

EXPLANATORY MEMORANDUM
DUTIES AMENDMENT BILL (NO. 2) 2011

The Duties Amendment Bill (No. 2) 2011 amends the *Duties Act 2008* to introduce an exemption from vehicle licence duty for transfers of vehicle licences between spouses or de facto partners of at least two years.

This measure was announced as part of the State Government's 2011-12 Budget.

Under the *Road Traffic Act 1974*, a vehicle licence can only be registered in one person's name.

For varying reasons, spouses will often want to change the vehicle licence registration from one to the other, only to discover there is a duty cost of doing so.

This duty exemption will allow the transfer of a vehicle licence from one spouse or de facto partner to the other spouse or partner to occur with only minimal cost.

The proposed exemption is similar to the existing duty exemption for the transfer of a principal place of residence from one spouse into the joint ownership of both spouses.

To ensure that the exemption applies only to a vehicle used for private or non-commercial purposes, the Bill requires that the vehicle qualify for the family vehicle licence concession under the *Road Traffic Act 1974*.

This concession applies to cars and wagons of up to three tonnes and currently provides a \$67 reduction in the annual vehicle registration fee.

The exemption will save spouses or eligible de facto partners \$275 on the transfer of a licence for a \$10,000 vehicle, \$550 for a \$20,000 vehicle and \$1,050 for a \$30,000 vehicle.

A transfer fee of around \$15 will continue to apply to cover the Department of Transport's administrative costs.

Similar exemptions apply in Victoria, Queensland, South Australia and the Northern Territory.

The measure is expected to have a negligible revenue impact, and is consistent with the State Government's objective of providing a fair and efficient tax system that is competitive with other States while raising sufficient revenue to meet the needs of the Western Australian community.

The exemption is intended to commence on 1 July 2011.

Subject to this Bill being passed by the Parliament and receiving Royal Assent, spouses or eligible de facto partners who transfer a vehicle licence between 1 July 2011 and the date of Royal Assent will be able to apply to the Commissioner of State Revenue for a reassessment and refund of the duty paid.

Clause 1: **Short title**

This clause provides that the short title of this Bill (once enacted) is the *Duties Amendment Act (No. 2) 2011*.

Clause 2: **Commencement**

This clause provides the commencement dates for the Act.

Paragraph (a) provides that sections 1 and 2 come into operation on the day on which the Act receives the Royal Assent.

Paragraph (b) provides that the rest of the Act comes into operation on 1 July 2011 if assent day is on or before 1 July 2011, or where assent day is after 1 July 2011, deems the Act to have come into operation on 1 July 2011.

If Royal Assent is received after 1 July 2011, a transfer of a vehicle licence that occurs between 1 July 2011 and the date of Royal Assent that qualifies for the exemption will be eligible for a reassessment and refund of duty pursuant to sections 17 and 54 of the *Taxation Administration Act 2003*.

Clause 3: **Act amended**

This clause provides that the amendments are to the *Duties Act 2008*.

Clause 4: **Section 244A inserted**

This clause inserts new section 244A into the Duties Act to provide an exemption from duty for the transfer of a vehicle licence between married couples or de facto partners of 2 years.

Subsection (1) provides that the term “de facto partners of 2 years” used in the proposed section has the same meaning as in section 9 of the Duties Act. The term is defined to mean 2 de facto partners of 2 years who are living in a de facto relationship with each other.

The meaning of the term “de facto relationship” is provided by sections 5 and 13A of the *Interpretation Act 1984*.

Subsection (2) provides that the exemption from duty is only allowed where all of the requirements set out in subsections (3), (4), (5) and (6) apply.

Subsection (3) provides that the transfer of the vehicle licence must be between persons who are married to each other or are de facto partners of 2 years.

Subsection (4) requires that neither of the parties to the transfer of the licence can be holding the vehicle, the subject of the licence, as a trustee of a trust. For example, if a vehicle licence was registered in the name of the husband, but he was holding the vehicle as trustee of a family trust, any transfer of the vehicle licence to his wife as trustee for a family trust or in her own right, would not be eligible for the exemption.

Subsection (5) imposes a requirement that the transfer of the licence must be for a vehicle used for private or non-commercial purposes for the exemption to apply. The determining factor as to whether the usage of a vehicle satisfies this requirement is whether the vehicle would have been eligible to have a reduced licence fee charged under section 19(3) of the *Road Traffic Act 1974*.

This subsection is designed to consider a hypothetical situation of whether a reduced fee under section 19(3) of the Road Traffic Act would have been charged to the spouse or de facto partner (transferee) if a licence was not previously in existence and was granted to the transferee for the vehicle on the day of the transfer.

Regulation 20 of the *Road Traffic (Charges and Fees) Regulations 2006* provides the eligibility criteria for a reduction of the vehicle licence fee chargeable under section 19(3) for granting or renewing any licence for a vehicle.

The reasons for the reduction must include that the vehicle is used exclusively for social, domestic or pleasure purposes. By default, although not specifically listed in subsection (5), the other requirements of Regulation 20 must also be satisfied to qualify for the reduction in the licence fee chargeable as no other Road Traffic Act regulation contains the requirement related to social, domestic or pleasure purposes. The additional requirements are that the vehicle is not a heavy vehicle as

defined in the Road Traffic Act and that the vehicle does not exceed 3000 kg with an unloaded mass. Should the structure of the Road Traffic Act alter in the future in relation to the reduction of licence fees, corresponding changes may be required to the Duties Act.

The exemption is not available where the licence is in relation to a vehicle used for carrying passengers or goods, for hire or reward or in any business, trade or profession.

Subsection (6) provides that to obtain the exemption, the transfer of the licence must be accompanied by or include a declaration in the approved form that the eligibility criteria outlined in subsections (3), (4) and (5) are satisfied.