

Stamp Amendment Bill 2001

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail and upon reconsideration)

Stamp Amendment Bill 2001

A Bill for

An Act to amend the *Stamp Act 1921*.

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Stamp Amendment Act 2001*.

2. Commencement

This Act comes into operation on the day on which the *Taxation Administration Act 2001* comes into operation.

3. The Act amended

5 The amendments in this Act are to the *Stamp Act 1921**.
[* Reprinted as at 3 August 2001.]

4. Sections 2A and 3 repealed

Sections 2A and 3 are repealed.

5. Section 4 amended

10 (1) Section 4 is amended by inserting before subsection (1) the following subsections —

“

(1aa) The *Taxation Administration Act 2001* is to be read with this Act as if they formed a single Act.

15 (1ab) The Glossary at the end of the *Taxation Administration Act 2001* defines or affects the meaning of some of the words and expressions used in this Act and also affects the operation of other provisions.

”.

20 (2) Section 4(1) is amended by deleting the definitions listed in the Table to this subsection.

Table of deleted definitions

“adhesive coupon”	“instrument”	“several”
“adhesive stamp”	“overseas transfer”	“stamp”
“Commissioner”	“paper”	“stamped”
“die”	“person”	“the Crown”
“duty”	“record”	“unencumbered value”
“executed” and “execution”		

- (3) Section 4(1) is amended by inserting the following definitions in their respective alphabetical positions —

“

5 **“dutiable statement”** means a statement prepared under section 31B, 31C, 63AE, 75HA, 76AG, 76AN, 92A, 104, 112HA or 112P;

“duty” means duty payable under this Act;

10 **“government body”** means an agent or instrumentality of the State, or an SES organisation as defined in the *Public Sector Management Act 1994*;

“instrument” does not include a return;

“interstate duty” means duty of a similar nature to the duty payable under this Act that is payable in another State or Territory;

15 **“Part IIIA statement”** means —

 (a) a section 76AG statement; or

 (b) a section 76AN statement;

20 **“section 76AG statement”** means a dutiable statement prepared under section 76AG in relation to which the Commissioner has not made a determination under section 76AG(5a);

25 **“section 76AN statement”** means a dutiable statement prepared under section 76AN in relation to which the Commissioner has not made a determination under section 76AN(4a);

“stamp”, when used as a verb in relation to an instrument, means to endorse the instrument in accordance with section 17C;

30 **“stamp Act”** means this Act or the *Taxation Administration Act 2001*;

”.

6. Section 4A amended

Section 4A(1) is amended by deleting “, for the purposes of this Act,”.

7. Part II repealed (sections 5 to 15B)

5 Part II is repealed.

8. Section 16 amended

(1) Section 16(1) is amended by deleting “, subject to this Act,”.

(2) Section 16(3) is amended by deleting “this Act” and inserting instead —

10 “ a stamp Act ”.

9. Section 17 replaced

Section 17 is repealed and the following sections are inserted instead —

“

15 **17. Liability to pay duty**

(1) The person liable to pay duty on an instrument on which duty is payable is —

20 (a) if a person is specified in the Second Schedule as the person liable to pay the duty on the instrument — that person;

(b) if another person is expressly liable under any other provision of a stamp Act to pay the duty — that other person;

25 (c) if the instrument is a dutiable statement and neither paragraphs (a) nor (b) apply — the person required to prepare the dutiable statement; or

- (d) in any other case — the party to the instrument by whom or on whose behalf it is held.
- (2) Nothing in this section is to be taken —
 - (a) to exonerate any other person from any liability imposed on the person under a stamp Act; or
 - (b) to exempt any instrument or matter from any duty to which it is liable under a stamp Act.
- (3) A person who is liable to pay duty is also liable to pay any penalty tax, interest or other amount payable under a stamp Act in connection with the duty.

17A. Time for payment of duty

- (1) The liability to pay duty on an instrument arises —
 - (a) when the instrument is first executed; or
 - (b) if the instrument is a dutiable statement, on the occurrence of the transaction or event to which the statement relates.
 - (2) The duty is payable within one month after the date of the assessment notice.
 - (3) Subsection (2) does not apply in a particular case if a provision of a stamp Act specifies that in that particular case duty is payable at, or within, a different time or period.
 - (4) A taxpayer must pay the duty within the time required by subsection (2) or that other provision.
- Penalty: \$5 000.

17B. Requirement to lodge instrument

(1) A person who is, or may be, liable to pay duty on an instrument must lodge the instrument with the Commissioner —

- 5 (a) within 2 months after the date on which the instrument was first executed; or
- (b) if the instrument is a dutiable statement — within 2 months after the occurrence of the transaction or event to which the dutiable statement relates.
- 10

Penalty: \$5 000.

(2) Subsection (1) does not apply in a particular case if a provision of a stamp Act specifies that in that particular case the instrument must be lodged at or within a different time or period.

15

17C. Instrument to be endorsed when duty paid etc.

(1) When —

- (a) duty is paid on an instrument;
- 20 (b) penalty tax or any other amount payable under a stamp Act in respect of an instrument is paid;
- (c) the payment of duty payable on, or penalty tax or any other amount payable under a stamp Act in respect of, an instrument is waived;
- (d) the Commissioner assesses an instrument as being not chargeable with duty;
- 25 (e) the Commissioner exempts an instrument from duty; or
- (f) the Commissioner allows a reduction of the duty payable on an instrument,

30 the Commissioner is to endorse the instrument accordingly.

-
- (2) An endorsement under subsection (1) must be made in a prescribed manner.
- (3) An instrument is taken to be endorsed in accordance with subsection (1) if the Commissioner endorses, in a prescribed manner, a copy or memorandum of the instrument under section 20 of the *Taxation Administration Act 2001*.
- (4) The grant or transfer of a licence (as defined in section 76B) is taken to be endorsed in accordance with subsection (1) when it is granted or transferred.
- (5) An endorsement on an instrument, or on a copy or memorandum of an instrument, in a prescribed manner is *prima facie* evidence of the matters noted in the endorsement.
- (6) The Commissioner may, at the request of a party to an instrument specified in the Third Schedule, endorse the instrument as exempt from duty.

”.

10. Section 18 amended

- (1) Section 18(1) is amended by deleting the subsection designation “(1)”.
- (2) Section 18(2) is repealed.

11. Section 19 amended

- Section 19 is amended by deleting “several” and inserting instead —
- “ 2 or more ”.

12. Sections 20, 21 and 23 replaced

Sections 20, 21 and 23 are repealed and the following section is inserted instead —

“

- 5 **20. Reduction of duty if matter not carried into effect**
- (1) The amount of duty payable on an instrument is reduced by the amount of the full duty payable in respect of a matter included in the instrument if the Commissioner is satisfied that —
- 10 (a) the matter has not been, and will not be, carried into effect;
- (b) the taxpayer has not received, and will not receive, a benefit in respect of the matter; and
- (c) the reason the matter was not, and will not be, carried into effect is not merely to enable a replacement transaction to be entered into.
- 15
- (2) The amount of duty payable on an instrument is reduced in accordance with subsection (3) if the Commissioner is satisfied that —
- 20 (a) a matter included in an instrument has not been, and will not be, carried into effect;
- (b) the taxpayer has received, or will receive, a benefit in respect of the matter;
- (c) the value of the benefit is less than the full duty payable in respect of the matter; and
- 25 (d) the reason the matter was not, and will not be, carried into effect is not merely to enable a replacement transaction to be entered into.
- (3) The amount of duty payable on the instrument is reduced by the amount of the difference between the value of the benefit referred to in subsection (2)(b) and
- 30

the amount of the full duty payable in respect of the matter.

- 5 (4) A taxpayer receives a benefit in respect of a matter included in an instrument if, as a result of the matter not being carried into effect, an amount of money, or a right, property or service, is received —
- (a) by the taxpayer; or
 - (b) with the consent, or at the direction of, the taxpayer, by an independent person.
- 10 (5) A taxpayer receives a benefit in respect of a matter contained in an instrument chargeable as a conveyance or transfer of property if —
- 15 (a) the instrument provides for or contemplates the conveyance or transfer of the property to an independent person;
 - (b) under an agreement, arrangement or understanding between the taxpayer and another party, the property has been or is to be conveyed or transferred to that other party or to another person; or
 - 20 (c) the taxpayer obtains exclusive use or control of the property under a term contract (however described), whether or not the contract is for any reason not fully carried into effect.
- 25 (6) Where a taxpayer receives a benefit of the kind described in subsection (5) the value of the benefit is the amount of the full duty payable in respect of the matter.
- 30 (7) For the purpose of calculating the value of a benefit received by a taxpayer in respect of a matter (other than a benefit of the kind described in subsection (5)), an amount equal to the amount (if any) required to restore the taxpayer to the position the taxpayer would

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have been in if the matter had not been included in the instrument, is not to be taken into account.

(8) Subject to section 17 of the *Taxation Administration Act 2001*, the Commissioner must make any reassessment necessary to give effect to this section.

(9) In this section —

“**full duty**”, in relation to a matter, means the amount of duty that would, but for this section, be payable in respect of the matter;

“**independent person**”, in relation to a matter, means a person who is not a party to the instrument that includes the matter;

“**party**”, in relation to a matter, means a person who is a party to the instrument that includes the matter;

“**replacement transaction**”, in relation to a matter, means a transaction between the taxpayer and an independent person that is substantially similar in effect to the transaction that was to have been effected by the instrument that includes the matter.

”.

13. Section 26 amended

(1) Section 26(1) is amended as follows:

(a) by deleting “every person who” and inserting instead —
“ a person must not ”;

(b) in paragraph (a) by deleting “executes” and inserting instead —
“ execute ”;

(c) in paragraph (b) by deleting “ neglects or omits” and inserting instead —
“ neglect or omit ”;

- (d) at the end of paragraph (b) by deleting the comma and inserting a full stop instead;
- (e) by deleting “commits an offence against this Act.” and inserting instead —
- 5 “ Penalty: \$20 000. ”.
- (2) Section 26(2) is amended by deleting “duly”.
- (3) Section 26(3) is amended as follows:
- (a) by deleting “duly”;
- 10 (b) by deleting all the words from and including “express his opinion” to the end of the subsection and inserting instead —
- “
- reassess the amount of duty payable on the instrument.
- Penalty: \$20 000.
- 15 ”.

14. Section 27 amended

- (1) Section 27(1) is amended as follows:
- (a) by deleting “this Act” and inserting instead —
- 20 “ a stamp Act ”;
- (b) by deleting “duly”.
- (2) Section 27(2) is amended as follows:
- (a) in paragraph (b)(i) by deleting “statement is required to be prepared and lodged” and inserting instead —
- “ dutiable statement is required to be prepared ”;
- 25 (b) by deleting “statement has been prepared and lodged” and inserting instead —
- “ dutiable statement has been prepared ”;

s. 15

- (c) by deleting “statement” in the last place where it occurs and inserting instead —
“ dutiable statement ”.

(3) Section 27(3) is amended as follows:

- 5 (a) by deleting “statement is required to be prepared and lodged” and inserting instead —
“ dutiable statement is required to be prepared ”;
- (b) by deleting “statement” in the 3 other places where it occurs and inserting instead —
10 “ dutiable statement ”.

15. Section 28 amended

(1) Section 28(1) is amended as follows:

- (a) in paragraph (a) by deleting “duly” in both places where it occurs;
- 15 (b) in paragraph (b) —
 - (i) by deleting “statement has been prepared and lodged” and inserting instead —
“ dutiable statement has been prepared ”;
 - (ii) by inserting after “with which the” —
20 “ dutiable ”;
- (c) by inserting after the subsection —
“ Penalty: \$20 000. ”.

(2) Section 28(3) is amended by deleting “duly”.

- (3) Section 28(4) and (5) are repealed and the following subsections are inserted instead —

“

- 5 (4) If a caveat relates to an instrument which is liable to duty or a document referred to in section 27(2) the registrar must reject the caveat unless —
- (a) the instrument or the dutiable statement relating to the document has been stamped; or
- 10 (b) the registrar is satisfied, on evidence provided by the person lodging the caveat, that the instrument or the dutiable statement relating to the document, has been lodged with the Commissioner for assessment.
- Penalty: \$20 000.
- 15 (5) If a caveat relates to an instrument that is not liable to duty the registrar may reject it unless when it is lodged it is accompanied by a statutory declaration —
- (a) stating that the instrument is not liable to duty; and
- 20 (b) setting out why the instrument is not liable to duty (including reference to any relevant provisions of a stamp Act).
- (6) In subsections (4) and (5) —
- “**caveat**” means a caveat lodged under —
- 25 (a) Part V of the *Transfer of Land Act 1893*; or
- (b) the *Mining Act 1978*;
- “**registrar**” means the Registrar of Titles or a mining registrar within the meaning of the *Mining Act 1978* (as the case requires).

”.

30

16. Section 29 amended

(1) Section 29(1) is amended as follows:

(a) by deleting “any omission or insufficiency of the stamp thereon” and inserting instead —

5

“

whether, and to what amount, the instrument has been stamped

”;

(b) by deleting “statement prepared and lodged” and inserting instead —

10

“ dutiable statement required to be prepared ”.

(2) Section 29(2) is amended by deleting “fine payable on the stamping of that instrument” and inserting instead —

“ penalty tax payable in respect of the instrument ”.

15

(3) Section 29(2a) is amended as follows:

(a) by deleting “statement is required to be, but has not been, lodged under section 31B(1) or 31C(1),” and inserting instead —

20

“

dutiable statement is required to be prepared under section 31B(1) or 31C(1) and either the dutiable statement has not been prepared or the duty with which the dutiable statement is chargeable has not been paid,

”;

25

(b) by deleting “statement” in the second place where it occurs and inserting instead —

“ dutiable statement ”;

(c) by deleting “fine with which the statement is chargeable” and inserting instead —

30

“ penalty tax payable in respect of the dutiable statement ”.

(4) Section 29(3) is amended as follows:

(a) by deleting “statement” and inserting instead —

“ dutiable statement ”;

(b) by deleting “fine paid thereon” and inserting instead —

5

“

penalty tax paid in respect of the instrument or dutiable statement

”.

(5) Section 29(4) is repealed and the following subsections are inserted instead —

10

“

(4) On receiving the instrument or dutiable statement the Commissioner is to make an assessment of the duty payable on it, issue an assessment notice, stamp the instrument or dutiable statement and return it to the officer of the court, arbitrator or referee with the assessment notice.

15

(5) Section 23(3) of the *Taxation Administration Act 2001* does not apply to an assessment notice referred to in subsection (4).

20

”.

17. Section 30 amended

(1) Section 30 is amended as follows:

(a) by inserting before “In proceedings” the subsection designation “(1)”;

25

(b) in paragraph (a) —

(i) by deleting “duly”;

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- (ii) by deleting “fine with which the instrument is chargeable” and inserting instead —
“ penalty tax payable in respect of the instrument ”;
- (c) in paragraph (b) —
- 5 (i) by deleting “statement under” and inserting instead —
“ dutiable statement prepared under ”;
- (ii) by deleting “fine with which the dutiable statement is chargeable.” and inserting instead —
10 “
penalty tax payable in respect of the dutiable statement.
”.
- (2) At the end of section 30 the following subsections are
15 inserted —
“
- (2) On receiving payment under subsection (1) the officer of the court, arbitrator or referee is to deliver the instrument or dutiable statement to the Commissioner together with the duty and any penalty tax paid in
20 respect of the instrument or dutiable statement.
- (3) On receiving the instrument or dutiable statement the Commissioner is to make an assessment of the duty payable on it, issue an assessment notice, stamp the instrument or dutiable statement and return it to the officer of the court, arbitrator or referee with the assessment notice.
25
- (4) Section 23(3) of the *Taxation Administration Act 2001* does not apply to an assessment notice referred to in
30 subsection (3).
”.

18. Sections 31, 31AA, 31AB, 31AC and 31A repealed

Sections 31, 31AA, 31AB, 31AC and 31A are repealed.

19. Section 31B amended

(1) Section 31B(1) is amended as follows:

- 5 (a) in paragraphs (a), (b), (c)(i), (ii) and (iii) by deleting
“the State” and inserting instead —
“ Western Australia ”;
- (b) by deleting all the words from and including “within a
10 period” to the end of the subsection and inserting
instead —
“
prepare a dutiable statement in respect of the
transaction.
Penalty: \$20 000.

15 ”.

(2) Section 31B(2) is repealed and the following subsections are
inserted instead —

- “
- (1b) A dutiable statement must be in an approved form.
- 20 (1c) A dutiable statement prepared under subsection (1) is
taken to be an instrument evidencing the transaction
and is chargeable with duty accordingly.
- (2) Each party to a transaction described in subsection (1),
except the person required to prepare the dutiable
25 statement, shall, within 2 months after entering into the
transaction, notify the Commissioner in an approved
form that the transaction has been entered into.
Penalty: \$20 000.

”.

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- (3) Section 31B(2a) is amended as follows:
- (a) by deleting “lodge a statement” and inserting instead —
“ prepare a dutiable statement ”;
 - (b) by deleting “subsection (7)” and inserting instead —
“ subsection (1) or (2) ”.
- (4) Section 31B(2b) is amended as follows:
- (a) by deleting “section 20(1)” and inserting instead —
“ section 17A ”;
 - (b) by deleting “was entered into” and inserting instead —
“ occurred ”.
- (5) Section 31B(3) is amended by deleting “The Governor may make regulations under section 120(1) exempting” and inserting instead —
“ Regulations may exempt ”.
- (6) Section 31B(4) and (5) are repealed and the following subsection is inserted instead —
“
(4) If interstate duty has been, or in the opinion of the Commissioner will be, paid in respect of a transaction to which subsection (1)(c) applies, the amount of duty payable in respect of the dutiable statement prepared in respect of the transaction is reduced by the amount of interstate duty that has been or will be paid.
”.
- (7) Section 31B(7) is repealed.

20. Section 31C amended

- (1) Section 31C(1) is amended by deleting “and lodge a statement with the Commissioner about the transfer.” and inserting instead —

5

“

a dutiable statement in respect of the transfer, but only if the assets are property of a kind that, if there was an instrument effecting or evidencing the transfer, duty would be chargeable on the instrument.

10

Penalty: \$20 000.

”.

- (2) Section 31C(2) is repealed and the following subsections are inserted instead —

“

15

(2) A dutiable statement must be in an approved form.

(2a) A dutiable statement prepared under subsection (1) is taken to be an instrument of transfer of the assets and is chargeable with duty accordingly.

(2b) Duty is payable by the receiving body.

20

”.

- (3) Section 31C(4) is repealed.

21. Section 31D repealed

Section 31D is repealed.

22. Sections 32 to 35 replaced

Sections 32, 33, 33A, 34, 34A, 34B, 34C and 35 are repealed and the following sections are inserted instead —

“

5 **33. Valuation of land or other property**

(1) When determining the value of any land or other property for the purpose of a stamp Act —

- 10 (a) the existence of any overriding power of revocation or reconveyance is to be disregarded;
- 15 (b) the value of an undivided share in the land or other property, whether held jointly or in common, is to be ascertained by multiplying the total value of the land or other property by the share expressed as a fraction; and
- 20 (c) when applying the ordinary principles of valuation —
- (i) it is to be assumed that a hypothetical purchaser would, when negotiating the price of the land or other property, have knowledge of all existing information relating to the land or other property; and
- 25 (ii) no account is to be taken of any amount that a hypothetical purchaser would have to expend to reproduce, or otherwise acquire a permanent right of access to and use of, existing information relating to the land or other property.
- 30

- (2) When determining the unencumbered value of any land or other property for the purposes of a stamp Act —
- 5 (a) an encumbrance on the land or other property is to be disregarded; and
- (b) an interest, agreement or arrangement (not being an encumbrance) that —
- 10 (i) has the effect of reducing the value of the land or other property; and
- (ii) was granted or made on or after 27 December 1996,
- is, subject to subsection (3), to be disregarded.
- (3) An interest, agreement or arrangement is not to be disregarded if, in the Commissioner's opinion —
- 15 (a) it was not granted or made for the purpose of reducing the value of the land or other property; and
- (b) it was not granted to or made in favour of —
- 20 (i) the taxpayer;
- (ii) in the case of an instrument chargeable under item 19 of the Second Schedule — the person on whom the land or other property is settled or agreed to be settled, or to whom the land or other property is given or agreed to be given, or for whom it is declared to be held in trust;
- 25 (iii) in the case of a relevant acquisition to which Division 3 of Part IIIA applies — the person who acquired the majority interest or further interest; or
- 30

- (iv) a person who is associated with, or related to (within the meaning of section 76), a person referred to in subparagraph (i), (ii) or (iii).

5 (4) In this section —

“land” includes an estate or interest in —

- (a) freehold land, whether or not registered under the *Transfer of Land Act 1893*;
 - 10 (b) a Crown lease registered under the *Transfer of Land Act 1893*; or
 - (c) 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
15 mining tenement.

34. Duplicates and counterparts

A duplicate or counterpart of a stamped instrument is chargeable with duty under item 9 of the Second Schedule.

20 **35. Unlodged transfers — independent person’s obligations**

- (1) This section applies in relation to a transfer of property if the instrument of transfer has not been lodged before the end of the period within which it is required under a
25 Stamp Act to be lodged.
- (2) Where a person who is not a party to the transfer —
 - (a) has custody or control of the instrument of transfer; or
 - (b) in dealing with the property, acts on the
30 authority of, in reliance on or in pursuance of the instrument of transfer,

the person must lodge the instrument, or notify the Commissioner about the instrument, as soon as practicable after the person becomes aware, or ought reasonably to have become aware, that the instrument has not been lodged before the end of the period within which it is required to be lodged under a Stamp Act.

Penalty: \$20 000.

- (3) A notification under subsection (2) must set out, to the extent that the information can be ascertained from the transfer or is otherwise known to the person —
- (a) the nature of the transfer;
 - (b) the names of the parties to the transfer;
 - (c) the date on which the transfer was first executed;
 - (d) a summary of the principal terms of the transfer (such as the property to which it relates and the consideration paid or payable); and
 - (e) any prescribed information.
- (4) In this section —
- “**instrument of transfer**” means an instrument of transfer, or a dutiable statement, on which duty is payable under item 4 of the Second Schedule;
- “**transfer**” includes conveyance.

”.

25 **23. Section 36 amended**

Section 36 is amended by deleting “this State” and inserting instead —

“ Western Australia ”.

24. Sections 37 to 39A replaced

Sections 37, 38, 39 and 39A are repealed and the following section is inserted instead —

“

5 **38. Instruments held in escrow**

For the purposes of a stamp Act an escrow is taken to be an instrument duly executed and delivered and is liable to duty accordingly.

”

10 **25. Section 49A amended**

Section 49A is amended as follows:

- (a) by deleting the subsection designation (1);
- (b) in paragraph (a) by deleting “in writing”;
- (c) by repealing subsection (2).

15 **26. Section 50 amended**

- (1) Section 50(1) is repealed and the following subsection is inserted instead —

“

- 20 (1) A person must not draw, make, issue, accept, endorse, transfer, negotiate, present for payment or pay any bill of exchange or promissory note which is liable to duty and is not stamped.

Penalty: \$20 000.

”

- 25 (2) Section 50(2) is amended by deleting “duly”.

- (3) Section 50(3) and (4) are repealed.

27. Section 50A repealed

Section 50A is repealed.

28. Section 50B amended

Section 50B(1) and (2) are amended by deleting “duly”.

29. Section 50D amended

Section 50D is amended as follows:

- 5
- (a) by deleting the subsection designation (1);
 - (b) by deleting “duly” in both places where it occurs;
 - (c) by repealing subsections (2), (3) and (4).

30. Section 52 repealed

Section 52 is repealed.

10 **31. Heading deleted**

The heading “*Conveyances on Sale*” immediately before section 63 is deleted.

32. Section 63 amended

15 Section 63(4)(a)(i) is amended by deleting “body corporate (as defined in section 9 of the Corporations Act)” and inserting instead —

“ corporation ”.

33. Section 63AA amended

20 (1) Section 63AA(1) is amended by deleting “a form approved by the Commissioner” and inserting instead —

“ an approved form ”.

(2) Section 63AA(4) is amended by deleting “in writing”.

(3) Section 63AA(5) is amended by deleting “written”.

(4) After section 63AA(5) the following subsection is inserted —

“

(6) If the Commissioner decides not to register a unit trust scheme as a pooled investment trust or an equity trust, the unit trustee may challenge the validity or correctness of that decision in accordance with Part 4 of the *Taxation Administration Act 2001* as if the unit trustee were a taxpayer and the decision were a decision affecting the trustee’s liability to pay duty.

”.

34. Section 63AB amended

(1) Section 63AB(8) is amended by deleting “a form approved by the Commissioner” and inserting instead —

“ an approved form ”.

(2) Section 63AB(9) is repealed.

35. Section 63AC amended

(1) Section 63AC(1) is amended by deleting “a form approved by the Commissioner” and inserting instead —

“ an approved form ”.

(2) Section 63AC(3) is amended by deleting “in writing”.

(3) Section 63AC(4) is amended by deleting “written”.

(4) After section 63AC(4) the following subsection is inserted —

“

(5) If the Commissioner decides not to grant the unit trust scheme interim registration as a pooled investment trust or an equity trust, the unit trustee may challenge the validity or correctness of that decision in accordance with Part 4 of the *Taxation Administration Act 2001* as if the unit trustee were a taxpayer and the

decision were a decision affecting the trustee's liability to pay duty.

”.

36. Section 63AD amended

5 Section 63AD(4)(c) and (6)(b) are amended by deleting “in writing”.

37. Section 63AE amended

(1) Section 63AE(1) is amended by deleting all of the words from and including “and lodge” to the end of the subsection and
10 inserting instead —

“

a dutiable statement.

Penalty: \$20 000.

”.

15 (2) Section 63AE(2) is amended as follows —

(a) by deleting “statement shall” and inserting instead —
“ dutiable statement must ”;

(b) by deleting paragraph (a) and inserting the following paragraph instead —

20 “ (a) be in an approved form; ”.

(3) Section 63AE(3) is repealed.

38. Section 63AF amended

Section 63AF(1) is repealed and the following subsection is inserted instead —

25 “

(1) A dutiable statement prepared under section 63AE is taken to be an instrument effecting or evidencing the transfers and dispositions details of which are included

in the dutiable statement under section 63AE(2)(c) or
(d) and is chargeable with duty accordingly.

”.

39. Section 63A amended

5 (1) Section 63A(1) is amended by inserting after “states that
value,” —

“

then despite section 33 and sections 21 and 22 of the
Taxation Administration Act 2001,

10

”.

(2) Section 63A(2) is amended by deleting all the words from and
including “and the Commissioner” to the end of the subsection.

40. Section 65 amended

15 Section 65(1) is amended by deleting “in accordance with the
provisions of this Act”.

41. Section 66 amended

Section 66 is amended by deleting “in accordance with this Act”
and inserting instead —

“ accordingly ”.

20 **42. Section 67 amended**

Section 67 is amended by deleting the subsection
designation “(1)”.

43. Section 69 amended

Section 69(1) is amended as follows:

25 (a) in paragraphs (a) and (b) by deleting “in this section
called” in each place where it occurs;

- (b) by deleting “several” and inserting instead —
“ 2 or more ”.

44. Section 70 amended

- (1) Section 70(1) is amended as follows:

- 5 (a) in the definition of “chargeable with duty” in
paragraph (b) by inserting after “12(1) or (3)” —
“ of the Second Schedule ”;
- (b) in the definition of “exempt chattels” —
- 10 (i) after paragraph (a) by inserting —
“ or ”;
- (ii) in paragraph (b) by deleting “motor”.

- (2) Section 70(3)(a)(ii) is amended by deleting “several” and
inserting instead —
“ 2 or more ”.

15 **45. Section 71 amended**

Section 71 is amended by deleting “several” and inserting
instead —

“ 2 or more ”.

46. Heading deleted

20 The heading “*Transfer of mortgages*” immediately before
section 72 is deleted.

47. Section 72 amended

- (1) Section 72(2) is amended by deleting “several” and inserting
instead —

25 “ 2 or more ”.

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- (2) Section 72(4) is amended by deleting all the words from and including “and the Commissioner” to the end of the subsection.

48. Heading deleted

5 The heading “*Documents Treated as Conveyances*” immediately before section 73 is deleted.

49. Section 73 amended

Section 73 is amended as follows:

- 10 (a) by deleting the subsection designation “(1)”;
(b) by deleting “in this Act otherwise provided” and inserting instead —
“ otherwise provided by a stamp Act ”.

50. Section 73A amended

- (1) Section 73A(1) is amended as follows:

- 15 (a) by deleting “in this section referred to as”;
(b) by deleting “in accordance with the provisions of this Act”;
(c) by deleting all the words from and including “sum of the amount paid” to the end of the subsection and inserting instead —
20 “
sum of —
(a) the amount paid by way of consideration for the granting of the option; and
(b) the amount payable in the event of the option
25 being exercised.
”.

- (2) Section 73A(5) is amended by deleting all the words from and including “the Commissioner shall refund” to the end of the subsection and inserting instead —

“

5

then —

- (c) the duty chargeable on the agreement or the conveyance or transfer (as the case may be) is reduced to the amount of duty that would have been payable if the consideration had been the amount referred to in subsection (1)(a) only; and
- (d) any reconveyance or retransfer referred to in paragraph (b) is chargeable with duty under item 6 of the Second Schedule.

10

15

”.

- (3) After section 73A(5) the following subsections are inserted —

“

20

(5a) Subject to section 17 of the *Taxation Administration Act 2001*, the Commissioner must make any reassessment necessary to give effect to this section.

(5b) For the purposes of subsection (5a), section 17 of the *Taxation Administration Act 2001* applies as if the original assessment had been made —

25

- (a) when the reconveyance or retransfer referred to in subsection (5)(b)(i) occurred; or
- (b) on the expiry, referred to in subsection (5)(a), of the time within which the option could have been exercised,

30

whichever is later.

”.

51. Section 73AA amended

- (1) Section 73AA(1)(c) is amended by inserting before
“exercise” —
“ the ”.
- 5 (2) Section 73AA(1)(d) is amended as follows:
(a) by inserting before “exercise” —
“ the ”;
(b) by deleting “a natural person” and inserting instead —
“ an individual ”.
- 10 (3) Section 73AA(1)(f) is amended by deleting “, if the
Commissioner is satisfied that the conveyance or transfer” and
inserting instead —
“ but which the Commissioner is satisfied ”.

52. Section 73B amended

- 15 (1) Section 73B(1) is amended as follows:
(a) by deleting “in this section referred to as”;
(b) by deleting “in accordance with the provisions of
this Act”.
- (2) Section 73B(3) is amended as follows:
20 (a) by deleting “in this subsection referred to as”;
(b) by deleting all the words from and including “the
Commissioner shall” to the end of the subsection and
inserting instead —
“
25 the amount of duty payable on the agreement is
reduced to the amount of duty that would have been
payable if the consideration had been equal to the
amount of the payment or payments paid or due and

payable by the determiner when the determination was made.

”.

(3) After section 73B(3) the following subsections are inserted —

5

“

(4) Subject to section 17 of the *Taxation Administration Act 2001*, the Commissioner must make any reassessment necessary to give effect to this section.

10

(5) For the purposes of subsection (4), section 17 of the *Taxation Administration Act 2001* applies as if the original assessment had been made when the determination was made.

”.

53. Section 73C amended

15

(1) Section 73C(3) is amended by deleting all the words from and including “the Commissioner shall” to the end of the subsection and inserting instead —

“

20

the amount of duty payable on the instrument is reduced to the amount of duty that would have been payable if the consideration had been equal to the amount paid or payable in respect of any occasion or occasions referred to in the instrument that have occurred before the person exercised the option or

25

failed to renew the right of option.

”.

(2) After section 73C(3) the following subsections are inserted —

“

30

(4) Subject to section 17 of the *Taxation Administration Act 2001*, the Commissioner must make any reassessment necessary to give effect to this section.

- 5 (5) For the purposes of subsection (4), section 17 of the
Taxation Administration Act 2001 applies as if the
original assessment had been made when the person
exercised the option or failed to renew the right of
option.

”.

54. Section 73D amended

- 10 (1) Section 73D(1) is amended as follows:
- (a) in the definition of “disposition” in paragraph (d) by
inserting after “with respect to” —
“ the ”;
 - (b) after the definition of “transfer” by deleting “and”.
- 15 (2) Section 73D(2) is amended as follows:
- (a) in paragraph (b) by deleting “duly stamped under this
Act” and inserting instead —
“ stamped ”;
 - (b) by inserting after the subsection —
“ Penalty: \$20 000. ”.
- 20 (3) Section 73D(3) is repealed.
- (4) Section 73D(4)(a) is amended by deleting “the State” and
inserting instead —
“ Western Australia ”.
- 25 (5) Section 73D(6a) is amended as follows:
- (a) in paragraph (b) by deleting “*ad valorem* duty has been
paid by such a person in another jurisdiction” and
inserting instead —
“ interstate duty has been paid by such a person ”;

(b) in paragraph (c) by deleting “the State” and inserting instead —

“ Western Australia ”.

(6) Section 73D(8) is amended by deleting “for not less than 2 years after the day on which it is delivered to him” and inserting instead —

“

in accordance with section 79 of the *Taxation Administration Act 2001*

”.

(7) Section 73D(9) is repealed.

55. Section 73DA amended

(1) Section 73DA(1) is repealed and the following subsection is inserted instead —

“

(1) For the purposes of section 73D(4), a unit trustee who has a majority interest is a company that is beneficially entitled to land and chattels (as defined in section 76) situated in Western Australia is taken to hold an undivided share in the land and chattels to the extent provided in subsection (2).

”.

(2) Section 73DA(2) is amended by deleting “the State” and inserting instead —

“ Western Australia ”.

(3) Section 73DA(3)(a) is amended by deleting “applies and” and inserting instead —

“ applies or ”.

56. Section 73E amended

(1) Section 73E(2) is amended as follows:

(a) by inserting after “Australia as” —
“ a ”;

5 (b) in paragraph (b) by deleting “duly stamped under this Act” and inserting instead —
“ stamped ”;

(c) after the subsection by inserting —
“ Penalty: \$20 000. ”.

10 (2) Section 73E(3) is repealed.

(3) Section 73E(9) is amended by deleting “for not less than 2 years after the day on which the transfer or instrument is delivered to it” and inserting instead —

15 “
in accordance with section 79 of the *Taxation Administration Act 2001*

”.

(4) Section 73E(10) is repealed.

57. Section 73F amended

20 (1) Section 73F(1) is amended in the definition of “business licence”, in paragraph (b) by deleting “the State” and inserting instead —

“ Western Australia ”.

(2) Section 73F(3) is amended as follows:

25 (a) by deleting “For the purposes of this Act, where” and inserting instead —

“ Where ”;

(b) by deleting “the State” and inserting instead —
“ Western Australia ”.

(3) Section 73F(4)(a) and (b) are amended by deleting “the State”
and inserting instead —

5 “ Western Australia ”.

58. Section 74 amended

(1) Section 74(3)(c) is amended by deleting “duly”.

(2) Section 74(4) is amended by deleting all the words from and
including “and the Commissioner” to the end of the subsection.

10 **59. Section 74A amended**

(1) Section 74A(3) is amended as follows:

(a) after paragraph (d)(i) by inserting —
“ or ”;

15 (b) after paragraph (e) by inserting —
“ and ”.

(2) Section 74A(4) is amended by inserting after the definition
of “B” —

“ and ”.

60. Section 75 amended

20 (1) Section 75(3)(c) is amended by inserting before “exercise” —
“ the ”.

(2) Section 75(3)(d) is amended as follows:

(a) by inserting before “exercise” —
“ the ”;

25 (b) by deleting “a natural person” and inserting instead —
“ an individual ”.

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(3) Section 75(3)(f) is amended by deleting “if the Commissioner is satisfied that the conveyance or transfer” and inserting instead —

“ but which the Commissioner is satisfied ”.

5 (4) Section 75(4) is repealed.

61. Sections 75A and 75AA replaced

Sections 75A and 75AA are repealed and the following section is inserted instead —

“

10 **75A. Power to exempt instruments made for charitable or similar purposes**

The Commissioner may exempt from *ad valorem* duty any deed of gift, conveyance, transfer, settlement or other instrument operating as a voluntary disposition of property, or any conveyance on the purchase of property, if the Commissioner is satisfied that it has been made for the purposes of a university or for charitable or similar public purposes.

”.

20 **62. Section 75AB amended**

Section 75AB is amended as follows:

(a) by deleting “When the Commissioner is satisfied that any instrument” and inserting instead —

“

25 The Commissioner may exempt from *ad valorem* duty any instrument that the Commissioner is satisfied

”;

(b) by deleting “, he may exempt from *ad valorem* duty, or refund any *ad valorem* duty paid on, that instrument”.

63. Section 75ABA amended

Section 75ABA(1) is amended by deleting “and the instrument is to be endorsed accordingly”.

64. Section 75AE replaced

5 Section 75AE is repealed and the following section is inserted instead —

“

75AE. Concessional rates for certain residential or business property

- 10 (1) A conveyance or transfer of residential property or business property is chargeable with duty under item 4(5) of the Second Schedule if —
- 15 (a) duty on the conveyance or transfer would, but for this section, be chargeable under item 4(1) of the Second Schedule;
 - (b) the value of the property does not exceed \$135 000; and
 - (c) the property is conveyed or transferred to —
 - 20 (i) one person who is an eligible purchaser;
 - (ii) in the case of business property — 2 or more purchasers all of whom are eligible purchasers; or
 - (iii) in the case of residential property —
 - 25 (I) at least one of whom is an eligible purchaser; and
 - (II) all of whom are either eligible purchasers or government bodies.

(2) Subject to section 17 of the *Taxation Administration Act 2001*, the Commissioner must make any reassessment necessary to give effect to this section.

(3) In this section —

5 **“business property”** means property that is or includes a business undertaking;

“eligible purchaser” means —

 (a) in relation to a residential property, an individual who —

10 (i) occupies, or after purchasing the property will occupy, the dwellinghouse on the property as his or her principal place of residence;

15 (ii) intends to so occupy the dwellinghouse for an indefinite period; and

 (iii) is not acquiring, and does not intend to hold, the property as agent, trustee or otherwise on behalf of another person; and

20 (b) in relation to a business property, a person who —

 (i) is not a government body;

25 (ii) after purchasing the property will carry on the business undertaking that is or is part of the property; and

 (iii) intends to carry on that business for an indefinite period;

30 **“residential property”** means property that includes a dwellinghouse.

”.

65. Section 75AF amended

Section 75AF(1) is amended by deleting “several” and inserting instead —

“ 2 or more ”.

5 **66. Section 75AG replaced**

Section 75AG is repealed and the following section is inserted instead —

“

75AG. Reduction of duty or refund for first home owner

- 10 (1) The duty payable under item 4(1), 4(5) or 19 of the Second Schedule on the conveyance or transfer of residential property is reduced in accordance with subsection (2) if —
- 15 (a) each of the persons (other than government bodies) to whom the property is conveyed or transferred —
- (i) intends to occupy the dwellinghouse as his or her principal place of residence; or
- 20 (ii) is a trustee holding the property on trust for a person who it is intended will occupy the dwellinghouse as his or her principal place of residence;
- (b) at least one of the persons to whom the property is conveyed or transferred is —
- 25 (i) a first home owner; or
- (ii) a trustee holding the property on trust for a first home owner;
- and

- (c) the value of the property does not exceed —
- (i) if the property is situated north of the 26th parallel of south latitude — \$202 500; or
 - (ii) otherwise — \$135 000.
- (2) The duty payable on the conveyance or transfer is reduced by an amount equal to R in the formula —
- $$R = \frac{A}{B} \times C$$
- where —
- A is the combined interest in the property, expressed as a percentage, of all the people to whom the property is conveyed or transferred who are —
 - (i) first home owners; or
 - (ii) trustees holding the property on trust for first home owners;
 - B is the combined interest in the property, expressed as a percentage, of all the people (including first home owners and trustees) to whom the property is conveyed or transferred who are not government bodies; and
 - C is the lesser of —
 - (i) \$500; and
 - (ii) the amount of duty that would, but for this section, be payable on the conveyance or transfer.
- (3) A refund, calculated in accordance with subsection (4), of duty paid under item 4(1), 4(5) or 19 of the Second Schedule on the conveyance or transfer of land

to a first home owner or to a trustee who holds the land on trust for a first home owner is payable if —

(a) either —

(i) the land is vacant land; or

(ii) the land is residential property but since the date of the conveyance or transfer the first home owner has not occupied the dwellinghouse;

(b) within 48 months after the date of the conveyance or transfer construction commences on the land of —

(i) where the land is vacant land, a dwellinghouse; or

(ii) where the land is residential property, a new dwellinghouse;

(c) each of the persons (other than government bodies) who own the land —

(i) intends to occupy the dwellinghouse referred to in paragraph (b) as his or her principal place of residence; or

(ii) is a trustee holding the land on trust for a person who it is intended will occupy the dwellinghouse referred to in paragraph (b) as his or her principal place of residence;

and

(d) the value of the vacant land or residential property at the time of the conveyance or transfer did not exceed \$52 000.

(4) The refund is an amount equal to R in the formula —

$$R = \frac{D}{E} \times C$$

where —

- 5 D is the interest in the land, expressed as a percentage, of the first home owner or trustee (as the case requires) as at the building date;
- E is the combined interest in the land, expressed as a percentage, of all the people (including the first home owner or trustee) who are owners of the land as at the building date other than government bodies; and
- 10 C is lesser of —
- (i) \$500; and
- (ii) the amount of duty paid on the conveyance or transfer of the vacant land to the first home owner or trustee (as the case requires).
- 15
- (5) If the conveyance or transfer is or was chargeable with duty under item 19 of the Second Schedule, this section does not apply unless the Commissioner is satisfied that the duty was or will be (as the case requires) paid by a person to whom the property is conveyed or transferred who is a first home owner.
- 20
- (6) Subject to section 17 of the *Taxation Administration Act 2001*, the Commissioner must make any reassessment necessary to give effect to this section.
- 25
- (7) In this section —
- “**first home owner**”, in relation to the conveyance or transfer of property, means an individual who, immediately before the conveyance or transfer —
- 30 (a) does not own, and has not previously owned, any residential property, except as a trustee; and

- 5
- (b) is not, and has not been, the beneficiary of a trust of any residential property where —
- (i) the individual is or was entitled to occupy the dwellinghouse on the property as his or her principal residence; and
- 10
- (ii) if the property is in Australia, the conveyance or transfer of the property to the trustee was chargeable with duty under item 4(1), 4(5) or 19 of the Second Schedule or a corresponding law of another State or Territory;
- and
- 15
- (c) where the property is conveyed or transferred to the individual, he or she is not acquiring the property as a trustee;

20

“residential property” means property (whether in Western Australia or elsewhere) that includes a dwellinghouse;

20

“trustee” —

- 25
- (a) includes an executor, an administrator, a guardian, a receiver, a liquidator, a person acting in any other fiduciary capacity and a person who in any other capacity has possession, control, or management of the property of a person who is under a legal disability; and
- (b) does not include a discretionary trustee or a unit trustee;

30

“vacant land” means land on which there is not a dwellinghouse.

”.

67. Section 75C amended

- (1) Section 75C(3) is amended by deleting “writing in a form approved by the Commissioner” and inserting instead —
“ an approved form ”.
- 5 (2) Section 75C(3a) is amended by deleting “and it shall be endorsed or stamped, as applicable, accordingly”.
- (3) Section 75C(3b) is repealed.
- (4) Section 75C(4) is amended in the definition of “lot”, in paragraph (a) by deleting “*Land Tax Assessment Act 1976*” and
10 inserting instead —
“ *Land Tax Assessment Act 2001* ”.

68. Section 75D amended

- (1) Section 75D(1) is amended in the definition of “family member” as follows:
- 15 (a) after paragraph (d) by deleting “or”;
- (b) by deleting paragraph (e) and inserting instead —
“
(e) the spouse or former spouse of the person; or
(f) the spouse of a person referred to in
20 paragraph (a), (b), (c) or (d),
”.
- (2) Section 75D(1) is amended in the definition of “instrument of conveyance” by deleting “statement required to be lodged under Part IIIBA” and inserting instead —
25 “ Part IIIBA statement ”.

69. Section 75E amended

(1) Section 75E(1) is amended as follows:

- (a) by deleting “in this section and in section 75HA referred to as”;
- 5 (b) by deleting “in this section and in section 75HA the person is referred to as”;
- (c) after paragraph (d) by deleting “and” and inserting instead —
“ or ”.

10 (2) Section 75E(5) is amended as follows:

- (a) by deleting “or refund has been allowed” and inserting instead —
“ has been granted ”;
- 15 (b) by deleting “or refund” in the second place where it occurs.

(3) Section 75E(6) is amended as follows:

- (a) in paragraph (a) by deleting “or refund has been allowed” and inserting instead —
“ has been granted ”;
- 20 (b) by deleting “or refund” in the second place where it occurs.

70. Section 75F replaced

Section 75F is repealed and the following section is inserted instead —

25 “

75F. Exemption of duty for farming property

If the Commissioner is satisfied that this Part applies to an instrument of conveyance, the Commissioner may, on receiving an application under section 75H —

30

- (a) exempt the instrument from duty; or

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- (b) in the circumstances referred to in section 75G,
partially exempt the instrument from duty.

”.

71. Section 75G amended

- 5 (1) Section 75G(1) is amended as follows:

(a) by deleting “this Act” and inserting instead —
“ a stamp Act ”;

(b) in paragraph (d) by deleting “section 75A” and inserting
instead —

10

“

section 33 and sections 21 and 22 of the
Taxation Administration Act 2001

”.

- 15 (2) Section 75G(3) is amended in the definition of “A” by deleting
“section 75A” and inserting instead —

“

section 33 and sections 21 and 22 of the *Taxation
Administration Act 2001*

”.

20 **72. Section 75H replaced**

Section 75H is repealed and the following section is inserted
instead —

“

75H. Application for exemption

- 25 (1) An application for an exemption under section 75F is
to be made in an approved form by the person
acquiring the farming property, interest or share or, if
there is more than one such person, by all of them.

- 30 (2) Despite section 17(1) of the *Taxation Administration
Act 2001*, an application for a reassessment of the duty

payable on an instrument to which this Part applies on the basis that an exemption under section 75F should have been, but was not, granted in relation to the instrument cannot be made more than 12 months after the day on which the instrument was stamped.

”.

73. Section 75HA amended

(1) Section 75HA(1) is amended as follows:

(a) by deleting the definition of “farming exemption” and inserting the following definition —

“

“farming exemption” means an exemption or partial exemption granted by the Commissioner under this Part;

”;

(b) at the end of the definition of “relevant proportion” by deleting the full stop and inserting a semicolon instead;

(c) after the definition of “relevant proportion” by inserting the following definition —

“

“the transferor” has the meaning given in section 75E(1).

”.

(2) Section 75HA(3) is amended as follows:

(a) by deleting “allowed” and inserting instead —
“ granted ”;

(b) by deleting “and lodge with the Commissioner a statement in a form approved by the Commissioner.” and inserting instead —

“

a dutiable statement in respect of the taxable event.
Penalty: \$20 000.

”.

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(3) After subsection (3) the following subsection is inserted —

“

(3a) A dutiable statement is to be in an approved form.

”.

5 (4) Section 75HA(4) is amended as follows:

(a) by deleting “lodge a statement under subsection (3)” and inserting instead —

“ prepare a dutiable statement ”;

10 (b) by deleting paragraph (a) and inserting the following paragraph instead —

“

(a) a dutiable statement in respect of the farming exemption has previously been prepared under this section and lodged with the Commissioner;

15

”.

(5) Section 75HA(5) to (10) are repealed and the following subsections are inserted instead —

“

20 (5) If a dutiable statement is prepared in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(i) or (ii), the dutiable statement is taken to be an instrument operating as a voluntary disposition under section 75(1) of the current exempted property and is chargeable with duty accordingly.

25

(6) If —

(a) a dutiable statement is required to be prepared under this section in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(iii);

30

- 5
- (b) a section 76AG statement is required to be prepared in respect of the acquisition that is the subject of the instrument of conveyance; and
 - (c) at the date of the taxable event the relevant farming company is beneficially entitled to all or part of the farming land to which the section 76AG statement relates,

10 then the dutiable statement prepared under this section is taken to be an instrument operating as a voluntary disposition under section 75(1) of the relevant proportion of the farming land or of that part of the farming land and is chargeable with duty accordingly.

(7) If —

- 15
- (a) a dutiable statement is required to be prepared under this section in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(iii); and

(b) either —

- 20
- (i) a section 76AG statement was not required to be prepared in respect of the acquisition that is the subject of the instrument of conveyance; or
 - (ii) a section 76AG statement was required to be prepared, but at the date of the taxable event the relevant farming company is not beneficially entitled to any part of the farming land to which the section 76AN statement relates,
- 25

30 then the dutiable statement prepared under this section is taken to be an instrument operating as a voluntary disposition under section 75(1) of the current exempted property and is chargeable with duty accordingly.

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- 5 (8) The amount of duty payable in respect of a dutiable statement prepared in respect of a farming exemption for an instrument of conveyance referred to in section 75E(1)(e)(ii) or (iii) is reduced (up to the amount of duty payable in respect of the dutiable statement) by the amount of any duty previously paid on the instrument of conveyance.

”.

74. **Section 75I replaced**

10 Section 75I is repealed and the following section is inserted instead —

“

75I. Part III BA companies

- 15 (1) Where —
- (a) the Commissioner is satisfied that an instrument of conveyance of a share in a farming company referred to in section 75E(1)(c), (d)(iii) or (e)(iii) is an instrument to which this Part applies; and
 - 20 (b) the transaction to which that instrument relates gives rise to a liability to prepare a section 76AG statement,
- the Commissioner may —
- 25 (c) if the land to which the section 76AG statement relates comprises only farming land in Western Australia — exempt the section 76AG statement from duty; or
 - 30 (d) if the land to which the section 76AG statement relates does not only comprise farming land in Western Australia — partially exempt the section 76AG statement from duty.

- (2) The amount of a partial exemption is the amount equal to R in the formula —

$$R = \frac{A}{B} \times C$$

where —

- 5 A is the value of the farming property in Western Australia;
- B is the value of all the land and chattels the subject of the section 76AG statement; and
- C is the amount of the duty —
- 10 (a) that would be chargeable on the section 76AG statement; or
- (b) where section 76AH(3) applies, that would ultimately be chargeable on the section 76AG statement,
- 15 if this Part did not apply to it.
- (3) Despite section 17(1) of the *Taxation Administration Act 2001*, an application for a reassessment of the duty payable on a section 76AG statement on the basis that an exemption under section 75I should have been, but was not, granted in relation to the section 76AG statement cannot be made more than 12 months after the day on which the section 76AG statement was stamped.

”.

25 **75. Section 75J amended**

- (1) Section 75J(1) is amended as follows:
- (a) in the definition of “foreign person” by inserting after paragraph (a) —
- “ or ”;

- (b) by deleting the definitions of “Part IIIBA statement” and “section 31B or 31C statement” and inserting the following definition instead —

5 “
“**section 31B or 31C statement**” means a dutiable statement prepared under section 31B or 31C;
”.

- (2) Section 75J(4) is repealed.

76. Section 75JA amended

- 10 (1) Section 75JA(1a)(c) is amended by deleting “and is”.

- (2) Section 75JA(2)(b) is amended by deleting “lodged” and inserting instead —

“ prepared ”.

- (3) Section 75JA(3) is amended as follows:

- 15 (a) by deleting “statement relates —” and inserting instead —

“ Part IIIBA statement relates — ”;

- (b) in paragraph (c) by deleting “writing in a form approved by the Commissioner” and inserting instead —

20 “ an approved form ”.

- (4) After section 75JA(4) the following subsections are inserted —

“

- (5) A decision by the Commissioner under subsection (3) is a non-reviewable decision.

- 25 (6) In this section —

“**instrument**” does not include a section 31B or 31C statement.

”.

77. Section 75JB amended

(1) Section 75JB(1) is amended as follows:

(a) in paragraph (b) by deleting “under this Act” and inserting instead —

5 “ from duty ”;

(b) in paragraph (d)(iii) —

(i) by deleting “lodged” and inserting instead —

“ prepared ”;

(ii) by deleting “paid in respect of that” and inserting instead —

10

“ paid on that Part IIIBA ”.

(2) Section 75JB(2)(b) is amended by deleting “has been paid in this State or elsewhere” and inserting instead —

“ or interstate duty has been paid ”.

15 (3) Section 75JB(3)(b) is amended by deleting “lodged” and inserting instead —

“ prepared ”.

(4) Section 75JB(4) is amended as follows:

(a) after paragraph (b) by deleting “or”;

20

(b) by deleting “writing in a form approved by the Commissioner” and inserting instead —

“ an approved form ”.

(5) Section 75JB(5f)(c) and (5h) are amended by deleting “writing in a form approved by the Commissioner” and inserting instead —

25

“ an approved form ”.

(6) Section 75JB(5i) is repealed.

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(7) Section 75JB(8) is amended by deleting “fine” and inserting instead —

“ penalty tax ”.

(8) After section 75JB(8) the following subsection is inserted —

5

“

(9) A decision by the Commissioner under subsection (7) is a non-reviewable decision.

”.

78. Section 75JBA amended

10

(1) Section 75JBA(3) is amended by deleting “writing in a form approved by the Commissioner” and inserting instead —

“ an approved form ”.

(2) Section 75JBA(4) is repealed.

79. Section 75JC amended

15

(1) Section 75JC(1) is repealed and the following subsection is inserted instead —

“

(1) A person acting on behalf of a body corporate that proposes to be party to a transaction or transfer that would give rise to —

20

(a) an instrument which, if executed; or

(b) an obligation to prepare a section 31B or 31C statement or a Part III BA statement which, if finalised,

25

might be exempt from duty under section 75JA or 75JB, may request the Commissioner to determine whether a draft of that instrument or statement, if executed or finalised, would be so exempt.

”.

(2) Section 75JC(2) is amended by deleting “writing in a form approved by the Commissioner” and inserting instead —

“ an approved form ”.

(3) Section 75JC(5)(a) is amended by deleting “lodged” and inserting instead —

“ finalised ”.

80. Section 75JD amended

(1) Section 75JD(1), (2) and (3) are repealed and the following subsections are inserted instead —

“

(1) An application for an exemption under section 75JA or 75JB must be made in an approved form.

(2) Despite section 17(1) of the *Taxation Administration Act 2001*, an application for a reassessment of the duty payable on —

(a) an instrument referred to in section 75JA(2)(a) or (2a) or 75JB(3)(a); or

(b) a Part III BA statement referred to in section 75JA(2)(b) or 75JB(3)(b),

on the basis that an exemption under section 75JA or 75JB (as the case requires) should have been, but was not, granted in relation to the instrument or statement cannot be made more than 12 months after the date of execution of the instrument or the occurrence of the relevant acquisition.

(3) Subject to section 17(2), (3) and (4) of the *Taxation Administration Act 2001*, the Commissioner must make any reassessment necessary to give effect to sections 75JA and 75JB.

”.

s. 81

- (2) Section 75JD(4) is amended as follows:
- (a) by deleting “fine” in the first place where it occurs and inserting instead —
“ penalty tax under section 75JE(b) or 75JF(b) ”;
 - (b) by deleting “for the duty and fine” and inserting instead —
“ notice ”.

81. Section 75JDA amended

- (1) Section 75JDA(2) is amended as follows:
- (a) by deleting “or statement” and inserting instead —
“ or Part IIIIBA statement ”;
 - (b) by deleting “lodged” and inserting instead —
“ finalised ”.
- (2) Section 75JDA(3) and (4) are amended by deleting “or statement” and inserting instead —
“ or Part IIIIBA statement ”.

82. Section 75JE amended

- (1) Section 75JE(1) is amended as follows:
- (a) by deleting the subsection designation “(1)”;
 - (b) in paragraph (b) —
 - (i) by deleting “a fine” and inserting instead —
“ penalty tax ”;
 - (ii) by deleting “for that duty and fine” and inserting instead —
“ notice ”;

-
- (c) in paragraph (c) —
- (i) by deleting “fine” in the first place where it occurs and inserting instead —
“ penalty tax ”;
- 5 (ii) by deleting “for the duty and fine” and inserting instead —
“ notice ”;
- (d) in paragraphs (d), (da) and (e) by deleting “fine” in each place where it occurs and inserting instead —
10 “ penalty tax ”;
- (e) in paragraph (f) —
- (i) by deleting “fine” and inserting instead —
“ penalty tax ”;
- 15 (ii) by deleting “to have been duly” and inserting instead —
“ to be, and always to have been, ”.

(2) Section 75JE(2) is repealed.

83. Section 75JF amended

- (1) Section 75JF(1) is amended as follows:
- 20 (a) by deleting the subsection designation “(1)”;
- (b) in paragraph (a) by deleting “statement” and inserting instead —
“ Part IIIIBA statement ”;
- (c) in paragraph (b) —
- 25 (i) by deleting “statement” in both places where it occurs and inserting instead —
“ Part IIIIBA statement ”;
- (ii) by deleting “a fine” and inserting instead —
“ penalty tax ”;

- (iii) by deleting “for that duty and fine” and inserting instead —
“ notice ”;
- (d) in paragraph (c) —
 - 5 (i) by deleting “fine” in the first place where it occurs and inserting instead —
“ penalty tax ”;
 - (ii) by deleting “for the duty and fine” and inserting instead —
10 “ notice ”;
- (e) in paragraph (d) by deleting “fine:” and inserting instead —
“ penalty tax — ”;
- 15 (f) in paragraph (d)(i) by deleting “statement lodged under section 76AG” and inserting instead —
“ section 76AG statement ”;
- (g) in paragraph (d)(ii) —
 - 20 (i) by deleting “statement lodged under section 76AN” and inserting instead —
“ section 76AN statement ”;
 - (ii) by deleting “lodge the” and inserting instead —
“ prepare the section 76AN ”;
- 25 (h) in paragraph (e) by deleting “fine” in both places where it occurs and inserting instead —
“ penalty tax ”;
- (i) in paragraph (f) —
 - (i) by deleting “fine the” and inserting instead —
“ penalty tax the Part IIIBA ”;

(ii) by deleting “to have been duly” and inserting instead —

“ to be, and always to have been, ”.

(2) Section 75JF(2) is repealed.

5 **84. Section 75JG amended**

(1) Section 75JG(1) is repealed and the following subsection is inserted instead —

“

10 (1) If a person contravenes section 75JA(3)(c) or 75JB(4) or (5f)(c) —

(a) the person commits an offence; and

15 (b) if the offence is committed by a body corporate, an officer (as defined in section 9 of the Corporations Act) of the body corporate who is knowingly a party to the contravention commits an offence.

Penalty:

(a) \$20 000; and

20 (b) an amount equal to the duty chargeable on the instrument or Part IIIIBA statement had it not been exempted under section 75JA or 75JB.

”.

(2) Section 75JG(2) is amended by deleting “fine” in both places where it occurs and inserting instead —

25 “ penalty tax ”.

(3) Section 75JG(3) is amended as follows:

(a) by deleting all of the words from and including “against this Act” to the end of the subsection;

(b) by inserting after the subsection —

“

Penalty:

(a) \$20 000; and

5 (b) an amount equal to the duty that would have been chargeable on —

10 (i) if a draft instrument or statement has been provided to the Commissioner under section 75JC — the instrument or statement had it been executed or finalised; or

15 (ii) if a request has been made under section 75JBA or an application has been made under section 75JB(5g) or 75JD — the instrument or statement concerned.

”.

85. Section 76 amended

(1) Section 76(1) is amended as follows:

20 (a) in the definition of “acquire” —

(i) after paragraph (b)(ii) by deleting “or”;

(ii) after paragraph (b)(iii) by inserting —
“ or ”;

25 (iii) in paragraph (c) by deleting “declared by this Act to be”;

(b) in the definition of “chattels” —

(i) in paragraph (b) by deleting “motor”;

(ii) after paragraph (b) by inserting —
“ or ”;

- (c) in the definition of “minerals” by deleting “Earth” and inserting instead —
“ earth ”;
- (d) in the definition of “mining tenement”, in paragraph (a) by deleting “or the *Mining Act 1904*”.
- (2) Section 76(2)(a)(v) is amended by deleting “natural person” and inserting instead —
“ individual ”.
- (3) Section 76(2)(b) is amended as follows:
- (a) by deleting “a person” and inserting instead —
“ an individual ”;
- (b) in subparagraphs (i), (ii) and (iii) by deleting “person” and inserting instead —
“ individual ”.
- (4) Section 76(3)(a) is amended by deleting “natural persons” and inserting instead —
“ individuals ”.
- (5) Section 76(3)(d) and (e) are amended as follows:
- (a) by deleting “a natural person” and inserting instead —
“ an individual ”;
- (b) by deleting “the natural person” and inserting instead —
“ the individual ”.

86. Sections 76A to 76AF replaced

Sections 76A, 76AA, 76AB, 76AC, 76AD, 76AE and 76AF are repealed and the following sections are inserted instead —

“

76A. Relevant acquisitions by trustees

- (1) Subject to subsection (2) if by a relevant acquisition a person, in the person’s capacity as a trustee, acquires a

majority interest or a further interest in a WA company or a corporation, this Part applies as if the person had acquired the interest beneficially.

- 5 (2) If the combined interest in the WA company or corporation of a beneficiary and any person related to the beneficiary is greater than the combined interest of the trustee and any person related to the trustee —
- 10 (a) the relevant acquisition is taken to have been made by the beneficiary;
- (b) the section 76AG statement or section 76AN statement prepared by the trustee in relation to the relevant acquisition is taken to have been prepared by the beneficiary; and
- 15 (c) the section 76AG statement or section 76AN statement is chargeable with duty accordingly.

- (3) In this section —
- 20 **“beneficiary”** means a person beneficially entitled to the interest in the WA company or corporation acquired by the trustee, whether the person’s interest is vested, contingent or discretionary;
- “interest”, “majority interest” and “further interest”** —
- (a) in relation to a section 76AG statement, have the meanings given by section 76AK; and
- 25 (b) in relation to a section 76AN statement, have the meanings given by section 76AR;
- “relevant acquisition”** has the meaning given by section 76AJ or 76AQ (as the case requires).

76AA. Assessment in the absence of a dutiable statement

30 If the Commissioner suspects that a corporation is required by section 76AN to prepare a dutiable statement in respect of a relevant acquisition but no

such statement has been lodged, the Commissioner may exercise the Commissioner's powers under sections 19 and 20 of the *Taxation Administration Act 2001* as if —

- 5 (a) the corporation were a corporation to which Division 3 applies;
- (b) an acquisition had occurred; and
- (c) the acquisition resulted in a person having an entitlement referred to in section 76AR(1) to
- 10 such an extent as the Commissioner may determine.

”.

87. Division heading amended

15 The heading to Part III BA Division 2 is amended by deleting “the State” and inserting instead —

“ **Western Australia** ”.

88. Section 76AG amended

(1) Section 76AG(1) is amended as follows:

- 20 (a) by deleting “and lodge with the Commissioner a statement” and inserting instead —
- “ a dutiable statement ”;
- (b) by inserting after the subsection —
- “ Penalty: \$20 000. ”.

25 (2) Section 76AG(2) is amended by deleting “and lodge a statement” and inserting instead —

“ a dutiable statement ”.

- (3) Section 76AG(3) is repealed and the following subsection is inserted instead —

“

5 (3) A dutiable statement must be in an approved form.

”.

- (4) Section 76AG(4) is amended by deleting “statement shall be in a form approved by the Commissioner and” and inserting instead —

10 “ dutiable statement ”.

- (5) Section 76AG(4)(d) and (da) are amended as follows:

(a) by deleting “the State” and inserting instead —

“ Western Australia ”;

(b) by deleting “that date” and inserting instead —

15 “ the date of the acquisition ”.

- (6) Section 76AG(4)(e) is amended by deleting “that date” and inserting instead —

“ the date of the acquisition ”.

- (7) Section 76AG(4)(f) is amended by deleting “statement is lodged” and inserting instead —

20 “ dutiable statement is prepared ”.

- (8) Section 76AG(5) is repealed and the following subsection is inserted instead —

“

25 (5) A dutiable statement prepared under subsection (1) is taken to be an instrument evidencing the relevant acquisition and is chargeable with duty accordingly.

”.

-
- (9) Section 76AG(5a) is amended as follows:
- (a) by deleting “statement lodged” and inserting instead —
“ dutiable statement prepared ”;
 - (b) by deleting “statement.” and inserting instead —
“ dutiable statement. ”.
- (10) Section 76AG(5b)(b) and (c) are amended by inserting after
“WA company or” —
“ any ”.
- (11) Section 76AG(5c) is amended as follows:
- (a) by deleting “written”;
 - (b) by deleting “lodged the statement” and inserting
instead —
“ prepared the dutiable statement ”.
- (12) Section 76AG(5d) is amended as follows:
- (a) by deleting “lodged the statement” and inserting
instead —
“ prepared the dutiable statement ”;
 - (b) by deleting “, in writing,” and “written”.
- (13) Section 76AG(5e) and (6) are repealed.
- 89. Section 76AH amended**
- (1) Section 76AH(1) is amended as follows:
- (a) by deleting “statement to which section 76AG(5)
applies” and inserting instead —
“ section 76AG statement ”;
 - (b) in paragraphs (a) and (b) by deleting “statement” and
inserting instead —
“ section 76AG statement ”.

(2) Section 76AH(2) is amended in the definition of “A” by deleting “the State” and inserting instead —

“ Western Australia ”.

(3) Section 76AH(3) is amended as follows:

5 (a) by deleting “on a statement” and inserting instead —
“ on a section 76AG statement ”;

(b) by deleting “lodge” and inserting instead —
“ prepare ”;

10 (c) by deleting “statement previously lodged under that
section” and inserting instead —

“
section 76AG statement previously prepared in relation
to the acquisition
”.

15 (4) Section 76AH(4) is amended as follows:

(a) by deleting “statement to which section 76AG(5)
applies” and inserting instead —
“ section 76AG statement ”;

20 (b) by deleting “the statement” in both places where it
occurs and inserting instead —
“ the section 76AG statement ”;

(c) in paragraph (a) by deleting “31D” and inserting
instead —
“ 31C ”;

25 (d) after paragraph (b) by inserting —
“ or ”;

(e) in paragraph (c) by deleting “the State” and inserting
instead —
“ Western Australia ”.

- (5) Section 76AH(5) is amended by deleting “statement” and inserting instead —

“ section 76AG statement ”.

90. Section 76AI amended

- 5 (1) Section 76AI(2)(a) and (b) are amended by deleting “the State” in each place where it occurs and inserting instead —

“ Western Australia ”.

- (2) Section 76AI(2a), (2b) and (2c) are repealed and the following subsection is inserted instead —

10 “

- (2a) If the Commissioner makes a determination under subsection (2) —

(a) the Commissioner is to give notice of it to the person who made the relevant acquisition;

15

(b) the notice is to contain reasons for the determination; and

(c) for the purposes of section 76AG(5)(b) the relevant acquisition is taken to have occurred when the notice is given.

20

”.

91. Section 76AL amended

- (1) Section 76AL(1) is amended as follows:

(a) by deleting “in this section called”;

(b) by deleting “the State” and inserting instead —

25

“ Western Australia ”.

- (2) Section 76AL(2) and (3)(a) and (b) are amended by deleting “the State” and inserting instead —

“ Western Australia ”.

92. Section 76AM amended

(1) Section 76AM(1) is repealed.

(2) Section 76AM(2) is amended as follows:

(a) by deleting the subsection designation (2);

5 (b) by deleting “Where” and inserting instead —
“ Without limiting section 17(1)(c), where ”;

(c) by inserting after “Division” —

“

10 on the section 76AG statement prepared in relation to
the acquisition

”.

93. Division heading amended

The heading to Part IIIA Division 3 is amended by deleting
“the State” and inserting instead —

15 “ **Western Australia** ”.

94. Section 76AN amended

(1) Section 76AN(1) is amended as follows:

(a) by deleting “and lodge with the Commissioner a
statement” and inserting instead —

20 “ a dutiable statement ”;

(b) by inserting after the subsection —

“ Penalty: \$20 000. ”.

(2) Section 76AN(2) is repealed and the following subsection is
inserted instead —

25 “

(2) A dutiable statement must be in an approved
form.

”.

-
- (3) Section 76AN(3) is amended by deleting “statement shall be in a form approved by the Commissioner and” and inserting instead —
- “ dutiable statement ”.
- 5 (4) Section 76AN(3)(d) and (da) are amended as follows:
- (a) by deleting “the State” and inserting instead —
- “ Western Australia ”;
- (b) by deleting “that date” and inserting instead —
- “ the date of the acquisition ”.
- 10 (5) Section 76AN(3)(e) is amended by deleting “that date” and inserting instead —
- “ the date of the acquisition ”.
- (6) Section 76AN(3)(f) is amended by deleting “statement is lodged” and inserting instead —
- 15 “ dutiable statement is prepared ”.
- (7) Section 76AN(4) is repealed and the following subsection is inserted instead —
- “
- 20 (4) A dutiable statement prepared under subsection (1) is taken to be an instrument evidencing the relevant acquisition and is chargeable with duty accordingly.
- ”.
- (8) Section 76AN(4a) is amended as follows:
- (a) by deleting “statement lodged” and inserting instead —
- 25 “ dutiable statement prepared ”;
- (b) by deleting “statement.” and inserting instead —
- “ dutiable statement. ”.
- (9) Section 76AN(4c) is amended by deleting “written”.

(10) Section 76AN(4d) is amended by deleting “, in writing,” and “written”.

(11) Section 76AN(4e) and (5) are repealed.

95. Section 76AO amended

- 5 (1) Section 76AO(1) is amended as follows:
- (a) by deleting “statement to which section 76AN(4) applies” and inserting instead —
“ section 76AN statement ”;
 - (b) in paragraphs (a) and (b) by deleting “statement” and
10 inserting instead —
“ section 76AN statement ”.
- (2) Section 76AO(2) is amended in the definition of “A” by deleting “the State” and inserting instead —
“ Western Australia ”.
- 15 (3) Section 76AO(3) is amended as follows:
- (a) by deleting “on a statement” and inserting instead —
“ on a section 76AN statement ”;
 - (b) by deleting “lodge” and inserting instead —
“ prepare ”;
 - (c) by deleting “statement previously lodged under that
20 section” and inserting instead —
“
section 76AN statement previously prepared in relation
to the acquisition
25 ”.
- (4) Section 76AO(4) is amended as follows:
- (a) by deleting “statement to which section 76AN(4) applies” and inserting instead —
“ section 76AN statement ”;

- (b) by deleting “the statement” in both places where it occurs and inserting instead —
 “ the section 76AN statement ”;
- 5 (c) in paragraph (a) by deleting “31D” and inserting instead —
 “ 31C ”;
- (d) after paragraph (b) by inserting —
 “ or ”;
- 10 (e) in paragraph (c) by deleting “the State” and inserting instead —
 “ Western Australia ”.
- (5) Section 76AO(5) is amended by deleting “statement” and inserting instead —
 “ section 76AN statement ”.
- 15 **96. Section 76AP amended**
- (1) Section 76AP(1)(a)(i) and (2)(a) and (b) are amended by deleting “the State” in each place where it occurs and inserting instead —
 “ Western Australia ”.
- 20 (2) Section 76AP(2a), (2b) and (2c) are repealed and the following subsection is inserted instead —
 “
- (2a) If the Commissioner makes a determination under subsection (2) —
- 25 (a) the Commissioner is to give notice of it to the corporation;
- (b) the notice is to contain reasons for the determination; and

- (c) for the purposes of section 76AN(4)(b) the relevant acquisition is taken to have occurred when the notice is given.

”.

5 **97. Section 76AS amended**

- (1) Section 76AS(1) is amended as follows:
 - (a) by deleting “in this section called”;
 - (b) by deleting “the State” and inserting instead —
“ Western Australia ”.

- 10 (2) Section 76AS(2) and (3)(a) and (b) are amended by deleting “the State” and inserting instead —
“ Western Australia ”.

98. Section 76AT repealed

Section 76AT is repealed.

15 **99. Sections 76AU to 76AY replaced**

Sections 76AU to 76AY are repealed and the following section is inserted instead —

“

76AU. Reassessment where deeming provision applied

- 20 (1) If, on the application of a person who has paid, or is liable to pay, duty on a Part IIIA statement, the Commissioner is satisfied that —
- (a) but for the operation of a deeming provision in relation to a contract or agreement —
 - 25 (i) the duty would not have been chargeable; or
 - (ii) the amount of the duty would have been less;
- and

- (b) the contract or agreement has been —
- (i) if a deeming-in provision applied — rescinded, annulled or otherwise terminated without being completed; or
 - (ii) if a deeming-out provision applied — completed,

the duty chargeable on the Part III BA statement is the duty that would have been payable had the deeming provision not applied to the contract or agreement.

- (2) In a case where a deeming-in provision applied, subsection (1) does not apply if the Commissioner is not satisfied that the rescission, annulment or other termination of the contract or agreement was not part of a scheme or arrangement under which the object of the contract or agreement has been or may be achieved in another way.
- (3) This section is in addition to the provisions of the *Taxation Administration Act 2001* relating to the reassessment of duty and does not affect the operation of those provisions.
- (4) In this section —
- “**deeming-in provision**” means section 76AI(5)(a), 76AI(6)(a), 76AP(5)(a) or 76AP(6)(a);
- “**deeming-out provision**” means section 76AI(5)(b), 76AI(6)(b), 76AP(5)(b) or 76AP(6)(b);
- “**deeming provision**” means a deeming-in provision or a deeming-out provision.

”.

100. Part IIIC replaced (sections 76B to 76CB)

Part IIIC is repealed and the following Part is inserted instead —

“

5

Part IIIC — Vehicle licences

76B. Interpretation in Part IIIC

(1) In this Part —

“**Commonwealth Act**” means the *Interstate Road Transport Act 1985* of the Commonwealth;

10

“**corresponding State law**” means a law of any other State or a Territory corresponding to the *Road Traffic Act 1974*;

“**dealer**” means a person who —

15

(a) carries on the business of selling new vehicles;

(b) is the holder of a dealer’s licence under the *Motor Vehicle Dealers Act 1973*;

20

(c) carries on the business of acquiring new or used vehicles for resale or disposal under hire purchase or leasing agreements; or

(d) in the course of the person’s business, takes possession of vehicles that are the subject of hire purchase or leasing agreements and resells them;

25

“**Director General**” means the chief executive officer of the department of the Public Service principally assisting in the administration of the provisions of the *Road Traffic Act 1974* that section 5 of that Act defines as the “licensing provisions of this Act”;

“**discretionary trustee**” means a trustee of any property over which any person has a power of appointment that was not created by will;

5 “**eligible vehicle**” means a motor vehicle (as defined in the *Road Traffic Act 1974* but not including a trailer, semi-trailer or caravan) —

- (a) that is constructed or designed, or has been modified, to include or have permanently affixed to it, specialised equipment; and
- 10 (b) that is designed to be driven or controlled by a person carried in or on the vehicle;

“**grant**”, in relation to a licence, includes renew;

“**heavy vehicle**” means a vehicle with a gross vehicle mass of more than 4.5 tonnes;

15 “**licence**” means a vehicle licence granted under Part III of the *Road Traffic Act 1974*, but does not include a duplicate licence or a certified copy of a licence granted under that Act;

20 “**net value**”, in relation to the grant or transfer of the licence for an eligible vehicle, means the market value of the vehicle as if the specialised equipment attached to it at the time the application for the grant or transfer was made was not attached to it;

25 “**non-beneficial**”, in relation to a change of ownership of a vehicle, has the meaning given in section 76C(1);

“**purchase price**”, in relation to a vehicle, includes any amount —

- 30 (a) allowed by the seller on a trade-in or an exchange of any article;
- (b) paid to the seller for anything included with or incorporated into the vehicle; or
- (c) paid to the seller for the preparation of the vehicle for delivery to the purchaser;

“specialised equipment” means —

- (a) a crane;
- (b) an excavator, road roller, road grader, bulldozer, mechanical shovel, plough, rotary hoe or similar plant;
- (c) hoisting equipment for lifting, partial lifting or towing other vehicles;
- (d) bitumen spraying equipment;
- (e) a cement agitator;
- (f) garbage collection equipment;
- (g) road sweeping equipment;
- (h) a refrigeration unit;
- (i) a stock crate;
- (j) a tank for transporting liquids;
- (k) equipment to make the vehicle habitable by a person in the course of a journey; or
- (l) any similar plant or equipment;

“trustee” does not include a discretionary trustee or a unit trustee;

“unit trustee” means a trustee of a unit trust scheme;

“unit trust scheme” means a private unit trust scheme within the meaning in section 63(2);

“vehicle” means a vehicle that is required to be licensed under the *Road Traffic Act 1974*.

- (2) For the purposes of this Part, a vehicle is taken to be used solely for the purpose mentioned in section 76D(4) or (5) if it is used only for that purpose and for minor incidental purposes.

76C. Non-beneficial change of ownership

- 5 (1) On application by a person to whom the licence for a
vehicle has been or is to be transferred the
Commissioner may authorise duty to be charged on the
transfer in accordance with section 76D(2) if the
Commissioner is satisfied that —
- 10 (a) the change in the legal ownership of the vehicle
to which the licence relates that necessitated, or
will necessitate, the transfer of the licence did
not, or will not, change the beneficial
ownership of the vehicle; and
- 15 (b) the transferor of the licence —
- (i) acquired the legal ownership of the
vehicle in his or her capacity as trustee,
discretionary trustee or unit trustee (as
the case requires); and
- (ii) paid duty on the grant or transfer to him
or her of the licence.
- 20 (2) An application for an authorisation is to be made to the
Commissioner in an approved form.
- (3) For the purposes of subsection (1)(a), a change in the
legal ownership of a vehicle does not change the
beneficial ownership of the vehicle if —
- 25 (a) the change in the legal ownership of the vehicle
is made to effect the appointment of a new
trustee, or the retirement of a trustee, whether
the trust is expressed or implied;
- 30 (b) the legal ownership of a vehicle passes to a
beneficiary from a trustee or a person in any
other fiduciary capacity (except a discretionary
trustee or a unit trustee), under a trust, whether
express or implied;

- 5
- (c) the legal ownership of the vehicle passes to a beneficiary under a discretionary trust (whether express or implied) from the discretionary trustee otherwise than as a result of the exercise by the trustee of a power of appointment;
- (d) the legal ownership of the vehicle passes to a beneficiary under a discretionary trust from the discretionary trustee as a result of the exercise by the trustee of a power of appointment if —
- 10
- (i) the beneficiary is an individual;
- (ii) the beneficiary acquires the vehicle for his or her own use and benefit; and
- (iii) at the time the trustee acquired the vehicle 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
- 15
- that instrument to appoint the vehicle;
- 20
- (e) the legal ownership of the vehicle passes to the holder of a unit in a unit trust scheme from the unit trustee if the change in the legal ownership of the vehicle —
- 25
- (i) has the effect of reducing the rights of the transferee in respect of the trust property to the extent of the vehicle or the value of the vehicle; and
- (ii) 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 trust property;
- 30

or

-
- (f) the change in the legal ownership of the vehicle —
- (i) does not pass a beneficial interest in the vehicle;
 - 5 (ii) is not made in contemplation of the passing of a beneficial interest in the vehicle; and
 - 10 (iii) is not part of, or made pursuant to, a scheme whereby any beneficial interest in the vehicle, whether vested or contingent, has passed or will or may pass.

76D. Duty on the grant or transfer of a vehicle licence

- 15 (1) Subject to this section, duty is payable on the grant or transfer of a licence in accordance with item 14 of the Second Schedule.
- (2) Subject to this section, duty is payable on the transfer of a licence in accordance with item 6 of the Second Schedule if —
 - 20 (a) the vehicle to which the licence relates is transferred under a testamentary instrument or on an intestacy to a person entitled to it under the instrument or on the intestacy; or
 - 25 (b) the Commissioner has granted an authorisation in respect of the transfer of the licence under section 76C(1) or 112UE(2).
- (3) Duty is not payable on —
 - 30 (a) the grant of a licence if no fee is payable under the *Road Traffic Act 1974* for the grant of the licence; or

- (b) the transfer of a licence if no fee would be payable under the *Road Traffic Act 1974* for the grant of the licence if it was granted to the transferee on the date of the transfer.
- 5 (4) Duty is not payable on the transfer of a licence to a dealer, if —
- (a) the dealer has acquired the vehicle to which the licence relates solely for the purpose of reselling it to another person;
- 10 (b) the resale is in the ordinary course of the dealer's business; and
- (c) the application for the transfer of the licence is accompanied by a certificate certifying that while the applicant holds the licence the vehicle
- 15 will be used solely for the purpose referred to in paragraph (a).
- (5) Duty is not payable on the grant of a licence to a dealer if —
- (a) the dealer acquired the vehicle to which the licence relates solely for the purpose of —
- 20 (i) selling it to another person in the ordinary course of that business; or
- (ii) demonstrating it to prospective purchasers;
- 25 and
- (b) the application for the grant of the licence is accompanied by a certificate certifying that while the applicant holds the licence the vehicle
- 30 will be used solely for the purposes referred to in paragraph (a).

-
- (6) The duty payable on the grant or transfer of a licence for an eligible vehicle (“**vehicle B**”) is to be calculated on the net value of the vehicle if —
- 5 (a) the applicant holds, or previously held, the licence for another eligible vehicle (“**vehicle A**”);
- (b) the applicant is the last person to hold a licence for vehicle A;
- 10 (c) the duty paid by the applicant on the grant or transfer of the licence for vehicle A was assessed on the market value of vehicle A including the specialised equipment that was then attached to it (“**original equipment**”);
- (d) the original equipment has been removed from vehicle A and attached to vehicle B; and
- 15 (e) the application for the grant or transfer of the licence for vehicle B is accompanied by a certificate certifying that while the applicant holds the licence for vehicle B —
- 20 (i) vehicle B will not be used if the original equipment has been removed from it; or
- (ii) if the original equipment is removed from vehicle B and vehicle B is used with different equipment, the original equipment will not be attached to any other vehicle for which the applicant intends to become the licence holder.
- 25
- (7) A certificate for the purposes of subsection (4)(c), (5)(b) or (6)(e) must be in an approved form and be signed by the applicant for the grant or transfer of the licence.
- 30

- (8) Subject to section 17 of the *Taxation Administration Act 2001*, the Commissioner must make any reassessment necessary to give effect to this section.

76E. Determination of value and assessment of duty

- 5 (1) When an application is made for the grant or transfer of a licence the Director General must assess the amount of duty payable on it.
- 10 (2) For the purpose of making the assessment, if duty is payable on the grant or transfer in accordance with item 14 of the Second Schedule the Director General must determine —
- (a) the market value; or
- (b) if section 76D(6) applies, the net value, of the vehicle to which the licence relates.
- 15 (3) For the purpose of determining the market value or net value of the vehicle the Director General may, by notice given to the applicant, require the applicant to provide, within a period stated in the notice, evidence of the market value of the vehicle and the applicant must comply with that requirement.
- 20 Penalty: \$20 000
- (4) An assessment made under subsection (1) is an official assessment for the purposes of the *Taxation Administration Act 2001*.

25 **76F. Payment of duty**

Duty payable on the grant or transfer of a licence and any penalty tax is payable —

- (a) to the Director General in accordance with the *Road Traffic Act 1974*; or

- (b) if the assessment or a reassessment is made by the Commissioner, in accordance with the *Taxation Administration Act 2001*.

76G. Applicant's statement of value in application

5 A person who applies under the *Road Traffic Act 1974* for the grant or transfer of a licence (other than a transfer chargeable with duty under section 76D(2)) must include in the application a statement signed by the applicant setting out —

- 10 (a) the applicant's estimate of the market value of the vehicle to which the licence relates at the time of the application; and
- (b) if the applicant is a purchaser of the vehicle, the purchase price paid for the vehicle.

15 Penalty: \$20 000.

76H. Seller's obligation to notify purchase price

(1) A person who ceases to be the owner of a vehicle and is required under the *Road Traffic Act 1974* to notify the Director General of the new owner must (unless the transfer of the licence for the vehicle is, or will be, chargeable with duty under section 76D(2)) include in that notice a statement signed by the person setting out —

- 25 (a) the purchase price (if any) received for the vehicle to which the licence relates; and
- (b) the person's estimate of the market value of the vehicle at the time the person ceased to be the owner of it.

Penalty: \$20 000.

s. 100

- (2) A dealer who sells a new vehicle must, within 7 days after the sale, give to the Director General a statement signed by the dealer setting out —
- (a) the purchase price received for the vehicle; and
 - (b) the dealer's estimate of the market value of the vehicle at the time the vehicle was sold.

Penalty: \$20 000.

- (3) If —
- (a) a person understates, in a statement under this section, the purchase price or estimated market value of a vehicle; and
 - (b) the duty payable on the grant or transfer of the licence for that vehicle is initially assessed on a value for the vehicle that is less than the proper market value,

the person is jointly and severally liable with the purchaser to pay the difference between the amount of duty as initially assessed and the amount of duty assessed on the vehicle's proper market value.

76L. Use of dealer registered vehicle for other purposes

- (1) If under section 76D(4) or (5) no duty was payable on the grant or transfer of a licence to a dealer, then while the dealer remains the licensee of the vehicle to which the licence relates the dealer must not use, or allow any other person to use, the vehicle for a purpose other than the purpose mentioned in section 76D(4) or (5) (as the case may be).

Penalty: \$20 000.

- (2) If a dealer contravenes subsection (1) —
- (a) the grant or transfer of the licence is taken not to be, and never to have been, exempt from duty under section 76D(4) or (5) (as the case may be);

- 5
- (b) the grant or transfer of the licence is chargeable with penalty tax of an amount equal to the amount of duty chargeable on the grant or transfer of the licence; and
 - (c) the duty and penalty tax is due for payment within one month after an assessment notice is issued in respect of the grant or transfer of the licence.

10 **76J. Use of specialised equipment on another vehicle**

- 10 (1) If —
- (a) under section 76D(6) duty on the grant or transfer of a licence for an eligible vehicle to a person is calculated on the net value of the vehicle; and
 - 15 (b) while that person holds the licence for that vehicle it is used with specialised equipment other than the equipment that was attached to it at the time the application for the grant or transfer of the licence was made (**“original equipment”**),
- 20

the person must not attach the original equipment to any other vehicle for which the licensee intends to become the licence holder.

Penalty: \$20 000.

- 25 (2) If a licensee contravenes subsection (1) —
- (a) the grant or transfer of the licence is taken to be, and always to have been, chargeable with duty on the market value of the eligible vehicle including the specialised equipment attached to it;
 - 30 (b) the grant or transfer of the licence is chargeable with penalty tax of an amount equal to the amount of duty chargeable on the grant or transfer of the licence; and

- (c) the duty and penalty tax is due for payment within one month after an assessment notice is issued in respect of the grant on transfer of the licence.

5 **76K. Failure to apply for transfer of licence**

- 10 (1) For the purposes of section 26 of the *Taxation Administration Act 2001*, a failure by a person to apply for the transfer of a licence when required by the *Road Traffic Act 1974* to do so is taken to be a contravention of a taxation Act.
- 15 (2) If it appears to the Commissioner that a person has failed to apply for the transfer of a licence when required by the *Road Traffic Act 1974* to do so, section 20 of the *Taxation Administration Act 2001* applies as if —
 - (a) the transfer were an instrument required to be lodged under a taxation Act; and
 - (b) an application for the transfer had been made as required by the *Road Traffic Act 1974*.

20 **76L. Powers of Director General and Commissioner**

- 25 (1) For the purposes of this Part the Director General has the functions of the Commissioner under sections 26 and 29 of the *Taxation Administration Act 2001*.
- (2) The Commissioner has all of the functions of the Director General under this Part.
- (3) For the purposes of the *Taxation Administration Act 2001* anything done by the Director General in the exercise of a function conferred by subsection (1) is taken to have been done by the Commissioner.

76M. Duty to be remitted to Commissioner

The Director General must, in accordance with any agreement between the Director General and the Commissioner —

- 5 (a) provide to the Commissioner details of licences granted or transferred and the duty and any penalty tax paid in relation to them; and
- (b) remit that duty and penalty tax to the Commissioner.

10

”.

101. Section 77 amended

Section 77(2) is amended by deleting all the words from and including “and the Commissioner” to the end of the subsection.

102. Section 78 amended

15

Section 78(2) is amended by deleting “duly” in both places where it occurs.

103. Section 79 amended

20

- (1) Section 79(3) is amended by deleting “duly”.
- (2) Section 79(4) and (5) are repealed and the following subsection is inserted instead —

“

25

- (4) If the amount of rent payable under a lease, or to be payable under a lease the subject of an agreement for a lease, is —
- (a) nil;
- (b) a nominal amount;
- (c) less than the amount considered by the Commissioner to be the fair market rent; or
- (d) unascertainable at the time of granting or entering into the lease or agreement for a lease,

30

the Commissioner may —

- 5
- (e) determine the amount that the Commissioner considers to be the fair market rent for the property that is, or is to be, the subject of the lease; and
 - (f) assess the duty payable on the lease or agreement for a lease as if the amount so determined was the rent payable, or to be paid, under the lease.

10

”.

- (3) Section 79(6) is amended by deleting “In this Act, for” and inserting instead —

“ For ”.

104. Section 80A amended

15

Section 80A is amended by deleting “, or refund any duty paid on,”.

105. Section 83 amended

20

- (1) Section 83(1a)(b) is amended by deleting “a natural person” and inserting instead —

“ an individual ”.

- (2) Section 83(1b) is amended by deleting “a natural person” and inserting instead —

“ an individual ”.

- (3) Section 83(3) is amended as follows:

25

- (a) by inserting before “executed” —

“ first ”;

- (b) by deleting all the words from and including “, without prejudice” to the end of the subsection and inserting instead —

30

“ is chargeable with duty accordingly. ”.

- (4) Section 83(6) is repealed and the following subsection is inserted instead —

“

- (6) Additional duty referred to in subsection (3) may be paid as further advances or loans are made or as the indebtedness is increased.

”.

- (5) Section 83(7) is amended by deleting “stamps concerned had been impressed on or affixed to the original instrument.” and inserting instead —

“

original instrument had been stamped with the additional duty.

”.

106. Section 84 amended

- (1) Section 84(1) is amended by deleting “out of the State” and inserting instead —

“ outside Western Australia ”.

- (2) Section 84(2) is amended as follows:

- (a) by deleting all the words from and including “any duty of” to and including “Commonwealth” and inserting instead —

“

interstate duty has been paid on the instrument, or any other instrument that secures the same money,

”;

- (b) in paragraph (b) by deleting “duty that is paid or payable in that other State or Territory” and inserting instead —

“ interstate duty ”.

(3) Section 84(2a)(b) is amended by inserting before “duty” —
“ interstate ”.

(4) Section 84(2b)(b) is amended by deleting “duty of a like nature
to duty payable under subsection (1)” and inserting instead —
5 “ interstate duty ”.

(5) Section 84(2c) is amended by deleting all the words from and
including “duty that” to the end of the subsection and inserting
instead —

“

10 interstate duty that would otherwise be payable under a
law of that State or Territory.

”.

(6) Section 84(4) is amended as follows:

(a) by deleting “in writing”;

15 (b) by deleting “duty on the instrument, or any other
instrument securing the same moneys, in another State
or Territory of the Commonwealth” and inserting
instead —

“

20 interstate duty on the instrument, or any other
instrument securing the same money

”.

(7) Section 84(4)(a) is amended by deleting “duty had been paid in
another State or Territory” and inserting instead —

25 “ interstate duty had been paid ”.

(8) Section 84(4)(b), (c) and (d) are deleted and the following
paragraphs are inserted instead —

“

30 (b) the Commissioner is to make an assessment of
the difference between the amount of duty

payable under subsection (1) and the duty paid under paragraph (a), and issue an assessment notice for that amount;

- 5 (c) if the instrument is produced to the Commissioner within 3 months after the assessment notice was issued, together with proof of payment of the interstate duty, the Commissioner is to cancel the assessment notice and endorse the instrument accordingly;
- 10 (d) if paragraph (c) is not complied with —
- (i) the duty and any penalty tax is payable within 3 months after the assessment notice was issued;
 - 15 (ii) no reduction shall be allowed for any interstate duty paid; and
 - (iii) the instrument is available only for the amount in respect of which duty has been paid under paragraph (a) as if the instrument related to property only in Western Australia until the duty and penalty tax is paid in full.
- 20

”.

107. Section 87 amended

- (1) Section 87(1) is amended by deleting “duly”.
- 25 (2) Section 87(1a) is amended by deleting “a form approved by the Commissioner” and inserting instead —
- “ an approved form ”.
- (3) Section 87(2) is amended by deleting “duly”.
- (4) Section 87(3) is repealed.

108. Section 88 amended

Section 88(2)(b) is deleted and the following paragraph is inserted instead —

“

- 5 (b) if the option or right is granted after the execution of the instrument, the instrument is taken to have been first executed on the day on which the option or right was granted.

”.

10 **109. Section 88A amended**

- (1) Section 88A(1) is amended by deleting “kind.” and inserting instead —

“

- 15 kind as if it had been first executed on the day on which it became an instrument of security.

”.

- (2) Section 88A(2) is repealed.

110. Section 90A amended

20 Section 90A is amended by deleting “, or refund any duty paid on,”.

111. Section 92 amended

Section 92 is amended by deleting “the State” in both places where it occurs and inserting instead —

“ Western Australia ”.

112. Section 92A replaced

Section 92A is repealed and the following section is inserted instead —

“

5 **92A. Dutiable statement required if policy issued outside Western Australia**

(1) Every person resident in Western Australia who effects —

- 10 (a) a policy of life insurance; or
- (b) any insurance in respect of —
- (i) property in Western Australia; or
- (ii) any liability, loss or damage occurring or brought about by the happening of any event within Western Australia,

15 for which insurance a policy of insurance is or is to be issued or renewed outside Western Australia shall within one month after effecting the insurance prepare and lodge with the Commissioner a dutiable statement in respect of the insurance.

20 Penalty: \$20 000.

(2) A dutiable statement is to be in an approved form.

25 (3) A dutiable statement prepared under subsection (1) is taken to be a policy of insurance in respect of the insurance to which it relates and is chargeable with duty accordingly.

(4) The duty payable on a dutiable statement prepared under subsection (1) is payable —

- 30 (a) by the person who effected the insurance; and
- (b) within one month after the insurance was effected.

s. 113

- (5) Subsections (1) to (4) do not apply if, before a dutiable statement prepared under subsection (1) is stamped, a policy of insurance for the insurance referred to in subsection (1) is stamped.
- 5 (6) A person resident in Western Australia must not accept payment of, or agree to have allowed on account, any money on or in respect of any insurance the policy for which is or is to be issued or renewed outside Western Australia unless the policy, or a dutiable statement in
- 10 respect of the insurance, has been stamped.
- Penalty: \$20 000.

”.

113. Section 92AA repealed

Section 92AA is repealed.

15 **114. Section 92B amended**

- (1) Section 92B(1) is amended as follows:
- (a) by deleting “the State” in each place where it occurs and inserting instead —
- “ Western Australia ”;
- 20 (b) by deleting “a return” and inserting instead —
- “ a statement ”;
- (c) by deleting “in writing”;
- (d) by inserting after the subsection —
- “ Penalty: \$20 000. ”.
- 25 (2) Section 92B(2) is amended by deleting “return” in each place where it occurs and inserting instead —
- “ statement ”.
- (3) Section 92B(3) and (4) are repealed.

(4) Section 92B(5) is amended as follows:

(a) by deleting “return and any written particulars” and inserting instead —

“ statement ”;

5 (b) by deleting “are” in both places where it occurs and inserting instead —

“ is ”.

115. Section 94 amended

10 (1) Section 94(1) is repealed and the following subsections are inserted instead —

“

15 (1) A person who receives or takes credit for any premium or consideration for any contract of insurance must, within 3 months after receiving or taking credit for such premium or consideration, make out, execute and have stamped, a policy of such insurance.

Penalty: \$20 000.

20 (1a) A person must not make, execute, or deliver out, or pay or allow in account, or agree to pay or allow in account, any money on or in respect of any policy of insurance which is not stamped.

Penalty: \$20 000.

”.

25 (2) Section 94(2) is amended by deleting all of the words from and including “the State shall” to the end of the subsection and inserting instead —

“

30 Western Australia must notify the Commissioner, in an approved form, that the contract of insurance has been made, entered into or renewed.

Penalty: \$20 000.

”.

s. 116

(3) Section 94(3) is repealed.

(4) Section 94(3a) is amended as follows:

(a) by deleting “the State” and inserting instead —
“ Western Australia ”;

5 (b) by deleting “this State” and inserting instead —
“ Western Australia ”.

(5) Section 94(4) is amended as follows:

(a) by deleting “upon a return furnished under
subsection (1) of that section” and inserting instead —
10 “ on a dutiable statement ”;

(b) by deleting “the return” and inserting instead —
“ the dutiable statement ”;

(c) by deleting “the State” and inserting instead —
“ Western Australia ”.

15 **116. Section 95 amended**

Section 95 is amended as follows:

(a) by deleting “a transfer or assignment of a policy of fire
insurance nor upon”;

20 (b) by deleting “upon which the duty imposed by this Act
has been paid before such time.” and inserting
instead —
“ that has been stamped. ”.

117. Section 95A repealed

Section 95A is repealed.

25 **118. Section 96 amended**

(1) Section 96(1) is amended by deleting “that is issued or renewed
on or after 1 November 1989”.

(2) Section 96(3) is amended by deleting “under this Act”.

119. Section 97 repealed

Section 97 is repealed.

120. Part IVA replaced (sections 112AB to 112FU)

5 Part IVA is repealed and the following Part is inserted instead —

“

Part IV — Unlisted WA securities

100. Interpretation

10 In this Part —

“**issuer**”, in relation to an unlisted WA security, means the body that issued the security;

“**overseas transfer**” means a transfer of an unlisted WA security that —

15 (a) is quoted on a financial market that is situated outside Australia and is not a recognized financial market; and

(b) is registered outside Australia on a branch register of the WA company;

20 “**register**”, when used as a verb in relation to an overseas transfer, means register in a register kept under Chapter 2C of the Corporations Act;

“**security**” means a marketable security or right in respect of shares;

25 “**unlisted WA security**” means a security that —

(a) is situated in Western Australia; and

(b) is not quoted on a recognized financial market.

101. Share buy-back

For the purposes of this Part a buy-back by a company of its own shares or stocks in accordance with —

- 5
- (a) Division 4B of Part 2.4 of the Corporations Law as in force immediately before the commencement of Schedule 1 to the *Company Law Review Act 1998* of the Commonwealth; or
 - (b) Division 2 of Part 2J.1 of the Corporations Act,
- is taken to be a transfer of shares or stocks.

10 **102. Securities situated in Western Australia**

- (1) For the purposes of a stamp Act, a security of a WA company is situated in Western Australia, irrespective of where the register on which it is registered by the company is situated and despite section 1070A(4) of the Corporations Act or any other law.
- 15
- (2) A security of a foreign company is situated in Western Australia if the security is registered on a register kept by the company in Western Australia.
- (3) A unit in a unit trust scheme is situated in Western Australia if —
- 20
- (a) the scheme's principal register is kept in Western Australia; or
 - (b) where the scheme's principal register is not kept in Australia, the scheme's manager, or if the scheme does not have a manager, the trustee, is —
- 25
- (i) an individual resident in Western Australia;
 - (ii) a WA company; or

-
- (iii) a foreign company with a registered office under the Corporations Act in Western Australia.
- 5 (4) A security of a company that is taken under the Corporations Act to be registered in another State or Territory, is not situated in Western Australia even if it is registered on a register in Western Australia.
- 10 (5) Subsection (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to section 1070A(4) of that Act.

103. Prohibition on registration of unstamped transfer

- 15 (1) The issuer of an unlisted WA security must not register a transfer of the security, other than an overseas transfer, unless the issuer is given an instrument of transfer —
- (a) that sets out —
- 20 (i) the consideration given for the transfer;
- (ii) if the transfer is to give effect to a sale of the security, the date of the sale; and
- (iii) the date on which the instrument was executed by each party to it;
- and
- 25 (b) that has been stamped or is not chargeable with duty.
- Penalty: \$20 000.
- 30 (2) The right or title of a transferee or subsequent holder of an unlisted WA security is not invalidated only because a transfer of the security was registered in contravention of this section.

104. Registration of an overseas transfer

- 5
- (1) Nothing in this Part prevents a WA Company from registering an overseas transfer —
- (a) whether or not there is an instrument of transfer; and
- (b) whether or not duty has been paid on the transfer.
- 10
- (2) Before a WA Company registers an overseas transfer for which there is not an instrument of transfer, the WA company must prepare a dutiable statement in respect of the transfer.
- (3) A dutiable statement is to be in an approved form.
- (4) A dutiable statement prepared under subsection (2) is taken to be an instrument of transfer of the unlisted WA securities the subject of the overseas transfer.
- 15
- (5) If a WA company registers an overseas transfer in respect of which duty has not been paid, the WA company is liable to pay the duty chargeable on the instrument of transfer or the dutiable statement prepared under subsection (2) (as the case may be).
- 20
- (6) Duty payable by a WA company under subsection (4) is to be paid in accordance with section 105.

105. Return of overseas transfers and payment of duty

- 25
- (1) Within 15 days after the end of a month in which a WA company registers an overseas transfer, the WA company must —
- (a) lodge with the Commissioner a return in an approved form of all overseas transfers registered by the WA company in that month other than those that are exempt from duty; and
- 30

- 5 (b) when lodging the return, pay to the
Commissioner the amount of duty payable on
the instrument of transfer for, or the dutiable
statement prepared under section 104 in respect
of, each transfer to which the return relates.

Penalty: \$20 000.

- 10 (2) On payment of duty under subsection (1) in respect of
an overseas transfer, the instrument of transfer or the
dutiable statement (as the case may be) is taken to have
been stamped.
- (3) The right or title of a transferee or subsequent holder of
a security is not invalidated by reason only that the
issuer contravened subsection (1).

106. Valuing an unlisted WA security

- 15 (1) The value of an unlisted WA security is to be
determined —
- 20 (a) as if the constitution or governing rules of the
issuer satisfied any requirements of the
Australian Stock Exchange Limited that must
be satisfied before the security could be quoted
on the Australian Stock Exchange Limited; and
- (b) disregarding a provision in the constitution or
governing rules of the issuer providing for the
valuation of the security.
- 25 (2) Despite subsection (1), the Commissioner may
determine the value of an unlisted WA security to be
the amount the Commissioner considers would be
received by the holder of the security if the issuer were
to be voluntarily wound up on the day of the transfer.

107. Retention of instruments of transfer

5 An issuer must retain an instrument of transfer for, or a dutiable statement prepared under section 104 in respect of, the transfer of an unlisted WA security for at least 5 years after the transfer is registered by the issuer.

Penalty: \$20 000.

”

121. Section 112HA amended

10 (1) Section 112HA(4), (5), (6) and (7) are repealed and the following subsections are inserted instead —

“

15 (4) If this section applies the WA company must prepare a dutiable statement in relation to the capital reduction or the rights alteration and share cancellation, unless the capital reduction, or the rights alteration and the share cancellation, also result in a relevant acquisition occurring under Part IIIA.

Penalty: \$20 000.

20 (5) A dutiable statement must be in an approved form.

(6) A dutiable statement prepared under this section is taken to be an instrument evidencing the capital reduction or the rights alteration and share cancellation and is chargeable with duty at the rate provided for in
25 item 4A of the Second Schedule on the dutiable value.

”

(2) Section 112HA(10) is repealed.

(3) Section 112HA(11) is amended by deleting “statement” and inserting instead —

30 “ dutiable statement ”.

(4) Section 112HA(12) and (13) are repealed.

122. Section 112I amended

- (1) Section 112I(1) is amended in the definition of “service costs” by deleting “in writing”.
- (2) Section 112I(1a)(a) is amended by deleting “under this Act”.

5 **123. Section 112J amended**

- (1) Section 112J(1) is amended as follows:
 - (a) by deleting “the State” in both places where it occurs and inserting instead —
“ Western Australia ”;
 - 10 (b) by inserting after the subsection —
“ Penalty: \$20 000. ”.

(2) Section 112J(1a) is repealed.

(3) Section 112J(2) is amended by deleting “the State” in each place where it occurs and inserting instead —

15 “ Western Australia ”.

(4) Section 112J(3) is amended by deleting “such form as the Commissioner approves in writing” and inserting instead —
“ an approved form ”.

20 (5) Section 112J(3a)(b) is amended by deleting “the State” and inserting instead —

“ Western Australia ”.

124. Section 112K amended

(1) Section 112K(1) is amended as follows:

- (a) by deleting “statement in such form as the Commissioner requires in writing” and inserting instead —
25 “ return in an approved form ”;

- (b) in paragraph (a) and (a)(ii) by deleting “statement” and inserting instead —
“ return ”;
- 5 (c) by deleting paragraphs (a)(iii) and (iv) and inserting the following subparagraphs instead —
“
10 (iii) the total amount received by him or her during the last preceding month in respect of his or her rental business on which interstate duty has been paid if the rate of interstate duty is less than the rate specified in subparagraph (ii); and
15 (iv) an amount determined by deducting the amount of the interstate duty from the sum equal to 1.8% of the sum arrived at by deducting service costs from the total amount referred to in subparagraph (iii) as set out in the return;
20 ”;
- (d) in paragraph (b) —
25 (i) by deleting “on that statement”;
(ii) by deleting “statement” in the other 2 places where it occurs and inserting instead —
“ return ”;
- (iii) by deleting “in cash”;
- (e) by inserting after the subsection —
“ Penalty: \$5 000. ”.
- (2) Section 112K(1a) is amended as follows:
30 (a) by deleting “statement” and inserting instead —
“ return ”;
- (b) by inserting after the subsection —
“ Penalty: \$5 000. ”.

(3) Section 112K(1c) is amended by deleting “statement” and inserting instead —

“ return ”.

(4) Section 112K(2) is amended as follows:

5 (a) in paragraph (a) —

(i) by deleting “year a statement” and inserting instead —

“ year an annual return ”;

10 (ii) by deleting “in a statement” and inserting instead —

“ in a monthly return ”;

(b) in paragraph (b) —

(i) by deleting “on that statement”;

15 (ii) by deleting “statement” in the second place where it occurs and inserting instead —

“ return ”;

(c) by inserting after the subsection —

“ Penalty: \$5 000. ”.

20 (5) Section 112K(2a) is amended by deleting “writing in such form as the Commissioner approves in writing” and inserting instead —

“ an approved form ”.

(6) Section 112K(3) is amended as follows:

25 (a) by deleting “statement” in both places where it occurs and inserting instead —

“ return ”;

(b) by inserting after the subsection —

“ Penalty: \$20 000. ”.

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(7) Section 112K(4) is amended by deleting “in writing” in both places where it occurs.

(8) Section 112K(5) is repealed.

125. Section 112KA amended

5 (1) Section 112KA(1) is amended as follows:

(a) by deleting all the words from the beginning of the subsection (including the subsection designation “(1)”) to and including “where —” and inserting instead —

“

10 A registered person is exempt from duty under this Part in respect of a financial year if —

”;

(b) in paragraphs (a) and (b) by deleting “to which the statement relates,”.

15 (2) Section 112KA(2) is repealed.

126. Section 112L amended

Section 112L(d)(i), (ii) and (iii) are amended by deleting “the State” and inserting instead —

“ Western Australia ”.

20 **127. Section 112N amended**

(1) Section 112N(1) is amended as follows:

(a) by deleting paragraph (f) and inserting the following paragraph instead —

“

25 (f) rental business in respect of which interstate duty has been paid at a rate that is not less than the rate specified in section 112K(1)(a)(ii);

”;

- (b) in paragraph (g), (g)(i) and (g)(ii) by deleting “the State” and inserting instead —
“ Western Australia ”.

(2) Section 112N(2) is repealed.

5 **128. Section 112O amended**

(1) Section 112O(1) is amended as follows:

- (a) by deleting “keep or cause to be kept in the State” and inserting instead —

“

10 make, or cause to be made, and retain in Western
Australia

”;

- (b) by deleting “statement” and inserting instead —
“ return ”.

15 (2) Section 112O(1a), (2) and (2a) are repealed and the following
subsection is inserted instead —

“

(2) A registered person shall make available for inspection
the books and records referred to in subsection (1).

20

”.

(3) Section 112O(3) is amended as follows:

- (a) in paragraph (a) by deleting “statement” and inserting
instead —

“ return ”;

25

- (b) by deleting “statements” in each place where it occurs
and inserting instead —

“ returns ”.

s. 129

- (4) Section 112O(4) is amended as follows:
- (a) by deleting “statement” in the first 2 places where it occurs and inserting instead —
“ return ”;
 - (b) by deleting “on that statement if it” and inserting instead —
“ if the return ”.
- (5) Section 112O(5) is amended by deleting “in writing”.

129. Section 112P amended

- 10 (1) Section 112P(1) is amended as follows:
- (a) by deleting “the State” in both places where it occurs and inserting instead —
“ Western Australia ”;
 - (b) by deleting all the words from and including “he shall”
15 to the end of the subsection and inserting instead —
“
the person is to prepare a dutiable statement in relation
to the transaction or offer.
Penalty: \$20 000.
20 ”.
- (2) Section 112P(2), (4) and (5) are repealed and the following
subsection is inserted instead —
“
25 (2) A dutiable statement must be in an approved form.
”.

(3) Section 112P(6) is amended as follows:

- (a) by deleting “the State is not required to make a note or memorandum” and inserting instead —

“

5 Western Australia is not required to prepare a dutiable statement

”;

- (b) in paragraph (d), (d)(i) and (d)(ii) by deleting “the State” and inserting instead —

10 “ Western Australia ”.

130. Section 112Q amended

Section 112Q(1) is amended by deleting “this Act” and inserting instead —

“ a stamp Act ”.

15 **131. Section 112R amended**

Section 112R(1) is amended by deleting “this Act” and inserting instead —

“ a stamp Act ”.

132. Section 112UA amended

20 Section 112UA is amended as follows:

- (a) in the definition of “Family Court Act” by deleting “the Parliament of the State” and inserting instead —

“ Western Australia ”;

- (b) in the definition of “Family Law Act” by deleting
25 “Parliament of the” in both places where it occurs.

133. Section 112UB amended

Section 112UB(2) is amended as follows:

- 5 (a) in paragraph (b) by deleting “otherwise be dutiable under the provisions of this Act other than this Part” and inserting instead —
- “ , but for this Part, be chargeable with duty ”;
- (b) by deleting all the words from and including “the Commissioner shall” to the end of the subsection and inserting instead —
- 10 “
- the maintenance agreement, order, or instrument of conveyance or transfer is chargeable with duty in respect of those other matters in accordance with this Act other than this Part.
- 15 ”.

134. Section 112UC amended

Section 112UC is amended by deleting “this Act” and inserting instead —

“ a stamp Act ”.

20 **135. Section 112UD amended**

Section 112UD is amended as follows:

- (a) by deleting “this Act” in the first place where it occurs and inserting instead —
- “ a stamp Act ”;
- 25 (b) by deleting “duly stamped in accordance with this Act” and inserting instead —
- “ stamped ”.

136. Section 112UE amended

- (1) Section 112UE(2)(c) is amended by deleting “motor”.

- (2) Section 112UE(5), (6) and (7) are repealed and the following subsection is inserted instead —

“

- (5) An application is to be made to the Commissioner in an approved form.

”

137. Sections 112V to 118 replaced

Sections 112V, 113, 114, 115, 116, 117 and 118 are repealed and the following sections are inserted instead —

113. Commissioner may impound unstamped documents

If it appears to the Commissioner that an instrument in the Commissioner’s possession or control (regardless of how it came to be in the Commissioner’s possession or control) is chargeable with duty but has not been stamped, the Commissioner may impound the instrument until the duty and any penalty tax payable in respect of the instrument have been paid.

114. Commissioner may destroy instruments

- (1) The Commissioner may destroy any instrument in the Commissioner’s possession or control if —
- (a) 6 years have elapsed since the original assessment of the amount of duty payable in respect of the instrument was made; and
 - (b) any amount that remains unpaid under a stamp Act in respect of the instrument has been written off under the *Taxation Administration Act 2001*.

- (2) Neither the Commissioner, nor any person acting under the Commissioner's authority, is liable in tort for any act done under subsection (1).

”.

5 **138. Section 119 amended**

Section 119(7) is repealed.

139. Section 120 replaced

Section 120 is repealed and the following section is inserted instead —

10 “

120. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by a stamp Act to be prescribed or are necessary or convenient to be prescribed to give effect to a stamp Act.
- 15
- (2) Regulations may be made in relation to any or all of the following matters —
- (a) the fees payable under a stamp Act;
- (b) the records required to be kept for the purposes of a stamp Act.
- 20
- (3) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding \$5 000.

”.

25 **140. First Schedule repealed**

The First Schedule is repealed.

141. Second Schedule amended

- (1) The amendments in this section are to the Second Schedule.

- (2) Item 4(5) is amended by deleting “the purchaser is an entitled person under section 75AE” and inserting instead —

“

the conveyance or transfer is chargeable under section 75AE
with duty under this subitem

”.

- (3) Item 9 is amended by deleting “an instrument chargeable with duty” and inserting instead —

“ a stamped instrument ”.

- (4) Item 13(1) is amended by deleting “duly”.

- (5) Item 14 is amended as follows:

- (a) by deleting the heading to the item and inserting instead —

“

VEHICLE LICENCES, GRANT OR TRANSFER

”;

- (b) by deleting “issue” in each place where it occurs and inserting instead —

“ grant ”;

- (c) in the third column —

- (i) by deleting “issued” and inserting instead —

“ granted ”;

- (ii) by deleting “section 76C(13)” and inserting instead —

“ section 76H(2) ”;

- (d) in the first column, in subitem (1) by deleting “motor”.

- (6) Item 16(1)(a)(i)(A) is amended by deleting “*Pay-roll Tax Assessment Act 1971*” and inserting instead —

“ *Pay-roll Tax Assessment Act 2001* ”.

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- (7) Item 16(1)(a)(i)(B) is amended by deleting “section 10” and inserting instead —
“ section 39 or 40 ”.
- (8) Item 16(1)(c) is amended as follows:
- 5 (a) by deleting “ — on the amount calculated under section 96(2)”;
- (b) by inserting after “8%” —
“ of the amount calculated under section 96(2) ”.
- (9) Item 16 is amended in the third column by deleting “and see
10 section 94” and inserting instead —
“ and see sections 92A(4)(a) and 94 ”.

142. Third Schedule amended

- (1) The amendments in this section are to the Third Schedule.
- (2) Item 1(4) is amended by inserting after paragraph (c) —
15 “ or ”.
- (3) Item 3(1)(a) and (b) are amended by deleting “duly”.
- (4) Item 6(1) is deleted and the following subitem is inserted instead —
“
- 20 (1) All leases or agreements for leases from —
- (a) the Crown;
- (b) the Minister to whom the administration of the *Land Administration Act 1997* is for the time being committed, under that Act; or
- 25 (c) the Minister to whom the *Mining Act 1978* is for the time being committed, under that Act.
- ”.

- (5) Item 7(4) is amended by deleting “the State” and inserting instead —
“ Western Australia ”.
- 5 (6) Item 8(2) is amended by deleting “the State” and inserting instead —
“ Western Australia ”.
- (7) Item 9 is amended in the heading by deleting “MOTOR”.
- (8) Item 9 is amended as follows:
- 10 (a) by deleting “motor” in each place where it occurs;
(b) by deleting “issue” in each place where it occurs and inserting instead —
“ grant ”;
- (c) by deleting “issued” in each place where it occurs and inserting instead —
15 “ granted ”.
- (9) Item 9(3) is amended by deleting “tractor or tractor plant, other than a prime mover, (as those terms are defined in the *Road Traffic Act 1974*)” and inserting instead —
“ vehicle that is in a prescribed class of vehicles ”.
-