

Western Australia

Revenue Laws Amendment and Repeal Act 2004

As at 29 Jun 2004

No. 12 of 2004

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Revenue Laws Amendment and Repeal Act 2004

CONTENTS

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — The <i>Land Tax Assessment Act 2002</i> amended		
3.	The Act amended	3
4.	Section 41 inserted	3
	41. Land under a conservation covenant	3
5.	The Glossary amended	3
Part 3 — The <i>Pay-roll Tax Assessment Act 2002</i> amended		
6.	The Act amended	5
7.	Section 41 amended	5
Part 4 — The <i>Taxation Administration Act 2003</i> amended		
8.	The Act amended	6
9.	Section 24 amended	6
10.	Section 45 amended	6
11.	Section 77 amended	6
12.	The Glossary amended	7

	Part 5 — The Stamp Act 1921 amended	
	Division 1 — The Act amended	
13.	The Act amended	8
	Division 2 — Amendments related to conditional contracts	
14.	Section 4 amended	8
15.	Part II inserted	9
	Part II — Conditional contracts (interpretation)	
6.	Meaning of “eligible conditional contract”	9
7.	Persons who are “related” for the purposes of this Part	10
8.	Meaning of “general conditional contract”	11
9.	Meaning of “farming land conditional contract”	13
10.	Meaning of “off-the-plan conditional contract”	13
11.	Meaning of “mining tenement conditional contract”	14
12.	Meaning of “subdivision conditional contract”	14
13.	When a conditional contract becomes unconditional	14
14.	Termination of conditional contracts on relevant grounds	15
16.	Section 16 amended	15
17.	Section 17AA inserted	15
	17AA. Time for payment on certain conditional contracts	15
18.	Section 17BA inserted	16
	17BA. Time for lodging certain conditional contracts	16
19.	Transitional provisions	17
	Division 3 — Amendments related to concessions for first home owners	
20.	Section 75AG replaced	17
	75AG. Reduction of duty or refund for first home owner	18
	Division 4 — Other amendments	
21.	Section 4 amended	20
22.	Section 17B amended	21
23.	Section 17C amended	21

24.	Section 31 inserted	22
	31. Stamped instruments as evidence	22
25.	Section 63AB amended	22
26.	Section 75AE amended	23
27.	Section 75D amended	23
28.	Section 75E amended	23
29.	Section 75I amended	24
30.	Section 75JA amended	24
31.	Section 75JB amended	24
32.	Section 91 amended and transitional provision	25
33.	Section 91D amended	25
34.	Section 120 amended	25
35.	The Third Schedule amended	25

Part 6 — Repeal of certain laws and consequential amendment

36.	The <i>Taxation (Reciprocal Powers) Act 1989</i> repealed	27
37.	The <i>Financial Institutions Duty Act 1983</i> repealed	28
38.	The Land Tax Relief Acts repealed	28
39.	The <i>Hire-Purchase Act 1959</i> amended	28

Western Australia

Revenue Laws Amendment and Repeal Act 2004

No. 12 of 2004

An Act to amend the following Acts —

- **the *Land Tax Assessment Act 2002*;**
- **the *Pay-roll Tax Assessment Act 2002*;**
- **the *Taxation Administration Act 2003*;**
- **the *Stamp Act 1921*,**

and to repeal the following Acts —

- **the *Financial Institutions Duty Act 1983*;**
- **the *Land Tax Relief Act 1991*;**
- **the *Land Tax Relief Act 1992*;**
- **the *Taxation (Reciprocal Powers) Act 1989*,**

and to make amendments and provide for transitional matters as a consequence of the amendments and repeals effected by this Act.

[Assented to 29 June 2004]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Revenue Laws Amendment and Repeal Act 2004*.

2. Commencement

- (1) Subject to subsections (2) and (3), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) If this Act receives the Royal Assent before or on 1 July 2004, Part 2, Part 5 Divisions 2 and 3 and section 26 and 32 come into operation on 1 July 2004.
- (3) If this Act receives the Royal Assent after 1 July 2004, Part 2, Part 5 Divisions 2 and 3 and sections 26 and 32 are deemed to have come into operation on 1 July 2004.

Part 2 — The *Land Tax Assessment Act 2002* amended

3. The Act amended

The amendments in this Part are to the *Land Tax Assessment Act 2002**.

[* *Act No. 52 of 2002.*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 209.]

4. Section 41 inserted

After section 40 the following section is inserted —

“

41. Land under a conservation covenant

Land that is used solely or principally for the conservation of native vegetation is exempt for an assessment year if the land is the subject of a conservation covenant that was in force at midnight on 30 June in the financial year before the assessment year.

”.

5. The Glossary amended

The Glossary is amended in clause 1 by inserting the following definition in its appropriate alphabetical position —

“

“conservation covenant” means a covenant that —

- (a) restricts or prohibits certain activities on the land that could degrade the environmental value of the land;
- (b) is permanent and registered on the title to the land (if registration is possible); and
- (c) is approved in writing by, or is entered into under a program approved in writing by, the Minister

Revenue Laws Amendment and Repeal Act 2004

Part 2 The Land Tax Assessment Act 2002 amended

s. 5

to whom the administration of the *Conservation
and Land Management Act 1984* is for the time
being committed by the Governor;

”.

Part 3 — The *Pay-roll Tax Assessment Act 2002* amended

6. The Act amended

The amendment in this Part is to the *Pay-roll Tax Assessment Act 2002**.

[* *Act No. 48 of 2002.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 281.]*

7. Section 41 amended

Section 41(5) is repealed.

Part 4 — The *Taxation Administration Act 2003* amended

8. The Act amended

The amendments in this Part are to the *Taxation Administration Act 2003**.

[* *Act No. 1 of 2003.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 385.]*

9. Section 24 amended

- (1) Section 24(5) is amended by inserting after “specified in an assessment notice” —

“ in relation to an original assessment ”.

- (2) After section 24(5) the following subsection is inserted —

“

- (5a) The date specified in an assessment notice in relation to a reassessment as the due date for payment must be at least 28 days after the date of the assessment notice.

”.

10. Section 45 amended

Section 45(3) is repealed.

11. Section 77 amended

After section 77(1) the following subsection is inserted —

“

- (1a) If stamp duty payable as a result of a reassessment under section 75AG of the *Stamp Act 1921* is not paid by the due date, the Commissioner may lodge a memorial with the Registrar of Titles to create a charge on the land for the unpaid stamp duty.

”.

12. The Glossary amended

The Glossary is amended in the definition of “due date” by deleting “section 45(1), (2) or (3)” and inserting instead —

“ section 45(1) or (2) ”.

Part 5 — The *Stamp Act 1921* amended

Division 1 — The Act amended

13. The Act amended

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

[* *Reprint 14 as at 12 September 2003.*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 365 and Act No. 56 of 2003.]

Division 2 — Amendments related to conditional contracts

14. Section 4 amended

Section 4 is amended by inserting the following definitions in their appropriate alphabetical positions —

“

“**eligible conditional contract**” has the definition it is given in section 6;

“**farming land conditional contract**” has the definition it is given in section 9;

“**general conditional contract**” has the definition it is given in section 8(1) as modified by section 8(2);

“**mining tenement conditional contract**” has the definition it is given in section 11;

“**off-the-plan conditional contract**” has the definition it is given in section 10;

“**primary produce contract**” has the definition it is given in section 9(2);

“**related**”, in relation to a general conditional contract, has the definition it is given in section 7;

“**subdivision conditional contract**” has the meaning it is given in section 12;

“terminated on relevant grounds”, in relation to a general conditional contract, has the definition it is given in section 14;

“unconditional”, in relation to a general conditional contract, has a meaning affected by section 13;

“unit”, in Parts II and IIIB, has the definition it is given in section 63(1);

”.

15. Part II inserted

After Part I the following Part is inserted —

“

Part II — Conditional contracts (interpretation)

6. Meaning of “eligible conditional contract”

- (1) An **“eligible conditional contract”** is a contract for the sale of property where —
 - (a) completion of the contract is conditional on the happening of an event;
 - (b) the parties to the contract do not have control over the happening of the event, except to the extent that they are required under the contract to use their best endeavours to secure the happening of the event; and
 - (c) no other person who is related to a party to the contract has control over the happening of the event.
- (2) However, none of the following is an eligible conditional contract —
 - (a) a put option and a call option (as defined in section 74B(1)) to which section 74B(6) applies;

- (b) a contract for the sale of a unit in a unit trust scheme as defined in section 63(1);
- (c) a contract that is subject to a condition which, in the opinion of the Commissioner, constitutes an arrangement or part of an arrangement to avoid or defer the payment of duty.

7. Persons who are “related” for the purposes of this Part

- (1) For the purposes of sections 6(1)(c), 14(a) and 17BA(3), persons are “related” if they are —
 - (a) joint owners of property;
 - (b) individuals who are in partnership with each other;
 - (c) participants in the same joint venture;
 - (d) spouses, or de facto partners, of each other or between whom the relationship is that of parent and child;
 - (e) related corporations;
 - (f) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
 - (g) an individual and a corporation, if the individual is a majority shareholder, director or secretary of the corporation or a related corporation;
 - (h) an individual and a trustee, if the individual is a beneficiary under the trust of which the trustee is a trustee, whether the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;

- (i) 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 of which the trustee is a trustee; or
 - (ii) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,whether (in either case) the beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust.
- (2) For the purposes of subsection (1) —
 - (a) an illegitimate person shall be treated as the legitimate child of that person’s parents;
 - (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; and
 - (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%.

8. Meaning of “general conditional contract”

- (1) A “**general conditional contract**” is an eligible conditional contract, completion of which is conditional on the happening of one or more of the following events, as specified in the contract —
 - (a) the obtaining by the purchaser of a satisfactory private taxation ruling by the Commissioner of Taxation of the Commonwealth as to the

Revenue Laws Amendment and Repeal Act 2004

Part 5 The Stamp Act 1921 amended

Division 2 Amendments related to conditional contracts

s. 15

- consequences of the contract with respect to taxation under a law of the Commonwealth;
- (b) the obtaining to the satisfaction of a purchaser under the contract of funds or of approval to obtain funds to finance the purchase;
 - (c) the obtaining by the purchaser of a satisfactory building inspection, geotechnical or environmental report from a third party in relation to the property to be sold or conveyed under the contract;
 - (d) the obtaining by a vendor of the consent of the Minister responsible for administering the *Land Administration Act 1997* to transfer a lease of leasehold land to a purchaser;
 - (e) the authorisation of the payment to the purchaser of a first home owner grant under the *First Home Owner Grant Act 2000*;
 - (f) the obtaining by the purchaser of a licence to trade or the grant of a franchise;
 - (g) the obtaining by the vendor of a commercial property of the renewal of an existing lease of the property;
 - (h) the obtaining from the landlord of a leasehold business by the vendor of the business of a new lease, or of an assignment of the lease to a purchaser;
 - (i) the sale of another property by the purchaser;
 - (j) the obtaining by the vendor of the registration of a plan of subdivision, or of a strata plan or survey strata plan;
 - (k) the obtaining by the purchaser of approval from a regulatory body;

- (l) the results of the making of due diligence inquiries by the purchaser where the results are to be measured against objective criteria set out in the contract;
 - (m) the issue of a certificate of title (however described) for the property that is the subject of the contract;
 - (n) a prescribed event.
- (2) Except for the purposes of the definitions in sections 9, 10, 11 and 12, a reference in this Act to a general conditional contract is to be read as excluding a reference to a farming land conditional contract, an off-the-plan conditional contract, a mining tenement conditional contract or a subdivision conditional contract.

9. Meaning of “farming land conditional contract”

- (1) A **“farming land conditional contract”** is —
- (a) a general conditional contract that is solely or principally for the sale of farming land as defined in section 75D(1); or
 - (b) a primary produce contract.
- (2) A contract is a **“primary produce contract”** if —
- (a) it is solely or principally for the sale of farming land as defined in section 75D(1); and
 - (b) completion of the contract is affected by or subject to an activity that constitutes primary production as defined in section 75D(1).

10. Meaning of “off-the-plan conditional contract”

An **“off-the-plan conditional contract”** is a general conditional contract that includes provision for —

- (a) the sale of a strata lot; and

- (b) the construction on the strata lot, after the contract is executed, of a building for commercial, residential or mixed-use purposes.

11. Meaning of “mining tenement conditional contract”

A “**mining tenement conditional contract**” is a general conditional contract for the sale of —

- (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*;
- (b) a right under a mining tenement in force under section 5 of the *Mining Act 1978*;
- (c) a right of occupancy in force under section 5 of the *Mining Act 1978*; or
- (d) a tenement, right or interest that is —
 - (i) similar to a tenement or right described in paragraph (a), (b) or (c); and
 - (ii) held under the law of the Commonwealth or of another State or a Territory, or under the law of another country.

12. Meaning of “subdivision conditional contract”

A “**subdivision conditional contract**” is a general conditional contract for the sale of land, completion of which is conditional on the obtaining by the purchaser of approval from the relevant authorities to subdivide the land or part of the land.

13. When a conditional contract becomes unconditional

A general conditional contract becomes unconditional when the condition to which its completion was subject is fulfilled.

14. Termination of conditional contracts on relevant grounds

A general conditional contract is “**terminated on relevant grounds**” if —

- (a) it is not carried into effect because the condition to which it is or was subject cannot be fulfilled for reasons that are not within the control of a party to the contract or a person who is related to a party to the contract; and
- (b) none of the parties has received or will receive a benefit under the contract.

”.

16. Section 16 amended

After section 16(3) the following subsection is inserted —

“

- (4) Despite anything else in this Part or in the Second Schedule, duty is not chargeable on a general conditional contract if the contract is not required to be lodged with the Commissioner because of the operation of section 17BA(4).

”.

17. Section 17AA inserted

After section 17A the following section is inserted —

“

17AA. Time for payment on certain conditional contracts

- (1) The duty on a farming land conditional contract or a mining tenement conditional contract is payable within 12 months after the date on which the contract was first executed or one month after the date of the assessment notice, whichever is the later.

- (2) The duty on an off-the-plan conditional contract or a subdivision conditional contract is payable within 2 years after the date on which the contract was first executed or one month after the date of the assessment notice, whichever is the later.

”.

18. Section 17BA inserted

After section 17B the following section is inserted —

“

17BA. Time for lodging certain conditional contracts

- (1) If a general conditional contract becomes unconditional within one month after the date on which it was first executed, then the person who is, or may be, liable to pay duty on the contract must lodge the contract with the Commissioner within 2 months after the date on which it was first executed.

Penalty: \$5 000.

- (2) If a general conditional contract is not required to be lodged under subsection (1), then the person who is, or may be, liable to pay duty on the contract must lodge the contract —

- (a) within one month after the date on which the contract becomes unconditional; or
(b) within 12 months after the date on which the contract was first executed,

whichever is earlier.

Penalty: \$5 000.

- (3) Despite subsection (2), if a vendor is related to a purchaser then the person who is, or may be, liable to pay the duty on the contract must lodge the contract with the Commissioner within 2 months after the day on which the contract was first executed.

Penalty: \$5 000.

- (4) Despite subsections (1), (2) and (3), a person is not required to lodge a general conditional contract with the Commissioner if the contract is terminated on relevant grounds before it is required to be lodged under this section.
- (5) The person who is or may be liable to pay duty on a contract of any of the following kinds must lodge the contract with the Commissioner within 2 months after the day on which the contract was first executed —
 - (a) a farming land conditional contract;
 - (b) a mining tenement conditional contract;
 - (c) an off-the-plan conditional contract;
 - (d) a subdivision conditional contract.

Penalty: \$5 000.

”.

19. Transitional provisions

- (1) The *Stamp Act 1921* as amended by this Division applies in relation to instruments executed on or after 1 July 2004.
- (2) The *Stamp Act 1921* as in force immediately before the commencement of this Division applies in relation to instruments executed before 1 July 2004.

Division 3 — Amendments related to concessions for first home owners

20. Section 75AG replaced

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

“

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

- (1) Duty on an instrument of transfer of property referred to in the Second Schedule item 4(2) or (3) becomes chargeable at the rate set out in the respective subitem when the transferee, or each transferee, if there are more than one —
 - (a) is paid a first home owner grant in relation to the property or becomes a person to whom a first home owner grant is or will be payable, in relation to the property; or
 - (b) becomes a person to whom a first home owner grant would be, or would have been, payable in relation to the property if consideration had been given for the transfer of the property.
- (2) The transferee may apply to the Commissioner for the amount of duty chargeable on the instrument to be assessed under this section.
- (3) If there is more than one transferee, the application must be made jointly by each transferee.
- (4) The application may only be made within the period —
 - (a) beginning on the commencement date of the eligible transaction to which the application relates; and
 - (b) ending 12 months after the completion of the eligible transaction.
- (5) The application must —
 - (a) be in an approved form; and
 - (b) include the information necessary to enable the Commissioner to decide whether duty on the instrument is chargeable under this section.

- (6) For the purposes of this section and for the purposes of applying the Administration Act in relation to the operation of this section —
- (a) the FHOG Act is to be treated as if it were a taxation Act;
 - (b) the FHOG Act applies to and in relation to an application under this section, to the extent that it can be applied for those purposes, as if a reference in the FHOG Act to an application or an applicant were a reference to the application or applicant under this section; and
 - (c) this Act and the Administration Act apply in relation to any information given to the Commissioner for the purposes of the FHOG Act by a person who is an applicant under this section as if the information had been given to the Commissioner for the purposes of this section.
- (7) Information provided by an applicant in or in connection with an application under this section must, if the Commissioner so requires, be verified by statutory declaration or supported by other evidence required by the Commissioner.
- (8) If the instrument of transfer is or was chargeable under the Second Schedule Item 19, this section does not apply unless the Commissioner is satisfied that the duty was or will be (as the case requires) paid by a transferee.
- (9) If a transferee is required to repay an amount under section 51 of the FHOG Act, or would be required to repay an amount if a first home owner grant had been paid to the transferee, duty on the instrument of transfer is not, or is no longer (as the case requires) chargeable under this section.

Revenue Laws Amendment and Repeal Act 2004

Part 5 The Stamp Act 1921 amended

Division 4 Other amendments

s. 21

- (10) Despite section 17 of the Administration Act, the Commissioner must make any reassessment necessary to give effect to this section.
- (11) An expression used in this section that is defined in the FHOG Act has the same meaning in this section as it has in that Act.
- (12) In this section, unless the contrary intention appears —
- “**Administration Act**” means the *Taxation Administration Act 2003*;
- “**FHOG Act**” means the *First Home Owner Grant Act 2000*;
- “**instrument of transfer**” includes —
- (a) an instrument of conveyance;
 - (b) an instrument on which duty is chargeable under the Second Schedule Item 19; and
 - (c) any other instrument that is chargeable as a conveyance or transfer;
- “**transferee**”, in relation to property, means a person to whom the property is conveyed or transferred, except —
- (a) a person who, under the FHOG Act, would not be required to join in making an application for a first home owner grant; or
 - (b) a prescribed person.

”.

Division 4 — Other amendments

21. Section 4 amended

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

“
“**endorse**” has a meaning affected by section 17C(7);
“**mortgage**” has the definition it is given in section 82;
”.

22. Section 17B amended

- (1) Section 17B(1) is amended by inserting after “duty on an instrument” —

“ except a mortgage ”.

- (2) After section 17B(1) the following subsection is inserted —

“

- (1a) The person who is, or may be, liable to pay duty on a mortgage must lodge the mortgage with the Commissioner each time a liability arises under section 87, and must lodge it within 2 months after the respective liability date as defined in section 81.

”.

23. Section 17C amended

- (1) Section 17C(1) is amended by deleting “ the Commissioner is to endorse the instrument accordingly.” and inserting instead —

“

then the Commissioner must —

- (g) endorse the instrument accordingly; or
(h) if the instrument is dealt with under a special tax return arrangement — issue a stamp duty certificate in accordance with the arrangement.

”.

- (2) Section 17C(5) is amended by deleting “endorsement on an instrument” and inserting instead —

“ endorsement of an instrument ”.

(3) After section 17C(6) the following subsection is inserted —

“

- (7) In this Act, a reference to endorsing an instrument is to be read as including a reference to issuing a stamp duty certificate in relation to the instrument under subsection (1)(h).

”.

24. Section 31 inserted

After section 30 the following section is inserted —

“

31. Stamped instruments as evidence

An instrument that has been stamped or is taken to have been stamped —

- (a) is admissible in evidence; and
(b) except in proceedings under Part 4 of the *Taxation Administration Act 2003*, the endorsement of the instrument is conclusive evidence that the assessment is correct.

”.

25. Section 63AB amended

Section 63AB(3) is amended as follows:

- (a) in paragraph (a)(i) by inserting after “shares” —
“ , or an option to acquire shares, ”;
- (b) after paragraph (a)(v) by inserting the following subparagraph —

“

- (vi) any thing prescribed for the purposes of this paragraph;

”.

26. Section 75AE amended

Section 75AE(1)(b) is amended by deleting “\$135 000” and inserting instead —

“ \$200 000 ”.

27. Section 75D amended

Section 75D(1) is amended by deleting the definition of “farming land” and inserting instead —

“

“**farming land**” means —

- (a) land that is used solely or principally for the purpose of primary production; or
- (b) land that is used solely or principally for the purpose of silviculture or reforestation;

”.

28. Section 75E amended

Subsection 75E(3) is repealed and the following subsections are inserted instead —

“

(3) This Part applies only where —

- (a) the family member, trustee or discretionary trustee to whom the farming property is conveyed or transferred intends to continue to use the farming property in the business of primary production;
- (b) the farming partnership in which an interest is conveyed or transferred to a family member, trustee or discretionary trustee intends to continue to use the farming property in the business of primary production; or

Revenue Laws Amendment and Repeal Act 2004

Part 5 The Stamp Act 1921 amended

Division 4 Other amendments

s. 29

- (c) section 75I applies and the farming company in which an interest is conveyed or transferred to the family member, trustee or discretionary trustee intends to continue to use the farming property in the business of primary production.
- (3a) However, if —
- (a) part of the farming property consists of farming land;
 - (b) some (but not all) of the farming land is leased to another person; and
 - (c) under the lease, the lessee is using the leased land solely or principally for the purposes of silviculture or reforestation,

then this Part applies under subsection (3) as if the family member, trustee or discretionary trustee, or the farming partnership or farming company, intends to use or continue to use the leased portion of the land in the business of primary production.

”.

29. Section 75I amended

Section 75I(2) is amended by deleting “farming property” and inserting instead —

“ farming land ”.

30. Section 75JA amended

Section 75JA(5) is repealed.

31. Section 75JB amended

Section 75JB(9) is repealed.

32. Section 91 amended and transitional provision

- (1) Section 91(2) is amended by inserting after “located in” —
“ the State of Victoria or ”.
- (2) Despite the amendment effected by subsection (1), the *Stamp Act 1921* as in force immediately before the commencement of that subsection continues to apply to and in relation to an advance made before 1 July 2004 in respect of property referred to in section 91.

33. Section 91D amended

Section 91D(1) is amended by deleting “secured by that package”.

34. Section 120 amended

After section 120(3) the following subsection is inserted —

“

- (4) Regulations made under this section or under any other provision of this Act may be expressed to apply to an instrument that was executed before the date on which the regulations come into operation, or to an event or transaction that took place before that date, if the application of the regulations to the instrument, event or transaction would not adversely affect a person who is or may become liable to pay duty on the instrument or in relation to the event or transaction, or adversely affect a party to the transaction.

”.

35. The Third Schedule amended

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

“

- (9) A deed that evidences —

Revenue Laws Amendment and Repeal Act 2004

Part 5 The Stamp Act 1921 amended

Division 4 Other amendments

s. 35

- (a) a lease or an agreement to lease; or
- (b) a bond, debenture, covenant, bill of sale, guarantee, lien or other instrument of security that is not subject to duty under item 13 of the Second Schedule.

”.

**Part 6 — Repeal of certain laws and
consequential amendment**

36. The *Taxation (Reciprocal Powers) Act 1989* repealed

- (1) The *Taxation (Reciprocal Powers) Act 1989* is repealed.
- (2) The *Taxation (Reciprocal Powers) Regulations 1990* are repealed.
- (3) The following orders are repealed —
 - (a) the *Taxation (Reciprocal Powers) Order 1990*;
 - (b) the *Taxation (Reciprocal Powers) Amendment Order 1992*;
 - (c) the *Taxation (Reciprocal Powers) Amendment Order (No. 2) 1992*;
 - (d) the *Taxation (Reciprocal Powers) Amendment Order 1993*;
 - (e) the *Taxation (Reciprocal Powers) Amendment Order 1994*;
 - (f) the *Taxation (Reciprocal Powers) Amendment Order 1997*;
 - (g) the *Taxation (Reciprocal Powers) Amendment Order 1998*;
 - (h) the *Taxation (Reciprocal Powers) Amendment Order 1999*;
 - (i) the *Taxation (Reciprocal Powers) Amendment Order 2000*;
 - (j) the *Taxation (Reciprocal Powers) Amendment Order 2001*;
 - (k) the *Taxation (Reciprocal Powers) Amendment Order 2002*;
 - (l) the *Taxation (Reciprocal Powers) Amendment Order 2003*.

s. 37

37. The *Financial Institutions Duty Act 1983* repealed

- (1) The *Financial Institutions Duty Act 1983* is repealed.
- (2) The *Financial Institutions Duty Regulations 1984* are repealed.

38. The Land Tax Relief Acts repealed

- (1) The *Land Tax Relief Act 1991* is repealed.
- (2) The *Land Tax Relief Act 1992* is repealed.

39. The *Hire-Purchase Act 1959* amended

- (1) The amendment in this section is to the *Hire-Purchase Act 1959**

[* *Reprinted as at 12 May 2000.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 175 and
Act No. 70 of 2003.]*

- (2) Section 3(2)(e)(viiia) is deleted.
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