

WESTERN AUSTRALIA

STAMP AMENDMENT ACT (No. 2)

No. 3 of 1989

AN ACT to amend the *Stamp Act 1921*.

[Assented to 20 April 1989.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Stamp Amendment Act (No. 2) 1989*.

Commencement

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

Principal Act

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

[*Reprinted as at 9 June 1985 and amended by Acts Nos. 84 and 85 of 1985, 98 of 1986 and 33 and 100 of 1987.]

Section 4 amended

4. Section 4 of the principal Act is amended by inserting after the definition of “duty” the following definition—

“ “dwellinghouse” includes flat, apartment or other residential unit; ”.

Section 75AE amended

5. Section 75AE of the principal Act is amended by repealing subsection (4).

Section 75AG inserted

6. After section 75AF of the principal Act the following section is inserted—

Rebate or refund of duty for first home owners

“ 75AG. (1) In this section—

“instrument of acquisition” means a conveyance or transfer of property or other instrument chargeable with duty under item 4 (1) or (5) or item 19 of the Second Schedule, as the case requires;

“trustee”, in addition to every person appointed or constituted trustee by act of parties, or by order or declaration of a court or by operation of law, includes—

- (a) an executor or administrator, guardian, committee of management, receiver or liquidator; and
- (b) every person having or taking upon himself the administration or control of property effected by any express or implied trust, or acting in any

fiduciary capacity, or having the possession, control, or management of the property of a person under any legal disability.

(2) This section applies in respect of property—

- (a) where settlement of the property, being payment to the vendor of the purchase price of that property, has been, or will be, completed on or after 1 March 1989; or
- (b) acquired without valuable consideration, where the instrument of acquisition of that property has been, or will be, executed on or after 1 March 1989.

(3) A person who—

- (a) claims to be a first home owner for the purposes of this section; and
- (b) is liable to pay duty on an instrument of acquisition in relation to property which includes a dwellinghouse and to which the claim referred to in paragraph (a) relates,

may apply to the Commissioner in the manner provided by subsection (10) for a rebate on that duty.

(4) A person who—

- (a) claims to be a first home owner for the purposes of this section; and
- (b) has paid the duty chargeable on the instrument of acquisition in relation to the property to which the claim referred to in paragraph (a) relates,

may apply to the Commissioner in the manner provided by subsection (10) for a refund of part or all of that duty.

(5) A person is a first home owner for the purposes of this section if that person is able to satisfy the Commissioner of the following—

- (a) that person is liable to pay, or has paid, duty on an instrument of acquisition;

- (b) that person has not acquired or does not intend to acquire the property to which the instrument of acquisition relates (in this subsection referred to as the “dutiabale property”) as agent, trustee or otherwise on behalf of any other person;
 - (c) the value of the dutiabale property, as determined for the purposes of this Act, does not exceed—
 - (i) in the case of property which includes a dwellinghouse, \$80 000 or, where that property is situated north of the 26th parallel of south latitude, \$120 000;
 - (ii) in the case of property which does not include a dwellinghouse, \$33 000;
 - (d) that person is a natural person who—
 - (i) has acquired or is acquiring the dutiabale property with the intention of occupying the dwellinghouse on the property as the principal place of residence of that person; or
 - (ii) has acquired the dutiabale property and, within a period of 48 months after the day on which the instrument of acquisition was stamped, has commenced the erection of a dwellinghouse on that property with the intention of occupying that dwellinghouse as the principal place of residence of that person;
 - (e) before the date on which the dutiabale property was, or is intended to be, acquired that person had not acquired property which included a dwellinghouse whether inside or outside of Western Australia either alone or together with another person or other persons; and
 - (f) no rebate or refund under this section has been made to that person, either alone or together with another person or other persons.
- (6) For the purposes of this section a person who—
- (a) has acquired property which includes a dwellinghouse;
 - (b) has not occupied that dwellinghouse; and

- (c) has commenced the erection of another dwellinghouse on the property and intends to occupy that dwellinghouse as the principal place of residence of that person,

shall be taken to have acquired a property which does not include a dwellinghouse.

(7) Where property is acquired, or will on settlement of the property as referred to in subsection (2) (a) be acquired, by a trustee other than a discretionary trustee, the beneficial owner of the property shall, for the purpose of determining whether a rebate or refund is payable under this section, be taken to be the person acquiring the property and paying duty on the instrument of acquisition.

(8) An application to the Commissioner under subsection (4) shall be made—

- (a) in the case of the acquisition of property which includes a dwellinghouse, within a period of 12 months after the day on which the instrument of acquisition was stamped; and
- (b) in the case of the acquisition of property which does not include a dwellinghouse, within 12 months after the day on which the erection of a dwellinghouse on the property commences.

(9) For the purposes of subsection (8) (b) the day on which the erection of the dwellinghouse commences shall be taken to be—

- (a) the day on which a contract for the whole or a substantial part of the erection is entered into; or
- (b) where no contract for the whole or a substantial part of the erection is entered into, the day on which the erection of the dwellinghouse commences.

(10) An application to the Commissioner under subsection (3) or (4) for a rebate or refund—

- (a) shall be made in writing in a form approved by the Commissioner by the person acquiring the property (or every such person if there is more than one);
- (b) shall be accompanied by such further information as the Commissioner may require; and

(c) shall be verified by a statutory declaration,

and if the Commissioner is satisfied that that person is a first home owner, or those persons are first home owners, for the purposes of this section the Commissioner shall allow a rebate or refund of \$500, or the amount of duty chargeable, whichever is the lesser amount, on the amount of duty chargeable or paid on the instrument of acquisition in relation to the property.

(11) A person who, in an application to the Commissioner under subsection (3) or (4), makes a statement which is false in any material particular commits an offence under this Act.

(12) For the purpose of ascertaining whether a rebate or refund is payable under this section, or for the purpose of determining the amount of the rebate or refund, the Commissioner may by notice in writing require any person to furnish him, within such reasonable time as may be specified in that notice, with such information specified in the notice as that person may be able to give. ”.

Section 75C amended

7. Section 75C of the principal Act is amended in subsection (4) by deleting the definition of “dwellinghouse”.

Third Schedule amended

8. The Third Schedule to the principal Act is amended in subitem (2) of item 6 by deleting “dwelling house, flat, apartment or other residential unit” and substituting the following—

“ dwellinghouse ”.
