of that kind.

(2) Section 20 applies to the instrument as if references in that section to the execution of the instrument were references to the time at which it became an instrument of security.

Contingent securities

89. (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.

Limits on application of sections 88 to 89

90. (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. ”.

PART 3—AMENDMENTS RELATING TO MARKETABLE SECURITIES

Section 4 amended

7. Section 4 of the principal Act is amended in subsection (1) by deleting the definition of “right in respect of shares” and substituting the following definition—

“ “right in respect of shares” means a right of a person to be issued with any marketable security and this definition applies—

- (a) whether the right is actual, prospective or contingent; and
- (b) whether or not any money or other consideration is to be payable for the issue of the marketable security; ”.

Section 112A amended

8. (1) Section 112A of the principal Act is amended—

- (a) by deleting the definitions of “broker” and “broker’s agent” and substituting the following definitions—

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

“corresponding broker” means a broker (other than a Western Australian broker) to whom provisions in a corresponding law which correspond with section 112C 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; ”;

- (b) by deleting the definition of “dealer” and substituting the following definitions—

“ “dealer” means a Western Australian 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 this Part; ”;

and

- (c) by deleting the definition of “odd lot specialist” and substituting the following definitions—

“ “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 this Part;

“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;

“Western Australian 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) 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.

Section 112C amended

9. Section 112C of the principal Act is amended—

- (a) by repealing subsection (1) and substituting the following subsection—

“ (1) Subject to subsection (5), 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 Western Australian broker on his or her own account or behalf; or
- (c) pursuant to an order lodged with a Western Australian 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 Part 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. ”; and

- (b) by repealing subsection (3) and substituting the following subsections—

“ (3) Subject to subsection (3a), when a broker who has made a return under subsection (2) has not made or is not deemed to have made any sale or purchase referred to in subsection (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.

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

Section 112E amended

10. Section 112E of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“ (1) After recording the details of a sale or purchase as required under section 112C (1) or making a sale or

purchase to which section 112C (1) applies by virtue of section 112C (6)—

- (a) a Western Australian broker or a corresponding broker shall 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 broker (other than a Western Australian broker or a corresponding broker) may endorse the transfer as specified in paragraph (a) where the Commissioner so approves on such conditions and terms as the Commissioner considers appropriate. ”.

Section 112H amended

11. Section 112H of the principal Act is amended in subsection (1)—

- (a) in paragraph (a) by inserting after “(ii)” the following—
 - “ if the instrument is chargeable with duty, ”;and
- (b) in paragraph (b) by inserting after “(ii)” the following—
 - “ if the instrument is chargeable with duty, ”.

Section 112HA amended

12. Section 112HA of the principal Act is amended in subsection (1) by inserting after “the relevant instrument of transfer” the following—

- “ is chargeable with duty ”.

Section 112HB inserted

13. After section 112HA of the principal Act the following section is inserted—

Exempt transfers

“ **112HB.** (1) Subject to subsection (2), duty shall not be charged on a transfer of a marketable security or right in respect of shares made on or after 1 November 1990—

(a) solely for the purpose of enabling a broker to effect settlement, in accordance with a procedure approved by the Australian Stock Exchange Limited or any other stock exchange prescribed for the purposes of this section, of a sale or purchase to which section 112C (1), or a corresponding provision of a law declared to be a corresponding law under Part IVA, applies; or

(b) solely for the purpose of fulfilling an obligation to replace a marketable security or right in respect of shares as a consequence of a settlement referred to in paragraph (a).

(2) Notwithstanding subsection (1), regulations may declare that transfers of a class specified in the regulations, or transfers to or by persons of a class specified in the regulations, are not exempt from duty under that subsection.

(3) Where a transfer of a marketable security or of a right in respect of shares is exempt from duty under subsection (1)—

(a) if the transfer is made to or by SECH Nominees Pty Limited, the Australian Stock Exchange Limited; or

(b) in any other case, the broker who makes the relevant sale or purchase,

shall endorse the transfer with the statement required under section 112E (1) (a), the day of endorsement and, in the case of an endorsement by a broker, that broker's stamp.

(4) A person required to endorse a transfer under subsection (3) shall keep or cause to be kept sufficient books and records to identify the transfer as a transfer exempt from duty under subsection (1).

(5) A person who contravenes or fails to comply with subsection (3) or (4) commits an offence against this Act.

(6) A person shall keep available for inspection the books and records referred to in subsection (4) for a period of not less than 2 years from the month in which the transfer is made.

(7) A person who contravenes or fails to comply with subsection (6) commits an offence against this Act. ”.

Third Schedule amended

14. The Third Schedule to the principal Act is amended in item 2—

(a) in subitem (2) by inserting after “marketable security” the following—

“ or right in respect of shares ”;

(b) in subitem (4) by inserting after “marketable securities” the following—

“ or rights in respect of shares ”; and

(c) by deleting subitem (12) and substituting the following subitem—

“ (12) A transfer of a marketable security or right in respect of shares to which section 112HB (1) applies and which is not subject to a regulation made under section 112HB (2). ”.

PART 4—MISCELLANEOUS AMENDMENTS

Section 75C amended

15. Section 75C of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a) by inserting after “married to each other” the following—

“ or are living with each other as a *de facto* married couple ”;

(ii) by inserting after paragraph (a) the following paragraph—

“ (aa) in the case of a *de facto* married couple, the parties to the relationship have lived in the relationship for at least 2 years before the time of the execution of the instrument; ”;

(iii) in paragraph (b) by deleting “married”; and

(iv) in paragraph (e) by deleting “married persons” and substituting the following—

“ persons referred to in paragraph (a) ”;

(b) in subsection (3) by deleting “married persons” and substituting the following—

“ persons referred to in paragraph (a) ”; and

(c) in subsection (4) by inserting before the definition of “lot” the following definition—

“ “*de facto* married couple” means a man and a woman who, although not legally married to each other, are living with each other as husband and wife on a *bona fide* domestic basis; ”.

Section 76C amended

16. Section 76C of the principal Act is amended—

- (a) in subsection (13A) by deleting “that section” and substituting the following—

“ section 31A ”; and

- (b) by inserting after subsection (13A) the following subsection—

“ (13B) Section 32 applies to an assessment under subsection (9) (c) as if it were an assessment made by the Commissioner. ”.
