

**TAXATION ADMINISTRATION AMENDMENT BILL 2018**

*Committee*

The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

**Clause 1: Short title —**

**Hon MARTIN ALDRIDGE:** As I said during the second reading debate, I have not had the benefit of a detailed briefing on this bill, in part because the one that I had planned is now redundant—there is no point having a briefing tomorrow. The minister will have to indulge me a little.

During my contribution to the second reading debate, I spoke specifically about the broadening of the farming exemption from transfer duty. I also have with me a media statement from 14 June 2018 called “Land tax win for farmers under McGowan Government reforms”. Can the minister confirm that the bill before the house deals with both matters?

**Hon STEPHEN DAWSON:** My advisers indicate that, yes, it does. We are inserting a regulation power that will allow us to do what was indicated in the media statement the member referred to.

**Hon MARTIN ALDRIDGE:** Another media release was headed “Farming families set to be the next winners from McGowan Government reforms”. I am sure that cabinet would not have agreed to the transfer duty reforms that are before us without understanding the number of taxpayers that this will impact and the likely cost to the taxpayers of Western Australia collectively from revenue foregone from these two measures. I have found it quite difficult thus far to get some clarity from the government, apart from the forward estimates suggesting with respect to the transfer duty matter that there would be a loss to government of less than \$1 million. I find it difficult to believe that some type of modelling would not have been done, even if it were fairly rudimentary, to estimate the number of taxpayers affected and the tax benefit to them, as well as the tax lost to government from the two measures that I have referred to. Could the minister provide some advice on that?

**Hon STEPHEN DAWSON:** I obviously cannot comment on the deliberations of cabinet. Indeed, I will not do so this afternoon. However, people do not do this at the moment because they cannot. We cannot estimate how many people are not doing something that is not allowed by the law at the moment. The short answer is that the department does not know how many people this may affect. There has been no modelling done on it. We know anecdotally that people out there could benefit from this change, if the change is passed by Parliament.

**Hon MARTIN ALDRIDGE:** With respect to the land tax exemption, the media statement refers to a particular benefit to be derived by poultry growers, amongst others. Can the minister explain why the government has singled out poultry growers as an example of the type of farm, amongst others, that is likely to be a beneficiary, over perhaps other industries?

**Hon STEPHEN DAWSON:** I cannot speculate as to why certain words were put into a media statement by the ministers some months ago; all I can deal with is what is before us in this legislation. I do not know why the words “poultry farmers” were used. I am advised that the changes apply to any primary producer. In particular, I am told that in the case of chickens at the moment, people who rear the chickens do not get the benefit. That might be the case sometimes in relation to pigs.

**Hon Martin Aldridge:** They may not overstock as well, which I think is part of the problem.

**Hon STEPHEN DAWSON:** Exactly. This change will capture them and they will benefit from the changes in the bills before us.

**Hon MARTIN ALDRIDGE:** In my contribution to the second reading debate, I quoted from question on notice 1413, which I tabled for the minister’s benefit. The answer to part (a) of that question talked about this issue first being identified by the Office of State Revenue whilst investigators were conducting a targeted land tax primary production audit program. I am not quite sure when that was, but the minister could perhaps advise us when the department’s audit program first detected this issue with the application of land tax and farms. The answer goes on further and says —

The audit program was suspended pending finalisation of the regulation. Consequently, the number of taxpayers who would have had their exemption removed is not known.

I have interpreted that to mean the finalisation of the regulations arising from the power that will be inserted by the passage of this bill, but please correct me if that is an incorrect assumption. Is it fair to say that the Office of State Revenue essentially has been applying the land tax laws in Western Australia in accordance with what would transpire with these regulations, as opposed to what is law today? Basically, is it applying the policy before the regulations have been provided?

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**Hon STEPHEN DAWSON:** I am advised that the answer is no; the practice that is currently used is the practice that is allowed under the existing law. However, in relation to the audit program or investigation, I am advised that that investigation was ceased because we knew that there was a problem and that this legislation was going to fix it. The regulations will be backdated to allow those people the exemption.

**Hon MARTIN ALDRIDGE:** In the second reading debate, we had an interchange about the penalty tax, which I think is the term that is used in the Taxation Administration Act for non-payment of duty. During my second reading contribution, I referred to a fishing family who did not receive any monetary value for the transfer of a business asset, which in their case was part of a fishing licence. This resulted in a dutiable payment of some \$305 000. Could the minister explain the time frame from the transaction occurring to the notice being issued to payment being required? Can the minister also elaborate on what hardship provisions or policies the Office of State Revenue has in dealing with these types of family transactions in which there is no monetary receipt for a family to easily facilitate the payment of duty?

**Hon STEPHEN DAWSON:** Honourable member, once the transaction occurs, people have to lodge it with the Office of State Revenue within two months. Once the duties assessment notice is issued, they generally get one month to pay the duty from the date of the notice. If they cannot make the payment by the due date, they can apply for an extension of time to pay or apply to pay in instalments.

**Hon MARTIN ALDRIDGE:** I do not have too many more areas to cover and I know there are other members who want to ask questions. I want to conclude my line of questioning on the government's position on the farm exemption and why this bill does not extend it to other industries. I heard what the minister said in reply to the second reading debate, which was that fishing is not farming, and I concur; I agree. My point is that there are parallels, in my view, between fishing and farming. Both are capital intensive; both are primary industries; both are multigenerational and have a history of family involvement; both suffer from fluctuating revenue; and, most of the time, both industries are price takers, not price makers. I encourage the minister to encourage his colleague the Treasurer and Minister for Finance to more closely examine this issue. In my electorate, a farm has reportedly sold for a value higher than \$60 million. It has a very high transaction value indeed.

**Hon Darren West** interjected.

**Hon MARTIN ALDRIDGE:** No; Hon Darren West is right. It was not an internal family transaction, so it would not be exempt from transfer duty. Transfer duty would be applicable in the scenario that I have just outlined. If that farm had been transferred to the next generation, it would have been exempt from transfer duty, yet in the case of the fishing licence that was transferred to the fifth if not sixth generation of family fishers in Western Australia, that family got whacked with full transfer duty, despite the fact that their business asset was 10 per cent of that value, estimated at \$6 million. Whatever happened in 1994 was probably relevant to that point in time. I really urge the government to consider the relevance of the current exemption, despite the good things it is doing and despite it fixing up some of the anomalies that have evolved over time around modern farming practices and structures. I encourage the government to really consider how we treat fishing families with respect to transfer duty in Western Australia.

**Hon STEPHEN DAWSON:** I acknowledge and thank Hon Martin Aldridge for his comments and, indeed, for prosecuting the case for these fishing families. The government is following the practice that was followed by the previous government. One of the current members in this place was the Minister for Fisheries previously and this issue was raised with that member numerous times, and indeed with other Ministers for Fisheries in the time of the last government. From about 2014 on, there is correspondence from the fishing industry to various ministers about that. The decision that was given in response to those pieces of correspondence is consistent with what I am saying today. The former government did not change it, and we do not plan to change it at this stage. The transfer of a fishing licence is subject to duty. Other dutiable assets of a fishing operation may include chattels and other business assets, such as goodwill and business names. The transfer of a boat is not dutiable, though. The member quite rightly pointed out in an earlier contribution, when he alluded to the *Hansard* from the Assembly on Wednesday, 3 April 2019, that the Minister for Finance indicated —

... at this point we are not proposing to broaden it any further. The member is right; it may be that Parliament has to deal with that at some point in the future.

It may well be that this will be dealt with at some point in the future; however, it is not our intention to deal with the matter at this stage.

**Hon MARTIN ALDRIDGE:** This is my last question, I promise. In looking at this issue over the last 12 to 18 months, one of the things that I think has been quite interesting is the lack of real data that we and the government can rely on when making decisions about these matters. Could the minister take on notice with the officials at the table that maybe the Office of State Revenue could improve the way in which it collects data when issuing notices? Governments now and in the future would then have something to rely upon when considering

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how to tailor, extend or retract exemptions. Even simple measures, like the number of taxpayers affected, the value of transactions affected, the amount of revenue that may be forgone by the state in making those decisions or, indeed, the amount of revenue that may well have been raised if that decision had been taken, would certainly assist us and the government, which is ultimately the one responsible for making the decisions about state taxes.

**Hon STEPHEN DAWSON:** The advisers here are fantastic, but they are not in a position to make that commitment. I can certainly commit to the member that I will raise that issue with the Minister for Finance, who can then raise it with the Office of State Revenue or the commissioner to see what data can be kept in the future to help us with further conversations or deliberations on similar matters.

**Hon RICK MAZZA:** I have a question about exemptions when there is the sale of a primary production business that is not related. There is an exemption on things that are not common-law fixtures used in primary production business, which is in the notes that I was given during the briefing. Can the minister outline what some of those not common-law fixtures may be?

**Hon STEPHEN DAWSON:** The exemption applies to any chattels and fixed items that are used in connection with the primary production business, so the exemption would apply to things such as silos, for example.

**Hon RICK MAZZA:** The value of the silos would be exempt from duty. What about things such as fuel tanks and, say, shearing sheds?

**Hon STEPHEN DAWSON:** I am advised that it depends on the degree of permanence of the attachment.

**Hon RICK MAZZA:** Regarding the permanence of the structure, silos could be very permanent. They can be there for 30 years; that is pretty permanent. I am struggling a little bit to grapple with this common-law fixtures definition. What about fencing and stockyards? What is the permanence of those things and would they be exempt as not being common-law fixtures? Could the minister please give us some guidance?

**Hon STEPHEN DAWSON:** I am told that the laws on this are not simple. This provision will not change. What is in place currently in relation to this issue will not be changed by the legislation before us. As I said, it depends on the issue of permanence. A fence is probably going to be there forever, but certain elements can be removed, so it really depends on what the item is. What is before us today will not change things. How these things are treated currently will not be changed by this bill before us.

**Hon RICK MAZZA:** I accept that it is not going to change, but it does not take away from the fact that we need to establish the things that are not common-law fixtures. How are things that are determined not to be common-law fixtures, such as silos, valued? In the sale of a farm for \$10 million, the 20-year-old silos may not be common-law fixtures. How are items not included in the assessment determined? Is it a self-assessment by the buyer and seller or does the commissioner require a valuation to be undertaken?

**Hon STEPHEN DAWSON:** I am advised that the commissioner will undertake the valuation. There are experts currently at Landgate who can undertake that work. Again, I make the point that what is before us now will not change the current policy. The member's question is very valid, so I am happy to undertake to provide, on another day, as definitive a policy as I can to enable him to engage with his constituents.

**Hon RICK MAZZA:** I have a final comment. It is not a question; it is more of a comment. The purpose of these two bills, as I understand it, is to close loopholes for people being able to put in place structures that unfairly reduce their revenue payments. This is a prime example of a bit of a moving target and it is uncertain what is and is not a common-law fixture and the value that they may incur. Again, with experts and a good legal team, we could find ourselves deficient of the duty we should be getting.

**Hon Dr STEVE THOMAS:** I start by taking on the comments of Hon Rick Mazza and proceeding with this. The minister may be able to correct me, but my understanding is that, much like the government's own tax, the duties system basically works on the honesty of the person presenting the data. In the first instance, the person who has undertaken a dutiable transaction will report the data as they see fit to the commissioner and the commissioner will make an assessment of that. The commissioner might decide with his group of experts that the information put forward is not accurate and will be reassessed according to the rules of the commissioner. I think that is how it works. The issue the minister has raised is that is how it worked previously, so I agree with the minister that that will not change. People will report their dutiable transaction in the way they think is an accurate assessment, and the commissioner will then react to that by either accepting it or sending his experts into the field. I think that is how it currently works and I think it will work in the same way after the bill is passed. If that is incorrect, the minister could let me know now. I will put in a substantive question, though. I am interested to know, in relation to the intent of the bill, whether this will impact any outstanding dutiable transactions currently in the system. Are we in the middle of a process for any outstanding dutiable transactions that will either be in or out of the new regulations, and is it likely to have an impact?

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**Hon STEPHEN DAWSON:** The honourable member was correct in his explanation earlier. The only thing I will take issue with is that he talked about the commissioner being “he”. It should be “she”.

**Hon Dr Steve Thomas:** Did I say “he”? Sorry; my apologies. I used the royal term!

**Hon STEPHEN DAWSON:** Everything else the member said is correct. I just wanted to place on the record that the commissioner is a woman; therefore, it is a “she”. In relation to transactions that are currently taking place, the short answer is that we do not know.

**Hon Dr STEVE THOMAS:** I thank the minister for that response. I stand berated for my inaccuracy.

Can I just, for the record, and for the sake of completeness, ask the minister to provide the definitions of “listed” and “unlisted” entities? It is in the briefing notes. Most members will have been briefed on the differences and the percentages of listed and unlisted entities. However, I think it behoves us to put that on the record so that members will understand.

**Hon STEPHEN DAWSON:** I am advised that “listed” means that the entity is listed on a prescribed stock exchange, such as the ASX, or the World Federation of Exchanges. An entity that is not listed on a prescribed stock exchange is deemed to be unlisted.

**Hon Dr STEVE THOMAS:** That is the answer. Excellent.

**Hon STEPHEN DAWSON:** I draw the honourable member’s attention to chapter 3 of the Duties Act 2008, “Landholder duty”, which provides the following definitions —

*listed corporation* means a corporation that is on the official list of a prescribed financial market;

*listed landholder* means —

- (a) a listed corporation; or
- (b) a listed unit trust scheme,

that is a landholder;

**Hon Dr STEVE THOMAS:** It is well known that this is just a natural progression in the level of international exposure. In terms of the Australian stock exchange, “listed” is a fairly obvious and open process. Do we have an understanding of the extent to which “listed” applies to foreign holdings? I am thinking particularly of emerging markets in which listings are not always as open as those on the good old Australian stock exchange.

**Hon STEPHEN DAWSON:** I do not want to go into too much detail on this, but we have a compliance team; and, if there is any doubt, the compliance unit will investigate and obviously deal with the issue.

**Hon AARON STONEHOUSE:** I want to clarify a couple of things, and, if I am on the right track, I might have a question or two for the minister. I refer to the fixed-to-land model that will be implemented by this bill. Currently, duty is charged on common-law fixtures. However, if something does not fit the definition of a common-law fixture, such as a chattel, duty is not charged. Currently, duty is not payable on infrastructure that has been separated from the land through statutory abrogation. That is proposed to be fixed through the implementation of the fixed-to-land model. If I am reading the bill correctly, duty will now be charged on all chattels, except for ones exempted under proposed new section 3A(4), which states —

Subsection 1(f) does not apply to the following —

It then lists in paragraphs (a) to (d) those things that will be exempt from duty. If I am on the right track, apart from the infrastructure example that has been given by the minister, what other chattels might have duty applied to them as a result of the fixed-to-land model? What other things that have been separated or severed through statutory abrogation might be included in this? I notice that we have been very specific about the kinds of chattels that will be exempted. For example, proposed subsection (4)(c) refers to —

a relocatable home fixed to a residential park site ...

That is a very specific exemption. Would a shed on a person’s property which does not fit the definition of being used for the purpose of construction work or primary production, and which previously might not have fit the definition of common-law fixture, now be captured by this new fixed-to-land model and have a duty applied to it?

**Hon STEPHEN DAWSON:** This new model will apply only to chattels that are fixed to land. If a person acquires a shed with the intention of removing it, duty will not be payable. Another example is machinery that is fixed to land on a mining tenement.

**Hon AARON STONEHOUSE:** The examples are fairly clear when we are talking about plant, machinery and capital on a mine site. I am thinking of non-industrial settings. Would a person with a demountable transportable building on their residential or commercial property, who under the previous model did not have to pay duty because it was a chattel, now have to pay duty on that building, assuming that building does not fit the definition

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in proposed subsection 4(c)—namely, a relocatable home fixed to a residential park site? Will that now be captured by this new fixed-to-land model?

**Hon STEPHEN DAWSON:** I will just talk briefly about the process to exclude assets from the fixed-to-land model. Regulation-making powers were included in the fixed-to-land provisions to deal with items that might inadvertently be caught by those amendments. The committee amendment in the other place to exclude residential park homes from the fixed-to-land model is an example of when the regulation-making power would be used if the issue had been identified after the legislation was in effect. The regulation-making power will not be used to exclude assets when it would be inconsistent with the policy of the fixed-to-land model to apply duty to the direct and indirect sale of fixed infrastructure and fixed infrastructure rights. The legislation excludes the following items from being fixed to land: a thing that is acquired without an interest in the underlying land and will be permanently removed by the purchaser; a thing that is temporarily fixed for construction purposes; and a thing that is not a common-law fixture and is used in a primary production business. These things are common-law chattels for which it is appropriate to maintain the current duty treatment, because they are not the type of significant fixed infrastructure assets at which the fixed-to-land model is aimed.

I am told that the Office of State Revenue undertook significant analysis to examine the impacts of the fixed-to-land model and to identify assets that should not be caught by the amendments. However, the broad scope of the term “fixed to land” means that other common-law chattels may be inadvertently caught in the duty base. Therefore, the regulation-making power will provide a safeguard to exclude any items from being dutiable if that is inconsistent with the policy of the fixed-to-land model. If a person buys a demountable home that is not a relocatable home, they would either remove the home, in which case duty would not apply, or the land would also be acquired with the home, in which case duty would apply to both the land and the home. It is unusual for a person to purchase a thing fixed to land without either acquiring the land or removing the thing fixed to the land.

**Hon AARON STONEHOUSE:** I thank the minister for that answer. It is very helpful.

*Sitting suspended from 6.00 to 7.30 pm*

**Hon AARON STONEHOUSE:** Before we broke for the dinner break, the minister was giving me an answer to my previous question. I had asked whether there were any other kinds of chattels, as we currently know them, that might be captured in the new fixed-to-land model, aside from the example of infrastructure that is severed from land through statutory abrogation. If I remember correctly, the minister’s answer was that there could be but it is hard to see what those might be at this point; however, this bill allows other exemptions to be granted through regulation. If a chattel is identified that is captured by the new fixed-to-land model that should not incur duty, there will be an ability to prescribe in regulation an exception or an exemption for that kind of property. Can the minister clarify whether I have summarised his answer correctly, and that is the case?

**Hon STEPHEN DAWSON:** That is correct, honourable member.

**The DEPUTY CHAIR (Hon Robin Chapple):** The question is that clause 1 stand as printed. I am sorry, Hon Dr Steve Thomas.

**Hon Dr STEVE THOMAS:** Sorry, Mr Deputy Chair, I am out here on the far right wing of the Liberal Party, so it can be hard to see me.

**Hon Stephen Dawson:** Living on the edge.

**Hon Dr STEVE THOMAS:** The sitting extremist!

As much as I would love to talk to the minister about ancient civilisations, I thought we might jump forward a little bit; again, because I hope to avoid going through this bill clause by clause. One thing that interested me that I have not quite got my head around is that the Treasurer in the lower house added a new section 264A in clause 125, on page 122, which discusses the automatic revocation of exemptions. The Treasurer added a provision that refers to public floats. I absolutely get that in prescribed circumstances one might take a set of prescribed circumstances in any piece of legislation and say we might prescribe when an automatic revocation may or may not exist. I am interested to know why the government needed to add in that section on a public float, because I understand from the debate in the lower house that a public float does not automatically mean a revocation of the exemption. There still appears to be discretion in relation to the actions of the Commissioner of State Revenue but, to be honest, I struggle to understand the circumstances in which that is applied and why that particular amendment in the lower house was necessary. I could have waited and we probably would have put every other clause to 125, or whatever it is, but the minister might be able to answer why this provision needed to be added down the track and the intent of the addition.

**Hon STEPHEN DAWSON:** New subsection (3)(a) provides that an exemption will not be automatically revoked when an entity is removed from the family group as the result of a public float. This is consistent with the

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commissioner's longstanding practice to not revoke an exemption in these circumstances and the approach in most other jurisdictions. A public float defined in amended section 257 means —

- (a) the securities of an entity being offered for sale or issue to the public for the purpose of listing the entity on a prescribed financial market; or
- (b) the securities of an entity being listed on a prescribed financial market within 12 months after being offered to the public ...

The regulation-making power in new subsection (3)(b) will allow other events to be excluded from automatically revoking an exemption. This will allow the government to respond promptly if it is identified after the legislation has passed that automatically revoking an exemption in a particular case is inconsistent with the policy and these regulations can apply retrospectively when they benefit taxpayers.

**Hon Dr STEVE THOMAS:** I will summarise that answer and get the minister to confirm that. The longstanding policy of the commissioner will effectively be enshrined in legislation, so he loses—sorry, she. We have done that twice now, apologies to the house and the commissioner. She loses or future commissioners lose the capacity for discretion in that process; it will now be legislated and permanent.

**Hon STEPHEN DAWSON:** The honourable member is correct.

**Clause put and passed.**

**Clauses 2 to 22 put and passed.**

**Title put and passed.**