

WESTERN AUSTRALIA

STAMP AMENDMENT ACT

No. 98 of 1986

AN ACT to amend the *Stamp Act 1921*.

[Assented to 11 December 1986.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Stamp Amendment Act 1986*.

Commencement

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

(2) Sections 4, 5, 6, 7, 8, 9 and 10 shall be deemed to have come into operation on 11 November 1986.

(3) Sections 11 and 19 shall come into operation on the 28th day after the day on which this Act receives the Royal Assent.

(4) Sections 12, 21 (1) (a) (ii), and 21 (1) (b) and (2) shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

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

[*Reprinted as approved 9 June 1985 and amended by Acts Nos. 84 and 85 of 1985.]

Section 16 amended

4. Section 16 of the principal Act is amended in subsection (2) by deleting “any section of, or in the Third Schedule to,” and substituting the following—

“ the Third Schedule or otherwise by or under ”.

Section 20 amended

5. Section 20 of the principal Act is amended—

(a) in subsection (1) by—

(i) deleting “calendar”; and

(ii) inserting after “first execution thereof” the following—

“ , but an instrument which is a statement prepared under section 31B (1) may be stamped without fine after that preparation if it is lodged under that section within a period of 3 months after the transaction to which it relates was entered into ”;

- (b) in subsection (2) by inserting before “period referred to” the following—
 - “ appropriate ”; and
- (c) in subsection (3) by deleting “calendar”.

Section 27 amended

6. Section 27 of the principal Act is amended by inserting after—

- (a) “27.” the following—
 - “ (1) ”;
- (b) “this Act no instrument” the following—
 - “ chargeable with duty and ”;
- (c) “when it was first executed” the following—
 - “ and any fine with which it is chargeable has been paid ”;
 - and
- (d) the existing section the following subsection—
 - “ (2) Any document executed in Western Australia, or relating, wheresoever executed, to any property situate or to any matter or thing done or to be done in Western Australia, which—
 - (a) affords any evidence of a transaction to which section 31B (1) (a) applies or contains—
 - (i) an offer;
 - (ii) an acceptance of an offer;
 - (iii) an application; or
 - (iv) an approval of an application,
 referred to in section 31B (1) (b) or (c); but
 - (b) is not itself chargeable with duty,

shall not, except in criminal proceedings, be pleaded or given in evidence or admitted to be good, useful, or available in law or equity, unless a statement has been prepared and

lodged under section 31B (1) in respect of the transaction to which that document relates and the duty and any fine with which the statement is chargeable have been paid. ”.

Section 28 amended

7. Section 28 of the principal Act is amended—

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

“ (1) A person whose duty it is to receive, register, enrol, enter or record—

(a) any original instrument or duplicate or counterpart instrument or any copy of an instrument shall not, if the original instrument is chargeable with duty or is exempt from duty or would, if it were in Western Australia, be so chargeable or exempt, receive, register, enrol, enter or record the original instrument, duplicate or counterpart instrument or copy unless he is satisfied that the original instrument has been duly stamped and any fine with which it is chargeable has been paid or is exempt from duty or that the duplicate or counterpart instrument or copy has been duly stamped and any fine with which it is chargeable has been paid under subsection (3), as the case requires; or

(b) any document referred to in section 27 (2) shall not receive, register, enrol, enter or record that document unless he is satisfied that a statement has been prepared and lodged under section 31B (1) in respect of the transaction to which that document relates and that the duty and any fine with which the statement is chargeable have been paid. ”; and

- (b) in subsection (4) by—

- (i) inserting after “which is liable to duty” in paragraph (a) the following—

“ or of a document referred to in section 27 (2) ”;

(ii) deleting paragraph (b) and substituting the following paragraph—

“ (b) under the *Mining Act 1978*, in respect of any instrument which is liable to duty or of any document referred to in section 27 (2), a mining registrar within the meaning of that Act, ”; and

(iii) inserting after “for assessment of duty” the following—

“ , or the statement has been prepared and lodged under section 31B (1) and the duty and any fine with which the statement is chargeable have been paid, as the case requires ”.

Section 29 amended

8. Section 29 of the principal Act is amended—

(a) in subsection (1) by—

(i) inserting after “chargeable with any duty” the following—

“ or a document referred to in section 27 (2) ”;

(ii) deleting “judge” and substituting the following—

“ court ”; and

(iii) inserting after “of the stamp thereon” the following—

“ or of any failure to comply with section 31B (1) in respect of the transaction to which that document relates, or to pay the duty and any fine with which the statement prepared and lodged under section 31B (1) in respect of that transaction is chargeable, as the case requires ”;

and

(b) by repealing subsection (2) and substituting the following subsections—

“ (2) If an instrument referred to in subsection (1) is one which may legally be stamped at the time of production, it may, on payment to an officer of the relevant court or to the arbitrator or referee concerned of the amount of unpaid

duty and of any fine payable on the stamping of that instrument, be received in evidence, saving all just exceptions on other grounds.

(2a) A document referred to in section 27 (2) may, on the preparation and lodging under section 31B (1) of a statement in respect of the transaction to which that document relates and the payment of the duty and any fine with which the statement is chargeable, be received in evidence, saving all just exceptions on other grounds. ”.

Section 30 repealed and substituted

9. Section 30 of the principal Act is repealed and the following section is substituted—

Secondary evidence

“ 30. In proceedings in any court of civil judicature or before any arbitrator or referee, secondary evidence of—

(a) an instrument may, if the instrument is one which may then legally be stamped, be admitted, saving all just exceptions on other grounds, notwithstanding that the instrument is chargeable with duty and has not been duly stamped, if the duty and any fine with which the instrument is chargeable are paid to an officer of that court or to the arbitrator or referee, as the case requires; or

(b) a document referred to in section 27 (2) may be admitted, saving all just exceptions on other grounds, if a statement has been prepared and lodged under section 31B (1) in respect of the transaction to which that document relates and the duty and any fine with which the statement is chargeable have been paid. ”.

Section 31B inserted

10. The principal Act is amended by inserting, after section 31A, the following section—

Payment of duty on statements in absence of dutiable instruments

“ 31B. (1) Subject to this section, a person who after the coming into operation of section 10 of the *Stamp Amendment Act 1986* becomes a party to a transaction—

- (a) which causes a change in the beneficial ownership of an estate or interest in—
- (i) freehold land, whether or not registered under the *Transfer of Land Act 1893*;
 - (ii) a Crown lease registered under the *Transfer of Land Act 1893*; or
 - (iii) a mining tenement registered under the *Mining Act 1978*,

or any buildings on, or fixtures annexed to, or to buildings on, any such land, Crown lease or mining tenement, which freehold land, Crown lease or mining tenement is situated in the State;

- (b) by which land situated in the State, or buildings thereon, or fixtures annexed thereto or to buildings thereon, is leased or agreed to be leased, and in respect of which there exists a written offer to lease, or a written acceptance of an offer to lease, that land or those buildings or fixtures; or
- (c) by which moneys—
- (i) are lent, or agree to be lent, in, or for the purpose of being used in, the State;
 - (ii) having been lent, are to be repaid in the State; or
 - (iii) are lent to a person resident in the State,

and in respect of which there exists a written offer, or a written acceptance of an offer, to lend moneys, a written offer to borrow, or a written acceptance of an offer to borrow, moneys, a written application for, or a written approval of an application for, moneys to be lent, or a written application, or a written approval of an application, to lend moneys,

but which transaction is not effected or evidenced by any instrument chargeable with *ad valorem* duty, shall, if he would have been liable to pay duty in respect of that transaction had such an instrument been executed, within a period of 3 months after

entering into that transaction, prepare and lodge with the Commissioner a statement in the prescribed form in respect of that transaction.

(2) Each party to a transaction referred to in subsection (1) (other than the person required by that subsection to prepare and lodge a statement in respect of that transaction) shall within a period of 3 months after entering into that transaction notify the Commissioner in the prescribed form that that transaction has been entered into.

(3) The Governor may make regulations under section 120 (1) exempting from the operation of subsections (1) and (2) any transactions—

(a) referred to in paragraph (b) or (c) of subsection (1); and

(b) belonging to a class specified in those regulations.

(4) A statement prepared under subsection (1) shall, subject to section 31A, be deemed to be an instrument effecting or evidencing the transaction to which it relates and is chargeable with duty accordingly, which duty is payable by the party to that transaction who is the person in that behalf specified in the Second Schedule in respect of that instrument.

(5) If stamp duty has been or, in the opinion of the Commissioner, will be paid under the law of another State or of a Territory in respect of a transaction to which subsection (1) (c) applies, the amount of duty payable in respect of the statement referred to in subsection (1) is reduced by the amount of stamp duty that has been, or in the opinion of the Commissioner will be, so paid.

(6) Nothing in this section prevents the joint making of a notification under subsection (2) in respect of a transaction by any 2 or more parties to the transaction who are required to make the notification.

(7) A person who—

(a) contravenes subsection (1) or (2); or

- (b) lodges or makes under subsection (1) or (2) a statement or notification, as the case requires, which is false in a material particular,

commits an offence against this Act.

(8) In subsection (1) (c), a reference, however expressed, to the lending of moneys includes a reference to—

- (a) the advancing of moneys;
- (b) the paying of moneys for or on account of or on behalf of or at the request of a person;
- (c) the forbearing to require payment of moneys owing on any account whatsoever; and
- (d) the effecting of a transaction (whatever its terms or form) which in substance effects a loan of moneys. ”.

Section 39 amended

11. Section 39 of the principal Act is amended—

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

“ (1a) If—

- (a) an instrument (other than a statement prepared and lodged under section 31B (1)) which is chargeable with duty is not presented for stamping within the period referred to in section 20 (1); or
- (b) the full amount of duty chargeable on an instrument is not paid within the period, or the extended period, referred to in section 20 (3),

the person in that behalf specified in the Second Schedule in respect of the relevant instrument, or in subsection (4)—

- (c) commits an offence; and
- (d) is liable, in addition to—

- (i) any penalty imposed in respect of the offence referred to in paragraph (c); and

(ii) the duty payable in respect of that instrument,

to pay the amount of the fine or fines charged under section 20 (2) or (3) or 20 (2) and (3), as the case requires. ”; and

(b) in subsection (2) by deleting “(1b)” and substituting the following—

“ (1a) (c) ”.

Section 112GE amended

12. Section 112GE of the principal Act is amended—

(a) in paragraph (d), by deleting “2” and substituting the following—

“ 10 ”; and

(b) in paragraph (e), by deleting “2” and substituting the following—

“ 10 ”.

Heading of Part IVBA deleted and substituted

13. The heading of Part IVBA of the principal Act is deleted and the following heading is substituted—

“ PART IVBA—MISCELLANEOUS PROVISIONS IN RESPECT OF MARKETABLE SECURITIES ”.

Section 112GH inserted

14. Part IVBA of the principal Act is amended by inserting before section 112H the following section—

Interpretation in Part IVBA

“ 112GH. In this Part—

“corporation” has the meaning given by section 5 of the *Companies (Western Australia) Code*. ”.

Section 112H amended

15. Section 112H of the principal Act is amended by deleting “, company or society” wherever it occurs.

Section 112HAA inserted

16. The principal Act is amended by inserting after section 112H the following section—

Effect of payment of certain stamp duty outside State

“ 112HAA. (1) Whenever stamp duty has been or, in the opinion of the Commissioner, will be paid under the law of another State or a Territory in respect of a conveyance or transfer on which duty is payable under item 4 (3) of the Second Schedule, the amount of duty payable in respect of that conveyance or transfer is reduced by the amount of stamp duty that has been, or in the opinion of the Commissioner will be, so paid.

(2) When the amount, if any, of the duty payable in respect of a conveyance or transfer to which subsection (1) applies has been paid, the instrument effecting or evidencing that conveyance or transfer shall be deemed to be duly stamped within the meaning of section 112H (1) (a) (ii). ”.

Section 112HA amended

17. Section 112HA of the principal Act is amended—

(a) by repealing subsections (1) and (2) and substituting the following subsections—

“ (1) Whenever the transfer of any of the marketable securities of a corporation incorporated in the State is registered on a register kept by that corporation, whether inside or outside the State, and the relevant instrument of transfer is not duly stamped under this Act, that corporation shall, within 15 days after the end of the month in which that transfer is so registered, lodge or cause to be lodged with the Commissioner in the prescribed form a return of all entries in that register relating to that transfer.

(2) When, in respect of any transfer of marketable securities referred to in subsection (1), duty or stamp duty—

(a) has not been paid under the law of any State, Territory or country, the corporation concerned shall when lodging or causing to be lodged the return concerned pay to the Commissioner an amount equal to the amount in which duty would have been payable if the transfer of the marketable securities concerned had at the relevant time been registered in a register kept by that corporation in the State and the relevant instrument of transfer had been duly stamped under this Act; or

(b) has been paid under the law referred to in paragraph (a) in an amount which is less than the amount in which duty would have been payable if the transfer of the marketable securities concerned had at the relevant time been registered in a register kept by the corporation concerned in the State and the relevant instrument of transfer had been duly stamped under this Act, that corporation shall when lodging or causing to be lodged the return concerned pay to the Commissioner the difference between those amounts. ”;

(b) in subsection (3) by deleting—

(i) “company” and substituting the following—

“ “corporation” ”; and

(ii) paragraph (a) and substituting the following—

“ (a) contravenes any of the provisions of subsection (1) or (2); or ”;

(c) in subsection (3a) by deleting—

(i) “Where a company has paid to the Commissioner under this section duty” and substituting the following—

“ When a corporation has made a payment to the Commissioner under this section ”;

(ii) “the company” and substituting the following—

“ the corporation ”; and

(iii) “that duty” and substituting the following—

“ the amount of the payment ”;

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

“ (3b) This section does not apply to or in relation to a transaction consisting of a sale or purchase of marketable securities effected by a member of a stock exchange in any State, Territory or country on the stock market of that stock exchange or on the stock market of any other stock exchange in any State, Territory or country.

(3c) For the purposes of this section, it shall be presumed that, if an instrument of transfer—

(a) is not stamped, duty or stamp duty has not been paid in any State, Territory or country; or

(b) is stamped in a particular amount, duty or stamp duty has been paid in that amount,

in respect of the transfer of the marketable securities concerned, unless the contrary is proved. ”; and

(e) by repealing subsection (4).

Section 112K amended

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

(a) in subsection (2)(b) by deleting “\$5 000” and substituting the following—

“ \$20 000 ”; and

(b) in subsection (4) by deleting “\$7 500” and substituting the following—

“ \$30 000 ”.

Section 116 amended

19. Section 116 of the principal Act is amended by deleting “\$2 000” and substituting the following—

“ \$10 000 ”.

Second Schedule amended

20. The Second Schedule to the principal Act is amended in item 4(3) by deleting—

- (a) “(3) Conveyance or transfer of any marketable security or right in respect of shares, not being” and substituting the following—

“ (3) Conveyance or transfer of any marketable security or right in respect of shares—

(a) of a corporation within the meaning of the *Companies (Western Australia) Code* incorporated in the State; or

(b) of a corporation within the meaning of the *Companies (Western Australia) Code* incorporated outside the State, which marketable security or right in respect of shares is registered on any register kept within the State by that corporation,

not being ”;

- (b) “or a transfer of any marketable security or right in respect of shares on a register situated outside the State”;

- (c) “(a) subject to paragraph (b)—” and substituting the following—

“ (c) subject to paragraph (d)— ”;

and

- (d) “(b) where the marketable security” and substituting the following—

“ (d) where the marketable security ”.

Third Schedule amended and transitional provision

21. (1) The Third Schedule to the principal Act is amended—

(a) in item 2—

(i) in subitem (1) (b), by inserting after “*Gazette*” the following—

“ (any such notice being subject to amendment, substitution or revocation in like manner by the Minister) ”; and

(ii) in subitem (2), by deleting “2” in both places where it occurs and substituting the following—

“ 10 ”;

and

(b) in item 8, by deleting “Policy of reinsurance. (See section 95).” and substituting the following subitems—

“ (1) Any policy of reinsurance. (See section 95).

(2) Any policy of insurance in respect of goods in the course of being transported, whether by rail, road, air or sea, and whether within the State or elsewhere.

(3) Any policy of insurance in respect of a marine hull used primarily for commercial purposes.

(4) Any policy of insurance of a class or description prescribed by regulations made under section 120. ”.

(2) The exemptions provided for by subitems (2) and (3) inserted by paragraph (b) of subsection (1) apply to a policy of insurance, or a renewal, entered into after the commencement of that paragraph.

Retrospective regulations for transitional purposes

22. Subject to this section, the Governor may, for the purpose of giving effect to the amendments to the principal Act set out in the provisions of this Act referred to in section 2(2) of this Act, make regulations under section 120(1) of the principal Act and may provide in those regulations that those regulations shall be deemed to have come into operation on 11 November 1986.