

STAMP AMENDMENT ACT

No. 20 of 1990

AN ACT to amend the *Stamp Act 1921*.

[Assented to 24 July 1990]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Stamp Amendment Act 1990*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

**Section 15A repealed, a section substituted
and application provision**

3. (1) Section 15A of the *Stamp Act 1921** is repealed and the following section is substituted—

Refund of duty on cancelled instruments

“ 15A. (1) Subject to this section, the Commissioner shall refund all of the *ad valorem* duty paid on an instrument where the Commissioner is satisfied that—

- (a) the instrument is rescinded, annulled, discharged or cancelled or that each matter contained in the instrument or to which the instrument relates and in respect of which *ad valorem* duty has been paid has not been, and will not be, carried into effect;

and

- (b) no amount of money, right, property or service in respect of the instrument or in consequence of the rescission, annulment, discharge or cancellation or from the matter or matters not being carried into effect has been or will be paid to or obtained by—

- (i) a person liable to pay *ad valorem* duty on the instrument; or

- (ii) any other person (being a person who was not a party to the instrument at the date of its execution) with the consent, or at the direction, of a person liable to pay *ad valorem* duty on the instrument.

(2) Subject to this section, where the Commissioner is satisfied that—

- (a) an instrument on which *ad valorem* duty has been paid is rescinded, annulled, discharged or cancelled or each of the matters contained in the instrument or to which the instrument relates and in respect of which *ad valorem* duty has been paid has not been, and will not be, carried into effect;

- (b) an amount of money, right, property or service in respect of the instrument or in consequence of the rescission, annulment, discharge or cancellation or from the matter or matters not being carried into effect has or will be paid to or obtained by—
 - (i) a person liable to pay *ad valorem* duty on the instrument; or
 - (ii) any other person (being a person who was not a party to the instrument at the date of its execution) with the consent, or at the direction, of a person liable to pay *ad valorem* duty on the instrument; and
- (c) the total of the amount of money and the value of any right, property and service referred to in paragraph (b) is or will be less than the amount of the *ad valorem* duty paid,

the Commissioner shall refund the difference between the amount of the *ad valorem* duty paid and the total referred to in paragraph (c) as determined by the Commissioner.

(3) Subject to this section, where an instrument has been charged with *ad valorem* duty under section 19 in respect of each of several distinct matters contained in the instrument or to which the instrument relates and the Commissioner is satisfied that—

- (a) at least one, but not all, of the matters in respect of which the *ad valorem* duty has been paid has not been, and will not be, carried into effect; and
- (b) no amount of money, right, property or service in respect of that matter or those matters, or in consequence of that matter or those matters not being carried into effect, has been or will be paid to or obtained by—
 - (i) the person liable to pay the *ad valorem* duty in respect of that matter or those matters; or

- (ii) any other person (being a person who was not a party to the instrument at the date of its execution) with the consent, or at the direction, of the person liable to pay the *ad valorem* duty in respect of that matter or those matters,

the Commissioner shall refund all of the *ad valorem* duty paid in respect of that matter, or those matters, as the case requires.

(4) Subject to this section, where an instrument has been charged with *ad valorem* duty under section 19 in respect of each of several distinct matters contained in the instrument or to which the instrument relates and the Commissioner is satisfied that—

- (a) at least one, but not all, of the matters in respect of which the *ad valorem* duty has been paid has not been, and will not be, carried into effect;
- (b) an amount of money, right, property or service in respect of that matter or those matters, or in consequence of that matter or those matters not being carried into effect, has been or will be paid to or obtained by—
 - (i) the person liable to pay the *ad valorem* duty in respect of that matter or those matters; or
 - (ii) any other person (being a person who was not a party to the instrument at the date of its execution) with the consent, or at the direction, of the person liable to pay the *ad valorem* duty in respect of that matter or those matters;

and

- (c) the total of the amount of money and the value of any right, property or service referred to in paragraph (b) is or will be less than the amount of

the *ad valorem* duty paid in respect of that matter or those matters,

the Commissioner shall refund the difference between the amount of the *ad valorem* duty paid in respect of that matter or those matters and the total referred to in paragraph (c) as determined by the Commissioner.

(5) For the purpose of determining the value of a right, property or service under subsection (2) or (4) the Commissioner may require such information and evidence as is necessary, and for that purpose section 7A shall apply as if the Commissioner were determining an amount of duty.

(6) For the purposes of this section, a person liable to pay the *ad valorem* duty on an instrument or in respect of any matter or matters chargeable as a conveyance or transfer of property is deemed to have obtained an amount equal to the duty paid if—

- (a) the instrument provides for or contemplates the conveyance or transfer of the property to another person, unless the Commissioner is satisfied that the conveyance or transfer has not occurred and will not occur; or
- (b) there exists an agreement, arrangement or understanding between the person liable to pay that *ad valorem* duty and another person that the property is or will be conveyed or transferred to that other person or another person, whether by the person liable to pay that *ad valorem* duty or by any other person.

(7) Where—

- (a) a refund of less than the full amount of *ad valorem* duty paid on an instrument is made under subsection (2), (3) or (4); or
- (b) the full amount of the *ad valorem* duty that would be chargeable on an instrument if this section did not apply has not been paid, and the Commissioner

has determined that a refund would have been payable in respect of that duty under this section if the duty were paid,

the amount of duty with which the instrument is chargeable for the purposes of this Act is the difference between the full amount of *ad valorem* duty and the amount of the refund paid or payable in respect of that duty.

(8) Where all of the *ad valorem* duty paid on an instrument is refunded under subsection (1), or no duty is payable on an instrument by virtue of the operation of subsection (7), that instrument shall, from the date of the refund or the determination of the Commissioner under subsection (7), be deemed not to be chargeable with duty under this Act.

(9) Where the amount of duty with which an instrument is chargeable under this section has been paid, or an instrument is not chargeable with duty under this section, the Commissioner may, at the request of any party to the instrument, endorse the instrument accordingly and that endorsement shall be *prima facie* evidence that the instrument has been duly stamped or is not chargeable with duty under this Act, as the case may be. ”.

(2) Section 15A of the principal Act inserted by subsection (1) applies to a rescission, annulment, discharge or cancellation of an instrument or failure of a matter or matters contained in an instrument or to which an instrument relates that occurred on or after 1 July 1988.

[*Reprinted as approved 21 March 1989 and amended by Acts Nos. 3, 16 and 41 of 1989.]