

STAMP.

No. 81 of 1984.

AN ACT to amend the Stamp Act 1921.

[Assented to 7 December 1984.]

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:—

1. (1) This Act may be cited as the *Stamp Amendment Act 1984*.

Short title
and
principal
Act.

(2) In this Act the Stamp Act 1921 is referred to as the principal Act.

Reprinted as
approved
25 March 1980
and amended
by Acts
Nos. 47 of
1979, 63 of
1980, 81 and
106 of 1981
and 1, 10,
15, 45, 93, 99
and 112 of
1982 and 14
and 61
of 1983.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Section 4
amended.

3. Section 4 of the principal Act is amended, in subsection (1) in the definition of "instrument", by deleting "or copy".

Section 7
amended.

4. Section 7 of the principal Act is amended, in subsection (1), by deleting "The" and substituting the following—

" For the purposes of this Act, the "

Section 7A
amended.

5. Section 7A of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

" (1) For the purpose of ascertaining whether any duty is chargeable or for the purpose of determining the amount of duty, the Commissioner may by notice in writing require any person—

(a) to furnish him, within such reasonable period as shall be specified in that notice, with such information specified therein as that person may be able to give; or

(b) to attend and give evidence before him on a date specified in that notice in any case in which it may be necessary to ascertain any facts, and to bring with him such instruments, books, documents and other papers as may be specified in that notice. "

Section 15A
inserted.

6. After section 15 of the principal Act, the following section is inserted—

Refund of
duty on
cancelled
instruments.

" 15A. (1) Subject to this section, the Commissioner shall refund the *ad valorem* duty paid on an instrument where the instrument

is rescinded, annulled, discharged, cancelled or is otherwise not carried into effect and no person has obtained or will obtain any significant benefit in respect of the instrument or in consequence of the rescission, annulment, discharge or cancellation or from the instrument not being carried into effect.

(2) A refund under subsection (1) shall be made only upon application being made therefor and after—

- (a) subject to subsection (3), the prescribed fee is deducted from the duty paid;
- (b) the instrument referred to in subsection (1) is delivered to the Commissioner; and
- (c) such of the following instruments as the Commissioner may call for are delivered to him for cancellation or amendment of the stamp or denotation—
 - (i) stamped duplicates or counterparts of the instrument referred to in subsection (1); and
 - (ii) instruments on which the payment of the duty concerned has been denoted.

(3) The Commissioner may waive wholly or in part the fee prescribed for the purposes of subsection (2) (a). ”.

7. Section 20 of the principal Act is amended— Section 20
amended.

- (a) in subsection (1), by deleting paragraphs (a) and (b) and substituting the following paragraphs—

“ (a) in the case of an instrument executed within Western Australia, if it is presented for

stamping within a period of one calendar month after the date of first execution thereof; or

- (b) in the case of an instrument executed outside Western Australia, if it is presented for stamping within a period of—

(i) 3 calendar months after the date of first execution thereof; or

(ii) one calendar month after it was first received in Western Australia,

whichever period expires first. ”;

- (b) in subsection (2), by deleting “ten per cent of that duty or a fine of two dollars, whichever is the greater amount” and substituting the following—

“ that duty ”;

- (c) in subsection (3)—

(i) by inserting after “in respect of the instrument” the following—

“ or within any period allowed under section 34C (2) ”; and

(ii) by deleting “ten per cent” and substituting the following—

“ 20% ”; and

- (d) in subsection (5b) by deleting “10%” and substituting the following—

“ 20% ”.

Section 26
amended.

8. Section 26 of the principal Act is amended by repealing subsection (3) and substituting the following subsection—

“ (3) A person who, after an instrument has been duly stamped, alters the instrument in any manner which may increase its liability to duty shall produce the altered instrument,

within one calendar month after the making of the alteration, to enable the Commissioner to express his opinion on the amount of further duty with which the instrument is chargeable; and if he fails to do so he commits an offence against this Act. ”.

9. Section 28 of the principal Act is amended— Section 28 amended.

- (a) in subsection (3), by inserting, after “he may,” the following—

“ at the request of any person and ”;
and

- (b) in subsection (4), by deleting “and is produced for his inspection” and substituting the following—

“ , or has been lodged with the Commissioner for assessment of duty ”.

10. Section 31A of the principal Act is amended in subsection (3) by inserting after “service of the notice)” the following— Section 31A amended.

- “ and, if it is not so paid, the person liable to pay the amount—

(a) commits an offence; and

(b) is, in addition to the amount assessed, liable to pay a fine calculated as provided in section 20 (3) ”.

11. (1) Sections 32 and 33 of the principal Act are repealed and the following sections are substituted— Sections 32 and 33 repealed and substituted, and transitional provision.

- “ 32. (1) A person who is dissatisfied with an assessment made by the Commissioner for the purposes of this Act, may, within a period of 42 days after the date of issue of that assessment, object to the assessment by forwarding to the Commissioner a statement in writing of the grounds of his objection to the assessment. Objection to assessment.

(2) A person entitled to make an objection may, whether before or after the expiry of the time for making the objection, apply for an extension of time, and the Commissioner may, for reasonable cause shown by that person, extend the time for making the objection for such period as the Commissioner considers reasonable in the circumstances.

(3) The Commissioner shall consider any objection and may allow or disallow the objection wholly or in part and may modify or confirm the assessment to which the objection relates.

(4) The Commissioner shall inform the person by whom the objection was made, in writing, of his decision on the objection and the grounds for that decision.

(5) If an assessment of duty is modified under subsection (3), the amount of duty payable shall be such amount as is fixed by the Commissioner; and the Commissioner shall refund the amount of any excess of duty which may have been paid in accordance with the assessment and the amount of any excess of any fine charged under section 20.

(6) For the purposes of this section and sections 33 and 34A the term "assessment" shall include any determination or decision made or purported to be made by the Commissioner under the provisions of this Act other than under this section and section 33.

Appeal from
assessment.

33. (1) A person who is dissatisfied with the decision of the Commissioner on an objection by the person may, within 42 days after service of notice of the decision of the Commissioner, appeal to the Supreme Court against that decision.

(2) A person entitled to appeal against a decision of the Commissioner on an objection by that person may whether before or after the expiry of the time for appealing, apply for an extension of time, and the Commissioner may, for reasonable cause shown by that person, extend the time for appealing for such period as the Commissioner considers reasonable in the circumstances.

(3) The Supreme Court shall hear and determine an appeal under subsection (1).

(4) Where the Supreme Court determines that the assessment of duty to which the appeal relates is in error, it shall assess the duty chargeable under this Act, recalculate any fine charged under section 20, and order the Commissioner to refund the amount of any excess of duty which may have been paid and the amount of any excess of any fine charged under section 20.

(5) Where the Supreme Court orders the Commissioner under subsection (4) to refund any duty or fine paid, the Court may order the Commissioner to pay interest on the amount refunded at a rate not exceeding 10% per annum from the date of payment of the duty or fine.

(6) Where the Supreme Court confirms an assessment by the Commissioner, the Court may order the appellant to pay to the Commissioner interest at a rate not exceeding 10% per annum on the amount of any duty assessed and any fine charged which had not been paid prior to the objection being made, such interest to run from such date, being a date not earlier than the date of the assessment, as the Court shall consider fit. ”.

(2) An appeal under the repealed section 33 of the principal Act which was commenced but not finally disposed of before this section came into

operation shall be continued and disposed of as if it were an appeal commenced under section 33 substituted in the principal Act therefor.

Sections 34A,
34B and 34C
inserted.

12. After section 34 of the principal Act, the following sections are inserted—

Appeal
against
refusal to
extend time
for objection
or appeal.

“ 34A. (1) A person who is dissatisfied with a decision of the Commissioner to refuse to extend the time for making an objection against an assessment, or for appealing against the decision of the Commissioner on an objection, may appeal to the Supreme Court against that decision.

(2) On the hearing of an appeal under subsection (1), the Supreme Court may make such order as it considers appropriate.

Costs of
appeals.

34B. The Supreme Court may make such order as to the costs of an appeal under section 33 or 34A and of a case stated under section 34 as it considers appropriate.

Liability to
pay duty
subject to
objection,
appeal or
case stated.

34C. (1) Subject to subsection (2), the fact that an objection, appeal or case stated under this Act is pending with respect to an assessment shall not affect the liability of any person to pay any duty pending determination of the objection, appeal or case stated.

(2) The Commissioner may if—

(a) he is requested by a person liable to pay any duty which is the subject of an objection, appeal (including an appeal under section 34A) or case stated; and

(b) the request is made before the time for payment of the duty,

extend the time for payment of the duty for such time as the Commissioner thinks fit. ”.

13. Section 39 of the principal Act is amended— Section 39 amended.

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

“ (1) The person in that behalf specified in the Second Schedule in respect of any instrument, or in subsection (4), is liable to pay the amount of duty charged on that instrument.

(1a) If—

(a) any instrument which is liable to duty is not presented for stamping within the period referred to in paragraph (a) or (b), as the case may be, of 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 or in subsection (4) is liable, in addition to the duty, to pay the amount of the fine or fines charged under section 20 (2) or (3) or under both, as the case may be.

(1b) If 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, or in subsection (4), commits an offence.

(1c) Where, under a provision of this Act other than this section, a person is liable to pay duty in respect of an instrument, the person shall be deemed, for the purposes of this section, to have been specified in that behalf in the Second Schedule in respect of the instrument. ”;

(b) in subsection (2)—

(i) by deleting “subsection (1) of this section” and substituting the following—

“ subsections (1) and (1a) and section 31A (3) ”; and

(ii) by deleting “paragraph (b) of that subsection” and substituting the following—

“ subsection (1b) and section 31A (3) ”; and

(c) in subsection (6)—

(i) by deleting “or penalties”; and

(ii) by inserting after “for stamping” the following—

“ or the notice under section 31A was served, as the case may be ”.

Section 67
amended.

14. Section 67 of the principal Act is amended by repealing subsection (2).

Section 73
amended.

15. Section 73 of the principal Act is amended—

(a) in subsection (1), by deleting the whole of the passage from and including “: Provided that” to the end of the subsection, and substituting a full stop; and

(b) by repealing subsections (2), (3) and (4).

Section 73A
amended.

16. Section 73A of the principal Act is amended by repealing subsections (2) and (3) and substituting the following subsections—

“ (2) Each of the parties to an agreement, conveyance or transfer referred to in subsection (1) is liable to pay the duty with which it is chargeable.

(3) Section 73AA of this Act does not apply to a conveyance or transfer referred to in subsection (1). ”.

17. After section 73A of the principal Act, the following section is inserted—

Section 73AA
inserted.

“ 73AA. A conveyance or transfer—

Duty on
conveyance
not passing
a beneficial
interest.

- (a) made for effectuating the appointment of a new trustee, or the retirement of a trustee, whether the trust is expressed or implied;
- (b) made to a beneficiary by a trustee or by another person in a fiduciary capacity, except a discretionary trustee or a unit trustee, under any trust whether express or implied;
- (c) made to a beneficiary by a discretionary trustee under any trust whether express or implied otherwise than in exercise of any power of appointment;
- (d) made by a discretionary trustee, in exercise of a power of appointment over the property conveyed or transferred, to a beneficiary who is a natural person for his own use and benefit, if—
 - (i) at the time when the discretionary trustee acquired the property conveyed or transferred the beneficiary was named or described in the instrument which created the power of appointment as a beneficiary or as a member of a class of beneficiaries in whose favour the discretionary trustee was empowered by that instrument to appoint the property; and

- (ii) the discretionary trustee, as such trustee, acquired the property conveyed or transferred under an instrument which is produced to the Commissioner with that conveyance or transfer;
- (e) made to the holder of a unit in a unit trust scheme by a unit trustee if—
 - (i) the unit trustee, as trustee of that unit trust scheme, acquired the property conveyed or transferred under an instrument which is produced to the Commissioner with that conveyance or transfer; and
 - (ii) the Commissioner is satisfied that—
 - (I) the conveyance or transfer has the effect of reducing the rights of the holder of the unit in respect of the property held by the unit trustee to the extent of the property, or the value of the property, conveyed or transferred; and
 - (II) the conveyance or transfer does not have the effect of varying, abrogating or altering the rights of the holder or holders of other units under the unit trust scheme in respect of the remaining property held by the unit trustee; or
- (f) not otherwise coming within this section, under which no beneficial interest passes in the property conveyed or transferred, not being a conveyance

or transfer which, in the opinion of the Commissioner, is made in contemplation of the passing of a beneficial interest in that property or is part of or made pursuant to a scheme whereby any beneficial interest in that property, whether vested or contingent, has passed or will or may pass to any person,

shall be charged with duty in accordance with item 6 of the Second Schedule. ”.

18. Section 73B of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

Section 73B
amended.

“ (2) The person to whom property is to be conveyed or transferred under an agreement referred to in subsection (1) is liable to pay the duty with which the agreement is chargeable. ”.

19. Section 73C of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

Section 73C
amended.

“ (2) The person on whom the right of the option is conferred by an instrument referred to in subsection (1) is liable to pay the duty with which it is chargeable. ”.

20. Section 73D of the principal Act is amended—

Section 73D
amended.

(a) in subsection (4) by inserting after “subsections (5)” the following—

“ , (5a) ”;

(b) by repealing subsection (5) and substituting the following subsections—

“ (5) Where a disposition does not significantly affect any right or rights pertaining to any unit, having regard

to the rights pertaining to the other issued units under the unit trust scheme, the instrument effecting or evidencing the disposition shall be chargeable with duty under item 6 of the Second Schedule.

(5a) Where a disposition, or a series of dispositions—

(a) has effect in relation to the number of units held by all holders of units in proportion to the number of units respectively held by them immediately prior to the disposition or dispositions taking effect; and

(b) does not have the effect of varying, abrogating or altering the rights of any holder of units as against the rights of any other holder of units with respect to the capital of the unit trust scheme,

the instrument effecting or evidencing the disposition, and each instrument effecting or evidencing a disposition in a series of dispositions, shall be chargeable with duty under item 6 of the Second Schedule. ”.

Section 74
amended.

21. Section 74 of the principal Act is amended—

(a) in subsection (1) by deleting “(except real or personal property locally situated out of Western Australia, or goods, wares or merchandise, or any ship or vessel, or part interest or share or property of or in any ship or vessel)”;

- (b) by inserting, after subsection (3), the following subsection—

“ (3a) Notwithstanding subsections (2) and (3), where—

- (a) a person named as purchaser in a contract or agreement to purchase property entered into the contract or agreement with the intention that the property be transferred to a corporation which the person intended to be incorporated;
- (b) at the time the contract or agreement was entered into action was being taken to incorporate the corporation; and
- (c) duty has been paid on the contract or agreement under subsection (1),

a conveyance or transfer of the property by the vendor under the contract to the corporation after it has been incorporated shall be charged with duty under item 6 of the Second Schedule. ”; and

- (c) by repealing subsections (5), (6) and (7).

22. (1) Section 75 of the principal Act is repealed and the following section is substituted—

Section 75
repealed
and sub-
stituted and
transitional
provision.

“ 75. (1) Every conveyance or transfer or instrument chargeable as a conveyance operating as a voluntary disposition *inter vivos* shall be chargeable with duty under item 19 of the Second Schedule in respect of the unencumbered value of the property disposed of.

Duty
chargeable
on
conveyance
for less than
full
considera-
tion.

(2) Every conveyance or transfer or instrument chargeable as a conveyance, which confers a substantial benefit on the person to whom the property is conveyed or transferred by reason that the unencumbered value of the property ascertained in accordance with section 75A exceeds the consideration payable in respect of that property or by reason of other circumstances shall be chargeable with duty—

- (a) as to the amount of the consideration payable in respect of the property, at the rate chargeable on a conveyance on sale under item 4 of the Second Schedule for that amount; and
 - (b) as to the amount by which the unencumbered value of that property ascertained in accordance with section 75A exceeds the consideration, at the rate provided in item 19 of the Second Schedule for that amount.
- (3) A conveyance or transfer—
- (a) for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied;
 - (b) made to a beneficiary by a trustee or by another person in a fiduciary capacity, except a discretionary trustee or a unit trustee, under any trust whether express or implied;
 - (c) made to a beneficiary by a discretionary trustee under any trust, whether express or implied, otherwise than in exercise of any power of appointment;

- (d) made by a discretionary trustee, in exercise of a power of appointment over the property conveyed or transferred, to a beneficiary who is a natural person for his own use and benefit, if—
 - (i) at the time when the discretionary trustee acquired the property conveyed or transferred the beneficiary was named or described in the instrument which created the power of appointment as a beneficiary or as a member of a class of beneficiaries in whose favour the discretionary trustee was empowered by that instrument to appoint the property; and
 - (ii) the discretionary trustee, as such trustee, acquired the property conveyed or transferred under an instrument which is produced to the Commissioner with that conveyance or transfer;
- (e) made to the holder of a unit in a unit trust scheme by a unit trustee if—
 - (i) the unit trustee, as trustee of that unit trust scheme, acquired the property conveyed or transferred under an instrument which is produced to the Commissioner with that conveyance or transfer; and
 - (ii) the Commissioner is satisfied that—
 - (I) the conveyance or transfer has the effect of reducing the rights of the holder of the unit in respect of the pro-

perty held by the unit trustee to the extent of the property, or the value of the property, conveyed or transferred; and

(II) the conveyance or transfer does not have the effect of varying, abrogating, or altering the rights of the holder or holders of other units under the unit trust scheme in respect of the remaining property held by the unit trustee; or

(f) not otherwise coming within this subsection, under which no beneficial interest passes in the property conveyed or transferred, not being a conveyance or transfer which, in the opinion of the Commissioner, is made in contemplation of the passing of a beneficial interest in that property or is part of or made pursuant to a scheme whereby any beneficial interest in that property, whether vested or contingent, has passed or will or may pass to any person,

shall not be charged with duty under this section.

(4) A conveyance or transfer operating as a voluntary disposition *inter vivos* shall be deemed not to be duly stamped unless the Commissioner has expressed his opinion thereon under section 31. ”.

(2) An appeal under repealed subsection (8) of section 75 of the principal Act commenced before this section came into operation shall be continued and disposed of as if this section had not been passed.

23. Section 75A of the principal Act is amended— Section 75A amended.

(a) in subsection (3), by deleting “or the existence of any fractional interest”; and

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

“ (4) For the purposes of subsection (2) the value of an undivided share in any property, whether held jointly or in common, shall be ascertained by—

(a) determining the total value of the property;

(b) expressing the share as a fraction; and

(c) multiplying the total value referred to in paragraph (a) by the fraction referred to in paragraph (b). ”.

24. Section 75AA of the principal Act is amended by deleting “Treasurer” and substituting the following— Section 75AA amended.

“ Commissioner ”.

25. Section 75AB of the principal Act is amended by deleting “Treasurer” and substituting the following— Section 75AB amended.

“ Commissioner ”.

26. Section 75AF of the principal Act is repealed and the following section is substituted— Section 75AF repealed and substituted.

“ 75AF. (1) Where several instruments to which this section applies together form, or arise from, substantially one transaction, or one series of transactions, those instruments shall be chargeable with *ad valorem* duty calculated upon the sum of the amounts by Computation of duty where several instruments.

reference to which *ad valorem* duty on each of those instruments would, but for this subsection, have been calculated, and that duty shall be apportioned to the various instruments as determined by the Commissioner.

(2) Where, by instruments to which this section applies that have been, or appear to have been, executed within 12 months of each other, a person conveys or transfers, or agrees to convey or transfer, property or properties to the same person (whether that person takes alone or with the same or different persons), it shall be presumed, unless the Commissioner is satisfied to the contrary, that the instruments arose out of one transaction or one series of transactions.

(3) This section does not operate to reduce the duty payable on any instrument.

(4) This section applies to conveyances or transfers of property and other instruments chargeable with duty under item 4 (1) or item 19 of the Second Schedule. ”.

Section 75B
amended.

27. Section 75B of the principal Act is amended by deleting “Treasurer” and substituting the following—

“ Commissioner ”.

Section 82
repealed and
substituted.

28. Section 82 of the principal Act is repealed and the following section is substituted—

Duty
chargeable
on certain
transfers
or convey-
ances by way
of security.

“ 82. (1) Subject to this section, an instrument of mortgage which by itself or in conjunction with another instrument effects a conveyance or transfer of any estate or interest in—

(a) freehold land registered under the Transfer of Land Act 1893;

(b) a Crown lease registered under that Act;

(c) a mining tenement registered under the Mining Act 1978; or

(d) a marketable security,

is chargeable with duty under item 4 of the Second Schedule as a conveyance or transfer of that estate or interest.

(2) References in item 4 of the Second Schedule to consideration shall, for the purposes of this section, be construed as references to the amount or value of the estate or interest conveyed or transferred.

(3) The mortgagor or obligor under an instrument of mortgage referred to in subsection (1) is liable to pay duty with which it is chargeable.

(4) Subsection (1) does not apply to or in relation to an instrument of mortgage which is, in the opinion of the Commissioner, a *bona fide* instrument of mortgage. ”.

29. Section 83 of the principal Act is amended— Section 83 amended.

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

(2) When the total amount secured or to be ultimately recoverable by or under an instrument of security is not in any way limited, the instrument concerned shall be chargeable with *ad valorem* duty at the rate set out under item 13 (2) of the Second Schedule on—

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

(b) an amount of \$2 000,

whichever is the greater.

(3) A security referred to in subsection (2) shall be available only for the amount in respect of which duty is denoted on that instrument, but when an advance or loan in excess of that amount is made or the indebtedness thereby secured is increased, the instrument of security concerned shall be chargeable with additional *ad valorem* duty in respect of the excess or increase and the additional advance or loan or indebtedness is, for the purpose of duty, deemed to be a new and separate instrument of security executed in Western Australia on the day on which that advance or loan is made or that indebtedness is increased and, without prejudice to any other provisions of this Act, subject to the provisions of sections 20 and 39 accordingly.

(4) Each mortgagor or obligor and each mortgagee or obligee under an instrument of security referred to in subsection (2) or a deemed instrument of security under subsection (3) is liable to pay duty with which the instrument or the deemed instrument, as the case may be, is chargeable. ”;

(b) by renumbering subsections (2b), (2c), (2d) and (3) as subsections (5), (6), (7) and (8) respectively;

(c) in subsection (5) by deleting “subsection (2) of this section” and substituting the following—

“ subsections (2) and (3) ”;

(d) in subsection (6) by deleting “(2a) of this section” and substituting the following—

“ (3) ”; and

- (e) in subsection (7) by deleting “(2a) of this section” and substituting the following—

“ (3) ”.

30. Section 87 of the principal Act is amended in subsection (2) by deleting “a policy of life assurance or mortgage” and substituting the following—

Section 87
amended.

- “ any estate or interest in property, other than that described in paragraph (a), (b), (c) or (d) of section 82 (1), ”.

31. Section 90A of the principal Act is amended by deleting “Treasurer” and substituting the following—

Section 90A
amended.

- “ Commissioner ”.

32. After section 112G of the principal Act, the following heading is inserted—

New heading
(PART
IVAA)
inserted.

- “ PART IVAA.—REGISTRATION OF TRANSFERS OF MARKETABLE SECURITIES AND DUTY ON TRANSACTIONS ON BRANCH REGISTERS. ”.

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

Section
112HA
amended.

- (a) in subsection (1) by inserting after “Every company in a” the following—

“ prescribed ”;

- (b) in subsection (2) by deleting “or Territory” in each place where it appears and substituting the following—

“ , Territory or country ”;

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

“ (3a) Where a company has paid to the Commissioner under this section duty in respect of a transfer of

marketable securities, the company may recover that duty in a court of competent jurisdiction as a civil debt due from the transferee.

(3b) The Treasurer may by instrument in writing published in the *Government Gazette* declare a State or Territory of the Commonwealth, or a country, to be a State, Territory or country that is specified for the purposes of this Part. ”; and

(d) in subsection (4)—

(i) by deleting the definition of “branch register” and substituting the following—

“ “branch register” means a branch register kept under section 262 of the *Companies (Western Australia) Code* at a place outside the State; ”; and

(ii) by inserting, after the definition of “company”, the following definition—

“ “prescribed branch register” means a branch register kept at a place which is within any State, Territory or country that is declared, under subsection (3b), to be specified for the purposes of this Part; ”.

35. Section 112 I of the principal Act is amended— Section 112 I amended.

- (a) in subsection (1), by deleting the definition of “goods” and substituting the following definition—

“ “goods” includes—

- (a) all chattels personal;
- (b) a fixture which is severable from the realty; and
- (c) a fixture which is not severable from the realty, but which is treated by an arrangement between the owner of the realty and any other person, made in connection with a grant of the right to use the fixture, as if it were not a part of the realty,

but does not include money, livestock and things in action; ”; and

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

“ (2) This Part does not apply to any rental business in the course of which the right to use any goods is granted to a person who is engaged in the trade or business of selling goods, or of carrying on rental business in goods, of the same nature or description as those goods. ”.

36. Section 119 of the principal Act is amended Section 119 amended. by inserting after subsection (2) the following subsection—

- “ (3) Subsection (1) shall not apply to an instrument to which section 83 (2) applies if the Crown or any Crown instrumentality,

agent of the Crown or Government authority designated by the Treasurer, or a local authority is a mortgagee or obligee of such instrument. ”.

Second
Schedule
amended.

37. The Second Schedule to the principal Act is amended in item 13—

(a) in sub-item (1) in the column headed “*Nature of Instrument*”—

(i) by deleting—

“ , which instrument sets out the only or principal or primary security for ”

and substituting the following—

“ for the payment or repayment of ”;

and

(ii) by deleting—

“ or rent reserved by a lease ”;

and

(b) in sub-item (2)—

(i) in the column headed “*Nature of Instrument*” by deleting—

“ , which instrument sets out the only or principal or primary security ”;

and

(ii) in the column headed “*Person liable to pay duty*”, by deleting—

“ Mortgagor or obligor. ”

and substituting the following—

“ Mortgagor or obligor; and see sections 82 (3) and 83 (4). ”.

38. The Third Schedule to the principal Act is amended—

Third
Schedule
amended.

- (a) in item 2, by inserting after sub-item (6) the following sub-items—

“ (7) A conveyance or transfer of any estate or interest in any real or personal property locally situated out of Western Australia, or in goods, wares or merchandise, or in any ship or vessel, or part interest or share or property of or in any ship or vessel.

(8) An agreement under which an option is given or taken for consideration to purchase or sell any marketable security at a future time at a certain price. ”;

and

- (b) in item 7, by deleting sub-item (1), and substituting the following sub-item—

“ (1) Any instrument for—

- (a) the hiring of any goods, wares or merchandise;
 - (b) the hiring, construction or installation of any machinery or plant;
 - (c) the execution of any building works; or
 - (d) works or services of a civil or other engineering or of a technological nature. ”.
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