

STAMP AMENDMENT ACT (No. 3)

No. 41 of 1989

AN ACT to amend the *Stamp Act 1921* and the *Stamp Amendment Act (No. 4) 1989*.

[Assented to 21 December 1989]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Stamp Amendment Act (No. 3) 1989*.

Commencement

2. (1) Sections 17, 18 (a), (f) and (g), 19 and 27 (2) shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

(2) Sections 11, 13, 20 (a) and (b), 24 and 26 shall be deemed to have come into operation on 1 November 1989.

(3) Sections 4, 10 (other than paragraph (d)), 12, 20 (c) and 27 (1) shall—

(a) if this Act receives the Royal Assent on or before 1 December 1989, come into operation on 1 December 1989; or

(b) if it receives the Royal Assent after 1 December 1989, be deemed to have come into operation on 1 December 1989.

(4) Section 27 (3) shall be deemed to have come into operation on 30 June 1989.

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

(6) Nothing in subsection (5) limits the operation of section 27 (4).

Principal Act

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

[**Reprinted as at 21 March 1989 and amended by Act No. 3 of 1989.*]

Section 4 amended

4. Section 4 of the principal Act is amended in subsection (1) by inserting before the definition of “stamp” the following definition—

“ “several” means 2 or more than 2; ”.

Section 7 amended

5. Section 7 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “this Act” and substituting the following—

“ an enquiry under subsection (1a) ”;

and

(ii) in paragraph (c), by deleting “relevant thereto”; and

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

“ (1a) The Commissioner may make enquiries—

(a) into any matter arising in connection with the administration of this Act;

(b) for the purposes of ascertaining the amount of duty chargeable in respect of an instrument or the amount (including any fine) otherwise payable in accordance with this Act, or both;

(c) for the purposes of ascertaining facts in order to determine whether there is, in respect of any transaction or suspected transaction, any liability—

(i) to pay duty or another amount (including a fine) under this Act, or both; or

(ii) to deliver to or lodge with the Commissioner any statement, return or other document;

(d) for the purposes of ascertaining whether a person whom he reasonably suspects may be required to comply with this Act in any respect has complied with this Act. ”.

Section 9 amended

6. Section 9 of the principal Act is amended—

(a) in subsection (1a) by deleting “Lotteries Commission constituted under the *Lotteries (Control) Act 1954*” and substituting the following—

“ Gaming Commission established under section 4 of the *Gaming Commission Act 1987* ”; and

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

“ (1b) The Commissioner, or any person authorized in writing by him, may communicate to a licensing authority referred to in section 76C (1) any information respecting the affairs of any person disclosed or obtained under Part IIIC. ”.

Section 16 amended

7. Section 16 of the principal Act is amended in subsection (3) by inserting after “property situate in” the following—

“ , or deemed to be situate in, ”.

Section 27 amended

8. Section 27 of the principal Act is amended—

(a) in subsection (1), by inserting after “property situate” the following—

“ or deemed to be situate ”; and

(b) in subsection (2)—

(i) by deleting “but

(b) is not itself chargeable with duty,” and substituting the following—

“ and

(b) is a document—

(i) relating to a transaction for which a statement is required to be prepared and lodged under section 31B; but

(ii) which is not itself chargeable with duty, ”; and

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

“ with which the statement is chargeable ”.

Section 28 amended

9. Section 28 of the principal Act is amended in subsection (1)—

(a) in paragraph (a) by deleting “and any fine with which it is chargeable has been paid” in both places where it appears; and

(b) in paragraph (b) by deleting “and any fine with which the statement is chargeable have” and substituting the following—

“ with which the statement is chargeable has ”.

Section 31B amended

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

- (a) in subsection (1) by deleting “after the coming into operation of section 10 of the *Stamp Amendment Act 1986*”;
- (b) after subsection (1) (b) by deleting “or”;
- (c) after subsection (1) (c) by deleting the comma, substituting a semi-colon and inserting the following—

“ (d) by which goodwill is acquired, ”; and

- (d) after subsection (1) by inserting the following subsection—

“ (1a) In subsection (1) “instrument chargeable with *ad valorem* duty” means—

- (a) in the case of a transaction which causes the change referred to in subsection (1) (a) an instrument chargeable with such duty at the rate which would be applicable to an instrument of conveyance of the beneficial ownership of an estate or interest in the property to which the change relates; or
- (b) in the case of any other transaction, an instrument chargeable with such duty at the rate applicable to an instrument effecting or evidencing that transaction. ”.

Section 75AE amended and transitional provision

11. (1) Section 75AE of the principal Act is amended in subsection (2) (b) by deleting “\$50 000” and substituting the following—

“ \$85 000 ”.

(2) Notwithstanding subsection (1), section 75AE (2) (b) of the principal Act as in force before the coming into operation of this section has effect for determining whether a purchaser is an entitled person for the purposes of section 75AE if the conveyance or transfer of property in question was executed before 1 November 1989.

Section 75AF amended

12. Section 75AF of the principal Act is amended in subsection (4) by inserting after “4 (1)” the following—

“ , item 17 ”.

Section 75AG amended and transitional provision

13. (1) Section 75AG of the principal Act is amended in subsection (5) (c) (i)—

(a) by deleting “\$80 000” and substituting the following—

“ \$85 000 ”; and

(b) by deleting “\$120 000” and substituting the following—

“ \$127 500 ”.

(2) Notwithstanding subsection (1), section 75AG (5) (c) (i) of the principal Act as in force before the coming into operation of this section has effect for determining whether a person is a first home owner for the purposes of section 75AG if the instrument of acquisition of the property in question was executed before 1 November 1989.

(3) In subsection (2) “instrument of acquisition” has the same meaning as it has in section 75AG of the principal Act.

Section 76AB amended

14. Section 76AB of the principal Act is amended—

(a) by repealing subsection (1); and

(b) in subsection (2)—

(i) by inserting after “acquisition” in the first place where it occurs the following—

“ or suspected acquisition ”;

(ii) in paragraph (a) by deleting “the acquisition” and substituting the following—

“ an acquisition occurred and ”;

and

(iii) by inserting after “the case may require” the following—

“ and the corporation is liable to pay the duty so assessed ”.

Section 76AG amended

15. Section 76AG of the principal Act is amended by inserting after subsection (5) the following subsection—

“ (6) A person who lodges a statement under subsection (1) which is false in a material particular commits an offence against this Act. ”.

Section 76AN amended

16. Section 76AN of the principal Act is amended by inserting after subsection (4) the following subsection—

“ (5) A person who lodges a statement under subsection (1) which is false in a material particular commits an offence against this Act. ”.

Section 76B amended

17. Section 76B of the principal Act is amended by inserting after the definition of “motor vehicle” the following definition—

“ “purchase price” includes—

- (a) an amount allowed by the seller of a motor vehicle on a trade-in or an exchange of any article; and
- (b) any amount paid to the seller of a motor vehicle for things included with or incorporated into the vehicle and for the preparation of the vehicle for delivery to the purchaser; ”.

Section 76C amended

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

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

“ (1) Duty referred to in item 14 of the Second Schedule shall, except where—

(a) it is denoted on a licence or transfer by an impressed stamp or an adhesive stamp which has been duly cancelled; or

(b) subsection (11) applies,

be paid to the licensing authority to which an application for a licence or transfer is made. ”;

(b) by repealing subsection (4) and substituting the following subsection—

“ (4) Every licensing authority shall cause licences and transfers granted by it and charged with duty in accordance with item 14 or, where subsection (6a) applies, item 6 of the Second Schedule to be endorsed as to the payment of duty in such manner as the Commissioner may require. ”;

(c) in subsection (6)—

(i) in paragraph (a), by inserting after “transfer relates” the following—

“ , and for no other purpose, ”;

and

(ii) in paragraph (b), by deleting “the licence is the initial licence granted for or in respect of that motor vehicle” and substituting the following—

“ for no other purpose ”;

(d) by inserting after subsection (6) the following subsection—

“ (6a) A transfer of a licence for a motor vehicle under a testamentary instrument or upon an intestacy to a person who is entitled to that vehicle in terms of that instrument or upon that intestacy—

(a) shall be charged with duty under item 6 of the Second Schedule; and

(b) is not subject to the requirements of subsection (8). ”;

(e) in subsection (7), by inserting after “that subsection” the following—

“ , and for no other purpose except a minor incidental purpose ”;

(f) by repealing subsections (8), (9), (10) and (11) and substituting the following subsections—

“ (8) For the purposes of this Part an application for a licence or transfer shall contain or be accompanied by—

(a) a statement signed by the person who is the proposed licensee or transferee showing—

(i) the market value of the motor vehicle at the time of the application;

(ii) whether or not the proposed licensee or transferee is a purchaser of the motor vehicle and, if he is, the purchase price paid for the vehicle;

(b) where the proposed licensee or transferee is a purchaser of the motor vehicle a statement signed by the seller of the motor vehicle showing the purchase price paid for the vehicle by the purchaser,

and the amount of duty payable, based on the market value so stated, shall be paid with the application.

(9) If an application does not contain any statement required by subsection (8) (a) or (b) or if the licensing authority considers that the market value of the motor vehicle stated is less than the market value at the time of the application, the licensing authority—

- (a) may call on the proposed licensee or transferee to furnish to it such evidence or further evidence of the market value as he may wish to supply;
- (b) shall determine the market value of the motor vehicle on such evidence, including the evidence (if any) furnished under paragraph (a), as it thinks fit;
- (c) shall, on the basis of that determination, assess the amount of duty payable on the licence or transfer; and
- (d) shall not grant the application for a licence or transfer until that amount has been paid.

(10) Where a person is convicted of an offence against section 24 (2) of the *Road Traffic Act 1974* in respect of a motor vehicle, the Commissioner may determine the market value of the motor vehicle, assess the duty payable and serve a notice of the assessment on that person as if he had applied for and been granted a transfer of the licence to which the conviction relates.

(11) If the Commissioner considers that duty has been paid or assessed on the basis of a value of a motor vehicle that is less than the market value at the time of the application he may, notwithstanding that the licence or the application for transfer has been granted and an amount of duty has been paid, serve—

- (a) a notice of assessment showing the duty or the balance of the duty assessed on the person liable under item 14 of the Second Schedule to pay the duty;
- (b) a notice of assessment showing the proportion of the duty assessed on a person liable under subsection (12) to pay a proportion of duty.

(12) If—

- (a) duty has been paid or assessed on the basis of a value of a motor vehicle that is less than the market value at the time of the application; and

- (b) the seller of the motor vehicle has in a statement under subsection (8) (b) understated the purchase price of the vehicle,

the seller is liable to pay the part of the duty that relates to the difference between the purchase price stated by him and the lesser of the actual purchase price or the market value of the vehicle.

(13) The liability of the seller under subsection (12) is joint and several with the liability of the person referred to in item 14 of the Second Schedule.

(13A) Section 31A (1a), (1b), (3), (4) and (5) and section 32 apply to a notice under subsection (10) or (11) as if it were a memorandum created by the Commissioner and an assessment of duty under that section. ”; and

- (g) by inserting after subsection (14) the following subsections—

“ (15) Section 75A does not apply to any determination by the Commissioner of the market value of a motor vehicle for the purposes of this section.

(16) A person referred to in subsection (8) (a) who fails or refuses to comply with paragraph (a) (i) or (ii) of that subsection commits an offence.

(17) A seller of a motor vehicle who fails or refuses to comply with subsection (8) (b) commits an offence. ”.

Section 76D repealed

19. Section 76D of the principal Act is repealed.

Section 83 amended

20. Section 83 of the principal Act is amended—

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

“ (1a) Where—

- (a) a security, or a deemed instrument of security under subsection (3), for the payment or repayment of an amount in excess of \$35 000 is given or made for the purpose of securing the

payment or repayment of money that is being, is to be, or has been, used wholly in or towards the cost of—

- (i) purchasing any property which includes a dwellinghouse used or intended to be used as the principal place of residence of the mortgagor or obligor, being property used solely or principally for residential purposes associated with that dwellinghouse;
- (ii) erecting a dwellinghouse which the mortgagor or obligor uses or intends to use as his principal place of residence;
- (iii) effecting improvements or additions to a dwellinghouse occupied or intended to be occupied by the mortgagor or obligor as his principal place of residence; or
- (iv) repaying moneys which have been used wholly in or towards the cost of—
 - (A) purchasing any property which includes a dwellinghouse used by the mortgagor or obligor as his principal place of residence, being property used solely or principally for residential purposes associated with that dwellinghouse; or
 - (B) erecting, or effecting improvements or additions to, a dwellinghouse used by the mortgagor or obligor as his principal place of residence;

and

- (b) the mortgagor or obligor is a natural person,

the instrument concerned is—

- (c) in the case of a security referred to in subsection (1), or a deemed instrument of security under subsection (3), chargeable with *ad valorem* duty at the rate set out under item 13 (1a) of the Second Schedule; and

(d) in the case of a security referred to in subsection (2), chargeable with *ad valorem* duty at the rate set out under item 13 (1a) of the Second Schedule on—

(i) the total amount secured or to be ultimately recoverable thereunder; or

(ii) the amount of \$2 000,

whichever is the greater.

(1b) Where a security, or deemed instrument of security under subsection (3), for the payment or repayment of an amount in excess of \$35 000 is given or made for the purpose of securing the payment or repayment of money that is being, is to be, or has been, used partly in or towards the cost of the matters described in subsection (1a) (a) (i), (ii), (iii) or (iv), and the mortgagor or obligor is a natural person—

(a) the instrument concerned is chargeable with *ad valorem* duty at the rate set out under item 13 (1a) of the Second Schedule to the extent of that part; and

(b) the instrument concerned is chargeable with *ad valorem* duty in accordance with subsection (1) or (2), as the case requires, to the extent of the balance as if that balance were a new and separate instrument of security. ”;

(b) in subsection (2), by deleting “When” and substituting the following—

“ Subject to subsections (1a) and (1b), when ”; and

(c) by inserting after subsection (3) the following subsection—

“ (3a) Notwithstanding subsection (3), where an advance or loan is made in excess of the amount in respect of which duty is denoted on an instrument referred to in subsection (2), or indebtedness secured by an instrument referred to in

subsection (2) is increased, *ad valorem* duty in respect of that excess or increase is, subject to subsections (1a) and (1b), chargeable—

- (a) at the rate set out under item 13 (2) (a) of the Second Schedule to the extent that the sum of—
 - (i) the amount in respect of which duty is denoted on that instrument; and
 - (ii) the amount of the advance or loan, or the advance or loan and one or more additional advances or loans, or the total amount of the increase in indebtedness,

does not exceed \$35 000; and

- (b) at the rate set out under item 13 (2) (b) of the Second Schedule in subparagraph (ii) of the column headed “Duty payable” to the extent that the sum referred to in paragraph (a) exceeds \$35 000. ”.

Section 84 amended

21. Section 84 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection—

“ (2a) If the Commissioner is satisfied that the instrument, or any other instrument that secures the same money, is an exempt instrument in another State or Territory the duty calculated under subsection (1) shall be reduced by—

- (a) the same proportion of the duty payable under subsection (1) as the value of the property situated in that other State or Territory bears to the aggregate value of all property to which the instrument relates; or
- (b) the actual amount of the duty that would have been payable in that other State or Territory if the instrument or other instrument had not been exempt,

whichever is the lesser.

(2b) If the Commissioner is satisfied—

- (a) that the instrument, or any other instrument that secures the same money, is an exempt instrument in another State or Territory, or would have been an exempt instrument in another State or Territory if the instrument had related to property in that State or Territory; and
- (b) that in another State or Territory (not being the State or Territory referred to in paragraph (a)) no duty of a like nature to duty payable under subsection (1) is payable in respect of instruments,

the duty calculated under subsection (1) shall be reduced by the same proportion of the duty payable under subsection (1) as the value of the property situated in the State or Territory referred to in paragraph (b) bears to the aggregate value of all property to which the instrument relates.

(2c) For the purposes of subsections (2a) and (2b) an instrument is an exempt instrument in a State or Territory if, under a prescribed provision of a law of that State or Territory, it is exempt from duty that—

- (a) would otherwise be payable under a law of that State or Territory; and
- (b) is of a like nature to duty payable under subsection (1).

(2d) Notwithstanding subsection (2c), regulations may declare that instruments of a class specified in the regulations are not exempt instruments for the purposes of subsections (2a) and (2b). ”; and

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

“ Where a reduction is allowed under subsection (2), (2a) or (2b) the ”.

Section 84A inserted

22. After section 84 of the principal Act the following section is inserted—

Certain marketable securities deemed to be situate in this State

“ 84A. For the purposes of this Part and item 13 of the Second Schedule, marketable securities of a corporation, within the meaning in the *Companies (Western Australia) Code*, incorporated in this State that are registered on a register kept by that corporation at a place outside the State are deemed to be situate in this State and not in that other place if—

- (a) money to be paid or repaid, or which is ultimately recoverable, under an instrument of security is secured by that instrument wholly or in part on those securities; and
- (b) the Commissioner is satisfied that duty of a like nature to duty payable under item 13 of the Second Schedule is not payable on that instrument by the law of that place, otherwise than by reason of there being another instrument that secures the same money and that is chargeable with such duty. ”.

Section 92 amended

23. Section 92 of the principal Act is amended by inserting before the definition of “person resident in the State” the following definition—

“ “insurance company” includes the State Government Insurance Commission and the State Government Insurance Corporation established under the *State Government Insurance Commission Act 1986*; ”.

Section 96 inserted

24. After section 95A of the principal Act the following section is inserted—

No duty chargeable on amount received on account of duty.

“ 96. (1) This section applies in relation to a policy of insurance referred to in item 16 (1) (a), (1) (c) or (3) (a) of the Second Schedule that is issued or renewed on or after 1 November 1989.

(2) The amount that is chargeable with duty under item 16 (1) (a), (1) (c) or (3) (a) of the Second Schedule shall be calculated by ascertaining the total amount paid to the person with whom the policy of insurance is effected in respect of the issue or renewal of the policy.

(3) Where a policy of insurance or a renewal certificate in respect of a policy of insurance shows an amount that represents the amount payable on account of duty under this Act in respect of the issue or renewal of the policy that amount shall be disregarded for the purposes of the calculation under subsection (2).

(4) In the case of a policy of insurance to which item 16 (3) (a) of the Second Schedule applies the reference in subsection (3) to a policy of insurance includes a reference to a statement of account in respect of a policy of insurance. ”.

Section 108 amended

25. Section 108 of the principal Act is amended in subsection (1)—

(a) by deleting the definition of “continuing lottery” and substituting the following definition—

“ “continuing lottery” means a lottery of the kind referred to in section 101 (2) of the *Gaming Commission Act 1987*; ”;

and

(b) in the definition of “permit”, by deleting “Lotteries (Control) Act 1954” and substituting the following—

“ *Gaming Commission Act 1987* ”.

Section 112K amended

26. Section 112K of the principal Act is amended—

(a) by inserting before subsection (1) (a) (ii) the following—

“ (ia) the prescribed amount; and ”;

(b) in subsection (1) (a) (ii) by inserting after “costs” the following—

“ and the prescribed amount ”; and

(c) by inserting after subsection (1a) the following subsections—

“ (1b) A reference in subsection (1) to the total amount received in respect of rental business includes a reference to all amounts received in respect of that business including, without limiting the generality of the foregoing, any amount received on account of duty under this Act.

(1c) In subsection (1) “prescribed amount” means 1.769% of the amount arrived at by deducting service costs from the total amount referred to in paragraph (a) (i) of subsection (1), as set out in the statement lodged under that subsection. ”.

Third Schedule amended and commencement provision

27. (1) The Third Schedule to the principal Act is amended by inserting after subitem 2 (10) the following subitem—

“ (11) A transfer to a person of the whole or any part of, or an interest in—

- (a) a trade debt;
- (b) cash or money in an account at call;
- (c) money on deposit with any person;
- (d) a negotiable instrument;
- (e) choses in action with respect to work in progress; or
- (f) goodwill to which section 31B (1) (d) applies, except to the extent that actual consideration is given therefor. ”.

(2) The Third Schedule to the principal Act is amended in item 2 by inserting after subitem (11) the following subitem—

“ (12) (a) A prescribed transfer of any marketable security or right in respect of shares to or by a broker’s entropôt nominee.

(b) In paragraph (a)—

“broker’s entropôt nominee” means a company notified by a broker to the Australian Stock Exchange Limited as the company established by the broker for the purpose of the FAST scheme established by that Exchange;

“prescribed transfer” means a transfer to which Part IVA applies and which is made solely for the purpose of facilitating or effecting settlement of a sale or purchase made in the ordinary course of the broker’s business. ”.

(3) The Third Schedule to the principal Act is amended in item 8 by inserting after subitem (3) the following subitem—

“ (3a) Any policy of insurance effected by—

- (a) a Crown instrumentality, agent of the Crown or Government authority designated by the Minister under section 119 (1); or
- (b) a local authority,

on or after 30 June 1989. ”.

(4) The exemption in subitem (12) inserted in item 2 of the Third Schedule to the principal Act by subsection (2) has effect from and including 1 July 1989.

Amendment of Stamp Amendment Act (No. 4) 1989

28. Section 2 of the *Stamp Amendment Act (No. 4) 1989** is amended—

- (a) in subsection (3) by deleting “22 (f)” and inserting the following—

“ 18 (f) ”; and

- (b) in subsection (4) by deleting “30” and substituting the following—

“ 24 ”.

[*Act No. 16 of 1989.]
