REVENUE LAWS AMENDMENT (ASSESSMENT) BILL 2000

EXPLANATORY MEMORANDUM

PART 1 – PRELIMINARY

This Part contains the title of the Act and the relevant commencement provisions.

<u>Clause 1:</u> **Short title**

This clause contains the short title and citation.

<u>Clause 2:</u> **Commencement**

This clause sets out the commencement provisions.

<u>Subclause (1)</u> specifies that subject to subsection (2), the Act comes into operation on the day on which it receives Royal Assent.

<u>Subclause (2)</u> provides that Part 3 containing amendments to the Land Tax Assessment Act, other that section 19(2), is deemed to come into operation on 30 June 1995. The 30 June 1995 date applies to the amendments relating to statutory authorities and vested land and seeks to ensure that refunds are not necessary in respect of non-exempt statutory authorities that have been paying land tax on vested land.

PART 2 – STAMP ACT 1921

Part 2 of the Bill seeks to amend the Stamp Act to:

- prevent the use of the corporate reconstruction exemption provisions for avoidance purposes;
- allow the Commissioner to upwardly reassess a stamp duty liability once an assessment has been issued; and
- correct an anomaly whereby modifications to a truck trailer may attract additional stamp duty when it is licensed.

Division 1 – Preliminary and miscellaneous

<u>Clause 3:</u> **The Act amended**

This clause provides that the amendments in Part 2 are to the Stamp Act 1921.

<u>Clause 4:</u> **Third Schedule amended**

This clause corrects a minor typographical error in the wording of Item 2 subitem (7c) of the Third Schedule which relates to chattels.

Division 2 – Corporate reconstructions

The changes contained in Part 2 Division 2 affect Part IIIBAAA of the Stamp Act which relates to exemptions for corporate reconstructions.

In 1996, the Government introduced this exemption to remove the stamp duty burden which would otherwise prevent groups of companies from adopting a more efficient corporate structure, providing there was little or no change in the underlying ownership.

However, the policy of this exemption was, and still is, aimed at excluding relief where the purpose of the reconstruction is to strip the assets of previously unrelated companies or to package group assets for on-sale to unrelated parties.

Late last year, certain practices emerged indicating that attempts were being made to manipulate the exemption in order to package assets into a company structure under the guise of a corporate reconstruction, greatly reducing the amount of stamp duty otherwise payable on the sale of assets to an unrelated purchaser.

The Government takes a dim view of these practices and in no way apologises for the additional constraints placed around the exemption by the measures in this Bill.

The amendments in this Bill are consistent with the overall policy of the exemption, but reinforce the integrity of the conditions that the body corporate receiving the exemption for an asset transfer should have a 3 year pre-association and remain associated with the corporate group for a period of 5 years after the transfer.

The amendments proposed are twofold:

- they seek to close down a potential weakness in the legislation exposed by a particular exemption application which sought to circumvent these conditions by a series of transactions which had no commercial efficacy apart from the minimisation of stamp duty; and

- they introduce a general anti-avoidance provision designed to deny the exemption where transactions are considered to provide stamp duty relief where none was intended to be given.

This would include attempts to asset strip or asset package, or where the restructure would otherwise assist with the avoidance of stamp duty.

In this regard, it should be noted that the legislation was initially drafted in 1996 with a public interest test, which would have allowed an exemption to be disallowed where it was considered that a transaction was not consistent with this principle. However, as a result of consultation with industry prior to the introduction of the legislation, the provision was removed.

The industry views that resulted in the removal of the provision from the earlier draft were based on the principle that the black letter law should be robust enough to withstand non-qualifying purposes. Industry considered that an anti-avoidance provision created uncertainty in the exemption, with parties to transactions never having any degree of comfort that qualifying transactions would be exempted.

It is apparent from the transactions that triggered these amendments that, in the absence of an anti-avoidance provision of the type proposed, the black letter law was not robust enough to repel concerted efforts by practitioners operating in this area to defeat the association requirements of the exemption. Those practitioners who are unhappy with the new requirements associated with this exemption, including the uncertainty created by the anti-avoidance provision, should look firstly to their own to cast blame.

The Government originally introduced the exemption with an expectation that the exemption would be used for the purposes it was intended. It is now clear that such expectations have not been met, with the consequence that the previous degree of certainty surrounding the exemption will no longer exist.

Fortunately, no damage to the revenue has been suffered as a result of the emergence of these attempts to circumvent the intent of the exemption provisions. The anti-avoidance amendment is proposed to operate from 25 October 1999, the date the Government announced its intention to legislate to strengthen these provisions. This will mean that any pre-determination given by the Commissioner on or after that date or any exemption similarly granted will be subject to this greater level of stringency.

The Commissioner of State Revenue has advised that he is aware of only one transaction where an exemption has been given that will have the stamp duty relief overturned as a result of these changes. Furthermore, where a pre-determination has been made on or after 25 October 1999 but prior to the time these provisions become operative, the legislation allows the Commissioner to overturn that pre-determination should he believe that avoidance is contemplated.

Notwithstanding these changes, it is considered that these provisions will continue to assist Western Australian companies, or bodies corporate owning Western Australian assets, to adopt efficient corporate structures.

Since this stamp duty relief was introduced in October 1996, some 157 exemptions have been allowed with duty foregone totalling nearly $200 million. The largest beneficiary of this relief has been the mining sector which has accounted for nearly 80% of the relief provided to date. It should be emphasised, however, that the actual cost of the scheme to Government is difficult to determine, as there is no method of determining whether a reconstruction would have proceeded if stamp duty remained payable.

Clause 5: **Section 75J amended**

This clause amends section 75J(2)(a)(ii) to rectify a technical deficiency. The section allows body corporates to be associated where a third “company” owns at least 90% of each body corporate and has voting control over it. The reference to a third “company” is restrictive, in that it excludes associations arising where two body corporates are owned by an entity which is a body corporate, but not a company. The amendment will address this deficiency. This will ensure that the exemption would be available to an incorporated body corporate that is not a company, for example the Royal Automobile Club (RAC).

Clause 6: **Section 75JB amended and transitional provision**

Subclause (1) repeals the existing subsection (5) and replaces it with subsections (5), (5a), (5b), (5c), (5d), (5e), (5f), (5g), (5h), (5i) and (5j). The amendment to this section is to address a deficiency in the legislation, which certain parties have attempted to exploit to circumvent the 5-year post-association requirement.

Subsection (5) allows duty that has been exempted on an instrument or statement required under Part IIIBA to be clawed-back, where the transferor and transferee cease to be associated within the post-association period.

Subsection (5a) provides that the claw-back of duty under subsection (5) does not apply if the transferor and transferee cease to be associated in circumstances where the transferor has no assets, or its only assets are cash, money in an account at call or on deposit, or a negotiable instrument.

The proposed subsections (5) and (5a) mirror the existing section 75JB(5). They have been separated to make it easier to refer to them in later provisions.

Subsection (5b) clarifies that in applying the exception under section 75JB(5a) to the claw-back, it is at the time of the appointment of the liquidator that one needs to consider whether the transferor holds assets other than those specified by subsection (5a).

Subsections (5c) to (5j) are being inserted to prevent situations arising where the transferee company could be sold or transferred out of the group structure prior to the expiration of the 5 year post-association period without the claw-back of duty arising.

Subsection (5c) inserts definitions of:

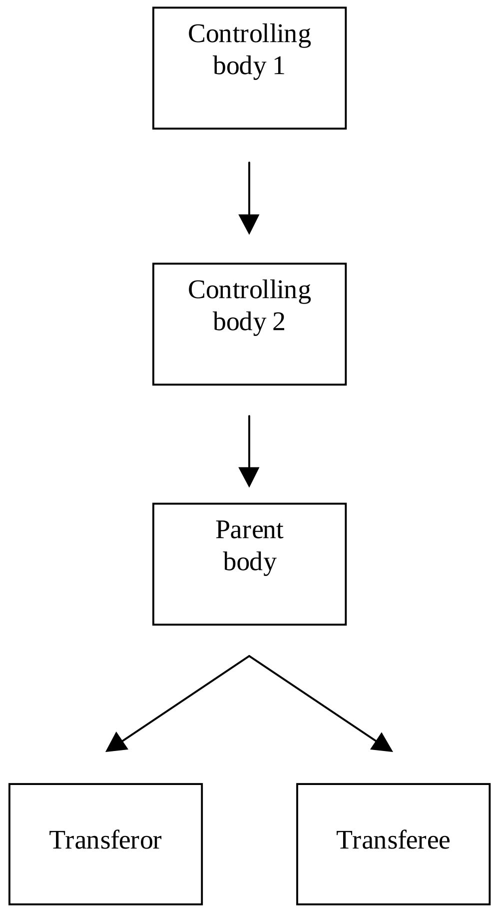
"controlling body";
"own and control";
"parent body"; and
"qualifying period".

These definitions apply to subsections (5c) to (5j).

Subsection (5d) establishes that a **"prescribed relationship"** exists for the purposes of subsection (5e), if the transferor and transferee company are associated because another body corporate **"owns and controls"** each of them.

A prescribed relationship will only exist when the transferor and transferee are related through a third body corporate.

One example of this type of relationship, as well as that with the **“parent body”** and **“controlling body”**, is illustrated below.



Subsection (5e) establishes that the **“relevant circumstances”** have occurred for the purposes of subsection (5f) if:

- the transferor and transferee were associated for the whole or part of the pre-association period because they were owned and controlled by another body corporate; or
- the transferor and transferee remain associated, such that the claw-back under subsection (5) does not apply, because they are owned and controlled by another body corporate.

Subsection (5f) provides that if the relevant circumstances have occurred and the parent body ceases to own or control the transferee on or after 25 May 2000 (the date on which the Bill is introduced into the Legislative Assembly), and within the post-association period, then the:

- parent body and transferee must advise the Commissioner of that fact within one month of it happening; and
- claw-back will apply.

Subsection (5g), however, enables the Commissioner to waive the claw-back applied under subsection (5f)(d), where an application is made under this subsection, if the Commissioner:

- approves a controlling body that continues to own and control the transferee; and
- is satisfied that waiving the claw-back would not be inconsistent with the objects of section 75JB. Notably, those objects include both the 3 year pre-association (subject to some exceptions) and the 5 year post-association requirements. Such an approval will act to re-establish an anchor within the corporate group to which the transferee can be connected to maintain the integrity of the 5 year post association test (see subsection (5j) below).

Subsection (5h) requires an application for the Commissioner to waive the claw-back to be in writing and in a form approved by the Commissioner.

Subsection (5i) enables the Commissioner to obtain further information and evidence from the applicant that will allow him to determine if the claw-back will be waived under subsection (5g).

Subsection (5j) ensures that if the claw-back is waived, the transferee and the controlling body approved by the Commissioner under subsection (5g)(a) will be subject to the requirements of subsection (5f)(c) and (d), if the controlling body subsequently ceases to own at least 90% of the issued share capital of B or ceases to control B within the same post-association period established at the time of the transfer from A to B.

Subclause (2) is a transitional provision to ensure that where the cessation of the association referred to in section 75JB(5f)(a) or (b) occurs on or after 25 May 2000 and before the Act receives the Royal Assent, the parent body and transferee have one month to notify the Commissioner from the date this Act receives Royal Assent.

Clause 7: **Section 75JBA inserted**

This clause inserts a new section 75JBA, which provides a mechanism for persons to apply for a pre-determination as to whether the Commissioner will waive the claw-back and establish a new post-association between the transferee and a controlling body where a transaction triggering section 75JB(5f) is contemplated. This pre-determination will provide a mechanism to give certainty as to the revenue consequences of such a transaction prior to it actually proceeding.

Operation of claw-back – application for pre-determination in certain cases

Subsection (1) specifies that terms used in this section have the same meaning as they have in section 75JB.

Subsection (2) enables a person acting on behalf of the transferor, the parent body or controlling body to apply to the Commissioner for a determination that the claw-back will be waived and a controlling body will be approved under section 75JB(5g), where it is proposed that the relationship between the parent body and transferee ceases (as described by section 75JB(5f)(a) or (b)).

Subsection (3) provides that any request for a determination made to the Commissioner will be in writing and in a form approved by him.

Subsection (4) enables the Commissioner to obtain further information and evidence from the applicant that will allow the Commissioner to make a determination.

Subsection (5) requires the Commissioner to make a determination if he has sufficient information to do so.

Subsection (6) requires the Commissioner to waive the claw-back and approve the controlling body on an application made under section 75JB(5g), where he has already made a determination to that effect. The Commissioner is not compelled to waive the claw-back and approve the controlling body if he believes that the application for a determination did not fully disclose all of the relevant facts and information.

Clause 8: **Section 75JDA inserted and transitional provision**

This clause inserts an anti-avoidance provision that operates in respect of asset transfers occurring under section 75JB. It also sets out certain transitional arrangements governing the operation of the anti-avoidance provision.

Subclause (1) inserts a new section 75JDA.

75JDA. Exemption may be withheld in certain cases

Subsection (1) provides a definition of the term **"duty avoidance arrangement"** which is used in this section.

A **"duty avoidance arrangement"** can be explained as being an arrangement whereby:

- the pre-association or post-association requirements of the exemption is or would be defeated by the arrangement; or
- the purpose, or one of the purposes of the arrangement is to reduce the amount of duty that would be payable if the exemption did not apply.

This is notwithstanding that the arrangement would otherwise fit within the other legislative parameters necessary to qualify for exemption.

This broad provision is considered necessary to ensure that a mechanism exists whereby the Commissioner can strike down arrangements that are outside the intention of the legislation and which violate the integrity of the pre and post association tests.

Moreover, if the relief under Part IIIBAAA is being used as part of a wider intention to subvert other provisions of the Act (eg. to defeat the land rich provisions), the Commissioner can likewise deny the relief.

Subsection (2) provides that the Commissioner may refuse to grant a pre-determination, made under section 75C, for a section 75JB exemption, if the Commissioner believes that an instrument or Part IIIBA statement would relate or would be likely to relate to a duty avoidance arrangement.

Subsection (3) provides that subject to subsection (4), the Commissioner may refuse to grant a section 75JB exemption, made under section 75JD, even if an instrument or Part IIIBA statement meets with the requirements of section 75JB, if the Commissioner believes that the instrument or statement relates or is likely to relate to a duty avoidance arrangement.

Subsection (4) requires the Commissioner to grant an application for an exemption made under section 75JD, if he has already determined under section 75JC that an instrument or Part IIIBA statement would be exempt from duty. This is true in these circumstances even if the Commissioner believes that the instrument or statement is made in connection with a duty avoidance arrangement.

In essence, this provision prevents the Commissioner from refusing an application for an exemption, once he has already approved a pre-determination.

The Commissioner would not, however, be prevented from refusing an application for an exemption, where he has previously approved a pre-determination during the period 25 October 1999 to 25 May 2000, where he believes that an instrument or Part IIIBA statement is made in connection with a duty avoidance arrangement (refer to the transitional provisions discussed below).

Furthermore, he could also refuse the application if the circumstances outlined in paragraphs (a) to (c) of section 75JC(5) exist.

Subclause (2) provides a definition of **“transitional period”** for the purposes of subclause (3).

It should be noted that the reference to 25 October 1999 in the definition of “transitional period” is the date on which the former Minister for Finance issued a media statement announcing that the Government would put these amendments forward, and that they would be retrospective to that date.

Subclause (3) is a transitional provision that provides that the duty claw-back will apply to section 75JB exemptions granted by the Commissioner during the transitional period, if the Commissioner believes that the exempted instrument or Part IIIBA statement was made in connection with a duty avoidance arrangement.

Subclause (4) is a transitional provision that provides that the proposed section 75JDA(4) of the Stamp Act does not apply to compel the Commissioner to grant a section 75JB exemption, where a pre-determination was made under section 75JC during the transitional period.

Notably, these provisions will not operate to overturn an exemption pursuant to a pre-determination made prior to the transitional period even where a duty avoidance arrangement is involved.

Clause 9: **Sections 75JE and 75JF amended**

This clause amends sections 75JE(1)(b) and 75JF(1)(b) by inserting a reference to the proposed section 75JB(5f)(c) in each of those sections.

The effect of these amendments is that a fine of 20% per annum will be imposed on the amount of duty chargeable on the instrument or Part IIIBA statement, from the date of the execution of the instrument or relevant transaction, until the Commissioner is notified of the cessation of the association between the parent body and transferee, in the circumstances outlined in section 75JB(5f)(a) or (b). If the Commissioner is not notified of the cessation of the association, the fine will be calculated to the date that the Commissioner raises an assessment of duty.

In circumstances where duty is waived under section 75JB(5g) because the parent body is replaced with an approved controlling body (on one or more occasions), the fine will be calculated to the date that notification is received in respect of the last approved controlling body ceasing to own and control the transferee.

Clause 10: **Section 75JG amended**

Subclause (1) amends section 75JG(1) and (2) by inserting a reference to the proposed section 75JB(5f)(c).

The effect of this amendment is that:

- a person, or in the case of a body corporate, an officer of the body corporate who is a party to the contravention, commits an offence against the Stamp Act, if they fail to notify the Commissioner, under section 75JB(5f)(c), of the circumstances described in section 75JB(5f)(a) and (b). The penalty for the offence is a maximum of $10,000 plus the amount of duty that was exempted on the instrument or Part IIIBA statement; and

- should the company be unable to pay the duty and fine, a liability for the duty that is clawed-back and the fine is imposed on each officer of a body corporate who is a party to the contravention.

Subclause (2) amends section 75JG(3) by inserting a reference to section 75JBA and an application made under section 75JB(5g).

The effect of this amendment is that a person commits an offence if they knowingly provide the Commissioner with false information, or withholds material information, when requesting a pre-determination under section 75JBA, or applying for the claw-back to be waived under section 75JB(5g).

The penalty for the offence is a maximum of $10,000 plus the amount of duty chargeable on the instrument or Part IIIBA statement.

Division 3 – Power to reassess

As a result of the decision in the Supreme Court case of Venture Management Limited v Commissioner of State Taxation, significant limitations were placed on the power of the Commissioner to upwardly correct a stamp duty liability once an assessment had been issued under the Stamp Act.

This inability to reassess stamp duty matters is of concern as revenue potentially due to the State could be forgone if an assessment error is made.

Until recently, no significant loss to the revenue had arisen as a result of this limitation. However, a recent decision in the Supreme Court in December 1999 highlighted these concerns. In that case, a duty liability of approximately $200,000 could not be collected because the court found the manner in which the Commissioner issued the assessment to be incorrect.

If the reassessment power had existed at that time, the allocation of the duty between the documents and transactions involved could have been rearranged to ensure the proper amount of duty was paid. While no other cases of such significance have arisen to date, the threat to the revenue is both significant and ongoing.

The amendments in this Bill authorise the Commissioner to increase a stamp duty liability if an assessment has been incorrectly made, providing the reassessment is within five years of the original assessment. The power currently exists to disregard this limitation if the original assessment was based on false or misleading information. A similar power already exists in the stamp duty legislation of all other jurisdictions, as well as in all other taxation legislation administered by the Commissioner in this State.

It should also be noted that the ability already exists within the Stamp Act to downwardly correct an assessment through the formal objection and appeal mechanisms.

The Bill proposes that these changes will be prospective and assessments issued by the Commissioner prior to the commencement date of these amendments will not be capable of being increased.

It is also noted that a comprehensive assessment regime that will apply in a consistent manner across all tax lines will be included in a Taxation Administration Bill which is currently being prepared.

Clause 11: **Section 31 amended**

This clause amends subsection 31(4) of the Stamp Act. This subsection currently has been interpreted by the courts to restrict the Commissioner's ability to increase the amount of stamp duty payable once an assessment has been issued. The changes proposed to this subsection will allow the Commissioner to reassess in the circumstances set out in a new section 31AA.

Clause 12: **Sections 31AA, 31AB and 31AC inserted**

This clause inserts three new sections into the Act, namely 31AA, 31AB and 31AC.

Section 31AA. Reassessment of duty

This section provides the power for the Commissioner to upwardly correct an assessment of a stamp duty liability once an assessment has been made.

Subsection (1) inserts the power for the Commissioner to reassess an instrument for stamp duty purposes subsequent to an assessment having been issued.

The reassessment power must be exercised by the Commissioner where a court directs him to do so. In exercising this power, the Commissioner cannot exceed the limitations of this section. For example, the Commissioner could not be directed by a court to reassess a liability to decrease an amount payable unless the reassessment is made under the objection and appeal process set out in sections 32 and 33 of the Act or pursuant to a case stated under section 34.

The Commissioner is also able to reassess an instrument of his own volition. These circumstances will usually arise where an error is detected in the assessment method when the instrument is presented to the Department as a support document for other instruments, or where the instrument is re-examined during investigation and audit activity.

The section has prospective effect. It will only operate where the instrument has been assessed in the first instance after the date this Act receives the Royal Assent. It should be noted that for the purposes of this operative clause, the date of execution of the instrument is irrelevant. The authority to reassess a particular instrument will stem from the date the original assessment was issued.

Subsection (2) provides a limitation on the Commissioner's reassessment power. A reassessment cannot increase a previous assessment where the previous assessment was made in accordance with an interpretation of the law generally relied on by the Commissioner, or where the previous assessment was based on a practice generally applied by the Commissioner at the time the instrument was assessed.

This limitation stems from concerns raised by peak industry bodies during consultation on the Taxation Administration Bill, which includes a similar reassessment power for all taxes administered by the Commissioner. Concerns were raised that the Commissioner may seek to retrospectively apply an altered interpretation of the law to the taxpayer's detriment.

For example, if a particular type of document was routinely assessed by the Commissioner at nominal duty rates, and a Court case or legal advice found the interpretation underlying that assessing practice to be incorrect, this provision would prevent the Commissioner from increasing the duty applied to every instrument of this type assessed at nominal duty rates in the preceding 5 years.

<u>Subsection (3)</u> provides that an instrument may be reassessed by the Commissioner more than once.

<u>Subsection (4)</u> provides that where the amount of duty is increased when an instrument is reconsidered, the Commissioner is to issue a reassessment in respect of the instrument and to endorse the instrument with the amount of duty chargeable. This is to occur where the Commissioner is of the opinion that an instrument is chargeable with duty when he was previously of the opinion that it was not. It will also occur where the Commissioner is of the opinion that the instrument is chargeable with more than the amount of duty previously assessed.

<u>Subsection (5)</u> provides that a reassessment may only be issued by the Commissioner within 5 years of the date of the original assessment. Again, this timing is dependent on the date the original assessment is issued, not the date of execution of the instrument. It should also be noted that where there is more than one reassessment, each reassessment must be within 5 years of the original assessment date.

<u>Subsection (6)</u> provides an exception to this 5 year period, in certain circumstances.

The first circumstance is where the Commissioner is directed to make the reassessment by a court. This situation may sometimes arise where an appeal process is drawn out and the appeal decision is handed down more than five years after the original assessment is made.

The second circumstance authorises the Commissioner to make a reassessment at any time where he considers that there has been an evasion of tax, or that a previous assessment was based on false or misleading information.

<u>Subsection (7)</u> provides for an instrument to be stamped in accordance with the reassessment made by the Commissioner.

Section 31AB. Effect of reassessment

This section clarifies how the power to reassess affects a number of other provisions within the Act.

Subsection (1) provides that a reassessment supersedes the previous assessment issued in relation to the instrument. This could be the original assessment or an earlier reassessment.

In most cases, stamp duty assessments will be cancelled and re-issued with the total tax liability being shown on the reassessment notice. However, assessments will reflect payment balances where duty has already been paid, or partly paid, on the original assessment.

Subsection (2) provides that for the purposes of recovery proceedings, a reassessment does not invalidate any proceedings in relation to an amount that may have been assessed under an original assessment. It provides that an adjustment is to be made to the amount to be recovered under the original assessment proceedings to take account of the adjustment made by the reassessment. This allows recovery proceedings taken by the Commissioner to remain on-foot, despite a change in the amount recoverable.

Subsection (3) similarly provides that an objection to the original assessment remains valid if a reassessment is made prior to the objection being determined. However, the original objection will only remain "on foot" where the grounds of the objection:

- are directly applicable to the reassessment; or
- relate to matters which are the same or similar in substance.

Section 31AC. Payment of reassessed duty

This section sets out how the due date for payment of a reassessment is to be determined.

Subsection (1) provides a definition of **"payment period"** for the purposes of this section. The meaning of **"payment period"** will be the period referred to in section 20(3), being the period 3 months after the date of issue of the assessment or such longer period allowed by the Commissioner under section 34C(2).

Subsection (2) sets out the method of determining the payment requirements where a reassessment is issued after the full amount of duty chargeable under the original assessment has been paid. In these circumstances a reassessment will be due for payment at least one month after the date of issue. However, in circumstances where the **"payment period"** has more than one month to run, the due date of the reassessment will correspond to the last day of the **"payment period"** The amount to be paid will be the difference between the amount reassessed and the amount already paid**.**

Subsection (3) provides for a fine to be imposed by the Commissioner where the full amount required to be paid under subsection (2) is not paid by the due date, or any extended due date that may have been allowed under section 34C(2). The fine is set at the greater of $2 or 20% of the amount required to be paid under subsection (2).

Subsection (4) provides that any fine chargeable under subsection (3) will be in addition to any fine chargeable under section 20, for example, where a fine has been imposed under section 20(2) for late lodgement of the instrument.

Subsection (5) provides that any fine charged under subsection (3) is to be denoted on the instrument.

Subsection (6) provides that the Commissioner may remit any fine imposed under subsection (3). The Commissioner may remit the whole fine or part of the fine.

Subsection (7) sets out the method for determining the due date for payment where no duty, or less than the full amount of duty has been paid in relation to the instrument and the reassessment is issued one month or more before the expiry of the **"payment period".**

In these circumstances, the references to the amount of duty payable in section 20(3) are to be read as references to the difference between the reassessed amount of duty and the amount of duty already paid (if any). Accordingly, the additional amount of duty payable will be due for payment by the last day of the **"payment period"** and failure to do so will render the instrument to a fine set at the greater of $2 or 20% of the amount required to be paid.

Subsection (8) sets out the method for determining the due date for payment where no duty, or less than the full amount of duty has been paid in relation to the instrument and the reassessment is issued after the expiry of the **"payment period"**, or less than one month before the expiry of the **"payment period".**

In these circumstances, the references to the amount of duty payable in section 20(3) are to be read as references to the difference between the reassessed amount of duty and the amount of duty already paid (if any).

Furthermore, the reference to the payment period in section 20(3) is to be read as the period ending one month after the day on which the reassessment issued. Therefore, a period of one month will be given to pay the reassessed amount. Again, failure to do so will render the instrument liable to a fine specified in section 20(3).

Clause 13: **Section 32 amended**

This clause amends the objection provisions of section 32 to ensure that a taxpayer has a right to object to a reassessment, in the same manner as rights to object to assessments are now provided.

Subclause (1) amends section 32(5) to allow the Commissioner refund any excess of duty or fine paid on a reassessment where an objection has been successful.

Subclause (2) amends section 32(6) to clarify that a right of objection exists in relation to any reassessment issued under section 31AA.

Clause 14: Section 33 amended

This clause amends section 33(4) to ensure that where an error in an assessment or a reassessment is found during an appeal process, under:

- Paragraph (a), the court can order the Commissioner to refund any excess of duty paid or any excess of fine charged under section 20 or 31AC; and

- Paragraph (b), the court can order the Commissioner to reassess the instrument under section 31AA to increase the amount of duty payable. Under the current arrangements, the court can only order the Commissioner to decrease the amount payable.

This ensures that the powers of the Court in determining an appeal are not more restrictive than those available to the Commissioner.

Clause 15: Section 39 amended

Subclause (1) amends section 39(1a)(b) such that where the full amount of duty chargeable on a reassessment is not paid by the due date, an offence has been committed for the purposes of that section.

Subclause (2) amends section 39(1a)(d) to ensure that any penalty imposed in respect to the offence committed under the section is in addition to any fines imposed under section 20(2), section 20(3) or section 31AC(3).

Division 4 – Exemption from duty on licensing of modified motor vehicles

The final amendment to the Stamp Act proposed in this Bill relates to stamp duty imposed on the issue and transfer of motor vehicle licences.

An anomaly in the legislation was recently highlighted whereby a modification to an existing five-axle truck trailer, referred to as a “dog” trailer, attracted further duty.

The modification resulted in the creation of two distinct trailers, referred to as a “dolly” and a semi trailer.

The modification creates a change in vehicle category for one or both of the new vehicles, which are subject to Australian Design Rule certification prior to registration as individual units.

Under current legislation, if the new semi-trailer is not modified to the extent that requires re-certification, the issue of the semi-trailer licence is exempt from stamp duty under item 9(2) of the Third Schedule to the Stamp Act.

However, if re-certification of the semi-trailer is required, the vehicle is treated as a new unit and stamp duty is chargeable on the market value of the semi-trailer.

Regardless of the stamp duty treatment of the new semi-trailer, the new licence issued for the "dolly" will create a liability to further duty.

In the above case, the owner of the vehicle paid stamp duty on the original purchase of the vehicle and was liable to further stamp duty on at least one of the two newly created vehicles.

This is considered to be inequitable as the vehicle ownership has not changed, nor has the market value of the vehicles increased.

The Bill proposes to amend the Stamp Act to address this inequity, such that the licensing of any vehicles that undergo similar modifications to those outlined, will be exempt from duty if the vehicles are licensed in the name of the same person, both immediately before and after the modifications.

Clause 16: **Third Schedule amended**

This clause inserts new subitems (5) and (6) into item 9 of the Third Schedule of the Stamp Act.

Subitem (5) provides a stamp duty exemption for a motor vehicle licence issued to a person in the circumstances outlined in paragraphs (a) and (b).

Paragraph (a) applies to a motor vehicle that was modified and that was licensed in the same person's name both immediately before and after it was modified.

Paragraph (b) applies to a motor vehicle that was part of another motor vehicle that was modified and that was licensed in the same person's name both immediately before and after it was modified.

Subitem (6) clarifies that the exemption in subitem (5) is available whether or not the vehicle that results from the modification is required to meet design rule requirements that are different to those of the original vehicle, before it can be licensed.

PART 3 – LAND TAX ASSESSMENT ACT 1976

Part 3 of the Bill seeks to amend the Land Tax Assessment Act 1976 to:

- ensure that land owned by a statutory authority that is liable for land tax includes vested land; and

- provide a land tax exemption where a home is held by a mortgagee for the purposes of a mortgagee sale subject to certain conditions.

Land vested in statutory authorities

The Port Authorities Act 1999 was proclaimed on 14 August 1999 and provided, among other things, that port authorities would no longer be agents of the Crown or have the status, immunities and privileges of the Crown.

In terms of competitive neutrality, it was intended that ports would be subject to land tax from the year of assessment commencing on 1 July 2000.

Land tax is based on the ownership and usage of land at midnight 30 June and is calculated on the aggregate unimproved value of all taxable land owned. The land values are determined by the Valuer General.

In implementing this policy, a more general question arose regarding the ownership of land that is vested in a statutory authority by the Crown.

Legal advice obtained by the Commissioner of State Revenue suggests that land does not vest in the statutory authority as owner, but rather in a more limited sense being for the purposes of management and control of that land.

Prior to this legal advice, it was believed that statutory authorities were owners of vested land for land tax purposes, and liable statutory authorities have been paying land tax on that basis. The amendments contained in this Bill are therefore necessary to put beyond doubt that non-exempt statutory authorities will have a liability to land tax both in respect of owned and vested land.

To ensure that refunds are not necessary as a result of this change in interpretation, the Bill provides that these amendments will operate from 1995 to validate those previous land tax assessments that have been paid in respect of vested land and to allow previous assessments to be amended to include any vested land that may not have been brought to account.

The additional net revenue expected as a result of the application of these changes to port authorities is estimated to be $200,000 annually.

Mortgagee sales

The purpose of this amendment is to address an inequity in the land tax regime.

A land owner is currently eligible for a land tax exemption for their principal place of residence, provided they own and occupy that residence as at 30 June.

Current exceptions to the requirement that the owner occupy the property at 30 June include:

- where the owner has bought a new home but is still in the process of selling their previous home;

- where a land owner is still in the process of constructing a new home on the land; or

- where an executor holds a property that was previously the principal place of residence of the deceased owner.

Situations have arisen where home owners have defaulted on loan repayments secured by a mortgage over the home, and the mortgagee has taken vacant possession of the home for the purposes of a mortgagee sale.

Under the law as it stands, if the home owner has ceased to occupy the home at 30 June, they will not be eligible for a residential land tax exemption.

In these circumstances, the mortgagee does not become the owner of the property, however, as the home owner no longer occupies the property, they will be liable for land tax.

This amendment will allow an exemption in such cases where the owner involuntarily ceases to occupy the home subject to certain conditions.

These conditions are that:

- the owner of the home is not receiving a principal place of residence exemption for another property which they may have moved into; and

- no rent or other income is derived from the land during the period that it is required to be vacant.

The amendments will apply to the assessment year commencing 1 July 2000 and subsequent years.

The cost of providing the exemption is expected to be minimal due to the small number of properties likely to be held by mortgagees at 30 June in any year.

Clause 17: The Act amended

This clause provides that the Act being amended in Part 3 of the Bill is the *Land Tax Assessment Act 1976*.

Clause 18: Section 18A inserted

This clause inserts a new section 18A into the principal Act and provides that where land is vested in certain public bodies, the body is to be treated as the owner of the land for the purposes of the *Land Tax Assessment Act 1976*. This provision will have application where the land has not been vested in the body as owner, but rather for management and control of the land. The provision will only apply to bodies that are liable to assessment and taxation under the Act as described in paragraphs (a) and (b).

Paragraph (a) applies to bodies that are established under an Act and are liable to land tax. This would cover circumstances where that body is liable to land tax by virtue of a specific provision either within its own legislation or the *Land Tax Assessment Act 1976*.

Paragraph (b) applies to bodies that have been excluded by regulation from the definition of **"public statutory authority"** in section 5 of the Act so that they become liable for land tax. The bodies currently excluded are set out in regulation 8 of the *Land Tax Assessment Regulations 1976*.

The statutory authorities that are currently liable to land tax are the:

- Government Employees Superannuation Board;
- Western Australian Land Authority;
- Electricity Corporation;
- Gas Corporation;
- Water Corporation;
- Albany Port Authority;
- Broome Port Authority;
- Bunbury Port Authority;
- Dampier Port Authority;
- Esperance Port Authority;
- Fremantle Port Authority;
- Geraldton Port Authority; and
- Port Hedland Port Authority.

Clause 19: Schedule amended

Subclause (1) amends clause 1 of Part 1 of the Schedule to the Act by inserting new paragraphs (c) and (d). Clause 1 of Part 1 of the Schedule provides a land tax exemption for land owned by, or vested in, the Crown, or a local government or any other public statutory authority.

Paragraph (c) removes the exempt status of any land referred to in paragraph (a) of clause 1 of Part 1 of the Schedule where a body included in the new section 18A is an owner of the land. This is necessary as although section 18A provides for a body to be treated as an owner of land for the purposes of the Act, the Crown would remain the legal owner of the land. However, to remove any conflict that may arise due to there being more than one owner, this paragraph also provides that no one referred to in paragraph (a), other than the section 18A body where relevant, is liable in respect of the land.

Paragraph (d) ensures that where, under paragraphs (b) and (c) of clause 1 Part 1 of the Schedule, different persons are potentially liable for assessment and taxation in relation to particular land, then only the person liable under paragraph (c) is actually liable.

Example: Although the Western Australian Land Authority (WALA) is an agent of the Crown, it is liable to land tax by virtue of section 32 of the *Western Australian Land Authority Act 1992*. If a person leases land from WALA for commercial purposes, they are potentially liable to land tax because of the definition of **"owner"** and the operation of clause (1)(b) of Part 1 of the Schedule in the *Land Tax Assessment Act 1976*. Under paragraph (b), only the lessee would be liable. Under paragraph (c), only WALA would be liable. Paragraph (d) resolves this inconsistency and ensures that only WALA would be liable.

Subclause (2) inserts a new clause 9A into Part I of the Schedule of the principal Act.

Paragraph (a) provides an exemption where a home owner does not occupy their home on 30 June because of a requirement that the land be vacant pursuant to a mortgagee's right to sell the land. The exemption is intended to apply in all circumstances involving a mortgagee sale where certain criteria are met and is not restricted solely to those instances where the mortgage is held by a bank or financial institution. The exemption therefore extends to other home loan financiers such as Keystart, building societies, credit unions and mortgage originators.

However, an exemption is only granted in the circumstances where a residential exemption would have applied under the existing clauses 9, 10 and 11 but for the requirement that the property be vacant pursuant to a mortgagee's right to sell the land.

Paragraph (b) provides that the exemption in paragraph (a) will not apply if the owner is entitled to a residential exemption under clause 9, 10 or 11 of Part 1 of the Schedule in respect of any other land in that year of assessment. Furthermore, the exemption will not apply if any person derives rent or other income from the land during the period when the land was required to be vacant.

The exemption will apply for one year of assessment only.

Paragraph (c) provides that this exemption will apply for the 2000/2001 year of assessment and subsequent years.