

Western Australia

Presbyterian Church Act 1908

As at 01 Jul 2008

Version 01-d0-04

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Presbyterian Church Act 1908

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Presbyterian Church Act 1908

An Act to repeal the law relating to the management of the real and personal estate of the Presbyterian Church in the State of Western Australia, and to make other provisions in lieu thereof.

1. Short title

This Act may be cited as the *Presbyterian Church Act 1908*¹.

2. Repeal and transitional

The *Presbyterian Church Act 1884*², is hereby repealed, but until Commissioners shall have been elected by the General Assembly as provided by section 4, the present Commissioners under the said repealed Act shall continue in office and be deemed to be The Commissioners of the Presbyterian Church in Western Australia under this Act.

3. Interpretation

In the construction and for the purposes of this Act the following terms shall, if not inconsistent with the context or subject matter, have the respective meanings hereby assigned to them, that is to say: —

Governor shall mean the person administering the Government acting by and with the advice of the Executive Council.

Church shall mean and apply to the Church now known as the Presbyterian Church in Western Australia, and hereinafter referred to as “the said Church”.

General Assembly shall mean the General Assembly of the said Church convened in accordance with the rules, practice, and usages of the said Church.

Moderator shall mean the Moderator for the time being of the General Assembly of the said Church, and include any person temporarily discharging the duties of such office in accordance with the rules, practice, and usages of the said Church.

Presbytery shall mean any Church Court under this name duly formed by the authority of the General Assembly of the said Church.

Congregation shall mean any number of persons duly recognised as a congregation by any Presbytery of the said Church.

Minister means any person recognised as a minister of the Presbyterian Church of Australia by a Presbytery of the Presbyterian Church in Western Australia and who is a member of that Presbytery.

Elder shall mean a person duly inducted and acting as such.

Members shall mean all persons whose names are on the Roll of Communicants of any congregation of the said Church.

Adherents shall mean all persons whose names are on the Roll of Adherents of any congregation and have the right of voting at any congregational meeting under the rules of the said Church.

Committee of Management shall mean the persons charged with the secular affairs of a congregation in accordance with the rules of the said Church.

[Section 3 amended by No. 120 of 1976 s. 3.]

4. Commissioners of the Presbyterian Church in Western Australia constituted a body corporate

The Moderator for the time being of the General Assembly and 8 persons who shall respectively hold office either as a Minister or as an Elder of the said Church (but 2, at least, of whom shall be Ministers), and who shall from time to time be elected by the

General Assembly as hereinafter provided shall be and are hereby constituted a body corporate for the better holding and management of the property of the said Church or of any congregation, mission or institution connected therewith, other than a mission or institution that is separately incorporated as provided in section 21, whether the same shall have been already acquired or may hereafter be acquired in any way howsoever; and for the better regulation and management of the affairs thereof, and under and by the name, style, and title of “The Commissioners of the Presbyterian Church in Western Australia” (hereinafter called *the Commissioners*) shall have continuance and succession for ever, and may have and use a Common Seal for the business of the said corporation and change and alter the same at their will and pleasure, and shall and may have, hold, purchase, receive, take, enjoy, and in the proper execution, and for the better fulfilment of the trusts of the said Church or corporation, and for the benefit and advantage thereof, manage, sell, lease, exchange, grant, transfer, and otherwise dispose of all manner of real and personal property whatsoever, and every part and parcel thereof, and exercise over the same all the powers of leasing and accepting surrenders of leases conferred on a tenant for life by *The Settled Land Act 1892*³ or any Acts for the time being in force amending or re-enacting the same, and shall also have power to borrow and take up at interest any sum or sums of money for the purpose of erecting or improving or aiding in erecting or improving churches, manses, or other buildings, or in the improvement of any property, whether freehold or leasehold, or in otherwise promoting as the General Assembly may direct, the objects of the said Church, and, in addition to the matters herein expressly provided for, shall in respect of the property of the said Church, exercise all the powers and perform all the functions and duties which the General Assembly may from time to time confer upon them, or in anywise direct by resolution to be passed in conformity with its recognised practice and procedure, and for any of such purposes may mortgage by deed or other instrument, under the said corporate seal, such portions of the

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property of the said Church as may be necessary for securing the repayment of such moneys with interest thereon; and the property so to be sold, exchanged, or mortgaged shall thenceforth be held and enjoyed by the purchaser or by the mortgagee thereof or his executors, administrators, and assigns, freed and absolutely discharged from the trusts upon which the Commissioners may theretofore have held the same, and the Commissioners shall and may, by the corporate name, style, and title aforesaid, sue and implead, be sued and impleaded, answer and be answered unto, in any Court of Record, or elsewhere, in law or equity, in all actions and causes whatsoever for, touching, or concerning any matter or thing appertaining to the said Church or corporation.

[Section 4 amended by No. 6 of 1924 s. 2; No. 19 of 1964 s. 2.]

4a. Commissioners, election, term of office, etc.

- (1) The General Assembly shall elect (as hereinafter provided) 8 persons whose qualification for such election shall be the holding by each of said persons of the office of either a Minister or an Elder of said Church, and so that the Moderator and such 8 persons when so elected, or the persons from time to time elected in place of them respectively, as hereinafter provided, shall constitute the Commissioners in accordance with section 4.
- (2) The said 8 persons or their successors shall be elected by the General Assembly by either a vote by a show of hands, or by ballot or otherwise as may be determined by the General Assembly from time to time.
- (3) Subject to the proviso hereinafter contained with regard to the first 8 persons elected as aforesaid or of persons appointed to fill any casual vacancy, the persons elected as Commissioners shall hold office for the period of 4 years, so that 2 of such persons shall retire in rotation each year:

Provided always —

- (a) that in the case of the first 8 persons to be elected as aforesaid, the General Assembly shall determine the period for which each of such persons shall hold office, and date of retirement by them respectively, and so that 2 of such persons shall retire during each of the first, second, third, and fourth years from the date of their election;
 - (b) that in the case of person subsequently elected as aforesaid, other than persons elected to fill a casual vacancy, such persons shall be elected for a period of 4 years from date of their respective election. All persons elected as aforesaid shall, subject to the provisions of subsections (5) and (6), hold office until the appointment of their successors, notwithstanding the provisions hereof; and
 - (c) that every person so elected and subject to retirement as aforesaid shall be eligible for re-election, provided such person continues to hold the qualification hereinbefore mentioned.
- (4) The Moderator shall not be subject to retirement, and shall hold office so long as he continues to act as Moderator.

The Moderator shall also act as convener of all meetings of Commissioners, and may summon general meetings of the Commissioners from time to time. In the absence of the Moderator or in case of the inability or refusal of the Moderator to convene any such meeting or meetings, then any 2 Commissioners may convene such meeting or meetings. The Moderator shall also be entitled to preside as chairman at all meetings, and in his absence the Commissioners present at any meeting may appoint one of their number to be chairman of such meeting.

- (5) If any person elected as aforesaid resigns his office by writing under his hand and delivered to the Moderator or secretary of the Commissioners, or if such person dies or ceases to have his usual place of residence within the State of Western Australia, or ceases to hold the qualification of a Minister or Elder of the said Church, or is absent from 6 or more consecutive general meetings of the Commissioners without leave obtained from

such meetings, then the place of every such person shall thereupon become vacant, and a casual vacancy shall be deemed to have occurred.

- (6) In the event of a casual vacancy occurring from any cause as aforesaid, it shall be lawful for the Commissioners to appoint some other person holding a qualification as aforesaid to fill the vacancy until the next meeting of the General Assembly, when it shall be lawful for the General Assembly to elect some other duly qualified person to fill such vacancy for the remainder of the term (if any) of the person whose place as aforesaid has been vacated.

[Section 4a inserted by No. 6 of 1924 s. 3.]

5. Vesting of property in Commissioners

All lands, tenements, hereditaments, and personal property at present belonging to or vested in the Commissioners, as constituted under the *Presbyterian Church Act 1884* (hereby repealed), and the full benefit of, and all rights, benefits, powers, and privileges to which such Commissioners may be entitled under any deeds, writings, or instruments, shall be, and the same are hereby vested in the Commissioners as constituted under this Act, subject to all rights, trusts, and equities affecting the same, and subject also to the provisions of this Act; and the Commissioners hereby constituted shall be bound by and be liable as a body corporate under all such deeds, writings, and instruments in place of and substitution for the Commissioners under the said repealed Act.

6. Register of property

The Commissioners shall keep a Register of all lands, tenements, and hereditaments, and personal property, held or registered now or hereafter in their name, and shall enter in such Register particulars to identify such lands, tenements, and hereditaments, and personal property, and shall, in a column to be set apart for such purpose, set forth whether such lands, tenements,

hereditaments, and personal property are held generally or for any specific purpose for the benefit of the said Church, or generally or for any specific purpose in trust or otherwise for any congregation, mission, or institution, belonging to or in connection with the said Church, or under the control thereof, and such lands, tenements, hereditaments, and personal property shall be deemed to be and shall be held by the Commissioners accordingly; provided always that where any lands, tenements, hereditaments, or personal property are or is held generally for the benefit of the said Church the same may be altered to a special purpose by a resolution to be passed by a majority of the members of the General Assembly present at any meeting thereof, or whether held generally or for any special purpose for the said Church the same may be altered by a resolution as aforesaid to any trust for any congregation, mission, or institution thereof; provided further that where any trusts are set forth in the said Register in respect of any lands, tenements, hereditaments, or personal property the same may be altered or varied by a resolution to be passed as aforesaid, but in the case of any lands, tenements, hereditaments, or personal property held subject to any trust for any congregation (other than a congregation ceasing to exist) such trusts shall not be altered, except by petition in writing signed by a majority of the members and adherents of the congregation entitled to the full benefit of the said trust, and with the approval of the Commissioners. All lands held or to be held as aforesaid shall be subject to the provisions of section 20.

[Section 6 amended by No. 50 of 1919 s. 2.]

7. Property held for congregational purposes

All lands, tenements, and hereditaments upon which any church, school, manse, or other building is now or shall hereafter be erected and which lands, tenements and hereditaments belong to and are held by the Commissioners upon trust for any particular congregation, and any lands, tenements, and hereditaments, and personal property purchased, devised, bequeathed, or given for the erection, endowment or benefit of any church, school, or manse of any particular congregation, shall, subject to the

provisions of section 20, be held by the Commissioners in trust for that congregation; and if such congregation shall cease to exist, then subject as aforesaid in trust for the maintenance or advancement or other purposes of the said Church as may be determined by the General Assembly by any resolution to be passed as aforesaid.

[Section 7 amended by No. 19 of 1964 s. 3.]

8. Property held for general purposes

All lands, tenements, and hereditaments and personal property held in trust by the Commissioners for other than congregational purposes shall, subject to the provisions of this Act, be held by the Commissioners in trust for the maintenance or advancement or other purposes of the said Church, and shall be duly entered in the said Register of properties, and shall not be sold, exchanged, mortgaged or leased except as the General Assembly may direct, such direction to be evidenced by a resolution to be passed as aforesaid. A certificate signed or purporting to be signed by the clerk for the time being of the General Assembly shall be conclusive proof of the due passing of any Resolution of the said Assembly.

9. Property held on special purpose or trust

- (1) Subject to subsection (2), all lands, tenements, and hereditaments, and personal property which shall be given, devised, or bequeathed to the said Church, or to any particular congregation or mission or institution thereof, or to the Commissioners for or upon any special purpose or trust, shall vest in and be held and applied by the Commissioners, subject to the carrying out of such purpose or the performance of such trust.
- (2) This section does not apply to any real or personal property that is given, devised or bequeathed to any mission or institution separately incorporated as provided in section 21.

[Section 9 amended by No. 19 of 1964 s. 4.]

10. Property given by Crown not to be sold etc., except with Governor's consent

No lands which shall have been acquired or may hereafter be acquired by the said Church or by the Commissioners or by any mission or institution of the said Church that has been separately incorporated as provided in section 21 by gift from the Crown without pecuniary consideration therefor shall be sold, demised, mortgaged or otherwise disposed of, charged or dealt with except with the consent in writing of the Governor for the time being endorsed as hereinafter provided for.

[Section 10 amended by No. 19 of 1964 s. 5.]

11. Dealing with property held for congregational purposes

The Commissioners may in their discretion, whenever requested so to do by a petition in writing signed by a majority of the members and adherents of any congregation, and provided that such petition shall be approved by a majority of the members and adherents of any congregation present at a Special Meeting called for the purpose by intimation from the pulpit during Divine Service on 2 successive Sabbaths immediately preceding the day of meeting, and subject to obtaining when necessary the consent of the Governor as aforesaid, and also the consent of the Presbytery within whose bounds the lands, tenements, hereditaments, or personal property affected are situate, sell, exchange, or mortgage all or any part of the lands, tenements, and hereditaments, or personal property held in trust for such congregation, for such price, sum, and upon such terms as the said majority of such congregation may direct; and the Commissioners shall, whenever directed or requested so to do by a resolution passed by a majority of the members of the Committee of Management of any congregation present at a Special Meeting called for that purpose (subject to the approval of the Presbytery within whose bounds such lands, tenements, and hereditaments are situate), let or lease all or any part of the lands, tenements and hereditaments held in trust for such congregation for such period, at such rent, and upon such terms as the said majority of the

members of such Committee of Management may direct. Provided always that no such sale, exchange, mortgage, letting, or lease shall be made by the Commissioners until the said respective resolutions have been passed, and the consent, where required, of the Governor and Presbytery has been obtained. A certificate signed by the Chairman presiding at any such meeting of a congregation, or for the Committee of Management, and a certificate signed by the Clerk of the Presbytery, shall be conclusive proof of the passing of the said respective resolutions and of the approval of the Presbytery.

[Section 11 amended by No. 50 of 1919 s. 3.]

12. Application of money held for congregational purposes

All moneys arising from the sale or mortgage, calling in or conversion of any lands, tenements, and hereditaments, and personal property held by the Commissioners in trust for any congregation, and the net rents, profits, and income of such lands, tenements, hereditaments, and personal property, and all other moneys coming to the hands of the Commissioners for the benefit of, or in trust for any congregation, shall from time to time be paid or applied in accordance with the directions of the Committee of Management of the congregation for which such lands, tenements, and hereditaments, personal property, and moneys are held in trust, and the receipt of the Treasurer for the time being of such Committee of Management for any such moneys, rents, profits, and income shall effectually discharge the Commissioners therefrom, and from being bound to see to the application or being answerable for the loss or misapplication thereof.

13. Application of money held for general purposes

All moneys arising from the sale or mortgage, calling in, or conversion of lands, tenements, and hereditaments, and personal property held by the Commissioners other than in trust for any congregation, mission, or institution, and the income thereof and the net rents, profits, and income of such lands, tenements, and hereditaments, and personal property, and all other moneys coming

to the hands of the Commissioners for the general purposes of the said Church shall be devoted to whatever purpose the General Assembly may determine, and the receipt of the Treasurer for the time being of such Fund for any such moneys, rents, profits, and income shall effectually discharge the Commissioners therefrom, and from being bound to see to the application or being answerable for the non-application thereof.

14. Authorised investments

The Commissioners may, from time to time, invest all moneys that shall come to their hands in any of the Public Stocks or Government securities of the United Kingdom, or of the Commonwealth of Australia, or of this State, or of any other Australian State, or upon purchase or mortgage of any real or personal property, or on deposit with any Bank carrying on business in this State, and no Commissioner shall be liable for any loss occasioned by the depreciation or failure of any such investment or otherwise, same by his own wilful default; and the Commissioners, from time to time, at their discretion may vary or transfer such stocks, funds, and securities into or for others of the same or a like nature.

15. Treasurer

It shall be lawful for the Commissioners, from time to time, to appoint a Treasurer, who shall hold his office on such terms as they may determine; and the receipt in writing of the Treasurer, or of any of the Commissioners duly authorised in that behalf for any moneys paid, and for any stocks, funds, shares, or securities transferred, shall effectually discharge the person paying or transferring the same therefrom, and from being bound to see to the application, or being answerable for the loss or misapplication thereof.

16. Vacancies not to invalidate gifts, etc.

No order, resolution, or proceeding of the Commissioners, nor any power by this Act conferred, nor any gift, devise, or bequest to them, or to any Minister, or person, for the benefit of the said

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Church, or any congregation, mission, institution, or charity connected therewith (whether or not the mission or institution is separately incorporated as provided in section 21), shall be invalidated by reason only of there being a vacancy in the office of Moderator or Minister, or any vacancy in the number of Commissioners.

[Section 16 amended by No. 19 of 1964 s. 6.]

17. Corporate seal to be affixed to deeds, etc.

The corporate seal of the Commissioners, which shall be and remain in the custody of the Treasurer for the time being, shall be affixed to every deed or instrument executed in exercise of the powers conferred by this Act at a General Meeting of the Commissioners, by the chairman of such meeting, and every such deed or instrument shall also be signed by 2 of the Commissioners.

18. General meetings, quorum

For a General Meeting of the Commissioners not less than 7 days' notice shall be given, and for the transaction of business thereat a quorum of 3 Commissioners, one of whom shall be a Minister, shall be necessary. The decision on any matter of a majority of the Commissioners present at any General Meeting shall be deemed to be the decision of the whole body of the Commissioners, and shall be binding on all absent or dissenting Commissioners, who shall, if required, execute and do all such instruments and acts as may be requisite for giving effect to such decision. Provided always, that with the consent in writing of any 2 other Commissioners the Moderator may convene a General Meeting on shorter notice than 7 days.

[Section 18 amended by No. 6 of 1924 s. 7.]

19. Purchasers, etc., protected

It shall not be necessary for any purchaser, transferee, lessee, or mortgagee to inquire whether the Commissioners, or any of them

signing any deed or instrument, or affixing the said seal as aforesaid, were or was duly or regularly appointed or whether the approval of the majority of the congregation or of the Committee of Management present at a Special Meeting or of the Presbytery as aforesaid has been duly or properly obtained to the sale, exchange, transfer, conveyance, mortgage, or lease of the lands, tenements, and hereditaments purporting to be sold, exchanged, transferred, conveyed, mortgaged, or leased by such deed or instrument, or whether the said power of sale, exchange, mortgage, or leasing was duly or regularly exercised, or in any wise to see to the application of any moneys raised under authority of this Act, or to inquire into the necessity, regularity, or propriety of any such conveyance, transfer, mortgage or lease; nor shall any purchaser, transferee, mortgagee, or lessee be affected by notice that the Commissioners, or any of them, have not been regularly appointed, or that such approval as aforesaid has not been obtained or that any such conveyance, transfer, mortgage, or lease, is in anywise irregular, unnecessary, or improper; and any such conveyance, transfer, mortgage, or lease duly executed in manner aforesaid (and endorsed with the Governor's consent, in writing, in the case of the sale or mortgage of lands acquired by gift from the Crown without pecuniary consideration therefor), shall be valid and effectual to all intents and purposes whatsoever.

20. Properties to be held subject to scheme of Union

Notwithstanding anything contained in this Act, or in any deed, declaration, or statement of trust, all lands, tenements, hereditaments, personal property, estates, and temporal privileges, and all equitable rights belonging to the said Church and the congregations thereof, or held by or in trust for or on behalf of, or in connection with the said Church and congregations, missions or institutions connected therewith, whether or not any of those missions or institutions is separately incorporated as provided in section 21 (in this section called "**properties of the said Church**"), shall be held subject to the provisions of the Scheme of Union set forth in the Schedule to the *Presbyterian Church of Australia Act 1901*, and all decisions of the General Assembly of

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the Presbyterian Church of Australia or the Judicial Commission thereof, given or come to in accordance with the said Scheme of Union shall be binding on all properties of the said Church.

[Section 20 amended by No. 19 of 1964 s. 7.]

21. Mission or institution of the Church may be separately incorporated etc.

- (1) The General Assembly may resolve that any mission or institution of the Church shall be separately incorporated according to law in such manner and subject to such conditions, restrictions, limitations and provisions as the General Assembly may by resolution determine.
- (2) Subject to this Act, on the date on which a mission or institution becomes so separately incorporated —
 - (a) the whole of the real and personal property that immediately before that date was exclusively used in the work and activities of the mission or institution, including all such real and personal property as was then held by the Commissioners upon trust for that mission or institution, and all contractual rights and benefits then existing that relate to the mission or institution, are hereby vested in the mission or institution in its corporate name, subject to all easements, encumbrances, rights, trusts and equities, affecting the same; and
 - (b) all debts, liabilities and obligations of every class or kind existing at that date that relate to the mission or institution by force of this section and without any transfer or assignment, shall be taken over by the mission or institution as so incorporated, and the mission or institution shall indemnify and at all times after that date keep indemnified the Commissioners and all persons who prior to that date were liable for those debts, liabilities and obligations.
- (3) Subject to this Act and to all easements, encumbrances, trusts and equities affecting the same, each mission or institution

incorporated as provided in this section, shall hold in its corporate name —

- (a) all real and personal property, rights and benefits that are acquired by it after it so incorporated; and
 - (b) all real and personal property given to the Commissioners in trust for the mission or institution after it is so incorporated.
- (4) Notwithstanding the operation and effect of the foregoing provisions of this section on any mission or institution, any mission or institution incorporated as therein provided, shall continue to be a mission or institution of the said Church and shall be subject to the provisions of section 20 of the *Presbyterian Church Act 1908*.
- (5) Every transfer, conveyance, assignment, application, deed and instrument that may be necessary for the purpose of effectually vesting the real and personal property, rights and benefits referred to in subsection (2) in the corporate name of a mission or institution incorporated as provided in this section shall be free from all —
 - (a) duty imposed by the *Duties Act 2008*; and
 - (b) fees that, but for this subsection, would be payable in respect thereof under the *Transfer of Land Act 1893*.
- (6) Where an institution is separately incorporated pursuant to this section, if the institution is a school or college all vacant land held by the institution and all land so held that is used exclusively or mainly for the purposes of the school or college is not rateable land under the provisions of the *Local Government Act 1995* or the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* and is exempt from land tax imposed by the *Land Tax Act 2002*.

[Section 21 inserted by No. 19 of 1964 s. 8; amended by No. 14 of 1996 s. 4; No. 45 of 2002 s. 20; No. 12 of 2008 s. 52.]

Notes

- ¹ This is a compilation of the *Presbyterian Church Act 1908* and includes the amendments made by the other written laws referred to in the following table ⁶. For amendments that had not come into operation on the date on which this compilation was prepared see endnote ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Presbyterian Church Act 1908</i>	2 of 1908	12 Aug 1908	12 Aug 1908
<i>Presbyterian Church Act Amendment Act 1919 s. 2 and 3</i>	50 of 1919	17 Dec 1919	17 Dec 1919
<i>Presbyterian Church Act Amendment Act 1924 s. 2, 3 and 7</i>	6 of 1924	5 Nov 1924	5 Nov 1924
<i>Presbyterian Church Act Amendment Act 1964 s. 2-8</i>	19 of 1964	8 Oct 1964	8 Oct 1964
<i>Presbyterian Church Act 1976 s. 3</i> ⁵	120 of 1976	1 Dec 1976	22 Jun 1977 (see s. 2 and <i>Gazette</i> 17 Jun 1977 p. 1811)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Reprint of the <i>Presbyterian Church Act 1908</i> as at 25 Oct 2002 (includes amendments listed above)			
<i>Taxation Administration (Consequential Provisions) Act 2002 s. 20</i> ⁸	45 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Duties Legislation Amendment Act 2008 s. 52</i>	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Presbyterian Church of Australia Act 1970 s. 7</i> ⁷	91 of 1970	30 Nov 1970	Notice to be published (see s. 7(2) and 2(2))

² I.e. 48 Vict. No. 20.

³ Repealed by the *Trustees Act 1962*.

⁴ Footnote no longer applicable.

⁵ The *Presbyterian Church Act 1908* was temporarily modified by the *Presbyterian Church Act 1976* s. 4. Section 4 ceased to operate or have effect on 28 Jun 1985. See *Gazette* 28 Jun 1985 p. 2374 and the 1976 Act s. 5 which reads as follows:

“

5. Reversion to General Assembly

The Presbytery of Western Australia may at any time by resolution declare itself to be the General Assembly of the Presbyterian Church in Western Australia and in that capacity it may take such steps as may be necessary for the General Assembly to be duly constituted and convened and upon the publication in the *Government Gazette* of a notice setting out the said declaration signed by the moderator for the time being of the presbytery the provisions of section 4 of this Act shall cease to have any operation or effect, but all persons, things and circumstances appointed or created by or under the *Presbyterian Church Act 1908* as amended, or the Presbytery of Western Australia upon and after the appointed day shall continue to have the same status, operation and effect as they would have had if the said declaration had not been made.

”

⁶ The *Presbyterian Church Act 1908* is to be read as one with the following Acts:

Presbyterian Church Act Amendment Act 1919

Presbyterian Church Act Amendment Act 1924

Other relevant Acts :

Presbyterian Church of Australia Act 1901

Presbyterian Church of Australia Act 1970.

⁷ As at the date of this reprint the amendments to this Act in the *Presbyterian Church of Australia Act 1970* s. 7 have not come into operation because the notice under s. 7(2) which would give them effect has not been published. Section 7 reads as follows:

“

7. Presbyterian Church Act 1908 amended

(1) The *Presbyterian Church Act 1908* is amended as follows:

- (a) by adding after the section number “3.” the subsection designation “(1)”;
- (b) by substituting for the definition “Church” in section 3 the following definition —

“

Church, the Presbyterian Church in Western Australia, the said Church, the Church mean that part of the Presbyterian Church of Australia that is within the State. ;

”;

- (c) by substituting for the definition “General Assembly” in section 3 the following definition —

“

The Synod means the Synod of Western Australia of the Presbyterian Church of Australia, convened in accordance with the rules, practice and uses of the said Church. ;

”;

- (d) by substituting for the words “General Assembly” in line two of the definition “Moderator” in section 3 the word “Synod”;
- (e) by substituting for the words “said Church” in line three of the definition “Presbytery” in section 3 the words “Presbyterian Church of Australia”;
- (f) by substituting for the definition “Minister” in section 3 the following definition —

“

Minister means any person recognised as a minister of the Presbyterian Church of Australia by a Presbytery of the Presbyterian Church in Western Australia and who is a member of that Presbytery. ;

- ”;
”;
(g) by adding after the definition “Committee of Management” a subsection as follows —

“

- (2) After the coming into operation of the *Presbyterian Church of Australia Act 1970*, a reference in this Act to the “General Assembly” except in the definition “Presbytery” and in section 20 of this Act shall be read and construed as a reference to “The Synod” but so that the Commissioners holding office at the time this subsection comes into operation shall, subject to this Act, continue to hold office. ;

- ”;
”;
(h) by substituting for the passage “*The Settled Land Act of 1892*” in lines 22 and 23 of section 4 the passage “the *Trustees Act 1962*”; and

- (i) by substituting for the figures “1901” in line 10 of section 20 the figures “1970”.

- (2) This section shall come into operation on the date of the publication in the *Gazette* of the notice referred to in section 2 of this Act.

”.

⁸ The *Taxation Administration (Consequential Provisions) Act 2002* s. 3 and 4 and Pt. 4 read as follows:

“

3. Relationship with other Acts

The *Taxation Administration Act 2003* is to be read with this Act as if they formed a single Act.

4. Meaning of terms used in this Act

The Glossary at the end of the *Taxation Administration Act 2003* defines or affects the meaning of some of the words and expressions used in this Act and also affects the operation of other provisions.

Part 4 — Transitional provisions

Division 1 — Interpretation

33. Definitions

In this Part —

commencement day means the day on which the *Taxation Administration Act 2003* comes into operation;

old Act means —

- (a) an Act repealed by section 5;
- (b) the old Stamp Act; or
- (c) section 41 of the *Metropolitan Region Town Planning Scheme Act 1959* as in force immediately before the commencement day;

old Stamp Act means the *Stamp Act 1921* as in force immediately before the commencement day;

substantive provisions, in relation to an old Act, means the provisions of the old Act other than those dealing with matters dealt with in the *Taxation Administration Act 2003*.

Division 2 — General transitional provisions

34. General transitional arrangements

- (1) Section 37(1) of the *Interpretation Act 1984*, except paragraphs (a) and (b), does not apply in relation to the repeal of an old Act.
- (2) The repeal of an old Act does not, unless the contrary intention appears —
 - (a) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;
 - (b) affect any duty, obligation, liability, or burden of proof imposed, created, or incurred prior to the repeal;
 - (c) subject to section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995*, affect any penalty or forfeiture incurred or liable to be incurred in respect of an offence committed against the old Act; or
 - (d) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture.
- (3) Subject to subsections (4) and (5) —
 - (a) a right, interest, title, power, privilege, duty, obligation, liability or burden of proof referred to in subsection (2)(a) or (b) may be exercised or enforced;
 - (b) a penalty or forfeiture referred to in subsection (2)(c) may be imposed and enforced; and

- (c) an investigation, legal proceeding or remedy referred to in subsection (2)(d) may be instituted, continued, or enforced,

as if the substantive provisions of the relevant old Act —

- (d) had not been repealed;
 - (e) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
 - (f) had been amended to make any modifications necessary for this section to have effect.
- (4) If an objection, appeal or other legal proceeding (the **action**) was instituted under an old Act and was not finally determined before the commencement day —
- (a) the action may be continued;
 - (b) any requirement to pay interest on an amount of tax determined in the action to have been overpaid applies and may be enforced;
 - (c) any penalty may be imposed and enforced; and
 - (d) any decision, order or determination made in the action has effect, and may be enforced,

as if this Act and the taxation Acts had not commenced.

- (5) If the time limited by an old Act for doing anything is longer than the time limited by a taxation Act for doing the equivalent thing under that Act, then in relation to a matter to which subsection (3) applies, the time limited under the old Act applies in relation to the doing of the thing under the taxation Act.
- (6) If the time limited by an old Act for commencing proceedings in relation to an offence under that Act is shorter than the 5 year period limited by section 111 of the *Taxation Administration Act 2003*, then despite section 111, proceedings in relation to an offence under the old Act (including an offence under a provision of the old Act that is continued in force under this Part) cannot be commenced after the expiry of the shorter period provided for by the old Act.
- (7) In this section a reference, in relation to the *Stamp Act 1921*, to the repeal of the old Act is a reference to the amendment of the Act by the *Stamp Amendment Act 2003*.

35. Commissioner not to increase tax liability

Despite Part 3 Division 1 of the *Taxation Administration Act 2003*, the Commissioner must not make a reassessment that increases the amount of tax a person is liable to pay in relation to anything that

happened before the commencement day if the reassessment could not have been made under the relevant old Act.

36. Delegations

A delegation made under an old Act and in force immediately before the commencement day continues in force on and after that day as a delegation made under section 10 of the *Taxation Administration Act 2003*.

Division 3 — Debits tax

37. Certificates of exemption from tax (*Debits Tax Assessment Act 1990, s. 11*)

- (1) A certificate issued under section 11 of the *Debits Tax Assessment Act 1990* and in force immediately before the commencement day continues in force on and after that day as a certificate issued under section 10 of the *Debits Tax Assessment Act 2002*.
- (2) Where section 13(1) of the *Debits Tax Assessment Act 2002* applies in relation to a certificate issued under section 11 of the *Debits Tax Assessment Act 1990* the Commissioner cannot make a reassessment of the amount of debits tax payable on a debit for the purpose of giving effect to that section more than 3 years after —
 - (a) if the financial institution has recovered the amount of the debits tax paid on the debit from the customer — the date on which that amount was recovered; or
 - (b) otherwise — the date on which the debits tax on the debits was paid.

Division 4 — Land tax

38. Exemptions for certain home unit owners (*Land Tax Assessment Act 1976, s. 19*)

If the amount of land tax payable on land for the financial year commencing on 1 July 2001 was assessed under section 19 of the *Land Tax Assessment Act 1976*, then on and after the commencement day section 16 of the *Land Tax Assessment Act 2002* applies in relation to that land as if that assessment had been made under section 16.

39. Inner city residential property rebate (*Land Tax Assessment Act 1976, s. 23AB*)

A notice given by the Commissioner under section 23AB(7) of the *Land Tax Assessment Act 1976* and in force immediately before the commencement day continues in force on and after that day as a notice under section 28(4) of the *Land Tax Assessment Act 2002*.

40. Land tax relief Acts

Despite —

- (a) the repeal of the *Land Tax Assessment Act 1976* and *Land Tax Act 1976*; and
- (b) the amendment of section 41 of the *Metropolitan Region Town Planning Scheme Act 1959*,

on and after the commencement day the *Land Tax Relief Act 1991* and *Land Tax Relief Act 1992* apply as if the substantive provisions of the Acts mentioned in paragraphs (a) and (b) —

- (c) had not been repealed;
- (d) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
- (e) had been amended to make any modifications necessary for this section to have effect.

Division 5 — Pay-roll tax

41. Treatment of certain contributions (*Pay-roll Tax Assessment Act 1971*, Sch. 2 cl. 5)

Despite the repeal of the *Pay-roll Tax Assessment Act 1971*, Schedule 2 clause 5 of that Act continues to apply on and after the commencement day in relation to contributions wholly or partly in respect of services performed or rendered before 1 July 1997 as if that Act had not been repealed.

42. Reassessments and refunds (*Pay-roll Tax Assessment Act 1971*, s. 19)

Despite sections 16(3), 20(3) and 22(4) of the *Pay-roll Tax Assessment Act 2002* and section 16(1)(a) of the *Taxation Administration Act 2003*, the Commissioner is not required to make a reassessment of the amount of pay-roll tax payable by an employer in respect of wages paid or payable before the commencement day unless an application for a reassessment is made within 2 years after the tax was paid.

Division 6 — Stamp duty

43. Adhesive stamps (*Stamp Act 1921*, s. 15, 21 and 23)

- (1) Despite its repeal by the *Stamp Amendment Act 2003*, section 15 of the old Stamp Act continues in force for 12 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
- (2) Despite their repeal by the *Stamp Amendment Act 2003*, sections 21 and 23 of the old Stamp Act continue in force for

3 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.

- (3) If adhesive stamps affixed to an instrument have been cancelled in accordance with the old Stamp Act (including the provisions of the old Stamp Act continued in force by subsections (1) and (2)) the instrument is taken to have been endorsed in accordance with section 17C of the *Stamp Act 1921*.

44. Printing of “Stamp Duty Paid” on cheques (*Stamp Act 1921*, s. 52)

- (1) An authorisation of a financial institution granted under section 52 of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom an authorisation continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the authorisation was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

45. First home owners — reassessment (*Stamp Act 1921*, s. 75AG)

Despite section 17(1) of the *Taxation Administration Act 2003*, if property that included a dwellinghouse was conveyed or transferred before the commencement day, an application for a reassessment of the duty payable on the conveyance or transfer on the basis that a rebate under section 75AG of the old Stamp Act should have been, but was not, allowed cannot be made more than 12 months after the date of the original assessment.

46. Reassessment of duty on grant or transfer of vehicle licences (*Stamp Act 1921*, s. 76C(18) and (19), 76CA(3a) and 76CB(9))

- (1) This section applies in relation to a grant or transfer of a licence that occurred before the commencement day.
- (2) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should not have been paid because —
 - (a) in the case of a grant — no vehicle licence fee was payable under the *Road Traffic Act 1974* in respect of the licence; or
 - (b) in the case of a transfer — had the transferee applied for the licence on the date of the transfer no vehicle licence

fee would have been payable under the *Road Traffic Act 1974*,

cannot be made more than 15 months after the licence was granted or transferred.

- (3) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty paid on the transfer of a licence on the basis that the duty should have been, but was not, charged in accordance with item 6 of the Second Schedule to the old Stamp Act because the transfer did not pass a beneficial interest, cannot be made more than 12 months after the licence was transferred.
- (4) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should have been, but was not, assessed on the net market value of the vehicle (as defined in section 76CB of the old Stamp Act), cannot be made more than 12 months after the licence was granted or transferred.

**47. Alternative to stamping individual insurance policies
(Stamp Act 1921, s. 95A)**

- (1) A permission granted under section 95A of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

48. Workers' compensation insurance (Stamp Act 1921, s. 97 and item 16 of the Second Schedule)

- (1) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the issue or renewal of a policy of insurance that occurred before the commencement day on the basis that the duty was assessed under item 16(1)(a)(i) of the Second Schedule to the old Stamp Act but should have been assessed under item 16(1)(a)(ii), cannot be made more than 2 years after the beginning of the insurance policy's cover period.
- (2) Despite the amendment of Schedule 2 item 16(1)(a) of the *Stamp Act 1921*, on and for 12 months after the commencement day —

- (a) the reference in Schedule 2 item 16(1)(a)(i)(A) to the *Pay-roll Tax Assessment Act 2002* includes a reference to the *Pay-roll Tax Assessment Act 1971*; and
- (b) the reference in Schedule 2 item 16(1)(a)(i)(B) to section 39 or 40 of the *Pay-roll Tax Assessment Act 2002* includes a reference to section 10 of the *Pay-roll Tax Assessment Act 1971*.

49. Payment of duty by returns (*Stamp Act 1921, s. 112V*)

- (1) A permission granted under section 112V of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

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