

**Business Tax Review (Assessment)
Bill (No. 2) 2003**

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in committee)

**Business Tax Review (Assessment)
Bill (No. 2) 2003**

A Bill for

An Act to amend the —

- *Stamp Act 1921*;
- *Taxation Administration Act 2003*;
- *Debits Tax Assessment Act 2002*; and
- *Land Tax Assessment Act 2002*,

**to make consequential amendments and transitional arrangements
and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Business Tax Review (Assessment) Act (No. 2) 2003*.

5 **2. Commencement**

(1) This Act, except Parts 3, 4 and 5, comes into operation on a day fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

10 (3) Part 3 comes into operation on 1 July 2004.

(4) Part 4 comes into operation on the day on which this Act receives the Royal Assent.

(5) Part 5 is deemed to have come into operation immediately after the *Taxation Administration Act 2003* came into operation.

Part 2 — Stamp duty changes

Division 1 — Stamp Act 1921 amended

3. The Act amended

The amendments in this Division are to the *Stamp Act 1921**.

5 [* Reprinted as at 3 August 2001.

*For subsequent amendments see Western Australian
Legislation Information Tables for 2002, Table 1, p. 368 and
Act No. 21 of 2003.]*

4. Section 4 amended

10 (1) The amendments in this section are to section 4(1).

(2) The definition of “dutiabale statement” is deleted and the
following definition is inserted instead —

“

15 “**dutiabale statement**” means a statement required to be
lodged under section 31B, 31C, 63AE, 63AJ,
73DAA(1), 73DE, 75HA, 76AG, 76AN, 77A, or
92A;

”.

20 (3) The definition of “marketable security” is amended in
paragraph (c) as follows:

(a) by deleting “or subunit”;

(b) in subparagraph (ii) after “section 63AC(2)” by
inserting —

“

25 or registered as a provisional public
trust under section 63ADA(2)

”.

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Part 2 Stamp duty changes

Division 1 Stamp Act 1921 amended

s. 5

(4) The definitions of “section 76AG statement” and “section 76AN statement” are amended by deleting “prepared” and inserting instead —

“ lodged ”.

5 (5) The definition of “WA company” is amended by inserting after “taken” —

“ , for the purposes of the Corporations Act, ”.

(6) The following definitions are inserted in the appropriate alphabetical positions —

10

“

“**GST**” has the same meaning as it has in the Commonwealth *A New Tax System (Goods and Services Tax) Act 1999* except that it includes notional GST of the kind for which payments may be made under the *State Entities (Payments) Act 1999* by a person that is a State entity as defined in that Act;

15

“**supply**”, in relation to an amount of GST, has the same meaning as it has in the Commonwealth *A New Tax System (Goods and Services Tax) Act 1999*;

20

”.

5. Section 4A amended

Section 4A(3) and (4) are repealed.

25 **6. Section 17 amended**

Section 17(1) is amended as follows:

(a) by deleting “on which duty is payable”;

(b) by deleting paragraph (c) and “or” after it and inserting instead —

“

5

(c) if the instrument is a dutiable statement — the person required to lodge the dutiable statement;
or

”.

7. Section 17B amended

10

Section 17B(1) is repealed and the following subsection is inserted instead —

“

15

(1) A person who is, or may be, liable to pay duty on an instrument must lodge the instrument with the Commissioner within 2 months after the date on which the instrument was first executed.

Penalty: \$5 000.

”.

8. Section 17C amended

20

After section 17C(3) the following subsection is inserted —

“

25

(3a) An instrument is taken to be endorsed in accordance with subsection (1) if the Commissioner endorses it under section 31B(15), 63A(2), 72(4), 74(4), 77(2) or 77A(11).

”.

9. Section 27 amended

30

(1) Section 27(2) is amended as follows:

(a) by deleting paragraph (a) and “and” after it and inserting instead —

“

(a) affords any evidence of —

(i) an acquisition to which section 31B applies;

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Part 2 Stamp duty changes

Division 1 Stamp Act 1921 amended

s. 9

- 5 (ii) a transfer to which section 31C applies;
(iii) a disposition to which
section 73DAA(1) applies; or
(iv) a transaction referred to in
section 77A(1);
and
”;
- (b) by deleting paragraph (b)(i) and “but” after it and
inserting instead —
10 “
(i) relating to an acquisition, transaction,
disposition for which a dutiable
statement is required to be lodged under
section 31B, 31C, 73DAA(1) or 77A;
15 but
”;
- (c) by deleting “prepared under section 31B(1) or 31C(1)”
and inserting instead —
20 “
lodged under section 31B, 31C, 73DAA(1)
or 77A
”;
- (d) by deleting “the transaction” and inserting instead —
“ the acquisition, transaction, disposition ”.
- 25 (2) Section 27(3) is amended as follows:
(a) by deleting “a transaction” and inserting instead —
“ an acquisition, transaction ”;
- (b) by deleting “prepared under section 31B or 31C” and
inserting instead —
30 “
lodged under section 31B, 31C or 77A, and this section
does not apply to an instrument or a document relating
to a disposition for which a dutiable statement is

required to be lodged under section 73DAA(1), where
the instrument or document is

”.

10. Section 28 amended

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

(a) by deleting “prepared under section 31B(1) or 31C(1)”
and inserting instead —

“

10 lodged under section 31B, 31C, 73DAA(1)
or 77A

”;

(b) by deleting “transaction” and inserting instead —

“ acquisition, transaction, disposition ”.

11. Section 29 amended

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

(a) after “section 27(2)” by inserting —

“

(other than a document relating to a disposition to
which section 73DAA(1) applies)

20

”;

(b) by deleting “or 31C(1)” in the first place where it occurs
and inserting instead —

“ , 31C(1) or 77A(1) ”;

(c) by deleting “prepared under section 31B(1) or 31C(1)”
and inserting instead —

25

“ lodged under section 31B, 31C or 77A ”;

(d) by deleting “transaction” in both places where it occurs
and inserting instead —

“ acquisition, transaction ”.

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

- (a) by deleting “a transaction” and inserting instead —
“ an acquisition, transaction ”;
- (b) by deleting “prepared under section 31B(1) or 31C(1)”
and inserting instead —
“ lodged under section 31B, 31C or 77A ”;
- (c) by deleting “has not been prepared” and inserting
instead —
“ has not been lodged ”.

10 **12. Section 30 amended**

Section 30(1)(b) is amended as follows:

- (a) after “section 27(2)” by inserting —
“
(other than a document relating to a disposition
to which section 73DAA(1) applies)
”;
- (b) by deleting “prepared under section 31B or 31C(1)” and
inserting instead —
“ lodged under section 31B, 31C or 77A ”.

20 **13. Section 31B replaced**

Section 31B is repealed and the following section is inserted
instead —

“

25 **31B. Payment of duty on statements in absence of
dutiabale instrument**

- (1) A person who acquires an interest by way of an
acquisition to which this section applies shall, within
2 months after the acquisition, lodge a statement with
the Commissioner in respect of the acquisition.

30 Penalty: \$20 000.

-
- (2) A dutiable statement must be prepared in an approved form.
- (3) Subject to subsection (8), this section applies to any of the following —
- 5 (a) the acquisition of beneficial ownership of an estate or interest in —
- (i) freehold land, whether or not registered under the *Transfer of Land Act 1893*;
- 10 (ii) a Crown lease registered under the *Transfer of Land Act 1893*; or
- (iii) a mining tenement registered under the *Mining Act 1978*,
- or any buildings on, or fixtures annexed to, or to buildings on, any such land, lease or tenement if the land, lease or tenement is situated in Western Australia;
- 15 (b) the acquisition of beneficial ownership of chattels (as defined in section 70) and other property (as defined in section 70);
- 20 (c) the acquisition of beneficial ownership of chattels (as defined in section 70) acquired as part of a series of acquisitions or transactions relating to chattels and to other property (as defined in section 70) at least one of which changes, or is or includes an agreement to change, the beneficial ownership of the other property;
- 25 (d) the acquisition of a business asset (as defined in section 74C) of a business in circumstances in which section 74C applies.
- 30 (4) A merger of a corporation (“**Company A**”) with and into another corporation (“**Company B**”) in circumstances where neither subsection (5) nor subsection (6) applies is taken to effect an acquisition by Company B of the

beneficial ownership of the property of Company A, and this section applies to that acquisition.

- 5
- (5) A merger of corporations (the “**merging corporations**”) in circumstances where another corporation (“**Company C**”) results as a consequence of the merger is taken to effect an acquisition by Company C of the beneficial ownership of the property of the merging corporations, and this section applies to that acquisition.
- 10
- (6) A merger of corporations (the “**merging corporations**”) with and into each other in circumstances where each of the merging corporations continues in existence is taken to effect an acquisition by the merging corporations, jointly, of the beneficial ownership of 50% (in value) of the property of the merging corporations, and this section
- 15
- applies to that acquisition.
- (7) Where —
- (a) section 73F applies to a transaction relating to a business licence; and
- (b) the business licence is of a kind prescribed for
- 20
- the purposes of this section,
- the transaction is taken to be an acquisition to which this section applies.
- (8) This section does not apply to —
- 25
- (a) an acquisition effected by an instrument that is —
- (i) chargeable with duty under item 4 or 6 of the Second Schedule; or
- (ii) exempt from duty;
- 30
- (b) an acquisition evidenced by an instrument if the instrument is chargeable with duty under item 4 of the Second Schedule;

- 5
- (c) an acquisition evidenced by an instrument which, if the acquisition were effected by that instrument (irrespective of whether it is practicable or possible to do so), would be an acquisition effected by an instrument that is —
- (i) exempt from duty; or
 - (ii) chargeable with duty under item 6 of the Second Schedule;
- 10
- (d) an acquisition which, if it were effected by an instrument (irrespective of whether it is practicable or possible to do so), would be effected by an instrument that is —
- (i) exempt from duty; or
 - (ii) chargeable with duty under item 6 of the
- 15
- Second Schedule;
- (e) an acquisition relating to chattels and other property as referred to in subsection (3)(b) unless this section would have applied to the acquisition if it had only related to the other
- 20
- property; or
- (f) a transaction relating to chattels as referred to in subsection (3)(c) unless at least one of the transactions in the series relates to other property (as defined in section 70) and is —
- 25
- (i) dutiable (as defined in section 70); or
 - (ii) a transaction to which subsection (1) applies.
- (9) A dutiable statement lodged under subsection (1) is taken to be an instrument of conveyance of property and is chargeable with duty accordingly.
- 30
- (10) Each person from whom another person has made an acquisition to which this section applies shall, within 2 months after the acquisition is made, notify the

Commissioner in an approved form that the acquisition has been made.

Penalty: \$20 000.

- 5
- (11) Nothing in this section prevents the joint making of a notification under subsection (10) in respect of an acquisition by any 2 or more parties to the acquisition who are required to make the notification.
- 10
- (12) The requirement to lodge a dutiable statement under subsection (1) or give notification under subsection (10) ceases to apply if an instrument that evidences the acquisition and is chargeable with *ad valorem* duty is executed at any time after the acquisition was made, but nothing in this subsection affects the liability of a person for an offence against subsection (1) or (10) committed before the instrument was executed.
- 15
- (13) Where subsection (12) has effect, the instrument referred to in that subsection is to be regarded, for the purposes of section 17A, as having been first executed on the day on which the acquisition was made.
- 20
- (14) If an instrument is executed as referred to in subsection (12) after a dutiable statement has been lodged under subsection (1), subsection (9) ceases to apply to the dutiable statement unless duty has already been paid in respect of it.
- 25
- (15) If duty has already been paid as mentioned in subsection (14), the instrument is not chargeable with *ad valorem* duty but the Commissioner, on being requested to do so, is to endorse on the instrument the duty paid.
- 30

”.

14. Section 31C amended

- (1) Section 31C(1) is amended by deleting “must prepare a dutiable statement” and inserting instead —

“

5 must, within 2 months after the transfer, lodge a statement with the Commissioner

”.

- (2) Section 31C(2) is amended by inserting after “must be” —

“ prepared ”.

- 10 (3) Section 31C(2a) is amended by deleting “prepared” and inserting instead —

“ lodged ”.

15. Sections 39 and 40 inserted

After section 38 the following sections are inserted in Part III —

15 “

39. Determining whether securities are situated in Western Australia

20 (1) A marketable security or right in respect of shares of a WA company is, for the purposes of a stamp Act, taken to be 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.

25 (2) A marketable security or right in respect of shares of a foreign company is, for the purposes of a stamp Act, taken to be situated in Western Australia if it is registered on a register kept by the company in Western Australia.

- (3) A unit in a unit trust scheme is, for the purposes of a stamp Act, taken to be situated in Western Australia if —
- (a) the scheme's principal register is kept in Western Australia; or
 - (b) where the scheme's principal register is not kept in Western Australia, the scheme's manager, or if the scheme does not have a manager, the trustee, is —
 - (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.
- (4) A marketable security or right in respect of shares of a company that is taken under the Corporations Act to be registered in another State or Territory is, for the purposes of a stamp Act, taken not to be situated in Western Australia even if it is registered on a register in Western Australia.
- (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.
- 40. Valuing a marketable security or right in respect of shares**
- (1) The value of a marketable security or right in respect of shares is to be determined —
- (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 or right could be

quoted on the Australian Stock Exchange Limited; and

- (b) disregarding any provision in the constitution or governing rules of the issuer providing for the valuation of the security or right.

- (2) Despite subsection (1), the Commissioner may determine the value of a marketable security or right in respect of shares to be the amount the Commissioner considers would be received by the holder of the security or right if the issuer were to be voluntarily wound up on the day of the transfer.

”.

16. Part IIIA (s. 49-50D) repealed and transitional

- (1) Part IIIA is repealed.

- (2) The amendments effected by this section and sections 87(2), 88(2) and 88(4) do not apply in relation to a blank cheque provided by a financial institution to the holder of a cheque account before this section came into operation regardless of when the cheque is drawn.

17. Section 63 amended

- (1) Section 63(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical positions the following definitions —

“

“**custodian trustee**” has the same meaning as it has in section 15 of the *Trustees Act 1962*;

“**disposition**”, in relation to a unit, includes —

- (a) a transfer or other disposition of the unit;
(b) the allotment or issue of the unit;
(c) the redemption, surrender or cancellation of the unit;

(d) the variation, abrogation or alteration of a right pertaining to the unit with respect to the capital of the unit trust scheme; and

5

(e) any means by which a unit is disposed of or the rights of its holder are diminished;

“provisional public trust” means a unit trust scheme that is registered under section 63ADA(2);

“start up period” means —

10

(a) in relation to a unit trust scheme except a provisional public trust to which paragraph (b) applies — the period of one year beginning on the day on which the first units under the scheme are issued; or

15

(b) in relation to a provisional public trust for which the prospectus or information memorandum has been, or is to be, lodged with the Australian Securities and Investments Commission — the period of one year beginning on —

20

(i) the day on which the first units under the scheme are issued; or

(ii) the day of lodgement,

whichever period is the later to expire;

25

“transfer”, in relation to a unit, means a conveyance, transfer, or instrument chargeable as a conveyance;

30

“unit” means any right or interest, whether described as a unit or otherwise, of a beneficiary under a unit trust scheme and includes an interest in a unit;

”;

(b) in the definitions of “trustee” and “unit trust scheme” after “means” by inserting —

“ , unless the contrary intention appears, ”.

(2) After section 63(1) the following subsection is inserted —

“

(1aa) For the purposes of sections 63AA(2a)(a) and
63AB(2)(g), the Commissioner may treat 2 or more
parcels of land as a single parcel of land if the
Commissioner is satisfied that it is appropriate to do so
having regard to —

- (a) the ownership of the parcels of land;
- (b) the proximity of the parcels of land;
- (c) the use of the parcels of land; and
- (d) any other matter the Commissioner considers to
be relevant.

”.

(3) Section 63(1a) and (1b) are repealed.

(4) Section 63(2) is amended by deleting “disposition of a unit or
sub-unit — ” and inserting instead —

“ other disposition of a unit — ”.

(5) Section 63(4) is repealed and the following subsections are
inserted instead —

“

(4) For the purposes of subsection (2)(a) and (b)(ii) —

(a) each partner in a partnership that holds units
under a unit trust scheme is to be treated as
beneficially entitled to the same proportion of
the units as the proportion of the partnership
assets to which the partner would be entitled on
the dissolution of the partnership and after all
the debts and liabilities of the partnership had
been discharged; and

(b) a person is to be treated as beneficially entitled
to a unit held by the person or by a related
person.

- (5) For the purposes of subsection (4), the following persons are related —
- (a) individuals who are spouses or de facto partners of each other or between whom the relationship is that of parent and child;
 - (b) related corporations;
 - (c) a trustee and a trustee of another trust if —
 - (i) there is any beneficiary common to the trusts, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust; and
 - (ii) the beneficiary's share or interest in each trust constitutes more than 50% of the trust property or of the issued units in the unit trust scheme;
 - (d) an individual and a corporation if the individual is a majority shareholder, director or secretary of the corporation or a related corporation;
 - (e) an individual and a trustee if —
 - (i) the individual is a beneficiary under the trust, whether the individual has a vested share or is contingently entitled or may benefit from a discretionary trust; and
 - (ii) the individual's share or interest in the trust constitutes more than 50% of the trust property or of the issued units in the unit trust scheme;
 - (f) a corporation and a trustee if —
 - (i) the corporation or a majority shareholder, director or secretary of the corporation is a beneficiary of the trust; or

- (ii) a related corporation to the corporation
is a beneficiary of the trust,
and that beneficiary's share or interest in the
trust constitutes more than 50% of the trust
property or of the issued units in the unit trust
scheme.
- 5
- (6) For the purposes of subsection (5) —
- (a) an illegitimate person is to be treated as the
legitimate child of that person's parents;
- 10 (b) it is irrelevant whether a relationship is of the
whole or half-blood, or whether it is a natural
relationship or a relationship established by a
written law;
- (c) a **“majority shareholder”**, in relation to a
corporation, is a person who would have a
substantial holding in the corporation under the
definition of “substantial holding” in section 9 of
the Corporations Act even if the reference in that
definition to 5% were a reference to 50%; and
- 15
- (d) a **“trustee”** includes a discretionary trustee and
a unit trustee.
- 20
- (7) For the purposes of subsection (5), the share or interest
of a person in a trust is to be determined as the greatest
share or interest that the person could derive at any
time from the trust whether by the fulfilment of any
condition, the outcome of any contingency or the
exercise of any power or discretion or otherwise, and in
particular a person that may benefit from a
discretionary trust is to be deemed to be entitled to —
- 25
- (a) the property subject to the discretionary trust,
unless the Commissioner determines otherwise;
or
- 30 (b) such part of that property as the Commissioner
determines.
- 35
- ”.

18. Section 63AA amended

- (1) Section 63AA(1) is repealed and the following subsections are inserted instead —

“

- 5 (1) In this section —
“**land**” has the same meaning as in section 76;
“**scheme land**” means land held by a unit trustee in the
unit trustee’s capacity as trustee of a unit trust
scheme.
- 10 (1a) A unit trustee may apply to the Commissioner in an
approved form for registration of a unit trust scheme.
- (1b) An application may be made whether or not the unit
trust scheme has previously been registered under
subsection (2).
- 15 (1c) An application for registration of a unit trust scheme as
a pooled investment trust is to be accompanied by a
statement by the unit trustee in an approved form of the
unencumbered value of the interests in scheme land
referred to in section 63AB(2)(f) and, if applicable,
20 (g)(i).

”.

- (2) Section 63AA(2) is amended as follows:

- (a) by deleting “the Commissioner is satisfied that”;
- (b) in paragraph (a) before “the unit” by inserting —
25 “ the Commissioner is satisfied that ”;
- (c) after paragraph (a) by deleting “and” and inserting —
“
- (ab) in the case of an application for registration of a
unit trust scheme as a pooled investment
30 trust — the unit trust scheme is not to be treated
as a sub-trust under subsection (2a); and

”;

(d) in paragraph (b) before “registration” by inserting —
“ the Commissioner is satisfied that ”.

(3) After section 63AA(2) the following subsection is inserted —

“

5 (2a) For the purposes of subsection (2)(ab) and
sections 63AC(2)(ab) and 63AD(8), a unit trust scheme
is to be treated as a sub-trust if —

- (a) the scheme land comprises only one parcel of
land;
- 10 (b) a unit holder in the scheme participated directly
or indirectly (otherwise than by means of the unit
holder’s subscription under the scheme) in the
unit trustee’s acquisition of the scheme land;
- 15 (c) a unit holder in the scheme states in a financial
report, or other document, provided to its
members that the unit holder has an interest in
the scheme land;
- (d) a unit holder in the scheme beneficially owns
an interest in any land otherwise than as a unit
20 holder in a unit trust scheme; or
- (e) a unit holder in the scheme makes an offer to
the public for subscriptions principally by
reference to the scheme land and not to units in
a unit trust scheme,

25 unless the Commissioner is satisfied that in the
circumstances of a particular case it is not reasonable to
treat the scheme as a sub-trust.

”.

(4) After section 63AA(3) the following subsection is inserted —

30 “

(3a) Subject to this Part, registration of a unit trust scheme
under subsection (2) has effect for a period of 3 years.

”.

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

“

- 5 (4a) Subject to section 17 of the *Taxation Administration Act 2003*, if the Commissioner registers a unit trust scheme as a pooled investment trust or an equity trust the Commissioner shall make any reassessment necessary to give effect to that registration.

”

19. Section 63AB amended

10 (1) Section 63AB(2) is repealed and the following subsections are inserted instead —

“

- 15 (1a) For the purposes of this section, a person and another person are related if they are related as provided in section 63(5).
- (2) For the purposes of section 63AA(2), a unit trust scheme is eligible for registration as a pooled investment trust if it meets all of the following criteria —
- 20 (a) the scheme is established and managed by a funds manager solely or principally for the investment and management of subscriptions by unit holders of the kind described in paragraph (c) and is not established or managed
- 25 (b) at least 2 persons who are not related are unit holders in the scheme;
- (c) each unit holder in the scheme —
- 30 (i) holds the unit in the unit holder’s capacity as a trustee of a complying superannuation fund within the meaning of the *Superannuation Guarantee*

(Administration) Act 1992 of the
Commonwealth;

- 5 (ii) holds the unit in the unit holder's
capacity as a trustee of a complying
approved deposit fund within the
meaning of the *Superannuation
Guarantee (Administration) Act 1992* of
the Commonwealth;
- 10 (iii) holds the unit in the unit holder's
capacity as a trustee or manager of a
fund that is part of a public sector
superannuation scheme within the
meaning of the *Superannuation Industry
(Supervision) Act 1993* of the
15 Commonwealth;
- (iv) is a life company that holds the unit
solely for the purpose of an investment
of its statutory funds maintained by it
under the *Life Insurance Act 1995* of the
20 Commonwealth;
- (v) holds the unit in the unit holder's
capacity as a trustee of a unit trust that
is not a unit trust scheme;
- 25 (vi) holds the unit in the unit holder's
capacity as a trustee of a master trust,
being a trust by means of which the
public may invest in managed funds;
- 30 (vii) holds the unit in the unit holder's
capacity as a trustee of a unit trust
scheme registered under
section 63AA(2) as a pooled investment
trust;
- 35 (viii) holds the unit in the unit holder's
capacity as a trustee of a unit trust
scheme each unit holder in which is of a

kind described in another subparagraph of this paragraph;

5 (ix) holds the unit in the unit holder's capacity as a trustee or manager of a fund or trust that the Commissioner is satisfied corresponds to a fund or trust referred to in subparagraph (i), (ii), (iii), (v) or (vi) under the law of an external Territory or a country other than Australia;

10 (x) is a body corporate that the Commissioner is satisfied —

15 (I) corresponds to a company referred to in subparagraph (iv) under the law of an external Territory or a country other than Australia; and

20 (II) holds the unit for a purpose that corresponds to the purpose referred to in that subparagraph;

(xi) holds not more than 5% of the total issued units under the scheme; or

25 (xii) is a person who, the Commissioner is satisfied, is, or is in a class of persons that is, prescribed for the purposes of this paragraph;

30 (d) if paragraph (c)(xi) applies to 2 or more unit holders in the scheme to which no other subparagraph of paragraph (c) applies, those unit holders do not together hold more than 10% of the total issued units under the scheme;

35 (e) at least 2 unit holders in the scheme who are not related each have a subscription under the scheme of not less than \$3 000 000;

- 5 (f) the unit trustee, in the unit trustee's capacity as trustee of the scheme, holds interests in land (whether or not situated in Western Australia) that together have an unencumbered value of not less than \$50 000 000;
- (g) either —
- 10 (i) the interests in land referred to in paragraph (f) include interests in at least 3 parcels of land, and at least 2 of those interests each have an unencumbered value of not less than \$10 000 000; or
- (ii) at least 6 unit holders who are not related each have a subscription under the scheme of not less than \$3 000 000;
- 15 (h) the scheme provides for offers of initial subscriptions only to persons to whom an offer of securities does not need disclosure under section 708(8) or (11) of the Corporations Act.
- (2a) In subsection (2)(a) —
- 20 **“funds manager”** means —
- (a) a body corporate that, as its principal business, provides funds management and investment services to persons of the kind described in subsection (2)(c) if —
- 25 (i) that business is not conducted to provide those services only to particular persons; and
- (ii) the body corporate manages funds invested with it of not less than
- 30 \$500 000 000;
- or
- (b) a body corporate that is a member of a group of related corporations that, as the group's principal business, provides funds

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management and investment services to
persons of the kind described in
subsection (2)(c) if —

- 5 (i) that business is not conducted to
provide those services only to
particular persons; and
- (ii) the body corporate or the group
manages funds invested with it of not
less than \$500 000 000.

10 (2b) For the purposes of subsection (2)(c), a unit held by a
unit holder in the unit holder's capacity as a custodian
trustee is taken to be held by each of the persons on
whose behalf the custodian trustee holds the unit.

15 (2) Section 63AB(4) is amended as follows:

- (a) by deleting “(2)(b) and (c) and”;
- (b) by deleting all of the subsection after “person and” and
inserting instead —

20 “ all units held by another person if those persons are
related as provided in section 63(5).

(3) Section 63AB(5), (6), (7) and (8) are repealed.

20. Section 63AC amended

25 (1) Section 63AC(1) is amended by deleting “not later than one
year after the day on which the first units under the scheme are
issued.” and inserting instead —

30 “ if the application is made before the end of the start up
period.

(2) Section 63AC(2) is amended as follows:

(a) by deleting “a period of one year beginning on the day on which the first units under the scheme are issued (the **“start up period”**)” and inserting instead —

5 “ the start up period ”;

(b) by deleting paragraph (a) and “and” after it and inserting instead —

“

10 (a) the Commissioner is satisfied that, subject to subsection (2a), the scheme satisfies the criteria for registration set out in section 63AB(2)(a), (c) (other than subparagraph (xi)) and (h) or (3)(a), as the case requires;

15 (ab) in the case of an application for interim registration of a unit trust scheme as a pooled investment trust — the scheme is not to be treated as a sub-trust under section 63AA(2a); and

”;

20 (c) in paragraph (b) by deleting “section 63AB(2)(a), (b), (c) and (d)” and inserting instead —

“ section 63AB(2)(b), (c), (d), (e), (f) and (g) ”.

(3) After section 63AC(2) the following subsection is inserted —

“

25 (2a) If —

(a) at the beginning of the start up period the body corporate that established and manages a unit trust scheme is not a funds manager (as defined in section 63AB(2a)); and

30 (b) the Commissioner is satisfied that —

(i) the scheme otherwise satisfies the criteria for registration referred to in subsection (2)(a); and

- (ii) the body corporate will be a funds manager by the end of the start up period,

5 the Commissioner may grant the scheme interim registration as a pooled investment trust under subsection (2).

”.

- (4) After section 63AC(3) the following subsection is inserted —

“

10 (3a) Subject to section 17 of the *Taxation Administration Act 2003*, if the Commissioner grants a unit trust scheme interim registration as a pooled investment trust or an equity trust, then the Commissioner shall
15 make any reassessment necessary to give effect to that registration.

”.

21. Section 63AD amended

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

20 “

- (1) For the purposes of this section and section 63AE, a disqualifying event occurs —
 - 25 (a) in the case of a unit trust scheme that has been registered under section 63AA(2) — if the scheme ceases to comply with a criterion that is applicable to it referred to in section 63AB(2) or (3);
 - 30 (b) in the case of a unit trust scheme that has been granted interim registration — if, during the start up period, the scheme ceases to comply with a criterion that is applicable to it referred to in section 63AB(2)(a), (c) (other than subparagraph (xi)) or (h), or (3)(a);

- 5 (c) in the case of a unit trust scheme that has been granted interim registration — if, on the last day of the start up period, the scheme does not comply with a criterion that is applicable to it referred to in section 63AB(2)(b), (c), (d), (e), (f) or (g), or (3)(b) or (c); or
- 10 (d) in the case of a unit trust scheme that was established and is managed by a body corporate and that has been granted interim registration as a pooled investment trust by virtue of section 63AC(2a) — if, on the last day of the start up period, the body corporate is not a funds manager (as defined in section 63AB(2a)).
- 15 ”.
- (2) Section 63AD(2) is amended by deleting “event.” and inserting instead —
- 20 “ event, unless it is taken to have occurred under subsection (4) or (6). ”.
- (3) Section 63AD(3)(b) is amended by deleting “first units under the scheme were issued.” and inserting instead —
- 25 “ start up period. ”.
- (4) Section 63AD(4) is amended as follows:
- (a) after “has occurred,” by inserting —
- 30 “ a disqualifying event is taken to have occurred and ”;
- (b) by deleting paragraph (c) and inserting the following paragraph instead —
- “ (c) notify the unit trustee of —
- (i) the cancellation;

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- (ii) from when the cancellation takes effect;
- (iii) the reasons for the cancellation; and
- (iv) when the Commissioner is satisfied that the disqualifying event occurred.

5

”.

(5) Section 63AD(5)(b) is amended by deleting “first units under the scheme were issued.” and inserting instead —

“ start up period. ”.

(6) Section 63AD(6) is amended as follows:

10

(a) after “payable” by inserting —

“

, a disqualifying event is taken to have occurred and

”;

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

15

“

(b) notify the unit trustee of the matters referred to in subsection (4)(c).

”.

20

(7) After section 63AD(7) the following subsection is inserted —

“

(8) If a unit trust scheme registered under section 63AA(2) or granted interim registration under section 63AC(2) is to be treated as a sub-trust under section 63AA(2a), a disqualifying event is taken to have occurred and the Commissioner shall —

25

(a) cancel the registration or interim registration; and

(b) notify the unit trustee of the matters referred to in subsection (4)(c).

30

”.

22. Sections 63ADA and 63ADB inserted

After section 63AD the following sections are inserted —

“

63ADA. Registration of private unit trust scheme as provisional public trust

5

(1) A unit trustee may apply to the Commissioner in an approved form for registration of a unit trust scheme as a provisional public trust if the application is made before the end of the start up period.

10

(2) The Commissioner may register the unit trust scheme as a provisional public trust for the start up period if satisfied that —

15

(a) it is intended that, by the end of the start up period, the unit trust scheme will no longer be a private unit trust scheme within the meaning in section 63(2); and

20

(b) registration is not being used and is not likely to be used as part of a scheme or arrangement with the collateral purpose of avoiding or reducing the duty that otherwise would be or might become payable on the conveyance or transfer of trust property.

25

(3) For the purpose of being satisfied as to a matter referred to in subsection (2)(b), the Commissioner may take into account any matter that the Commissioner considers to be relevant.

30

(4) The Commissioner —

(a) must advise the unit trustee as to whether or not the Commissioner has registered the unit trust scheme as a provisional public trust; and

(b) if the Commissioner decides not to register a unit trust scheme as a provisional public trust,

must give the unit trustee reasons for that decision.

- 5
- (5) Subject to section 17 of the *Taxation Administration Act 2003*, if the Commissioner registers a unit trust scheme as a provisional public trust, then the Commissioner must make any reassessment necessary to give effect to that registration.
- 10
- (6) If the Commissioner decides not to register a unit trust scheme as a provisional public trust, the unit trustee may challenge the validity or correctness of that decision in accordance with Part 4 of the *Taxation Administration Act 2003* as if the unit trustee were a taxpayer and the decision were a decision affecting the trustee's liability to pay duty.

15 **63ADB. Cancellation of registration of provisional public trust**

- 20
- (1) For the purposes of this section and section 63AE a disqualifying event occurs in relation to a unit trust scheme that has been registered as a provisional public trust —
- (a) if, on the last day of the start up period, the scheme is a private unit trust scheme within the meaning in section 63(2); or
- (b) without limiting paragraph (a), if —
- 25
- (i) the start up period begins on the day on which the prospectus or information memorandum for the scheme is lodged with the Australian Securities and Investments Commission; and
- 30
- (ii) during the start up period, there is a disposition of a unit that was held in the scheme on the first day of that period.

-
- (2) A disposition referred to in subsection (1)(b)(ii) is to be disregarded if the Commissioner is satisfied that in the circumstances of a particular case it is reasonable to do so.
- 5 (3) If a disqualifying event occurs —
- (a) the Commissioner must cancel the registration of the unit trust scheme as a provisional public trust;
 - 10 (b) the cancellation is taken to have had effect on and from immediately before the start up period; and
 - 15 (c) the unit trustee must, within 14 days after the day on which the disqualifying event occurs, give the Commissioner notice about the disqualifying event, unless it is taken to have occurred under subsection (4) or (5).
- (4) If the Commissioner has not been notified of the occurrence of a disqualifying event but is satisfied that a disqualifying event has occurred —
- 20 (a) a disqualifying event is taken to have occurred and subsection (3)(a) and (b) apply; and
 - (b) the Commissioner must notify the unit trustee of —
 - 25 (i) the cancellation under subsection (3)(a) of the registration of the unit trust scheme as a provisional public trust;
 - (ii) the reasons for the cancellation; and
 - (iii) when the Commissioner is satisfied that the disqualifying event occurred.
- 30 (5) If the Commissioner is satisfied that a provisional public trust is being used as part of a scheme or arrangement with the collateral purpose of avoiding or reducing the duty that otherwise would be or might

become payable on the conveyance or transfer of trust property —

- 5 (a) a disqualifying event is taken to have occurred and subsection (3)(a) and (b) apply; and
- (b) the Commissioner must notify the unit trustee of the matters referred to in subsection (4)(b).
- (6) For the purposes of subsection (5), if a conveyance or transfer of the trust property of a provisional public trust —
- 10 (a) is taken to be made for the purposes of section 73D(4); and
- (b) results solely from the allotment or issue of units in the provisional public trust during the start up period,
- 15 the conveyance or transfer is to be disregarded in relation to a unit held in the provisional public trust on the first day of the start up period.
- (7) For the purpose of being satisfied as to a matter referred to in subsection (5), the Commissioner may
- 20 take into account any matter that the Commissioner considers to be relevant.

”.

23. Section 63AE amended

- 25 (1) Section 63AE(1) is amended by deleting “prepare a dutiable statement.” and inserting instead —
- “
- within 2 months after the day on which the disqualifying event occurred lodge a statement with the Commissioner in relation to the event.
- 30 ”.
- (2) Section 63AE(2) is amended as follows:
- (a) in paragraph (a) by inserting after “be” —
- “ prepared ”;

- (b) in paragraph (c) after “registration” by inserting —
“ under section 63AA(2) ”;
- (c) after paragraph (c) by deleting “and”;
- 5 (d) in paragraph (d) by deleting “first units under the
scheme were issued” and inserting instead —
“ start up period ”;
- (e) after paragraph (d) by deleting the full stop and
inserting —
“
- 10 ; and
- (e) in the case of the cancellation of the registration
of a unit trust scheme as a provisional public
trust, contain details of transfers and dispositions
15 in relation to the scheme that occurred in the
period commencing immediately before the start
up period and ending on the day on which the
Commissioner is given notice of the event or the
day on which the Commissioner is satisfied that
20 the event occurred and which would have been
chargeable with duty under section 73D had the
scheme not been registered as a provisional
public trust.
- ”.

24. Section 63AF amended and transitional

- 25 (1) Section 63AF(1) is amended as follows:
- (a) by deleting “prepared” and inserting instead —
“ lodged ”;
- (b) by deleting “or (d)” and inserting instead —
“ , (d) or (e) ”.
- 30 (2) Section 63AF(2) is repealed.
- (3) However, section 63AF(2) of the *Stamp Act 1921* continues to
apply in relation to an instrument of conveyance or transfer

disclosed in a dutiable statement if the instrument was executed before this section came into operation, and in any such case the reference in section 63AF(2) to item 4A is to be read as a reference to that item as in force from time to time prior to its repeal by this Act.

5

25. Sections 63AG to 63AJ inserted and transitional

(1) After section 63AF the following sections are inserted —

“

63AG. When unit trust scheme becomes private unit trust scheme

10

(1) In this section and sections 63AH, 63AI and 63AJ —
“**aggregated dispositions**” means dispositions that —

15

(a) include a disposition referred to in subsection (3)(a) (the “**transitional disposition**”); and

(b) under this section together form substantially one disposition;

“**private unit trust scheme**” has the meaning given in section 63(2).

20

(2) Subject to subsection (3), if, as a result of the disposition of a unit, a unit trust scheme becomes a private unit trust scheme, the unit trust scheme is taken to have become a private unit trust scheme immediately before that disposition.

25

(3) If —

(a) as a result of the disposition of a unit, a unit trust scheme becomes a private unit trust scheme; and

- (b) that disposition is one of 2 or more dispositions of units in the unit trust scheme that together form substantially one disposition,

5 the unit trust scheme is taken to have become a private unit trust scheme immediately before the first of those dispositions.

- (4) For the purposes of subsection (3), dispositions of units in a unit trust scheme are together taken to form substantially one disposition if those dispositions are made in response to —

10 (a) one offer made or one arrangement entered into; or

(b) offers made or arrangements entered into within 12 months of each other by a person or by a person and a related person.

- (5) For the purposes of subsection (4), a person and another person are related if they are related as provided in section 63(5).

- (6) If —

20 (a) the aggregated dispositions are made in response to 2 or more offers made or arrangements entered into; and

(b) the Commissioner is satisfied that a disposition that would otherwise form part of the aggregated dispositions is not made for a common purpose,

25 the Commissioner is to treat that disposition as not forming part of the aggregated dispositions.

- (7) Subject to subsection (10), duty is chargeable under section 73D in respect of the dispositions that comprise —

30 (a) the transitional disposition; and

(b) any of the aggregated dispositions made before the transitional disposition is made,

as if those dispositions together formed one disposition made at the time the transitional disposition is made.

- 5 (8) If any disposition forming part of the aggregated dispositions is made after the transitional disposition is made, duty is chargeable under section 73D in respect of all the aggregated dispositions as if they together formed one disposition made at the time the last of the aggregated dispositions is made.
- 10 (9) The amount of duty payable under subsection (8) is to be reduced by the amount of any duty paid under subsection (7).
- 15 (10) A unit trustee liable to pay duty under both subsections (7) and (8) may elect to pay duty solely under subsection (8) by lodging with the Commissioner a notice, in an approved form, within 2 months after the transitional disposition is made.
- 20 (11) For the purposes of this section, if the disposition of a unit is not made within the period of 3 months after the unit holder ceases to be the beneficial owner of the unit, the disposition of the unit is taken to have been made on the expiry of that period, and the Commissioner may create a memorandum of the disposition for the purposes of section 20 of the
- 25 *Taxation Administration Act 2003.*

63AH. Liability for duty on aggregated dispositions

- 30 (1) Despite section 73D(7), the unit trustee is liable to pay the duty that is chargeable under section 73D because of section 63AG in respect of the aggregated dispositions.
- (2) If —
- (a) a person other than the unit trustee has paid duty under section 73D in respect of a

disposition that forms part of the aggregated dispositions; and

- (b) the unit trustee has paid the duty referred to in subsection (1) in respect of those dispositions,

5 the person referred to in paragraph (a) is entitled to a refund of the amount of duty paid by that person.

- (3) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.

10 **63AI. Interstate security duty**

- (1) If interstate security duty has been paid in respect of any disposition forming part of the aggregated dispositions, the amount of the aggregated duty that is attributable to that disposition is to be reduced by the same proportion of the interstate security duty as the value of the trust property situated in Western Australia bears to the aggregate value of all the trust property.

15

- (2) In subsection (1) —

20

“**aggregated duty**” means the duty that is chargeable under section 73D because of section 63AG in respect of the aggregated dispositions;

“**interstate security duty**” means duty chargeable in another State or a Territory on a conveyance or transfer of any marketable security or right in respect of shares.

25

63AJ. Dutiable statement to be lodged

- (1) If duty is chargeable under section 73D because of section 63AG in respect of the aggregated dispositions, the unit trustee of the unit trust scheme concerned must lodge with the Commissioner —

30

- (a) if no election is made under section 63AG(10) — within 2 months after the

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transitional disposition is made, a statement in respect of that disposition and any disposition forming part of the aggregated dispositions that is made before the transitional disposition is made; and

5

- (b) if any disposition forming part of the aggregated dispositions is made after the transitional disposition is made — within 2 months after the last of the aggregated dispositions is made, a statement in respect of all the aggregated dispositions.

10

Penalty: \$20 000.

- (2) A dutiable statement must be prepared in an approved form.
- (3) A dutiable statement lodged under subsection (1) is taken to be an instrument evidencing the dispositions in respect of which it is lodged and is chargeable with duty to the extent that duty chargeable on those dispositions under section 73D because of section 63AG has not been paid.
- (4) The amount of duty payable in respect of a dutiable statement lodged under paragraph (b) of subsection (1) is to be reduced by the amount of any duty paid in respect of a dutiable statement lodged under paragraph (a) of that subsection.

15

20

25

”.

- (2) Section 63AG of the *Stamp Act 1921*, as inserted by subsection (1), does not apply to or in relation to a disposition referred to in that section —

30

- (a) made before the day on which this section comes into operation; or
- (b) made in response to an offer made or arrangement entered into before that day.

26. Section 63A amended

Section 63A(2) is amended by deleting “liable to duty.” and inserting instead —

“

5 chargeable with duty but the Commissioner, on being requested to do so, is to endorse on the conveyance or transfer the duty paid.

”.

27. Section 69 amended and transitional

10 (1) Section 69(2) is amended by deleting “or 4A(1)”.

 (2) However, section 69(2) as in force before this section came into operation continues to apply in relation to an instrument of conveyance or transfer to an intermediary executed before this section came into operation and in any such case the reference
15 in section 69(2) to item 4A is to be read as a reference to that item as in force from time to time prior to its repeal by this Act.

28. Section 70 amended

(1) The amendments in subsections (2) to (5) are to section 70(1).

20 (2) The definition of “chargeable with duty” is amended by deleting “**chargeable with duty**” and inserting instead —

“ **“dutiable”** ”,

and by moving that definition to the appropriate alphabetical position.

25 (3) The definition of “exempt chattels” is amended as follows:

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

“ goods, wares or merchandise ”;

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- (b) after paragraph (a) by deleting “or” and inserting —
“
- 5 (aa) goods, wares or merchandise used solely or principally in connection with the business of primary production (as defined in section 75D); or
- ”.
- (4) The definitions of “estate or interest in land”, “farming land” and “land” are deleted.
- 10 (5) The following definition is inserted in the appropriate alphabetical position —
- “
- 15 **“other property”** means property other than goods, wares or merchandise, and includes an estate or interest in such property;
- ”.
- (6) After section 70(1) the following subsection is inserted —
- “
- 20 (1a) For the purposes of this section a mining tenement (as defined in section 76) is an estate or interest in property.
- ”.
- (7) Section 70(2) and (3) are each amended by deleting “land” wherever it occurs and inserting instead —
- 25 “ other property ”.
- (8) Section 70(2)(b) and (3)(b) are each amended by deleting “chargeable with duty” and inserting instead —
- “ dutiable ”.

29. Section 72 amended

Section 72(4) is amended by deleting “duty.” and inserting instead —

“

5 duty, but the Commissioner, on being requested to do so, is to endorse the duty on the instrument.

”.

30. Section 73AB inserted

After section 73AA the following section is inserted —

10 “

73AB. Duty on conveyance to correct error

If the Commissioner is satisfied that —

- 15 (a) a conveyance or transfer of property (the “**correcting transfer**”) is solely for the purpose of correcting the effect of an error in respect of —
- (i) the contract or agreement for the sale of that property; or
- 20 (ii) a previous conveyance or transfer of that or other property;
- (b) no additional consideration is paid or payable in respect of the correcting transfer; and
- 25 (c) the correcting transfer passes an interest in the property only to the extent necessary to correct the effect of the error,

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

”.

31. Section 73D amended

(1) Section 73D(1) is amended as follows:

- (a) by deleting the definition of “disposition”;
- (b) at the end of the definition of “land” by deleting the semicolon and inserting instead a full stop;
- (c) by deleting the definitions of “transfer” and “unit”.

(2) After section 73D(1) the following subsection is inserted —

“

(1a) This section applies to a disposition in relation to a unit in a unit trust scheme if the trust property of the scheme comprises or includes —

- (a) property situated, or taken to be situated, in Western Australia; or
- (b) any interest, including any beneficial interest, in such property.

”.

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

- (a) by deleting “make, accept,”;
- (b) by deleting paragraphs (a) and (b) and “and” between them and inserting instead —

“

(a) a transfer or an instrument effecting or evidencing the disposition is executed and (unless the person executed the transfer or the instrument) delivered to the person and the duty with which the transfer or the instrument is chargeable has been paid; or

(b) the person is satisfied that a dutiable statement has been lodged under section 63AJ or 73DAA in respect of the disposition and that the duty with which the dutiable statement is chargeable has been paid.

”.

(4) Section 73D(7) is amended by deleting “Each” and inserting instead —

“ Subject to sections 63AH and 73DC(6), each ”.

(5) Section 73D(10) is amended by deleting “made, accepted, gave effect to,” and inserting instead —

“ gave effect to ”.

(6) Section 73D(11) is amended as follows:

(a) after “subsection (12)” by inserting —

“ and section 73DC ”;

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

(c) after paragraph (b) by deleting the full stop and inserting —

“

; or

(c) registered as a provisional public trust under section 63ADA(2).

”.

(7) Section 73D(12) is amended by deleting “If the registration or interim registration of a unit trust scheme is cancelled,” and inserting instead —

“

If —

(a) the registration or interim registration of a unit trust scheme; or

(b) the registration of a unit trust scheme as a provisional public trust,

is cancelled,

”.

32. Section 73DAA inserted

After section 73D the following section is inserted —

“

73DAA. Dutiable statement required if transfer or instrument not lodged

5

(1) Subject to subsection (3) if, for a disposition in relation to a unit —

(a) a transfer; or

10

(b) an instrument effecting or evidencing the disposition,

is not lodged with the Commissioner, each liable person must, within 2 months after the disposition is made, lodge a statement with the Commissioner in respect of the disposition.

15

Penalty: \$20 000.

(2) In subsection (1) —

“liable person” means —

20

(a) if a transfer or instrument has been executed — a person who is liable to pay duty in respect of the disposition; or

(b) if a transfer or instrument has not been executed — a person who would be liable to pay duty in respect of the disposition if a transfer or instrument were executed.

25

(3) Subsection (1) does not apply in relation to a disposition that is included in a dutiable statement under section 63AJ.

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

30

(5) A dutiable statement lodged under subsection (1) is taken to be an instrument evidencing the disposition in

respect of which it is lodged and is chargeable with duty accordingly.

- 5
- (6) The requirement to lodge a dutiable statement under subsection (1) in respect of a disposition ceases to apply if a transfer or an instrument effecting or evidencing the disposition is lodged with the Commissioner at any time after the disposition was made, but nothing in this subsection affects the liability of a person for an offence against subsection (1) committed before the transfer or the instrument is lodged.
- 10
- (7) If subsection (6) has effect, the transfer or instrument referred to in that subsection is to be regarded, for the purposes of section 17A, as having been first executed on the day on which the disposition was made.
- 15
- (8) Section 31B does not apply to, or in relation to, a disposition referred to in subsection (1).

”.

33. Sections 73DB to 73DE inserted

20 After section 73DA the following sections are inserted —

“

73DB. Interpretation for sections 73DC, 73DD and 73DE

- 25
- (1) In sections 73DC, 73DD and 73DE —
- “**acquire**”, in relation to an interest in a registered unit trust scheme, means acquire beneficially in any manner or by any means and includes the increasing of an existing interest;
- “**registered unit trust scheme**” means a unit trust scheme registered as a pooled investment trust under section 63AA(2).
- 30
- (2) For the purposes of sections 73DC, 73DD and 73DE, an interest acquired or held by a custodian trustee on

behalf of a person is taken to have been acquired, or to be held, by the person.

- (3) For the purposes of section 73DC, 73DD and 73DE, a person and another person are related if —
- (a) they are related as provided in section 63(5); or
 - (b) they acquire interests in a registered unit trust scheme by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions.

10 **73DC. Acquisition of majority interest or further interest in pooled investment trust**

- (1) Despite section 73D(11) and subject to this section, duty is chargeable under section 73D in respect of a disposition of a unit in a registered unit trust scheme if, as a result of the disposition, a person acquires, or a person and a related person acquire, a majority interest or a further interest in the scheme.
- (2) If paragraph (b) of section 73DD(1) applies in relation to the acquisition of a majority interest in a registered unit trust scheme, duty is chargeable under section 73D in respect of the dispositions of units in the scheme (the “**aggregated dispositions**”) that result in a person, or a person and a related person, acquiring the interests referred to in that paragraph as if the aggregated dispositions formed one disposition made at the time the majority interest was acquired.
- (3) If the aggregated dispositions include one or more dispositions (“**relevant aggregated dispositions**”) made when the unit trust scheme was not —
- (a) registered under section 63AA(2); or

- (b) granted interim registration under section 63AC(2),

duty chargeable under section 73D, as referred to in subsection (2), is to be reduced by the amount of duty that would be chargeable under that section in respect of the relevant aggregated dispositions if those dispositions together formed one disposition made immediately before the majority interest was acquired.

- (4) Duty is chargeable under section 73D in respect of a disposition of a unit in a registered unit trust scheme that results in a person, or a person and a related person, acquiring a further interest in the scheme as if —

- (a) that disposition; and

- (b) each of the dispositions that resulted in the person, or the person and the related person, acquiring an interest in the scheme held by the person, or by the person and the related person, immediately before the further interest was acquired,

together formed one disposition made at the time the further interest was acquired.

- (5) Duty chargeable under section 73D, as referred to in subsection (4), is to be reduced by the amount of duty that would be chargeable under that section in respect of the dispositions referred to in subsection (4)(b) if those dispositions together formed one disposition made immediately before the further interest was acquired.

- (6) Despite section 73D(7), the person liable to pay the duty chargeable under section 73D because of this section in respect of a disposition is the person who acquires the majority interest or further interest in the registered unit trust scheme.

- 5
- (7) If a majority interest or a further interest in a registered unit trust scheme is acquired by virtue of acquisitions of interests in the scheme by a person and a related person, those persons are jointly and severally liable to pay the duty referred to in subsection (6).
- 10
- (8) If interstate security duty has been paid in respect of a disposition in respect of which duty is chargeable under section 73D because of this section, the duty chargeable under that section is to be reduced by the same proportion of the interstate security duty as the value of the trust property situated in Western Australia bears to the aggregate value of all the trust property.
- 15
- (9) In subsection (8) —
“**interstate security duty**” means duty chargeable in another State or a Territory on a conveyance or transfer of any marketable security or right in respect of shares.

73DD. Meaning of majority interest and further interest

- 20
- (1) For the purposes of section 73DC, a person acquires a majority interest in a registered unit trust scheme if a disposition of a unit in the scheme results in the person, or the person and a related person, acquiring an interest in the scheme (the “**relevant interest**”) such that having acquired —
- 25
- (a) the relevant interest itself; or
- (b) the relevant interest when taken with each interest in the scheme that —
- 30
- (i) is held by the person or by a related person immediately before the relevant interest was acquired; and
- (ii) was acquired within 3 years before the relevant interest was acquired (whether or not the scheme was a registered unit

trust scheme at the time of the
acquisition),

5 the person, or the person and the related person, would
be beneficially entitled, if the property of the scheme
were to be distributed, to participate in a distribution of
the property of the scheme to an extent of 50% or more
of the value of the distributable property.

10 (2) The acquisition of the relevant interest or another
interest referred to in paragraph (b) of subsection (1) is
to be taken into account for the purposes of that
subsection only if, at the time of the acquisition, the
property of the registered unit trust scheme included
land (as defined in section 76) situated in Western
Australia.

15 (3) If on the first day on which a unit trust scheme is
registered under section 63AA(2) a majority interest is
held in the scheme, an interest acquired in the scheme
as a result of one or more dispositions made during a
period that the scheme was granted interim registration
20 under section 63AC(2) is taken to have been acquired
as a result of a disposition made on that day.

(4) For the purposes of section 73DC, a person acquires a
further interest in a registered unit trust scheme if —
25 (a) the person holds, or the person and a related
person hold, a majority interest in the scheme;
(b) the acquisition of that majority interest gave
rise to a liability for duty under section 73D
because of section 73DC; and
30 (c) a disposition of a unit in the scheme results in
the person acquiring, or the person and a related
person acquiring, an interest in the scheme such
that having acquired that interest the person, or
the person and the related person, would be
beneficially entitled, if the property of the

scheme were distributed, to participate further in a distribution of the property of the scheme.

- 5
- (5) For the purposes of this section, if —
- (a) the registration of a unit trust scheme is cancelled under section 63AD; and
- (b) a disposition of a unit in the scheme (the “**relevant disposition**”) is made within 12 months after that registration is cancelled,
- 10 the scheme is to be treated as if it is still a registered unit trust scheme when the relevant disposition is made.
- (6) Subsection (5) does not apply if the Commissioner is satisfied that the relevant disposition is not made with the collateral purpose of avoiding or reducing the duty that otherwise would be or might become payable if the registration of the unit trust scheme had not been cancelled.
- 15
- (7) For the purpose of being satisfied as to a matter referred to in subsection (6), the Commissioner may take into account any matter that the Commissioner considers to be relevant.
- 20
- (8) For the purposes of this section, a reference to the entitlement to participate in a distribution of the property of a unit trust scheme is a reference to that entitlement otherwise than as a creditor or other person to whom the scheme is liable, and a reference to distributable property is a reference to property distributable to persons otherwise than as creditors or other persons to whom the scheme is liable.
- 25
- (9) For the purposes of this section, the entitlement of a person on the distribution of the property of a unit trust scheme is to be determined as the greatest entitlement that the person could derive at any time from the
- 30

scheme whether by the fulfilment of any condition, the outcome of any contingency or the exercise of any power or discretion or otherwise, and in particular a person that may benefit from a discretionary trust is to be deemed to be entitled to —

- (a) the property subject to the discretionary trust, unless the Commissioner determines otherwise; or
- (b) such part of that property as the Commissioner determines.

73DE. Dutiable statement to be lodged

- (1) Subject to subsection (3), a person who acquires a majority interest or a further interest in a registered unit trust scheme must, within 2 months after the acquisition, lodge a statement with the Commissioner in respect of the disposition or dispositions that resulted in the acquisition of that interest and in respect of which duty is chargeable under section 73D because of section 73DC.

Penalty: \$20 000.

- (2) A dutiable statement must be prepared in an approved form.
- (3) If a majority interest or a further interest in a registered unit trust scheme is acquired by a person and one or more related persons, subsection (1) is taken to be complied with if one of those persons lodges a dutiable statement under that subsection on behalf of all those persons.
- (4) A dutiable statement lodged under subsection (1) is taken to be an instrument evidencing the disposition or dispositions in respect of which it is lodged and is chargeable with duty to the extent that duty chargeable on that disposition or those dispositions under section 73D because of section 73DC has not been paid.

”.

34. Section 73G inserted

After section 73F the following section is inserted —

“

73G. Farm-in agreements relating to mining tenements

5

(1) In this section —

“**exploration amount**”, in relation to a farm-in agreement, means an amount to be expended, after the agreement is made, on exploration or development of the mining tenement carried out after the agreement is made;

10

“**farm-in agreement**” means an agreement between the owner of a mining tenement and another person that, after the other person expends the exploration amount specified in the agreement, that other person will have a right to acquire an interest in the mining tenement that is —

15

- (a) specified in the agreement; and
- (b) to be held with the owner of the mining tenement;

20

“**mining tenement**” means —

- (a) a mining tenement held under the *Mining Act 1978*, being a mining tenement within the meaning of that Act or the *Mining Act 1904*; and
- (b) a mining tenement or right of occupancy continued in force by section 5 of the *Mining Act 1978*;

25

“**payment**” does not include payment of an exploration amount.

30

(2) An instrument evidencing or effecting a farm-in agreement is —

- (a) to the extent that —
 - (i) the instrument evidences or effects a farm-in agreement; and

- 5 chargeable with duty at the rate set out under
item 8 of the Second Schedule; and
- (b) to the extent that —
- 10 (i) the instrument provides for the
acquisition of an interest in a mining
tenement otherwise than pursuant to a
farm-in agreement; or
- 15 (ii) payment has been made or is payable in
respect of the right to acquire the
interest, or the acquisition of the
interest, specified in the farm-in
agreement,
chargeable with duty at the rate set out in
item 4 or 19 of the Second Schedule, as the
case requires.
- 20 (3) If the Commissioner is satisfied that —
- (a) a conveyance or transfer evidences or effects
the acquisition of an interest in a mining
tenement pursuant to a farm-in agreement;
- 25 (b) the amount specified in the farm-in agreement
to be expended on exploration or development
of the mining tenement has been expended
accordingly; and
- (c) any duty chargeable under subsection (2) in
respect of the instrument has been paid,
- 30 then —
- (d) to the extent that —
- (i) the conveyance or transfer evidences or
effects the acquisition of the interest; and

- (ii) no payment has been made or is payable in respect of the acquisition,
the conveyance or transfer is chargeable with duty under item 6 of the Second Schedule; and
- 5 (e) to the extent that —
- (i) the conveyance or transfer provides for the acquisition of an interest in a mining tenement otherwise than pursuant to the farm-in agreement; or
- 10 (ii) payment has been made or is payable in respect of the acquisition of the interest specified in the farm-in agreement and duty in respect of that acquisition was not paid under subsection (2)(b),
- 15 the conveyance or transfer is chargeable with duty under item 4 or 19 of the Second Schedule, as the case requires.

”.

35. Section 74 amended

- 20 (1) Before section 74(1) the following subsection is inserted —
- “
- (1aa) In this section —
- “**dormant**” has the meaning given by section 75JAA;
- 25 “**dormant corporation**” means a corporation that has been dormant from when it was incorporated;
- “**interest**”, in relation to a managed investment scheme, has the same meaning as it has in section 9 of the Corporations Act;
- 30 “**managed investment scheme**” has the same meaning as it has in section 9 of the Corporations Act;
- “**member**” means a person who holds an interest in a managed investment scheme;

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- (ii) a dormant corporation, the shares in which the person intended to be acquired;
- 5 (b) at the time the contract or agreement was entered into action was being taken to incorporate the corporation or acquire the shares in the dormant corporation; and
- (c) duty has been paid on the contract or agreement under subsection (1),
- 10 a conveyance or transfer of the property by the vendor under the contract or agreement to the corporation after it has been incorporated or after the shares in it have been acquired, as the case requires, shall be charged with duty under item 6 of the Second Schedule.
- 15 (3b) Notwithstanding subsection (2), if —
- (a) the Commissioner is satisfied that a managed investment scheme has been, or is to be, established by means of an offer to subscribe to the scheme made to the public;
- 20 (b) the Commissioner is satisfied that before the establishment of the scheme —
- (i) the person named as purchaser in a contract or agreement referred to in subsection (1) entered into the contract or agreement; or
- 25 (ii) the person promoting the scheme arranged for that contract or agreement to be entered into,
- with the intention that the property concerned would become scheme property;
- 30 (c) the contract or agreement provides to the effect that, if the scheme is not established, the contract or agreement is terminated;

- (d) the Commissioner endorses on the subsequent conveyance or transfer that the Commissioner is satisfied in relation to the matters referred to in paragraphs (a) and (b); and
- 5 (e) duty has been paid on the contract or agreement under subsection (1),

a conveyance or transfer of the property by the vendor under the contract or agreement that results in the property becoming scheme property shall be charged with duty under item 6 of the Second Schedule.

10

(3c) Notwithstanding subsection (2), if —

- (a) a contract or agreement referred to in subsection (1) is entered into; and
- (b) duty has been paid on the contract or agreement under subsection (1),
- 15

a conveyance or transfer of the property concerned by the vendor under the contract or agreement —

- (c) to the extent of the whole or any part of the interest that the purchaser would have acquired in the property if the contract or agreement had been completed; and
- (d) to a person who at the time the contract or agreement was entered into was related to that purchaser,
- 20

shall be charged with duty under item 6 of the Second Schedule.

25

(3d) For the purposes of subsection (3c), the following persons are related to a purchaser who is an individual —

- (a) the purchaser's spouse or de facto partner;
- (b) a parent or remoter lineal ancestor of the purchaser or the purchaser's spouse or de facto partner;
- 30

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Division 1 Stamp Act 1921 amended

s. 35

- 5
- (c) a child or remoter lineal descendant of the purchaser or the purchaser's spouse or de facto partner;
- (d) a brother or sister of the purchaser or the purchaser's spouse or de facto partner;
- (e) a corporation if —
- 10
- (i) the purchaser is the sole shareholder of the corporation; or
- (ii) the purchaser is a shareholder of the corporation and is related (within the meaning of this section) to each of the other shareholders;
- (f) a unit trustee in the unit trustee's capacity as trustee of a unit trust if —
- 15
- (i) the purchaser is the sole unit holder in the unit trust; or
- (ii) the purchaser is a unit holder in the unit trust and is related (within the meaning of this section) to each of the other unit holders.
- 20
- (3e) For the purposes of subsection (3c), a person is related to a purchaser that is a corporation if —
- (a) the person is the sole shareholder of the purchaser; or
- 25
- (b) the person is a shareholder of the purchaser and, if the person were a purchaser, would be related (within the meaning of this section) to each of the other shareholders.
- (3f) For the purposes of subsection (3c), a person is related to a purchaser that is a unit trustee if —
- 30
- (a) the person is the sole unit holder in the unit trust; or

(b) the person is a unit holder in the unit trust and, if the person were a purchaser, would be related (within the meaning of this section) to each of the other unit holders.

5 (3g) For the purposes of subsections (3d), (3e) and (3f), a person cannot be related to a purchaser in relation to the conveyance or transfer to the person of property that the person intends to hold on behalf of another person (the “beneficiary”) —

- 10 (a) as the trustee of a discretionary trust (as defined in section 76);
(b) subject to subsection (3d)(f), as a unit trustee; or
(c) as a trustee other than a trustee referred to in paragraph (a) or (b), unless the beneficiary is also related (within the meaning of this section) to the purchaser.
- 15

(3h) For the purposes of subsections (3d), (3e) and (3f) —

- (a) an illegitimate person is to be treated as the legitimate child of that person’s parents; and
(b) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by a written law.
- 20

25 (5) Section 74(4) is amended by deleting “liable to duty.” and inserting instead —

“ chargeable with duty but the Commissioner, on being requested to do so, is to endorse on the conveyance or transfer the duty paid.

30

36. Section 74A amended

Section 74A(1) is amended by deleting “or 4A(1), as the case requires,”.

37. Sections 74B and 74C inserted

After section 74A the following sections are inserted —

“

74B. Transactions involving a call option and a put option

5

(1) In this section —

“**call option**” means the right referred to in subsection (2)(a);

“**option property**” means —

10

(a) the property to which the call option applies; or

(b) if the put option applies to only a part of the property to which the call option applies, that part of the property;

15

“**property**” includes an estate or interest in property;

“**put option**” means the right referred to in subsection (2)(b).

(2) Subject to subsection (4), this subsection applies if, at the same time —

20

(a) a person (“**A**”) has a right to require another person (“**B**”) to sell property to A, or to a person who has an agreement, arrangement or understanding with A relating to the property; and

25

(b) B has a right to require A, or a person referred to in paragraph (a), to purchase —

(i) the property;

(ii) a part of the property; or

(iii) property that includes the property,

30

from B.

-
- (3) Subsection (2) applies regardless of when the call option or the put option is exercisable.
- (4) The Commissioner may determine that subsection (2) does not apply if the Commissioner is satisfied —
- 5 (a) that the call option and the put option are for, and only for, the purpose of obtaining finance or making other financial arrangements; or
- (b) that the call option and the put option form part of a scheme of call options and put options
- 10 given by the proprietors of a business that —
- (i) are for, and only for, the purpose of facilitating the continuation of the business by one or some of the proprietors (the **“continuing proprietor or proprietors”**); and
- 15 (ii) are not exercisable except on the occurrence of an event specified in them that would cause the continuing proprietor or proprietors to seek to acquire the interest of another of the proprietors.
- 20
- (5) In subsection (4)(b) —
- “proprietor”** means —
- 25 (a) in the case of a partnership, a partner;
- (b) in the case of a company, a shareholder;
- (c) in the case of a unit trust scheme, a unit holder; or
- (d) in any other case, a person the Commissioner determines to be a proprietor of the business.

- (6) From the time when subsection (2) applies the call option is to be regarded as —
- (a) a contract for the sale of the option property to A for the purposes of section 74(1); or
 - 5 (b) an acquisition by A of beneficial ownership of the option property for the purposes of section 31B,
- whichever is applicable in the circumstances.
- (7) The consideration for the contract or acquisition mentioned in subsection (6) is taken to be —
- 10 (a) the sum of —
 - 15 (i) the amount paid by way of consideration for the granting of the call option in respect of the option property; and
 - (ii) the amount payable in the event of the call option being exercised in respect of the option property;
 - or
 - 20 (b) if the unencumbered value of the option property is ascertainable and it is greater than the sum mentioned in paragraph (a), that unencumbered value.
- (8) If as a result of the call option or the put option being exercised —
- 25 (a) a contract or agreement for the sale of the option property is executed; or
 - (b) there is an acquisition of beneficial ownership of the option property for the purposes of
 - 30 section 31B,
- the duty payable in respect of the contract or agreement or because of the acquisition is to be reduced by the

amount of any duty paid because of subsections (6) and (7).

(9) This subsection applies if —

5 (a) A has assigned the call option to another person (“C”) so that C has a right to require B to sell the option property to C, or to a person who has an agreement, arrangement or understanding with C relating to the property; and

10 (b) B has a right to require C, or a person referred to in paragraph (a), to purchase the option property from B.

(10) If subsection (9) applies, subsection (2) does not apply in relation to the rights of C and B referred to in subsection (9)(a) and (b).

15 (11) From the time when subsection (9) applies the assignment of the call option is to be regarded as —

(a) a contract for the sale of the option property to C for the purposes of section 74(1); or

20 (b) an acquisition by C of beneficial ownership of the option property for the purposes of section 31B,

whichever is applicable in the circumstances.

(12) The consideration for the contract or acquisition mentioned in subsection (11) is taken to be —

25 (a) the sum of —

(i) the amount paid by way of consideration for the assignment of the right referred to in subsection (9)(a); and

30 (ii) the amount payable in the event of the right referred to in subsection (9)(a) being exercised;

or

- (b) if the unencumbered value of the option property is ascertainable and it is greater than the sum mentioned in paragraph (a), that unencumbered value.

5

- (13) If as a result of the right referred to in subsection (9)(a) or the right referred to in subsection (9)(b) being exercised —

10

- (a) a contract or agreement for the sale of the option property is executed; or
- (b) there is an acquisition of beneficial ownership of the option property for the purposes of section 31B,

15

the duty payable in respect of the contract or agreement or because of the acquisition is to be reduced by the amount of any duty paid because of subsections (11) and (12).

- (14) If —

20

- (a) the call option and the put option both expire without being exercised; or
- (b) after either of those options is rescinded or cancelled by agreement, the other expires without being exercised,

25

and subsection (9) has never applied, the duty chargeable on the call option is reduced to the amount of duty that would have been payable but for subsections (6) and (7).

- (15) If —

30

- (a) the rights referred to in subsection (9)(a) and (b) both expire without being exercised; or
- (b) after either of those rights is rescinded, withdrawn, surrendered or cancelled by

agreement, the other expires without being exercised,

the duty chargeable on the assignment of the call option is reduced to the amount of duty that would have been payable but for subsections (11) and (12).

5

(16) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to subsection (14) or (15).

10

(17) For the purposes of subsection (16), section 17 of the *Taxation Administration Act 2003* applies as if the original assessment had been made —

15

- (a) in the case of subsection (14), as soon as the call option and the put option had both expired; or
- (b) in the case of subsection (15), as soon as the rights referred to in subsection (9)(a) and (b) had both expired.

20

(18) In relation to duty paid because of subsections (6) and (7) —

25

- (a) the matter is not carried into effect for the purposes of section 20(1)(a) or (2)(a) if —
 - (i) the call option and the put option are rescinded or cancelled by agreement; or
 - (ii) after either of those options expires without being exercised, the other is rescinded or cancelled by agreement,

and

30

- (b) if section 20(1) or (2) applies, the amount of duty is not to be reduced to less than the amount that would have been payable but for subsections (6) and (7).

(19) In relation to duty paid because of subsections (11) and (12) —

(a) the matter is not carried into effect for the purposes of section 20(1)(a) or (2)(a) if —

5 (i) the rights referred to in subsection (9)(a) or (b) are rescinded, withdrawn, surrendered or cancelled by agreement; or

10 (ii) after either of those rights expires without being exercised, the other is rescinded, withdrawn, surrendered or cancelled by agreement,

and

15 (b) if section 20(1) or (2) applies, the amount of duty is not to be reduced to less than the amount that would have been payable but for subsections (11) and (12).

74C. Acquisition of certain business assets

(1) In this section —

20 **“business asset”** means —

(a) goodwill of a business;

(b) a restraint of trade arrangement for a business;

(c) a business identity;

25 (d) a business licence as defined in paragraph (b) of the definition of that term in section 73F(1) if it authorises the carrying out of an activity in Western Australia and elsewhere;

30 (e) a right of a business under an uncompleted contract to supply commodities or provide services;

- (f) intellectual property of a business; or
- (g) things that a business has that are in the nature of rent rolls and client lists;

5 **“business identity”** means a business name, trading name or Internet domain name, or a right to use a business name, trading name or Internet domain name;

10 **“circuit layout right”** means an exclusive right under the *Circuit Layouts Act 1989* of the Commonwealth for an eligible layout under that Act;

“commodities” includes land, money, credit and goods and any interest in them;

15 **“franchise arrangement”** means an agreement or other arrangement under which a person (the **“franchisor”**) who carries on a business authorises or permits another person (the **“franchisee”**) —

20 (a) to engage in the business of producing, supplying or providing commodities or services, or both, at a place other than the place of business of the franchisor as long as the franchisee does so under —

25 (i) a stated marketing, business or technical plan or system; and

 (ii) a common format or common procedure, or both;

and

30 (b) to use a mark or common trade name in such a way that the business carried on by the franchisee is or is capable of being identified by the public as being substantially associated with the mark or name identifying, commonly connected with or

controlled by the franchisor or a person who would be related to the franchisor for the purposes of Part IIIBA;

“intellectual property” means —

- 5 (a) a patent, trademark, industrial design, copyright, registered design, plant breeder right or circuit layout right;
- (b) anything else that has the following characteristics —
- 10 (i) it is in the nature of a strategy, process, procedure, mode of operation or way of working that enables a commodity or service to be produced, supplied or provided or that enhances the production, supply, provision or quality of a commodity or service;
- 15 (ii) it was created, devised or developed to be used for business purposes or, having been created, devised or developed for other purposes, has been applied, adapted or modified for use for business purposes;
- 20 or
- (c) a right to use or exploit —
- 25 (i) anything mentioned in paragraph (a) or (b); or
- (ii) an adaptation or modification of anything mentioned in paragraph (a) or (b);

30 **“plant breeder right”** means —

- (a) a plant breeder’s right under the *Plant Breeder’s Rights Act 1994* of the Commonwealth; or

(b) a plant breeder's right corresponding to a right mentioned in paragraph (a);

5 “**restraint of trade arrangement**” for a business means a restraint of trade arrangement which, in the opinion of the Commissioner, enhances or is likely to enhance the value of the business.

(2) This section applies if a business asset of a business is acquired by a person and, at any time in the year preceding the acquisition, the business has —

10 (a) been carried on in or from Western Australia; or

 (b) supplied commodities or provided services to customers in Western Australia.

15 (3) This section does not apply to the acquisition of a business asset by the franchisee from the franchisor in accordance with a franchise arrangement unless another person has relinquished, or agreed not to extend, that business asset or a business asset of the same kind so that the franchisee could acquire that
20 business asset.

(4) This section does not apply to the acquisition of intellectual property unless the acquisition is the subject of an arrangement that includes the acquisition of a business asset other than intellectual property.

25 (5) If a person —

 (a) carries on, or has carried on, a business (the “**first business**”); and

 (b) creates intellectual property, a restraint of trade arrangement or a business identity related to the
30 first business for the purpose of the carrying on of the first business or another business by another person,

the creation of the intellectual property, restraint of trade arrangement or business identity is to be regarded for the purposes of this section as the acquisition by that other person of a business asset of the first business.

5

(6) If this section applies —

(a) the business asset is to be regarded for the purposes of this Act as property; and

10

(b) the acquisition of the business asset is to be regarded for the purposes of this Act as a transaction that transfers property and is chargeable with duty,

whether or not the business asset would otherwise be regarded under this Act as property and despite item 2(7) of the Third Schedule.

15

(7) Subject to subsection (10), duty on the acquisition of the business asset is to be assessed in accordance with whichever of subsection (8) or (9) is applicable.

20

(8) If the principal place of business or head office of the business is in Western Australia, duty is to be assessed on the amount determined using the following formula —

$$A = \frac{CUV \times (TS - IS)}{TS}$$

where —

25

A is the dutiable amount;

CUV is the consideration for the acquisition of the business asset, or the unencumbered value of the business asset, whichever is the greater;

30

TS is the gross amount (in Australian dollars) of all the commodities supplied and services provided

by the business in the last 3 completed financial years preceding the acquisition; and

5 IS is the gross amount (in Australian dollars) of the commodities supplied and services provided by the business to customers elsewhere in Australia in the last 3 completed financial years preceding the acquisition.

10 (9) If neither the principal place of business nor the head office of the business is in Western Australia, duty is to be assessed on the amount determined using the following formula —

$$A = \frac{CUV \times WAS}{TS}$$

where —

15 A is the dutiable amount;

CUV is the consideration for the acquisition of the business asset, or the unencumbered value of the business asset, whichever is the greater;

20 TS is the gross amount (in Australian dollars) of all the commodities supplied and services provided by the business in the last 3 completed financial years preceding the acquisition; and

25 WAS is the gross amount (in Australian dollars) of the commodities delivered and services provided by the business to customers in Western Australia in the last 3 completed financial years preceding the acquisition.

30 (10) Despite whichever of subsection (8) or (9) is applicable, the Commissioner may determine the dutiable amount on another basis if the Commissioner is satisfied that the other basis would be more appropriate in the circumstances.

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(11) If this section applies to the acquisition of a business asset as defined in paragraph (d) of the definition of that term in subsection (1), section 73F does not apply to the acquisition.

5 (12) Section 74 applies to a contract or agreement for the acquisition of a business asset to which this section would apply.

”.

38. Section 75 amended

10 Section 75(2) is amended by deleting “or 4A(1), as the case requires,”.

39. Section 75AD amended

Section 75AD(1) is amended by deleting “or 4A(1), as the case requires,”.

15 **40. Section 75AG amended and transitional**

(1) Section 75AG(1)(c) is amended as follows:

(a) in subparagraph (i) by deleting “\$202 500” and inserting instead —

“ \$277 500 ”;

20 (b) in subparagraph (ii) by deleting “\$135 000” and inserting instead —

“ \$185 000 ”.

(2) Section 75AG(3)(d) is amended by deleting “\$52 000” and inserting instead —

25 “ \$72 000 ”.

(3) The amendments effected by this section do not apply in relation to —

(a) an agreement for the conveyance or transfer of residential property executed before this section came

into operation regardless of when any instrument of conveyance or transfer entered into in accordance with the agreement is executed; or

- 5 (b) an instrument of conveyance or transfer made in accordance with an agreement referred to in paragraph (a), regardless of when the instrument is executed.

41. Section 75CA inserted

10 After section 75C the following section is inserted in Part IIIB —

“

75CA. Refund where contingent consideration is not paid

- 15 (1) If payment of any part of the consideration (the “**contingent consideration**”) in respect of which a contract or agreement for the sale of any estate or interest in any property (the “**contract**”) was charged with *ad valorem* duty was dependent on the happening of a future event, then if, on an application under subsection (2), it is shown to the satisfaction of the Commissioner that —
- 20 (a) the contract was executed on or after the day on which this section came into operation;
- (b) the contingent consideration has not been paid;
- 25 (c) the event did not happen, or did not happen within the time specified in the contract for the happening of the event; and
- (d) either —
- (i) the event cannot happen in the future; or
- 30 (ii) the time specified in the contract for the happening of the event has passed or expired,

then the contingent consideration is taken not to be, and never to have been, part of the consideration in respect of which the contract is chargeable and the Commissioner must reassess the duty payable on the contract accordingly.

5

(2) An application for the purposes of this section —

(a) is to be made in an approved form by the person liable to pay the duty; and

10

(b) cannot be made more than 5 years after the contract was executed.

(3) In this section, a reference to the happening of an event includes a reference to an event not happening.

”.

42. Section 75D amended

15

Section 75D(1) is amended in the definition of “instrument of conveyance” by deleting “or item 4A” in both places where it occurs.

43. Section 75E amended

20

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

(a) by deleting paragraph (c);

(b) in paragraph (d) —

(i) after subparagraph (i) by inserting —

“ or ”;

25

(ii) at the end of subparagraph (ii) by deleting “; or” and inserting a comma; and

(iii) by deleting subparagraph (iii);

(c) in paragraph (e) —

(i) after subparagraph (i) by inserting —

“ or ”;

-
- (ii) at the end of subparagraph (ii) by deleting “; or”
and inserting a comma; and
- (iii) by deleting subparagraph (iii).
- (2) Section 75E(3) is amended by deleting “company,” and “or
5 share”.
- (3) Section 75E(4) is amended as follows:
- (a) by deleting “subsection (1)(a), (b) or (c)” and inserting
instead —
“ subsection (1)(a) or (b) ”;
- 10 (b) by deleting “property, interest or share,” and inserting
instead —
“ property or partnership interest, ”.
- (4) Section 75E(5) is amended as follows:
- 15 (a) by deleting “property, an interest in a farming
partnership or a share in a farming company,” and
inserting instead —
“ property or an interest in a farming partnership, ”;
- (b) by deleting “property, interest in partnership or share”
and inserting instead —
20 “ property or partnership interest ”.
- (5) Section 75E(6) is amended as follows:
- (a) in paragraph (b) by deleting “property, interest in the
farming partnership or share in the farming company”
and inserting instead —
25 “ property or partnership interest ”;
- (b) by deleting “property, interest in a farming partnership
or share in a farming company” and inserting instead —
“ property or partnership interest ”.

44. Section 75G amended

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

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

5 (b) at the end of paragraph (b) by deleting “; or” and
inserting a comma;

(c) by deleting paragraph (c);

(d) in paragraph (d) by deleting “property, interest in the
partnership or share in the company” and inserting
10 instead —

“ property or partnership interest ”.

(2) Section 75G(2)(a) is amended by deleting “or item 4A” and
“; as the case requires”.

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

15 (a) by deleting “or company referred to in subsection (1)(b)
or (c)” and inserting instead —

“ referred to in subsection (1)(b) ”;

(b) in the definitions of “A”, “B” and “C” by deleting “or
company, as the case requires”.

20 **45. Section 75H amended**

Section 75H(1) is amended by deleting “, interest or share” and
inserting instead —

“ or partnership interest ”.

46. Section 75HA amended

25 (1) Section 75HA(3) is amended as follows:

(a) by deleting “referred to in section 75E(1)(e)” and
inserting instead —

“ to a discretionary trustee of a discretionary trust ”;

- (b) by inserting after “subsection (4)” —
“ or (4a) ”;
- (c) by deleting “prepare a dutiable statement” and inserting
instead —
5 “ lodge a statement with the Commissioner ”.
- (2) Section 75HA(3a) is amended by inserting after “be” —
“ prepared ”.
- (3) Section 75HA(4) is amended as follows:
- (a) by deleting “prepare” and inserting instead —
10 “ lodge ”;
- (b) in paragraph (a) by deleting “prepared under this section
and”.
- (4) After section 75HA(4) the following subsection is inserted —
“
15 (4a) If the property conveyed by an instrument of
conveyance was a share in a farming company, the
discretionary trustee is not required to lodge a dutiable
statement unless subsection (6) will apply if such a
statement is lodged.
20 ”.
- (5) Section 75HA(5) is amended by deleting “prepared” and
inserting instead —
“ lodged ”.
- (6) Section 75HA(6) is amended as follows:
- (a) by deleting “prepared” in each place where it occurs and
25 inserting instead —
“ lodged ”;
- (b) in paragraph (a) by deleting “referred to in
section 75E(1)(e)(iii)” and inserting instead —
30 “ that conveyed a share in a farming company ”;

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(c) by deleting paragraph (c) and inserting instead —

“

(c) at the date of the taxable event the relevant farming company is still beneficially entitled to farming land to which it was beneficially entitled when the acquisition referred to in paragraph (b) occurred,

”.

(7) Section 75HA(7) is repealed.

(8) Section 75HA(8) is amended as follows:

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

“ lodged ”;

(b) by deleting “referred to in section 75E(1)(e)(ii) or (iii)” and inserting instead —

“

that conveyed an interest in a farming partnership or a share in a farming company

”.

47. Section 75I amended

(1) Section 75I(1) is amended by deleting paragraph (a) and “and” after it and inserting instead —

“

(a) the Commissioner is satisfied that, if the amendments made to this Part by the *Business Tax Review (Assessment) Act (No. 2) 2003* had not been made, an instrument of conveyance of a share in a farming company would have been —

(i) an instrument referred to in section 75E(1)(c), (d)(iii) or (e)(iii); and

(ii) an instrument to which this Part applied;

and

”.

- (2) Section 75I(1)(b) is amended by deleting “prepare” and inserting instead —
“ lodge ”.

48. Section 75J amended

- 5 (1) The amendments in this section are to section 75J(1).
(2) The definition of “foreign person” is deleted.
(3) The definition of “section 31B or 31C statement” is amended by deleting “prepared” and inserting instead —
“ lodged ”.
10 (4) The definition of “shares” is amended by deleting the full stop and inserting a semicolon.
(5) The following definitions are inserted in the appropriate alphabetical positions —
“
15 “**licence**” has the meaning given to that term in section 76B;
“**vehicle**” has the meaning given to that term in section 76B.
”.

20 **49. Section 75JA amended**

- (1) Section 75JA(1a), (2) and (2a) are repealed and the following subsection is inserted instead —
“
25 (2) If, on an application under section 75JD, it is shown to the satisfaction of the Commissioner that this section applies because of subsection (1) and the acquisition is a relevant acquisition under Part IIIA, the Commissioner shall exempt a Part IIIA statement lodged in respect of the acquisition from duty
30 chargeable under section 76AH or 76AO.

”.

(2) Section 75JA(3) is amended by deleting “subsection (2)(b)” and inserting instead —

“ subsection (2) ”.

5 (3) Section 75JA(4) is repealed and the following subsection is inserted instead —

“

(4) If —

- 10 (a) an instrument was exempted under subsection (2a) before it was repealed; and
- (b) within 6 months after the acquisition the transferee has not become listed on a recognised stock exchange situated in the country where the transferee is incorporated,

15 the clawback applies.

”.

50. Section 75JB amended and transitional

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

- 20 (a) by deleting subparagraph (i);
- (b) after subparagraph (ii) by deleting “or”;
- (c) in subparagraph (iii) by deleting “prepared” and inserting instead —
- “ lodged ”;

25 (d) after subparagraph (iii) by inserting —

“

or

- 30 (iv) A and B are associated in the circumstances described in section 75J(2)(a)(ii), the third body corporate referred to in section 75J(2)(a)(ii) (“C”) has owned the

issued share capital of B in those circumstances since B was incorporated in Australia, B has been dormant from when it was incorporated until it resolved to acquire the property from A, and A has been associated with C for at least the qualifying period;

”.

- 5
- (2) The amendment effected by subsection (1)(a) does not apply in relation to an instrument if, before the commencement day, the Commissioner issued a pre-determination to the effect that section 75JB(1)(d)(i) of the *Stamp Act 1921* applied to the parties to the instrument, and in any such case —
- 10
- (a) the reference in section 75JB(1)(d)(i) to section 75JA(1a) is to be read as a reference to that subsection as in force from time to time prior to its repeal by this Act; and
- 15
- (b) any such pre-determination is as binding on the Commissioner after the commencement day as it was before that day.
- 20
- (3) After section 75JB(2) the following subsection is inserted —
- “
- (2a) This section also applies if —
- 25
- (a) an instrument executed on or after the day on which section 50 of the *Business Tax Review (Assessment) Act (No. 2) 2003* comes into operation evidences an agreement to transfer or assign an interest in a vehicle and includes the following information —
- 30
- (i) the make and model of the vehicle;
- (ii) the licence plate number of the vehicle;
- (iii) the market value of the vehicle;
- (iv) the purchase price (if applicable) of the vehicle;
- and

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(b) subsection (1)(b) to (f) are met (with any necessary modifications).

”.

(4) Section 75JB(3) is amended as follows:

5 (a) by inserting after “section 75JD” —

“

in respect of an instrument to which subsection (1)(a) refers

”;

10 (b) in paragraph (a) by deleting “4A,”;

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

“ lodged ”.

(5) After section 75JB(3) the following subsection is inserted —

15 “

(3a) If, on an application under section 75JD in respect of an instrument to which subsection (2a) refers, it is shown to the satisfaction of the Commissioner that this section applies, then the Commissioner shall issue to the applicant an exemption certificate in the approved form.

”.

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

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

25 “

If —

(aa) an instrument is exempted under subsection (3);
or

(ab) an exemption certificate is issued under subsection (3a) in relation to an instrument,
and

”;

- 5 (b) in paragraph (b) by deleting “or (1a)(a) to (h)”;
(c) in paragraph (c) by deleting “or (1a)(f)”.

(7) Section 75JB(5) is amended by deleting “If” and inserting instead —

“

10 If —

(aa) an instrument is exempted under subsection (3);
or

(ab) an exemption certificate is issued under subsection (3a) in relation to an instrument,

15 and

”.

(8) Section 75JB(5f) is amended as follows:

(a) by deleting from and including “If the” to and including “parent body — ” and inserting instead —

20 “

If —

(aa) an instrument is exempted under subsection (3) or an exemption certificate is issued under subsection (3a) in relation to an instrument;

25 (ab) the relevant circumstances have occurred; and

(ac) within 5 years after the execution of the instrument or the date of the relevant acquisition,

the parent body —

30

”;

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(b) in paragraph (b) by inserting after “to have” —
“ voting ”.

(9) Section 75JB(6) is amended by deleting “If” and inserting instead —

5

“

If —

(aa) an instrument is exempted under subsection (3);
or

10

(ab) an exemption certificate is issued under
subsection (3a) in relation to an instrument,

and

”.

(10) Section 75JB(7) is amended as follows:

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

15

“

If —

(aa) an instrument is exempted under subsection (3);
or

20

(ab) an exemption certificate is issued under
subsection (3a) in relation to an instrument,

and

”;

(b) by deleting “or (1a)(a) to (h)”;

(c) in paragraph (b) by deleting “or (1a)(f)”.

25

(11) The amendments effected by subsections (6)(b), (6)(c), (10)(b)
and (10)(c) do not apply in relation to an instrument executed
before the commencement day, and in any such case the references
in section 75JB of the *Stamp Act 1921* to section 75JA(1a) of that
Act are to be read as references to that subsection as in force from
30 time to time prior to its repeal by this Act.

(12) In this section —

“commencement day” means the day on which this section came into operation.

51. Section 75JBA amended

5 Section 75JBA(2) is amended as follows:

- (a) by inserting after “ownership or” —
“ voting ”;
- (b) by deleting “control B” and inserting instead —
“ have voting control of B ”.

10 **52. Section 75JC amended**

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

- (a) by deleting “a transaction” and inserting instead —
“ an acquisition, transaction ”;
- (b) in paragraph (b) by deleting “prepare” and inserting
15 instead —
“ lodge ”.

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

“ from ”.

20 **53. Section 75JD amended**

(1) Section 75JD(2) is amended as follows:

- (a) by deleting “on —” and inserting instead —
“ on an instrument or Part IIIIBA statement ”;
- (b) by deleting paragraphs (a) and (b) and “or” between
25 them.

(2) After section 75JD(2) the following subsection is inserted —

“

(2a) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the transfer of a licence on the basis that an exemption certificate under section 75JB(3a) should have been, but was not, issued in relation to an instrument cannot be made more than 12 months after the date of the application for the transfer.

”.

(3) After section 75JD(4) the following subsection is inserted —

“

(5) In subsection (4) —

“**exempted instrument**” includes an instrument in relation to which an exemption certificate has been issued under section 75JB(3a).

”.

54. Section 75JDA amended

Section 75JDA(3) is amended by deleting “in respect of an instrument or” and inserting instead —

“

or to issue an exemption certificate under section 75JB(3a) in respect of an instrument or to grant an exemption under section 75JB(3) in respect of

”.

55. Section 75JE amended

(1) Section 75JE is amended as follows:

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

(b) by inserting after “to an instrument” —

“

that has been exempted from duty under
section 75JB(3)

5

”;

(c) in paragraph (d), by inserting before “transaction” —

“ acquisition, ”.

(2) At the end of section 75JE the following subsections are
inserted —

10

“

(2) If this section applies to an instrument in relation to
which an exemption certificate has been issued under
section 75JB(3a), the exemption certificate is revoked
by force of this subsection and if, under
section 76D(3)(c), the licence for a vehicle has been
transferred without duty being payable —

15

(a) the Commissioner shall assess the amount of
duty payable on the transfer under Part IIIC;

20

(b) the transfer shall be charged with penalty tax
equal to 20% per annum of the duty chargeable
on the transfer calculated from the date of the
application for the transfer to the date the
Commissioner is notified under section 75JB(4)
or (5f)(c), or if the Commissioner is not so
notified, to the date an assessment notice is
issued by the Commissioner;

25

(c) the duty and penalty tax shall be paid within
one month after an assessment notice is issued
by the Commissioner;

30

(d) if a body corporate that is liable to pay the duty
and penalty tax has been wound up voluntarily,
its directors at the time of the resolution to
wind-up shall be jointly and severally liable to

pay the duty and penalty tax unless the Commissioner is satisfied that —

- 5
- (i) the winding-up was a creditors' voluntary winding-up (as defined in the Corporations Act); and
 - (ii) no creditor was an associate (as defined in the Corporations Act) of the body corporate;

and

- 10
- (e) on payment of the duty and penalty tax the transfer shall be deemed to be, and always to have been, stamped.

(3) For the purposes of subsection (2)(a) —

- 15
- (a) the amount to be assessed is the amount of duty that would have been payable when the licence was transferred if the exemption certificate had not been in existence; and
 - (b) section 76E(2) and (3) apply to the assessment as if the Commissioner were the Director
- 20
- General as defined in section 76B.

”.

56. Section 75JF amended

Section 75JF(d)(ii) is amended by deleting “prepare” and inserting instead —

25 “ lodge ”.

57. Section 76 amended

- (1) The amendments in this section are to section 76(1).
- (2) The definition of “acquire” is amended in paragraph (b)(iii) as follows:

- 30
- (a) after Item (II) by inserting —
“ and ”;
 - (b) by deleting Item (III) and “and” after it.

- (3) The definition of “chattels” is amended in paragraph (c) by deleting “that are usually situated on farming land” and inserting instead —

5

“ used solely or principally in connection with the business of primary production

”.

58. Section 76A amended

10

Section 76A(2)(b) is amended by deleting “prepared” in both places where it occurs and inserting instead —

“ lodged ”.

59. Section 76AA amended

Section 76AA is amended by deleting “prepare” and inserting instead —

15

“ lodge ”.

60. Section 76AB inserted

After section 76AA the following section is inserted in Part IIIBA Division 1 —

20

76AB. Request that Commissioner determine whether dutiable statement is required to be lodged

25

(1) A person may, within 2 months after the making of an acquisition, request the Commissioner to determine whether a dutiable statement is required to be lodged by that person under section 76AG or 76AN in respect of the acquisition.

(2) A request under subsection (1) —

(a) must be made in an approved form; and

- 5
- (b) must include —
- (i) the information that would be required under section 76AG(4)(a) to (f) or 76AN(3)(a) to (f) if the request were a dutiable statement; and
- (ii) any prescribed information.
- 10
- (3) If a request is made by a person under subsection (1) as to whether a dutiable statement is required to be lodged by that person and that request complies with subsection (2) —
- (a) the Commissioner shall make the requested determination; and
- 15
- (b) any requirement to lodge a dutiable statement under section 76AG or 76AN in respect of the acquisition does not apply in relation to that person.
- 20
- (4) Despite subsection (3)(a) if the Commissioner needs any further information and evidence to make the determination, the Commissioner may defer the determination and require the person making the request to provide that information and evidence to the Commissioner within such reasonable period (the “**specified period**”) as the Commissioner specifies in the requirement.
- 25
- (5) If at the end of the specified period the Commissioner does not have sufficient information and evidence to make the requested determination —
- (a) the Commissioner is no longer required to make the determination; and
- 30
- (b) any requirement that the person making the request lodge a dutiable statement under section 76AG or 76AN in respect of the acquisition is revived as if the request had never been made.

- (6) If the Commissioner determines that the person making the request is not required to lodge a dutiable statement under section 76AG or 76AN, the Commissioner shall notify that person accordingly.
- 5 (7) If the Commissioner determines that the person making the request is required to lodge a dutiable statement under section 76AG or 76AN, the request under subsection (1) and any information and evidence provided with the request or under subsection (4) are
10 taken to be the dutiable statement lodged by the person.

61. Section 76AG amended

- (1) Section 76AG(1) is amended by deleting “prepare a dutiable statement” and inserting instead —
15 “
 , within 2 months after the acquisition, lodge a statement with the Commissioner
”.
- (2) Section 76AG(2) is amended by deleting “prepare” and inserting instead —
20 “ lodge ”.
- (3) Section 76AG(3) is amended by inserting after “be” —
“ prepared ”.
- (4) Section 76AG(4)(f), (5), (5a), (5c) and (5d) are each amended by deleting “prepared” and inserting instead —
25 “ lodged ”.

62. Section 76AH amended

(1) Section 76AH(2) is amended as follows:

- (a) by deleting the formula and inserting the following formula instead —

5

“

$$\frac{A - \$1\,000\,000}{\$500\,000} \times B$$

”;

- (b) after the definition of “A” by inserting —

“ and ”;

10

- (c) at the end of the definition of “B” by deleting “; and” and inserting a full stop;

- (d) by deleting the definition of “C”.

(2) Section 76AH(2a) is repealed.

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

15

- (a) by deleting “prepare” and inserting instead —

“ lodge ”;

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

“ lodged ”.

63. Section 76AI amended

20

Section 76AI(2)(b) is amended by deleting “80%” and inserting instead —

“ 60% ”.

64. Section 76AJ amended

After section 76AJ(2) the following subsection is inserted —

25

“

- (2a) A previous acquisition of an interest in the WA company is not to be taken into consideration under

subsection (1)(a)(ii) if, at the time of that acquisition,
the WA company was not a land-holder for the
purposes of this Division as enacted at that time.

”.

5 **65. Section 76AM amended**

Section 76AM is amended by deleting “prepared” and inserting
instead —

“ lodged ”.

66. Section 76AN amended

10 (1) Section 76AN(1) is amended by deleting “prepare a dutiable
statement” and inserting instead —

“

 , within 2 months after the acquisition, lodge a
statement with the Commissioner

15

”.

(2) Section 76AN(2) is amended by inserting after “be” —

“ prepared ”.

(3) Section 76AN(3)(f), (4) and (4a) are each amended by deleting
“prepared” and inserting instead —

20

“ lodged ”.

67. Section 76AO amended

(1) Section 76AO(2) is amended as follows:

(a) by deleting the formula and inserting the following
formula instead —

25

“

$$\frac{A - \$1\,000\,000}{\$500\,000} \times B$$

”;

- (b) after the definition of “A” by inserting —
“ and ”;
 - (c) at the end of the definition of “B” by deleting “; and”
and inserting a full stop;
 - 5 (d) by deleting the definition of “C”.
- (2) Section 76AO(2a) is repealed.
- (3) Section 76AO(3) is amended as follows:
- (a) by deleting “prepare” and inserting instead —
“ lodge ”;
 - 10 (b) by deleting “prepared” and inserting instead —
“ lodged ”.

68. Section 76AP amended

Section 76AP(2)(b) is amended by deleting “80%” and inserting
instead —
15 “ 60% ”.

69. Section 76AQ amended

After section 76AQ(2) the following subsection is inserted —
“
20 (2a) A previous acquisition of an interest in the corporation
is not to be taken into consideration under
subsection (1)(a)(ii) if, at the time of that acquisition,
the corporation was not a land-holder for the purposes
of this Division as enacted at that time.
”.

70. Section 76B amended

- (1) Section 76B(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

5

“market value” means —

- (a) in relation to a new vehicle —

(i) which is a vehicle of a class prescribed for the purposes of this paragraph; and

10

(ii) for which a price has been fixed by the manufacturer, importer or principal distributor as the retail selling price in Western Australia of a vehicle of that make and model,

15

the sum of —

(iii) the price so fixed; and

20

(iv) the price fixed by the manufacturer, importer or principal distributor as the additional retail selling price in Western Australia of any optional feature in or of the vehicle;

and

25

- (b) in relation to any other vehicle — the amount for which the vehicle might reasonably be sold, free of encumbrances, in the open market;

“new vehicle” means a vehicle that has never been used or that has only been used —

30

- (a) for the purpose of selling it in the ordinary course of a dealer’s business;
- (b) for the purpose of demonstrating it to prospective purchasers;
- (c) for both those purposes; or

(d) for either or both those purposes and for
minor incidental purposes,
but does not include a vehicle that has been used
for the purpose in paragraph (b) for a period of
more than 3 months;

5

“optional feature” means —

(a) any particular kind of transmission in a
vehicle; and
(b) any other feature in or of a vehicle
prescribed by the regulations,
that is not a standard feature of a vehicle of that
make and model;

10

”.

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

15

“

(2) A reference in this Part to the use of a vehicle for the
purpose referred to in section 76D(4)(a) or the
purposes referred to in section 76D(5)(a) includes a
reference to its use for that purpose or those purposes
and for minor incidental purposes.

20

”.

71. Section 76D amended

(1) Section 76D(3) is amended as follows:

(a) after paragraph (a) by deleting “or”;
(b) after paragraph (b) by deleting the full stop and
inserting —

25

“

; or
(c) the transfer of a licence if an exemption
certificate issued under section 75JB(3a) in

30

relation to an instrument relating to the vehicle
is given to the Director General.

”.

5 (2) Section 76D(5)(a)(i) is amended by deleting “that” and inserting
instead —

“ the dealer’s ”.

72. Section 76G amended

Section 76G is amended by inserting after “76D(2)” —

“ or to which section 76D(3)(c) applies ”.

10 **73. Section 76H amended**

Section 76H(1) is amended by inserting after “76D(2)” —

“ or is a transfer to which section 76D(3)(c) applies ”.

74. Section 76I amended

15 Section 76I(1) is amended by deleting “mentioned in
section 76D(4) or (5)” and inserting instead —

“

referred to in section 76D(4)(a) or the purposes
referred to in section 76D(5)(a)

”.

20 **75. Section 77 amended**

Section 77(2) is amended by deleting “liable to duty.” and
inserting instead —

“

25 chargeable with duty but the Commissioner, on being
requested to do so, is to endorse on the lease the duty
paid in accordance with subsection (1).

”.

76. Section 77A inserted

After section 77 the following section is inserted —

“

77A. Offer to lease

- 5 (1) Subject to subsection (2), where there is a transaction —
- (a) by which —
- 10 (i) land situated in Western Australia;
- (ii) buildings on land situated in Western Australia; or
- 15 (iii) fixtures annexed to, or to buildings on, land situated in Western Australia, is or are leased;
- (b) in respect of which there exists a written offer to lease, or a written acceptance of an offer to lease, that land or those buildings or fixtures; and
- 20 (c) which is not effected or evidenced by an instrument chargeable with *ad valorem* duty under item 12 of the Second Schedule,
- the lessee of the land, buildings or fixtures shall, within 2 months after entering into the transaction, lodge a statement with the Commissioner in respect of the transaction.
- 25 Penalty: \$20 000.
- 30 (2) Subsection (1) does not apply to a lessee unless, had an instrument effecting or evidencing the transaction been executed, the lessee would have been liable to pay *ad valorem* duty under item 12 of the Second Schedule in respect of the transaction.

-
- 5
- (3) A dutiable statement shall be prepared in an approved form.
- (4) A dutiable statement lodged under subsection (1) is taken to be a lease and is chargeable with duty accordingly.
- 10
- (5) Each party to a transaction described in subsection (1), except the person required to lodge the dutiable 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.
- 15
- (6) Subsection (5) does not apply to a party unless, had an instrument effecting or evidencing the transaction been executed, the lessee would have been liable to pay *ad valorem* duty under item 12 of the Second Schedule in respect of the transaction.
- 20
- (7) Nothing in this section prevents the joint making of a notification under subsection (5) in respect of a transaction by any 2 or more parties to the transaction who are required to make the notification.
- 25
- (8) The requirement to lodge a dutiable statement under subsection (1) or give notification under subsection (5) ceases to apply if an instrument that evidences the transaction and is chargeable with *ad valorem* duty under item 12 of the Second Schedule is executed at any time after the transaction was entered into, but nothing in this subsection affects the liability of a person for an offence against subsection (1) or (5) committed before the instrument was executed.
- 30
- (9) Where subsection (8) has effect, the instrument referred to in that subsection is to be regarded, for the purposes of section 17A, as having been first executed on the day on which the transaction occurred.

- 5 (10) If an instrument is executed as referred to in subsection (8) after a dutiable statement has been lodged under subsection (1), subsection (4) ceases to apply to the dutiable statement unless duty has already been paid in respect of it.
- 10 (11) If duty has already been paid as mentioned in subsection (10), the instrument is not chargeable with *ad valorem* duty but the Commissioner, on being requested to do so, is to endorse on the instrument the duty paid.
- (12) Regulations may exempt from the operation of subsections (1) and (5) any transactions belonging to a class specified in those regulations.

”.

15 **77. Section 79 amended**

Section 79(3), (4), (6) and (7) are repealed.

78. Section 80 repealed

Section 80 is repealed.

79. Part IIIE (s. 81-90A) replaced

20 Part IIIE is repealed and the following Part is inserted instead —

“

Part IIIE — Mortgage duty

Division 1 — Interpretation for this Part

81. Definitions

25 In this Part, unless the contrary intention appears —
“**advance**” has the meaning given in section 83;

“**corresponding Act**” means an Act of another State that deals with the imposition and assessment of mortgage duty (however described);

5

“**collateral mortgage**” means a mortgage that is or is to be stamped as a collateral mortgage under section 91B;

“**home mortgage**” has the meaning given in section 85;

10

“**liability date**”, in relation to a mortgage, means a date on which the liability to pay mortgage duty on the instrument arises;

“**loan**”, in relation to a mortgage, has the meaning given in section 84;

“**mortgage**” has the meaning given in section 82;

15

“**mortgage duty**” means duty payable on a mortgage in accordance with this Part;

“**mortgage package**” has the meaning given in section 91A;

20

“**referable point**” means the document used under section 91(3) to work out the dutiable proportion of a mortgage;

“**secured amount**”, in relation to a mortgage, means the amount determined under Division 3 as the amount secured by the mortgage;

25

“**security interest**”, in relation to property, means the estate or interest of a mortgagee, chargee or other secured creditor.

82. Mortgages

30

- (1) For the purposes of this Part, a “**mortgage**” is an instrument that —
 - (a) is a security by way of mortgage or charge over property that is wholly or partly in Western Australia at the liability date;

- 5
- (b) is a security by way of a conveyance or an assignment of property that is wholly or partly in Western Australia to a trustee, that is to be sold or otherwise converted into money, and is redeemable before the sale or conversion, except a conveyance or an assignment made for the benefit of creditors who accept the conveyance or assignment in full satisfaction of debts owed to them;
- 10
- (c) is a conveyance or an assignment of property that is wholly or partly in Western Australia, or effects or is evidence of an agreement for the conveyance or assignment of property that is wholly or partly in Western Australia, where the conveyance or assignment apparently is or will be absolute but is intended only as security for an advance; or
- 15
- (d) on the deposit of documents of title, authority to control title or a pledge to provide authority to control title, to property wholly or partly in Western Australia, becomes a mortgage or evidences the terms of a mortgage.
- 20
- (2) For section 91B, a reference to a mortgage or earlier mortgage includes a reference to a mortgage first executed before the commencement of this section.
- 25

83. Advances

- (1) An “**advance**” is the provision or obtaining of funds by way of financial accommodation by —
- 30
- (a) a loan; or
- (b) a bill facility that is one or more agreements, understandings or arrangements as a consequence of which a bill of exchange or promissory note —
- (i) is drawn, accepted, endorsed or made; or
- (ii) is held, negotiated or discounted.

- (2) Subsection (1)(b) applies whether or not the funds are obtained from —
- (a) the person who draws, accepts, endorses or makes the bill of exchange or promissory note; or
 - (b) a person who is a party to any of the agreements, understandings or arrangements.
- (3) An “**advance**” includes a contingent liability under section 90.

84. Loans

Each of the following is a “**loan**” —

- (a) an advance of money;
- (b) the payment of money for or on account of, or at the request of, any person;
- (c) a forbearance to require the payment of money owing on any account;
- (d) any transaction, whatever its terms or form, that in substance effects a loan of money.

85. Home mortgages

(1) A mortgage is a home mortgage if —

- (a) the mortgagor is an individual;
- (b) part or all of the secured amount is used for a dwellinghouse as provided by subsection (2); and
- (c) the dwellinghouse is being or will be used by the mortgagor as his or her sole or principal place of residence.

(2) An amount is used for a dwellinghouse if it is used solely in or towards the cost of any of the following —

- (a) purchasing any property which is or includes a dwellinghouse;
- (b) building a dwellinghouse;

- (c) effecting improvements or additions to a dwellinghouse;
- (d) repaying money that was used solely for a purpose referred to in paragraph (a), (b) or (c).

5

Division 2 — Liability for Mortgage Duty

86. Assessing mortgage duty

10

For the purposes of section 16, the amount of mortgage duty chargeable on a mortgage specified in item 13 of the Second Schedule is calculated, subject to the exemptions set out in item 7 of the Third Schedule, by applying the rates of duty specified in item 13 to the secured amount in accordance with this Part.

87. Liability dates

15

- (1) A mortgage is liable to mortgage duty when it is first executed.
- (2) A mortgage is also liable to mortgage duty when an advance or a further advance is made under the mortgage if the total secured amount exceeds the secured amount for which the mortgage has been stamped, or is exempt from duty, under this or a corresponding Act.
- (3) Subsection (4) applies to an instrument of security that does not affect property in Western Australia when it is first executed if the instrument —
 - (a) affects any property that is specifically identified, whether or not in the instrument, when it is first executed and, under an arrangement, the property is intended to be secured by the security; or
 - (b) affects land, other than a security interest, in Western Australia within one year after it is first executed.

25

30

(4) The instrument of security is liable for mortgage duty when it first affects the property or land unless it is stamped with, or is exempt from, similar duty under a corresponding Act.

5 (5) An instrument referred to in section 82(1)(d) that becomes a mortgage or is evidence of the terms of a mortgage is liable to mortgage duty on the deposit of the instruments.

88. Stamping before advance

10 (1) A mortgage may be stamped before an advance is made under the mortgage, whether or not an earlier advance has been made under it.

15 (2) A mortgage mentioned in section 91 or 91A may be stamped to secure any amount exceeding that to which it is already stamped based on the dutiable proportion for the mortgage when it is stamped.

Division 3 — Amount secured by a mortgage

89. The secured amount

20 (1) The amount secured by a mortgage is the amount equal to the sum of the advances actually secured by it and recoverable under the terms of the mortgage.

(2) However, if —
25 (a) a mortgage has been stamped, or is exempt from duty, under this or a corresponding Act for an amount of advances secured by the mortgage;
(b) a further advance secured by the mortgage is made; and

- (c) the total amount secured by the mortgage exceeds the amount for which the mortgage has been stamped,

5 then the amount secured by the mortgage is the amount by which the amount of the advances secured by the mortgage exceeds the amount for which the mortgage has been stamped.

- (3) Mortgage duty is not payable on any part of the secured amount that is advanced for one or more of the following —

- 10 (a) the insurance of the mortgaged property against damage by fire, or for keeping up a life insurance policy included in the mortgaged property or for taking out a new life insurance policy in lieu of the previous policy;
- 15 (b) the renewal of any grant or lease of any of the mortgaged property upon the ending of a life interest in the mortgaged property.

90. Contingent liabilities

- 20 (1) This section applies to a mortgage securing or capable of securing, whether directly or indirectly, an amount contingently payable (the “**secured amount**”) in connection with an advance (the “**primary advance**”) —

- 25 (a) by a guarantor or indemnifying party under a guarantee or indemnity; or
- (b) by another party under another type of instrument.

- 30 (2) Mortgage duty is assessed on the secured amount as if it were a separate advance secured by the mortgage.

- (3) For subsection (2), the contingent liability is limited to the amount of the primary advance.

- (4) This section —
- (a) does not apply if the Commissioner is satisfied there is no connection between the mortgage and the primary advance; and
 - (b) does not require mortgage duty to be paid more than once for an advance.

91. Mortgage over property partly outside WA

- (1) Mortgage duty chargeable in relation to mortgaged property that is partly in Western Australia and partly outside Western Australia is assessed by applying the appropriate rate of duty to the dutiable proportion of the secured amount worked out in accordance with subsection (2).
- (2) The dutiable proportion of the secured amount is the amount that bears to the secured amount the same proportion that, at the liability date, the value of the mortgaged property in Western Australia bears to the total value of the mortgaged property (excluding the value of any part of the mortgaged property that is located in a Territory or outside Australia).
- (3) The dutiable proportion must be worked out by reference to the property values according to a referable point.
- (4) For subsection (3), a referable point is any of the following prepared in the year before the liability date for the mortgage —
- (a) an independent valuation of the secured property;
 - (b) a statement of the mortgagee based on information obtained by the mortgagee in deciding to make the advance to the mortgagor;

- 5
- (c) property valuations used by the mortgagor in preparing an annual return to be lodged under the Corporations Act;
- (d) a financial report of the mortgagor, certified by an independent auditor as presenting a true and fair view of the corporation's financial position;
- (e) agreed property valuations that form the basis of the mortgagor's insurance policies;
- 10 (f) another document the Commissioner considers to be appropriate for working out the dutiable proportion.
- (5) However, if there is more than one referable point for a mortgage, the referable point is the later or latest of the referable points.
- 15 (6) Also, the referable point used for the purposes of this Act must be the same as the referable point used to determine liability to mortgage duty under the corresponding Acts of the other jurisdictions in which part of the property is located.

20 **91A. Mortgage packages**

- (1) Two or more security instruments constitute a **"mortgage package"** if —
- 25 (a) at least one of the instruments is a mortgage;
- (b) at a liability date, the instruments secure or partly secure the same moneys; and
- (c) at least one of the instruments is a security affecting property wholly or partly outside Western Australia.
- (2) Also, a **"mortgage package"** includes —
- 30 (a) a mortgage executed after the liability date if the Commissioner is satisfied the mortgage was intended to be part of the package; and

- (b) a mortgage previously collateral to an earlier advance under one or more of the other mortgages in the package.
- 5 (3) Mortgage duty on a mortgage package is assessed as if the instruments constituting the mortgage package were one mortgage that was first executed on the day the last of the executed instruments was executed.
- 10 (4) One of the mortgages in the mortgage package must be stamped with the mortgage duty paid in Western Australia for the mortgage package and each other mortgage in the mortgage package must be stamped as a collateral mortgage.

91B. Collateral mortgages

- 15 (1) Mortgage duty is not imposed in relation to the part of the amount secured by a collateral mortgage that is secured by —
- (a) a mortgage or security instrument that is stamped under this Act or a corresponding Act; or
- 20 (b) a mortgage package that has been stamped under section 91A or a corresponding Act.
- (2) A collateral mortgage that no longer secures an amount secured by a mortgage, instrument or mortgage package mentioned in subsection (1) is not security for
- 25 another advance unless mortgage duty for the amount of the other advance is paid.
- (3) The Commissioner, on being requested to do so, is to endorse on the collateral mortgage the mortgage duty paid on the mortgage, instrument or mortgage package.

91C. Extent to which mortgage can be enforced

- 5
- (1) A mortgage or mortgage package for which mortgage duty is imposed or a similar duty is chargeable under a corresponding Act is enforceable only to the extent of the amount secured by the mortgage or mortgage package for which duty has been paid or the mortgage or mortgage package is exempt from mortgage duty, under this Act or the corresponding Act.
- 10
- (2) For subsection (1), mortgage duty has been paid on a mortgage or mortgage package affecting property that is partly in and partly outside Western Australia if —
- 15
- (a) duty has been paid on the total advances under the mortgage or mortgage package when the mortgage duty paid is taken with the duty paid under a corresponding Act; and
- (b) the dutiable proportion of the mortgage or mortgage package is not incorrect by more than 5% when worked out under section 91(3).

91D. Use of stamped and collateral mortgages as security

- 20
- (1) A stamped or collateral mortgage that was, but is no longer, part of the same mortgage package and no longer secures the same moneys as were or are secured by the package is not security for another advance secured by that package unless mortgage duty for the amount of the other advance is paid.
- 25
- (2) The fact that the stamped or collateral mortgage is no longer part of the mortgage package does not affect the amounts for which the remaining mortgages in the mortgage package provide security.

30 **91E. Multi-jurisdictional statement**

- (1) If mortgage duty is imposed in relation to the dutiable proportion of a mortgage, (whether for a mortgage over

5 property not wholly in Western Australia, a mortgage package or on original or subsequent advances), the mortgagor or mortgagee must make a statement in the approved form about the location and value of the secured property.

Penalty: \$5 000.

- 10 (2) The making of a statement under subsection (1) by the mortgagor or mortgagee relieves the other person from complying with the subsection.
- (3) The statement may be taken to be the mortgage, or the instruments comprising the mortgage package, as the case requires.

91F. Exemptions for charitable or public purposes

15 If the Commissioner is satisfied that a mortgage has been given to secure an advance that has been, is being or will be used for a university or any charitable or similar public purpose, the Commissioner may exempt the mortgage from mortgage duty.

”.

20 **80. Section 92 amended**

(1) Section 92 is amended as follows:

- (a) by inserting before “In” the subsection designation “(1)”;
(b) in the definition of “policy of insurance” by deleting “accident;” and inserting instead —

25

“

30

accident, but does not include any policy of life insurance where the period for which the insurance is effected commences on or after the day on which section 80 of the *Business Tax Review (Assessment) Act (No. 2) 2003* came into operation;

”.

(2) At the end of section 92 the following subsections are inserted —

“

(2) If —

5

(a) a policy of life insurance, in addition to providing the insurance referred to in the definition of “policy of life insurance”, also provides for the payment of a benefit on the happening of an event or contingency that does not relate to or depend on a life or lives (the

10

“**additional insurance**”); and

(b) an identifiable part of the premium payable under the policy is attributable to the additional insurance,

15

then to the extent that it provides for the additional insurance, the policy is a policy of insurance but is not a policy of life insurance.

(3) Subsection (2) applies —

20

(a) whether or not the life insurance and the additional insurance are distinct matters for the purposes of section 19; and

(b) whether or not payment of a benefit under the additional insurance component of the policy —

25

(i) will or may reduce the benefit payable under the life insurance component of the policy; or

(ii) will or may terminate the policy.

”.

81. Section 92A amended

(1) Section 92A(1) is amended as follows:

(a) by deleting “effects —” and paragraphs (a) and (b) and
“or” between them and inserting instead —

5

“

effects any insurance in respect of —

(a) property in Western Australia; or

(b) any liability, loss or damage occurring or
brought about by the happening of any event
within Western Australia,

10

”;

(b) by deleting “prepare and” and “dutiabale”.

(2) Section 92A(2) is amended by inserting after “be” —

“ prepared ”.

15

(3) Section 92A(3), (4) and (5) are each amended by deleting
“prepared” and inserting instead —

“ lodged ”.

82. Section 92B amended

20

Section 92B(1)(a) and (b) are each amended by deleting “, a
policy of life insurance or”.

83. Section 96 amended

(1) Section 96(1) and (2) are each amended by deleting “or (3)(a)”.

(2) Section 96(4) is repealed.

84. Parts IV (s. 100-107) and IVAC (s. 112H-112HA) repealed

25

Parts IV and IVAC are repealed.

85. Part IVB (s. 112I-112P) replaced

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

“

Part IVB — Hire of goods

5

Division 1 — Interpretation in Part IVB

112I. Commercial hire business

- (1) For the purposes of this Part, a person who hires out goods as a business is called a “**commercial hire business**”.
- 10 (2) It is immaterial whether or not hiring out the goods is the principal business of the person or is ancillary to some other form of business, and whether or not any such principal or ancillary business is carried on wholly or partly outside Western Australia.

15

112IA. Goods

For the purposes of this Part, “**goods**” includes —

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

25

but does not include books, money, livestock and things in action.

112IB. Hire of goods

- (1) A “**hire of goods**” is an arrangement under which goods are or may be used at any time by a person other

than the person hiring out the goods, except an arrangement excluded under subsection (3).

- (2) There are 2 kinds of hire of goods —
- (a) equipment financing arrangements; and
 - (b) ordinary hiring arrangements.
- (3) A hire of goods does not include any of the following —
- (a) an arrangement that gives a person a right to use goods that is incidental to a lease of, or a licence to occupy or use, land, if there is no apportionment of consideration between the right to use the goods and the right to possess, use or occupy the land;
 - (b) an arrangement made between related corporations;
 - (c) an arrangement for the hire of an aircraft, ship or vessel, or for the hire of an engine or other component part of an aircraft, ship or vessel;
 - (d) an arrangement for the provision of goods to a trader for the purpose of displaying or demonstrating the goods pending their sale or hire to a third party;
 - (e) an arrangement under which an operator is provided by or at the direction of the person hiring out the goods to operate the goods for the hirer (that is, an arrangement that is commonly known as a “wet hire”);
 - (f) an arrangement for the use of goods the provision of which is incidental and ancillary to the provision of a service if the provision of the goods is solely to enable the contractual provision of the service;

- 5
- 10
- 15
- 20
- (g) an arrangement under which a motor vehicle is subleased by an employee to an employer in connection with the employee's remuneration or other employment benefits;
 - (h) an arrangement for the use, by a person who is partially or totally incapacitated, of an invalid aid or prosthetic device or of any similar aid, device or appliance;
 - (i) a credit contract within the meaning of the *Consumer Credit (Western Australia) Code*;
 - (j) an arrangement relating to the use of a caravan that is to remain on site;
 - (k) a State hire of goods;
 - (l) an arrangement that is prescribed by regulations made for the purpose of this subsection.
- (4) A hire of goods need not be effected or evidenced by an instrument in writing for the purposes of this Part.
- (5) A hire of goods may be constituted by 2 or more arrangements, which individually do not constitute a hire of goods.

112IC. State hire of goods

- 25
- 30
- (1) A “**State hire of goods**” is a hire of goods to which at least one of the following is a party —
- (a) the State;
 - (b) a State instrumentality, agent of the State or Government authority, designated by the Minister as an exempt person or body for the purposes of this subsection;
 - (c) a person acting on behalf of, or for the benefit of, the State or an exempt person or body.
- (2) The Minister may by order published in the *Gazette* designate a State instrumentality, agent of the State or

Government authority as exempt for the purposes of subsection (1).

- 5 (3) An order under subsection (2) may be varied or revoked by the Minister by a further order published in the *Gazette*.

112ID. Equipment financing arrangements

- (1) An “**equipment financing arrangement**” is a hire of goods that consists of —

- 10 (a) a hire purchase agreement; or
(b) some other agreement for a term of not less than 9 months and under which the final payment is payable at least 8 months after the agreement is entered into.

- (2) A “**hire purchase agreement**” is —

- 15 (a) a letting of goods with an option to purchase; or
(b) an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise),

20 but does not include any agreement by which the property in the goods covered by the agreement passes at the time of the agreement or on or at any time before the delivery of the goods.

112IE. Hiring charges

- 25 (1) “**Hiring charges**” are payments made by or on behalf of the hirer to the person who hires out the goods —

- (a) for the hire of the goods; or
(b) that arise as an incident of the hire of the goods.

- (2) The following charges are included as hiring charges —
- (a) payments for damage waiver or for damage excess;
 - 5 (b) late return fees;
 - (c) an amount paid to the person who hires out the goods for giving the hirer information about, or rights relating to, the use of the goods for the purposes of the hire of goods.
- 10 (3) The following charges are not included as hiring charges —
- (a) payments for delivery, repositioning, erection, installation, maintenance or cleaning of the goods;
 - 15 (b) refundable deposits or bonds (unless retained as hiring charges);
 - (c) in the case of hire purchase agreements — deposits or other consideration paid or given to the person who hires out the goods at or before the time the agreement is made;
 - 20 (d) insurance premiums payable by the hirer;
 - (e) an amount equivalent to duty paid or payable under this Act or interstate duty;
 - 25 (f) payments for the sale of goods (such as fuel, replacement parts or theft replacement);
 - (g) an amount equivalent to any GST payable on the supply to which the hire of goods relates;
 - (h) a payment by the hirer under a hire of goods if title to the goods passes to the hirer as a consequence of the payment;
 - 30 (i) any payment of a type prescribed by the regulations.

112IF. Terms used in this Part

In this Part —

“**annual duty-free threshold**” has the meaning given
by section 112LB(2);

5 “**commercial hire business**” has the meaning given by
section 112I;

“**duty-free threshold**”, for a return period, is worked
out in accordance with section 112LB(2);

10 “**equipment financing arrangement**” has the
meaning given by section 112ID(1);

“**goods**” has the meaning given by section 112IA;

“**hire of goods**” has the meaning given by
section 112IB;

15 “**hire purchase agreement**” has the meaning given by
section 112ID(2);

“**hirer**” means a person who hires goods from a person
who hires out goods under a hire of goods;

“**hiring charges**” has the meaning given by
section 112IE;

20 “**ordinary hiring arrangement**” means a hire of
goods that is not an equipment financing
arrangement (see section 112IB(2));

25 “**registered commercial hire business**” means a
commercial hire business that is registered under
section 112JA;

“**return period**” has the meaning given by
section 112LC;

“**State hire of goods**” has the meaning given by
section 112IC.

Division 2 — Registration of commercial hire businesses

112J. Commercial hire businesses to be registered

- 5
- (1) A commercial hire business that is not registered under section 112JA must apply to be registered under that section if, in a month, the total amount of the hiring charges received by the commercial hire business in the month exceeds \$4 167.
- (2) An application for registration must be made in an approved form on or before the 21st day after the end of the month referred to in subsection (1).
- 10
- Penalty: \$20 000.

112JA. Registration of commercial hire businesses

- (1) The Commissioner must register a commercial hire business that applies for registration.
- 15
- (2) The Commissioner must register a commercial hire business that has not applied for registration if satisfied that the commercial hire business ought to be registered for the purposes of this Part.
- (3) The Commissioner must give notice to a commercial hire business of its registration.
- 20

112JB. Cancelling registration of commercial hire businesses

- (1) The Commissioner may cancel the registration of a commercial hire business on his or her own initiative or at the request of the business.
- 25
- (2) The Commissioner is not to cancel a commercial hire business's registration unless satisfied that registration of the commercial hire business is no longer necessary for the purposes of this Part.

- (3) A cancellation has effect on and from the day specified in the notice of cancellation of registration, which may be a day that is earlier than the day on which the notice is issued.

5

Division 3 — Connection to the State

112K. Connection to the State — hire of goods and persons to which this Part applies

10

- (1) Duty under Division 4 is payable in relation to a hire of goods in a return period if the goods are used solely or predominantly in Western Australia during the return period.

- (2) Duty under Division 5 is payable in relation to a hire of goods if the goods are used solely or predominantly in Western Australia during the course of the hire.

15

- (3) For the purposes of deciding whether goods are used solely or predominantly in Western Australia —

20

- (a) if a motor vehicle that is registered under the law of a State or Territory is the subject of an equipment financing arrangement — the vehicle is taken to be used solely in that State or Territory;

25

- (b) if a motor vehicle that is registered under the law of a State or Territory is the subject of an ordinary hiring arrangement — the vehicle is taken to be used solely in the State or Territory in which it is initially delivered under the arrangement;

30

- (c) in any other case — goods are used predominantly in Western Australia if they are used more in Western Australia than in any other single State or Territory; and

- 5 (d) if goods are not used solely or predominantly in any particular State or Territory — they are taken to be used predominantly in the State or Territory in which they are initially delivered under the hire of goods.

Division 4 — Commercial hire businesses

112L. Lodging returns and paying duty

- 10 (1) A registered commercial hire business must —
- (a) lodge a return in an approved form for each return period of the commercial hire business; and
 - (b) pay the duty payable on the return (if any),
- on or before the 21st day after the end of the return period.
- 15 Penalty: \$5 000.
- (2) The commercial hire business must lodge the return even if no duty is payable on the return.
- (3) A commercial hire business that is not registered under section 112JA must —
- 20 (a) lodge a return in an approved form for a month if the total amount of hiring charges received by the commercial hire business in that month exceeds \$4 167; and
 - (b) pay the duty payable on the return (if any),
- 25 on or before the 21st day after the end of the month.
- Penalty: \$5 000.
- (4) The month referred to in subsection (3) is to be treated as a return period for the purposes of this Part.

112LA. Calculating the assessable amount for a return period

- 5
- (1) The assessable amount for a return period of a commercial hire business is —
- (a) the sum of all hiring charges received by the commercial hire business in the return period; or
- 10 (b) if the Commissioner has, under subsection (2), approved another basis for calculating the assessable amount for the commercial hire business — the amount calculated for the return period on that basis.
- 15 (2) The Commissioner may by notice approve a basis for calculating an assessable amount for a return period for a commercial hire business if the Commissioner is satisfied that the amount of duty payable on that basis will, over a period of time, approximate the amount of duty otherwise payable using assessable amounts calculated in accordance with subsection (1)(a).
- 20 (3) An approval may be revoked by the Commissioner at any time by notice to the commercial hire business.
- 25 (4) A registered commercial hire business may, with the Commissioner's consent, change the basis for calculating the assessable amount from return period to return period but it must not change the basis within a return period.
- 30 (5) On the change of basis, the Commissioner may assess or reassess the duty payable in any return period prior to the change of basis to include any hiring charges that would not be accounted for, or to exclude any hiring charges that would otherwise be accounted for twice, because of the change of basis.

112LB. Calculating the amount of duty payable on a return

- (1) The amount of duty payable on the return for a return period is the amount equal to the sum of —
- (a) 0.75% of that part of the assessable amount for the return period that is attributable to equipment financing arrangements; and
 - (b) 1.5% of the amount by which that part of the assessable amount for the return period that is attributable to ordinary hiring arrangements exceeds the duty-free threshold for the return period.

- (2) The duty-free threshold for a return period is —
- $$\text{annual duty-free threshold} \times \frac{\text{number of whole months in the return period}}{12}$$

where —

“**annual duty-free threshold**” is \$50 000.

112LC. Return period for a commercial hire business

The return period of a registered commercial hire business is —

- (a) one month, if a special tax return arrangement is not in force; or
- (b) the return period provided in a special tax return arrangement in force under section 49 of the *Taxation Administration Act 2003*.

112LD. Annual reconciliation

- (1) If the sum of all assessable amounts of a registered commercial hire business in a financial year does not exceed the annual duty-free threshold, the commercial hire business is entitled to a refund or rebate of all duty paid or payable in respect of those assessable amounts.

(2) If —

- (a) the sum of all assessable amounts of a registered commercial hire business in a financial year exceeds the annual duty-free threshold;
- (b) the assessable amount for one or more return periods of the commercial hire business in the year consists of or includes an amount of hiring charges attributable to ordinary hiring arrangements (an **“attributable amount”**); and
- (c) the sum of all attributable amounts in the year does not exceed the annual duty-free threshold,

the commercial hire business is entitled to a refund or rebate of all duty paid or payable in respect of the attributable amounts.

(3) If —

- (a) the sum of all assessable amounts of a registered commercial hire business in a financial year exceeds the annual duty-free threshold;
- (b) the assessable amount for one or more return periods of the commercial hire business in the year consists of or includes an amount of hiring charges attributable to ordinary hiring arrangements (an **“attributable amount”**);
- (c) the sum of all attributable amounts of the year exceeds the annual duty-free threshold; and
- (d) the sum of the amounts of duty paid by the commercial hire business in respect of the attributable amounts in the financial year exceeds 1.5% of the dutiable amount,

then the commercial hire business is entitled to a rebate equal to the difference between the total amount of

duty paid in respect of the attributable amounts and 1.5% of the dutiable amount.

(4) In subsection (3)(d) —

5 “**dutiable amount**” means the amount by which the sum of the attributable amounts in the financial year exceeds the annual duty-free threshold for the financial year.

10 (5) If a commercial hire business is registered for a part of a financial year, then, in applying subsection (1), (2) or (3), the annual duty-free threshold for the commercial hire business is reduced as follows —

$$\begin{array}{r} \text{annual} \\ \text{duty-free} \\ \text{threshold} \end{array} \times \frac{\begin{array}{r} \text{number of days in the year the commercial} \\ \text{hire business was registered} \end{array}}{\begin{array}{r} \text{number of days in the year} \end{array}}$$

(6) Subject to section 17(4) of the *Taxation Administration Act 2003*, the Commissioner must make any assessment necessary to give effect to this section.

15 **Division 5 — Persons other than commercial hire businesses**

112M. Statement of transaction

20 (1) If a hirer hires goods under a hire of goods from a person who is not a commercial hire business and the total amount of hiring charges paid or payable for the hire of the goods is at least \$1 000, the hirer must prepare a statement that includes particulars of the following —

- 25 (a) the name and address of each party to the hire;
- (b) a description of the goods;
- (c) the commencement date and the term of the hire;

- (d) the total of the hiring charges paid or payable over the term of the hire;
- (e) the intervals at which the hiring charges are paid or payable.
- 5 (2) The statement must be prepared at or before the earlier of —
- (a) the time that the hirer makes the first (or only) payment of hiring charges; or
- 10 (b) the time that the hiring charges become payable.
- Penalty applicable to subsections (1) and (2): \$5 000.
- (3) This section does not require a separate statement to be prepared if the hire is already evidenced in a document that otherwise complies with this section, in which
- 15 case, the document is taken to be the statement.
- (4) The hirer need not prepare a statement under subsection (1) if the hire of goods is wholly for private or domestic purposes.

112MA. Lodging statements and paying duty

- 20 (1) Within 3 months after the statement is required to be prepared, the hirer must —
- (a) lodge the statement with the Commissioner; and
- (b) pay the duty payable on the statement.
- 25 Penalty: \$5 000.
- (2) Duty payable on a statement is —
- (a) 0.75% of the total amount of hiring charges if the hire of goods is an equipment financing arrangement; or

- (b) 1.5% of the total amount of hiring charges if the hire of goods is an ordinary hiring arrangement.

112MB. Method of calculating total hiring charges if they are not readily ascertainable

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- (1) If the Commissioner is satisfied that it is not reasonably practicable to calculate the total of the hiring charges payable over the term of the hire by the time a statement is required to be lodged under section 112MA, the Commissioner may, in a notice given to the hirer, require the hirer to prepare one or more statements, at the time or times specified in the notice, to take the place of the statement required by section 112M.
 - (2) To the extent possible, the statement or statements must include the same information as is specified in section 112M.
 - (3) Within 3 months after a statement is required to be prepared, the hirer must —
 - (a) lodge the statement with the Commissioner; and
 - (b) pay duty on the statement calculated in accordance with section 112MA(2) to the extent that the total hiring charges are ascertainable at the time the statement is prepared.
- Penalty: \$5 000.
- (4) The amount of duty paid on a prior statement relating to the same hire of goods is to be deducted from the duty payable on any subsequent statement.

Division 6 — General provisions

112N. Credit for duty paid in another Australian jurisdiction

5 The duty otherwise payable under this Part in respect of a hire of goods is reduced by the amount of interstate duty paid in respect of the hire.

112NA. Splitting or redirecting hiring charges — anti-avoidance provision

- 10 (1) The Commissioner may include in an assessment or reassessment, as part of an amount received as hiring charges, any of the following —
- 15 (a) a payment, or a portion of the payment, under a hire of goods that is not a hiring charge, including a charge referred to in section 112IE(3), that the Commissioner is satisfied has been made or included in the payment for the purpose of minimising duty under this Part;
- 20 (b) a payment that would be a hiring charge except for the fact that it is paid to a person other than the person who hires out the goods.
- 25 (2) The Commissioner may include in an assessment or reassessment penalty tax of an amount equal to the amount included in the assessment or reassessment under subsection (1).

112NB. Ascertainment and disclosure of place of use of goods

- 30 (1) A commercial hire business may, in determining the commercial hire business's liability to duty, rely on a statement of the hirer as to —
- (a) where the goods will be solely or predominantly used in the course of the hire; or

(b) in the case of an unregistered motor vehicle,
where the motor vehicle will be registered
during the course of the hire,

unless the commercial hire business knows that the
statement is false.

5

(2) A commercial hire business is not bound to inquire as
to any change in the place of use of the goods or, in the
case of a motor vehicle, the place of its registration, but
cannot continue to rely upon a statement referred to in
subsection (1) if the commercial hire business becomes
aware of a change in the place of use or registration.

10

(3) If goods are solely or predominantly used in a place
other than the place advised by the hirer in a statement
referred to in subsection (1), the Commissioner may
assess or reassess the duty payable according to the
actual place of sole or predominant use of the goods.

15

(4) If a motor vehicle is registered in a place other than the
place advised by the hirer in a statement referred to in
subsection (1), the Commissioner may assess or
reassess the duty payable according to the place of its
registration.

20

(5) A person who fails to pay duty on a hire of goods in
reliance on a statement referred to in subsection (1)
does not contravene a taxation Act for the purposes of
the *Taxation Administration Act 2003* and the person is
not liable to penalty tax unless the duty is not paid
within one month after the issue of a notice of
assessment of the duty.

25

(6) A hirer who knowingly falsely makes a statement
referred to in subsection (1) (whether it is relied upon
or not) is guilty of an offence.

30

Penalty applicable to subsection (6): \$20 000.

112NC. Records

A commercial hire business and a hirer who must prepare a statement under Division 5 must keep —

- 5
- (a) the records that are prescribed in the regulations for the purposes of this section (if any); and
 - (b) any other records necessary to enable the Commissioner to determine the person's liability to duty under this Part.

Penalty: \$20 000.

10

”.

86. Section 119 amended

- (1) Section 119(4) and (5) are each amended by deleting “or 4A”.
- (2) Section 119(9) is repealed.

87. Second Schedule amended

15

- (1) The amendments in this section are to the Second Schedule.
- (2) Item 2 is deleted.
- (3) Item 4 is amended by deleting “(except any marketable security or right in respect of shares)”.
- (4) Item 4A is deleted.

20

- (5) Item 6 is amended as follows:
 - (a) in the second column, under the heading “Nature of instrument” —
 - (i) after paragraph (b) by inserting —
“ or ”;
 - (ii) at the end of paragraph (c) by deleting the semicolon and “or” after it and inserting instead a fullstop; and
 - (iii) by deleting paragraph (d);

25

Business Tax Review (Assessment) Bill (No. 2) 2003

Part 2 Stamp duty changes

Division 1 Stamp Act 1921 amended

s. 88

- (b) in the third column, under the heading “Duty payable”, by deleting “or 4A (as the case may be)”.
- (6) Item 12 is amended as follows:
- (a) subitem (2) is deleted;
- 5 (b) subitem (3) is amended by deleting “combined” and “and the duty payable on a lease or agreement for a lease for the rent under subitem (2)”;
- (c) subitems (4) and (5) are deleted.
- (7) Item 14(2) is amended by inserting before “registered” —
- 10 “ licensed or ”.
- (8) Item 14A is amended by deleting “or 4A, as the case requires” in both places where it occurs.
- (9) Item 16 is amended as follows:
- (a) subitems (1) and (2) are each amended by deleting “,
- 15 other than life insurance”;
- (b) subitem (3) is deleted.
- (10) Item 17 is amended by deleting “or 4A(1), as the case requires”.
- (11) Item 19 is amended as follows:
- (a) by deleting “or 4A(1), as the case requires”;
- 20 (b) by deleting “items 4 and 4A(1)” and inserting instead — “ item 4 ”.

88. Third Schedule amended

- (1) The amendments in this section are to the Third Schedule.
- (2) Item 1 is deleted.

(3) Item 2 is amended as follows:

(a) by deleting subitem (1) and inserting the following subitem instead —

“

5 (1) A conveyance or transfer of a marketable security or right in respect of shares or an agreement under which an option is given or taken to purchase or sell a marketable security or right in respect of shares.

”;

10 (b) in subitem (7c) by deleting “and 31B(1)(ca) and (cb)” and inserting instead —

“ and referred to in section 31B(3)(b) or (c) ”;

(c) by deleting subitems (8) and (9);

(d) in subitem (11) —

15 (i) at the end of paragraph (e) by deleting “; or” and inserting a full stop; and

(ii) by deleting paragraph (f).

(4) After item 3(5) the following subitems are inserted —

“

20 (6) Draft or order drawn by any financial institution in Western Australia on any other financial institution in Western Australia not payable to bearer or order, and used solely for the purpose of settling or clearing any account between those financial institutions.

25 (7) Letter written by a financial institution in Western Australia to any other financial institution in Western Australia directing the payment of any sum of money, the same not being payable to bearer or to order, and that letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf.

30

(8) Letter of credit granted in Western Australia authorising drafts payable in Western Australia to be drawn out of Western Australia.

”.

(5) Item 6(2) is deleted.

(6) Item 7 is amended as follows:

(a) by deleting the heading and inserting instead —

“ MORTGAGES (INCLUDING HOME MORTGAGES) ”;

5 (b) in subitem (3) by deleting “or bond”;

(c) by deleting subitems (1), (2), (4), (5), (6), (7), (8), (9) and (10).

(7) Item 9 is amended as follows:

10 (a) in subitem (2) by inserting after “licensed” in each place where it occurs —

“ or registered ”;

(b) in subitem (4)(b) by inserting after “licence” —

“ or registration ”;

15 (c) in subitem (5)(a) and (b) by inserting after “licensed” in each place where it occurs —

“ or registered ”.

Division 2 — Transitional provisions

89. Registered pooled investment trusts

(1) In this section —

20 “**commencement day**” means the day on which this section came into operation;

“**former provisions**” means the *Stamp Act 1921*, as in force immediately before the commencement day;

25 “**new provisions**” means the *Stamp Act 1921*, as in force on the commencement day;

“**start up period**” has the same meaning as it has in section 63AC(2) of the former provisions and refers to a period that ends on or after the commencement day.

(2) Without limiting sections 63AD and 63AE of the new provisions, a disqualifying event occurs for the purposes of those sections if —

5 (a) on the commencement day, a pooled investment trust registered under section 63AA(2) of the former provisions; or

(b) on the day on which the start up period ends, a pooled investment trust granted interim registration under section 63AC(2) of the former provisions,

10 does not comply with section 63AB(2) of the new provisions.

(3) Subject to subsection (2) and to the new provisions other than section 63AA(3a), if the registration of a pooled investment trust under section 63AA(2) of the former provisions has effect immediately before the commencement day, that registration continues to have effect for the period of 3 years from that day.

15

90. Determinations under section 75JBA or 75JC

(1) In this section —

“commencement day” means the day on which this section came into operation.

20 (2) If, before the commencement day, the Commissioner made a determination —

(a) under section 75JBA that a controlling body would be approved and the claw-back waived; or

(b) under section 75JC that an exemption would be granted,

25 the determination is as binding on the Commissioner after the commencement day as it was before that day, even if any of the relevant provisions of the *Stamp Act 1921* have been amended or repealed by this Act.

91. Agreements for lease

The amendments effected by sections 5, 77, 78 and 87(6) do not apply in relation to —

- 5
- (a) an agreement for lease executed before this section came into operation regardless of when any lease entered into in accordance with the agreement is executed; or
 - (b) any such lease, regardless of when it is executed.

92. Mortgages

(1) In this section —

10 **“amended Act”** means the *Stamp Act 1921* as amended by this Act and the *Business Tax Review (Taxing) Act (No. 2) 2003*;

“commencement day” means the day on which section 79 came into operation;

15 **“former Act”** means the *Stamp Act 1921* as in force from time to time before the commencement day.

(2) The amended Act does not apply to a mortgage or other security on which duty was payable under Part IIIE of the former Act if the amount secured by the mortgage does not increase on or after the commencement day.

20

(3) However, a mortgage that was liable to duty under Part IIIE of the former Act is liable to duty under Part IIIE of the amended Act as if the mortgage had first been executed after the commencement day if an advance as defined in Part IIIE of the amended Act is made under the mortgage after the commencement day.

25

93. Life insurance

30 The amendments effected by sections 80, 81, 82, 83 and 87(9) do not apply in relation to a policy of life insurance where the period for which the insurance is effected commenced before this section came into operation.

94. Hire of goods

(1) In this section —

“commencement” means the time at which section 85 came into operation;

5 **“new Part IVB”** means Part IVB of the *Stamp Act 1921* as in force after commencement and, for the purposes of this section, is taken to include item 18 of the Second Schedule as in force after commencement;

10 **“old Part IVB”** means Part IVB of the *Stamp Act 1921* as in force immediately before commencement and, for the purposes of this section, is taken to include item 18 of the Second Schedule as in force immediately before commencement.

15 (2) An expression used in this section that is given a meaning in the *Stamp Act 1921* (including old Part IVB and new Part IVB) has the meaning so given unless the contrary intention appears.

20 (3) On commencement, a person who was registered under old Part IVB immediately before commencement is taken, for all purposes, to have been registered under section 112JA of new Part IVB.

25 (4) For the purposes of the ongoing application of old Part IVB under subsection (7), the registration of a person who was registered under old Part IVB immediately before commencement is taken to continue under old Part IVB, unless the person’s registration is cancelled under new Part IVB.

(5) On commencement, a designation made by the Minister under section 112N(1)(fa)(ii) of old Part IVB and in force immediately before commencement is taken, for all purposes, to have been made under section 112IC(2) of new Part IVB.

30 (6) New Part IVB applies to hiring charges received under a hire of goods entered into after commencement.

- (7) Despite the repeal of old Part IVB, it continues to apply —
- (a) in relation to the conduct of a rental business before commencement; and
 - (b) in relation to the conduct of a rental business after commencement to the extent that the conduct of the rental business relates to rights, granted before commencement, to which old Part IVB applied before commencement.
- (8) To the extent that section 112O of old Part IVB has effect after commencement in relation to the conduct of a rental business, it has effect subject to the *Taxation Administration Act 2003*.

Division 3 — Amendments to other Acts

95. Taxation Administration Act 2003 amended

- (1) The amendments in this section are to the *Taxation Administration Act 2003**.

[* *Act No. 1 of 2003*.]

- (2) After section 18 the following section is inserted —

“

18A. Withdrawal of assessment

- (1) The Commissioner may, within 5 years after the issue of a notice of assessment, withdraw the assessment.
- (2) An assessment may not be withdrawn if any amount of tax has been paid on the assessment.
- (3) The Commissioner must give a written notice of withdrawal to the taxpayer.
- (4) If an assessment in respect of an event or transaction is withdrawn, the assessment is taken never to have been made and, subject to this Act, the Commissioner may make an assessment in respect of the event or

transaction at any time after the first-mentioned
assessment is withdrawn.

”.

(3) Section 20(3) is amended as follows:

- 5 (a) by deleting “prepared and”;
(b) by deleting “prepared or, if prepared, has not been”;
(c) by deleting “treat it as if the memorandum were the
instrument” and inserting instead —

“

10 for the purposes of the taxation Act and this Act the
memorandum is taken to be the instrument lodged by
the person required to lodge it under the taxation Act

”.

(4) Section 26(1)(a) is deleted.

15 (5) The Glossary is amended as follows:

- (a) in the definition of “instrument”, in paragraph (a), by
deleting “bill of exchange, promissory note,”;
(b) in the definition of “penalty tax”, in paragraph (c), by
deleting “or 76J(2)(b)” and inserting instead —

20 “ , 76J(2)(b) or 112NA(2) ”.

96. *Totalisator Agency Board Betting Act 1960* amended

(1) The amendment in this section is to the *Totalisator Agency
Board Betting Act 1960**.

[* *Reprinted as at 8 November 2002.*]

25 (2) Section 29 is amended by deleting “or cheque drawn”.

Part 3 — Stamp duty on workers compensation insurance policies

97. The Act amended

5 The amendments in sections 98 and 99 are to the *Stamp Act 1921**.

[* *Reprinted as at 3 August 2001.*

For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 368 and Act No. 21 of 2003.]

10 **98. Section 92 amended and transitional**

(1) Section 92 is amended in the definition of “policy of insurance” by deleting all of the definition after “against” and inserting instead —

“

15 accident, but does not include —

(a) any policy of life insurance where the period for which the insurance is effected commences on or after the day on which section 80 of the *Business Tax Review (Assessment) Act (No. 2) 2003* came into operation; or

(b) any policy of insurance against an employer’s liability to pay compensation under the *Workers’ Compensation and Rehabilitation Act 1981* where the period for which the insurance is effected commences on or after 30 June 2004;

”.

20
25
30 (2) The amendments effected by this section and section 99 do not apply in relation to a policy of insurance against an employer’s liability to pay compensation under the *Workers’ Compensation*

and Rehabilitation Act 1981 where the period for which the insurance was effected commenced on or before 29 June 2004.

99. Second Schedule amended

The Second Schedule, item 16(1)(a) and (1a) are deleted.

5 **100. Taxation Administration Act 2003 amended and transitional**

(1) The amendment in this section is to the *Taxation Administration Act 2003**.

[* *Act No. 1 of 2003.*]

(2) Section 114(3)(f) is deleted.

10 (3) The amendment effected by this section does not apply in relation to a policy of insurance of the kind described in that section 114(3)(f) if the period for which the insurance is effected commenced on or before 29 June 2004.

Part 4 — *Debits Tax Assessment Act 2002* amended

101. The Act amended

The amendments in this Part are to the *Debits Tax Assessment Act 2002**.

5 [* Act No. 50 of 2002.]

102. Section 5 amended

Section 5(4) is amended by inserting the following paragraph before paragraph (a) —

10 “
(aa) a debit made on or after 1 July 2005;
”.

103. Section 9 amended

After section 9(4) the following subsection is inserted —

15 “
(5) A financial institution is not required to lodge a
monthly return under subsection (1) or (2) for a month
commencing on or after 1 July 2005.
”.

104. Section 10 amended

20 Section 10(1) is amended by inserting after “all debits” —
“ made, or to be made, before 1 July 2005 ”.

105. Section 12 amended

(1) Section 12(1) is amended by inserting after “certificated
account” —
25 “ before 1 July 2005 ”.

- (2) Section 12(2) is amended by inserting after “30 days” —
“ and before 1 July 2005 ”.

106. Section 14 amended

After section 14(2) the following subsection is inserted —

5

“

- (3) A financial institution is not required to lodge an
annual statement under subsection (1) for the year 2006
or any subsequent year.

”.

Part 5 — Minor amendments

107. Stamp Act 1921 amended

- (1) The amendments in this section are to the *Stamp Act 1921**.

[* *Reprinted as at 3 August 2001.*

5 *For subsequent amendments see Western Australian
Legislation Information Tables for 2002, Table 1, p. 368 and
Act No. 21 of 2003.]*

- (2) Section 4(1) is amended by inserting the following definition in
the appropriate alphabetical position —

10

“

“unencumbered value” has a meaning affected by
 section 33;

”.

- 15 (3) Section 35(1) and (2) are each amended by deleting “Stamp
Act” and inserting instead —

 “ stamp Act ”.

- (4) Section 75HA(7)(b)(ii) is amended by deleting “section 76AN”
and inserting instead —

 “ section 76AG ”.

- 20 (5) Section 76(2)(b)(iv) is amended by deleting “person” and
inserting instead —

 “ individual ”.

- (6) Section 88A is amended by deleting the subsection
designation “(1)”.

- 25 (7) In the Second Schedule item 4A is amended by inserting before
“Conveyance” the subitem designation “(1)”.

108. Taxation Administration Act 2003 amended

(1) The amendments in this section are to the *Taxation Administration Act 2003**.

[* *Act No. 1 of 2003.*]

5 (2) Section 23(2) is amended as follows:

(a) by deleting “if the Commissioner”;

(b) in paragraph (a) by inserting before “makes a reassessment” —

“ if the Commissioner ”;

10 (c) after paragraph (a) by deleting “or”;

(d) in paragraph (b) by inserting before “assesses the amount” —

“ if the Commissioner ”;

15 (e) after paragraph (b) by deleting the full stop and inserting —

“

; or

20 (c) if no tax is payable under an exemption (however expressed) provided under the *Land Tax Assessment Act 2002*.

”.

(3) The Glossary is amended as follows:

(a) by inserting the following definition in the appropriate alphabetical position —

25 “

“**approved**” means approved by the Commissioner;

”;

(b) in the definition of “instrument”, in paragraph (a), by deleting “insurance policy” and inserting instead —

30 “ policy of insurance ”.

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109. *Land Tax Assessment Act 2002* amended

- (1) The amendments in this section are to the *Land Tax Assessment Act 2002**.

[* *Act No. 52 of 2002.*]

- 5 (2) Section 29(4) is amended by deleting “rural zone” and inserting instead —

“ non-rural zone ”.

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