

EXPLANATORY MEMORANDUM

DUTIES AMENDMENT BILL 2022

The Duties Amendment Bill 2022 seeks to amend the *Duties Act 2008* (Duties Act) to introduce tax simplification measures to reduce the tax burden on some taxpayers and simplify tax administration.

Aligning the general and residential property transfer duty rates

Reducing the general rate of duty

Transfer duty is imposed under the Duties Act on various dutiable transactions, including transfers of land and certain business assets. Transactions involving residential property are assessed at a concessional residential rate of duty while those involving commercial property, land and business assets are assessed at the general rate of duty.

The Bill amends the general rate of duty that applies to non-residential property to be the same as the concessional residential rate of duty. This change effectively provides that the current concessional residential rate of duty will apply to all dutiable transactions.

The change will benefit taxpayers who transfer non-residential property valued at more than \$200,000 up to a maximum \$2,800. It is estimated between 3,000 and 5,000 transactions a year will benefit from the reduced rate of duty.

Removing the concessional residential rate of duty

The Bill removes the concessional residential rate of duty. The alignment of the general rate of duty with the current residential rate means a separate concessional residential rate will no longer be required. The lower rate will apply to all transactions.

This change will reduce red tape for taxpayers who are currently required to complete an application for the concessional residential rate for each dutiable transaction. It will also reduce recordkeeping obligations and other administrative burdens on licensed settlement agents and conveyancers who self-assess transactions under the Duties Act.

Adjusting the residential or business property concession

Transactions involving residential land or business property valued at less than \$200,000 are assessed at a separate concessional rate of duty. For some transactions, but not all, this is lower than the current concessional residential rate.

The Bill adjusts this concessional rate to provide a concession to all eligible transactions valued at less than \$200,000. This adjustment is required to align the concessional treatment of transactions involving residential property and business property as a consequence of the new single general rate of duty.

Vehicle licence duty exemptions

The Bill introduces a vehicle licence duty exemption for new service demonstrator vehicles that are loaned to customers having their vehicles serviced at a

dealership. These vehicles are allocated to customers the dealer hopes to entice into upgrading their vehicle after experiencing the features of the service demonstrator vehicle. These vehicles do not currently qualify for the demonstrator exemption because they are not acquired solely for demonstration purposes.

This measure will reduce the number of disputes about the issue, more accurately reflect industry practices and resolve the administrative difficulties with auditing dealer exemptions.

The Bill also introduces an exemption for transactions when a vehicle is returned to the seller for a full refund of the purchase price or a replacement vehicle. It ensures a consumer does not pay duty a second time when replacing a faulty vehicle and aligns Western Australia with other jurisdictions.

Abolishing duty on prospecting licences

The Bill abolishes duty on transactions for prospecting licences unless they include other dutiable property. This will reduce red tape and remove the inefficiencies associated with assessing these transactions. The change will also simplify the process of transferring prospecting licences by allowing these transfers to be registered with the Department of Mines, Industry Regulation and Safety without being lodged for duty assessment.

Removing duty for family court orders

Parties to the breakdown of a marriage or de facto relationship may make a financial agreement under the family law legislation to transfer property as part of the relationship ending. These financial agreements are exempt from duty under the Duties Act. Transfers of land made in accordance with a financial agreement are charged nominal duty, which is currently \$20.

The Bill amends the duty treatment of family law court orders following a marriage or de facto relationship breakdown to make them exempt from duty. Nominal duty will apply to eligible transfers of property made under these orders. This will align the duty treatment of family law court orders with financial agreements made under the family law legislation.

Part 1 – Preliminary

Clause 2: Commencement

Paragraph (a) provides that Part 1 of the Act comes into operation on the day on which Royal Assent is received (***assent day***).

Part 3 of the Act makes amendments relating to the general rate of duty, the concessional residential rate, the residence or business property concession and transactions involving prospecting licences. Paragraph (b) provides that Part 3 of the Act comes into operation on 1 July 2022.

Part 4 of the Act inserts transitional provisions for particular sections of the Duties Act involving derivative mining rights that were inserted by the *Revenue Laws Amendment Act 2019* (RLA Act).

Paragraph (c) provides that Part 4 is deemed to have come into operation on the day that Act commenced on 13 June 2019.

Paragraph (d) provides that the rest of the Act comes into operation on the day after assent day. These provisions relate to the new vehicle licence duty exemptions and the exemption for family law court orders following a marriage or de facto relationship breakdown.

Clause 3: Act amended

This clause provides that the amendments in this Act are to the *Duties Act 2008* (Duties Act).

Part 2 – Amendments commencing on the day after Royal Assent

Clause 4: Section 113 amended

Section 113 provides that financial agreements made under the family law legislation are exempt from duty.

This clause amends section 113 to also exempt court orders made under the family law legislation from duty. The effect of the amendment is that all family law relationship instruments (court orders and agreements) are exempt from duty. The amendment also exempts maintenance agreements made under the family law legislation, which were not previously exempt.

Subclause (1) amends section 113 to extend the exemption to family law court orders and maintenance agreements.

Subclause (2) inserts new subsection (2) to provide that the ‘no double duty’ rules do not apply to relationship instruments exempt under section 113.

Subsection (2) provides the ‘no double duty’ rules in section 42 do not apply to relationship instruments exempt under section 113. These rules prevent duty being charged twice when a transaction for property consists of more than one dutiable transaction. For example, when a buyer pays duty for a contract for sale of land, the matching transfer of the land will not be charged duty.

These rules are not intended to apply to financial agreements and court orders exempt under section 113. When parties receive a court order or enter into a financial agreement, any subsequent transfers of land should be assessed for nominal duty under section 131 (if they are eligible). If the subsequent transactions are not eligible for nominal duty under section 131 they should be assessed at the general rate of duty.

Clause 5: Section 131 amended

Section 131 provides that nominal duty applies to family law court orders and to transfers of dutiable property made in accordance with family law financial agreements.

This clause amends section 131 to provide that transfers of dutiable property made in accordance with family law court orders (and maintenance agreements) are also charged nominal duty. The effect of the amendment is that transfers made in accordance with any family law relationship instrument, either court order or agreement, is charged nominal duty.

The clause also amends section 131 to provide that court orders under the family law legislation will not be charged nominal duty. These court orders will instead be exempt from duty under proposed section 113 (amended by clause 4).

Subclause (1) amends subsection (1) to provide an eligible transaction made in accordance with a matrimonial instrument is charged nominal duty.

Subclause (2) amends subsection (2) to provide an eligible transaction made in accordance with a de facto relationship instrument is charged nominal duty.

The amendments remove subsections 131(1)(a)-(b) and 131(2)(a)-(b) but do not change the numbering of subsections 131(1)(c)-(d) and 131(2)(c)-(d). This ensures the amended Duties Act is consistent with amendments in the *Family Court Amendment Bill 2022*.

The section heading is also amended.

Clause 6: Section 132 amended

This clause makes consequential amendments to section 132 to make it consistent with amended section 131.

Section 132 provides that a transaction charged with duty can be reassessed for nominal duty if it:

- (a) is a family law financial agreement; or
- (b) is in accordance with a family law court order (or maintenance agreement).

The clause amends section 132 to provide that a transaction can be reassessed for nominal duty if it is in accordance with any of the above matrimonial or de facto relationship instruments.

Clause 7: Section 228 amended

Section 228 defines the terms used in Chapter 5 of the Duties Act on vehicle licence duty.

A **new vehicle** is defined as a vehicle that has not been used or a vehicle that has only been used for the purpose of selling it in the ordinary course of business, for demonstration purposes or for certain charitable purposes, other than a vehicle that has been used

for demonstration of certain charitable purposes for more than two months.

This clause makes a consequential amendment to the definition of **new vehicle** for the new dealer exemption for service demonstrator vehicles. The effect is that a service demonstrator vehicle that has been used for that purpose for a period of not more than two months is a new vehicle.

Clause 8: Section 233 amended

Section 233 sets out the powers of the CEO of the Department of Transport (CEO) in relation to assessing duty. Section 233(1) requires the CEO to assess the amount of duty payable on the grant or transfer of a vehicle licence.

Subclause (1) amends section 233(1) to provide that the CEO must assess the liability to duty of the grant or transfer rather than the amount of duty payable. This is because there will be no duty payable if an exemption in Part 4 of Chapter 5 applies. This is a minor technical amendment that does not change the practical effect of the provision.

Section 233(3) provides that an assessment of duty by the CEO is an official assessment for the purposes of the *Taxation Administration Act 2003* (TAA).

Proposed section 244B(1)(b)(ii) (inserted by clause 9) introduces a vehicle licence duty exemption for cancelled vehicle sales by dealers when the purchaser does not take possession of the vehicle. In these circumstances, the CEO has the power to reassess vehicle licence duty on the grant or transfer.

Subclause (2) makes a consequential amendment to section 233(3) to provide that a reassessment made by the CEO is also an official assessment for the purposes of the TAA.

Clause 9: Section 244B inserted

This clause inserts a new vehicle licence duty exemption that applies if:

- (a) a vehicle is returned to the seller for a full refund of the purchase price or a replacement vehicle; or
- (b) the agreement to purchase the vehicle is cancelled before the purchaser takes possession of the vehicle.

The exemption would apply if, for example, a vehicle is returned to the seller because the purchaser has a right to a remedy under the Australian Consumer Law due to a breach of a consumer guarantee (for example, the vehicle is not reasonably fit for a disclosed purpose or is not of an acceptable quality). This will address the situation where a person returns a faulty vehicle for a refund or

replacement and must pay duty a second time when they acquire a replacement vehicle.

The vehicle must be returned and an application for reassessment made within five years of the original assessment. This will provide sufficient time for taxpayers to apply for a refund when the return of the vehicle is delayed because the dealer or manufacturer attempts to repair the vehicle or there are lengthy proceedings under the consumer laws.

The exemption will also apply to the grant or transfer of a licence where the sale of the vehicle by a dealer is cancelled and the purchaser does not take possession of the vehicle. This typically occurs when a dealer arranges for a licence to be granted or transferred to a prospective purchaser of a vehicle through the Department of Transport's Dealers Online in anticipation of the sale being completed.¹ The dealer usually pays the vehicle licence duty and licensing fees on behalf of the purchaser at the time of licensing.

If the deal is cancelled and the purchaser never takes possession of the vehicle, the vehicle licence duty is refunded by the Department of Transport. This exemption supports the reassessment and refund of duty in these circumstances.

244B. If agreement for purchase of vehicle is terminated or vehicle is returned

Subsection (1) provides that duty does not apply to the grant or transfer of a licence for a vehicle if:

- (a) the application for the grant or transfer of the licence is the result of an agreement by a person (the **purchaser**) to purchase the vehicle from another person (the **seller**); and
- (b) either –
 - (i) the agreement is rescinded, annulled or otherwise terminated before the purchaser takes possession of the vehicle; or
 - (ii) after the purchaser takes possession of the vehicle, the purchaser returns the vehicle for a refund of the purchase price or a replacement vehicle and the return is accepted; and
- (c) any money that is refundable (for example, where the vehicle is returned for a refund of the purchase price instead of a replacement vehicle) is refunded to the purchaser.

Paragraph (b)(ii) above only applies to genuine returns of the vehicle to the seller for a refund of the purchase price or replacement vehicle. It does not apply to a subsequent purchase

¹ Dealers Online allows dealers to perform their transactions online, including factory new vehicle licensing (registration), vehicle licence renewals, vehicle transfers and the issue of vehicle licence plates.

of the same vehicle by the seller from the purchaser or a trade-in associated with the subsequent purchase of another vehicle from the seller. In these cases, the exemption does not apply.

Subsection (2) provides that the appropriate reassessment officer must, on application in the approved form, make any reassessment necessary as a result of subsection (1). ***Appropriate reassessment officer*** is defined in subsection (3).

In the circumstances where a vehicle is returned to the seller for a refund or replacement vehicle, the application for a reassessment of vehicle licence duty paid on the returned vehicle must be made to the Commissioner of State Revenue.

The Department of Transport will continue to process refunds where a dealer applies for the grant or transfer of a vehicle licence in anticipation of a sale of a vehicle and the sale is cancelled before the purchaser takes possession of the vehicle. Applications for a reassessment of duty in these circumstances must be made to the CEO of the Department of Transport.

Subsection (3) defines ***appropriate reassessment officer*** for the purposes of subsection (2) to mean:

- (a) the CEO if:
 - (i) the seller is a dealer;
 - (ii) the application for the grant or transfer of the licence is made by the dealer; and
 - (iii) the agreement for the sale of the vehicle is rescinded, annulled or terminated before the purchaser takes possession of the vehicle; or
- (b) the Commissioner in any other circumstances, for example, where a faulty vehicle is returned to the seller for a refund or replacement vehicle.

Subsection (4) provides that the reassessment under subsection (2) is subject to the time limits set out in section 17 of the TAA. An application for reassessment must be made within five years of the original assessment, which is the general reassessment timeframe that applies to dutiable transactions. This should provide sufficient time to apply for a reassessment in circumstances where the return of the vehicle is delayed because the dealer or manufacturer attempts to repair the vehicle or there are lengthy proceedings under the consumer laws.

Subsection (5) requires the CEO to refund duty paid if a reassessment made under subsection (2) results in an overpayment. For the Commissioner, this requirement already exists under section 54 of the TAA.

Subsection (6) clarifies that the Commissioner is not required to make a reassessment under section 16(1)(c) of the TAA if tax is refundable by the CEO under subsection (5). Section 16(1)(c) of the TAA requires the Commissioner to make a reassessment if a taxation Act provides for a rebate or refund, and that rebate or refund was not taken into account when the original assessment was made.

Subsection (7) provides that if the grant or transfer of a vehicle licence was exempt from duty under subsection (1), duty also does not apply on a subsequent transfer of a vehicle licence from the purchaser to the seller if the transfer is occurring because of one of the events in subsection (1)(b).

This provision ensures that duty does not apply if the vehicle licence is transferred back to the seller because the vehicle is returned for a refund or replacement vehicle or the deal is cancelled before the purchaser takes possession of the vehicle.

Clause 10: Section 245 amended

Section 245 provides that for the purpose of determining whether a vehicle is used for certain exempt purposes, a reference to its use for that purpose includes use for other minor incidental purposes. Revenue Ruling DA 5 sets out the Commissioner's interpretation of the term 'minor incidental purposes'.

This clause makes a consequential amendment to section 245 by including a reference to proposed section 246(3)(a) for the new dealer exemption for service demonstrator vehicles. The effect is that a reference to its use as a service demonstrator vehicle includes use for other minor incidental purposes.

A minor technical amendment is also made to change the cross-references to refer to specific paragraphs of sections 246(1), (2) and 247(1) rather than subsections.

Clause 11: Section 246 amended

Section 246 provides that duty does not apply on the grant or transfer of a licence to a dealer for a vehicle acquired solely for the purpose of selling or reselling it to another person in the ordinary course of the dealer's business.² It also exempts duty on the grant of a licence to a dealer if the dealer acquired the vehicle solely for demonstrating it to prospective purchasers.³

Despite the sole use requirement, the vehicle can be used for a minor incidental purpose without affecting the exemptions.⁴ The

² Duties Act ss 246(1)(a)(i) and 246(2)(a).

³ Duties Act s 246(1)(a)(ii).

⁴ Revenue Ruling DA 5.

Commissioner's interpretation of "minor incidental purpose" does not include using a vehicle as a designated loan vehicle.

This clause amends section 246 to introduce an exemption from vehicle licence duty for the grant of a licence to a dealer for a vehicle acquired solely for use as a service demonstrator vehicle.

The motor vehicle industry's practices have evolved over the past decade, with manufacturers using new ways to incentivise the sale of excess stock to dealers. This includes designated loan vehicle programs run by vehicle manufacturers.

Under these programs, a new vehicle is provided to a new car dealer at a discounted price to be used as a loan vehicle for a limited period by customers having their vehicles serviced at the dealership. The vehicle is allocated to customers the dealer hopes to entice into upgrading their vehicle after experiencing the features of the service demonstrator vehicle.

The dealer exemption for demonstration vehicles does not currently apply to the grant of a licence for a service demonstrator vehicle. This is because a vehicle used as a loan vehicle for customers having their car serviced does not meet the requirement that it be acquired solely for the purpose of demonstrating it to prospective purchasers.

These amendments will exempt service demonstrator vehicles, reduce the number of disputes about the issue and more accurately reflect industry practices. It will also address the administrative overheads associated with auditing these exemptions, which generally involve a resource-intensive investigation and insignificant duty recovery.

The exemption will apply to the grant of a licence for a vehicle to a dealer if the vehicle was acquired solely for the purpose of using it as a service demonstrator vehicle and, at the time of acquisition, the vehicle has not been used.

Subclause (1) makes a consequential amendment to section 246(1)(b)(i) to include a reference to proposed subsection (3)(a), which sets out that duty is not chargeable on the grant of a licence for a service demonstrator vehicle.

Section 246(1)(b)(i) provides that the application for the grant of a licence for a vehicle acquired as trading stock or for demonstration purposes must be accompanied by a declaration that the vehicle will not be used for a purpose other than those purposes or for certain charitable purposes.

The effect of the amendment is the declaration will be that, while a dealer holds the licence, the vehicle will not be used for any purposes other than as trading stock, for demonstration purposes, as a service demonstrator vehicle or for certain charitable purposes.

Subclause (2) inserts new subsections (3) and (4) for the service demonstrator vehicle exemption.

Subsection (3) provides that duty does not apply to the grant of a licence to a dealer if:

- (a) the dealer acquired the vehicle solely for the purpose of using it as a service demonstrator vehicle. Under section 245, the vehicle can also be used for a minor incidental purpose without affecting the exemption;
- (b) at the time of acquisition by the dealer, the vehicle has not been used. The exemption is limited to new vehicles so car dealers are not given an advantage over other businesses (for example, non-car dealership service centres) that provide used vehicles as loan vehicles. Service demonstrator vehicles can be distinguished from other loan vehicles as they are new vehicles acquired from the manufacturer to provide to a customer without charge for the primary purpose of demonstrating their upgraded features to entice a sale; and
- (c) the application for the grant of the licence must include a declaration in the approved form that while the dealer holds the licence, the vehicle will not be used for a purpose other than as a service demonstrator vehicle, as trading stock, for demonstration purposes or for charitable purposes, and that the dealer understands the effects of sections 248 and 249 if the use changes.

Subsection (4) sets out when a vehicle is used as a service demonstrator vehicle for the purposes of the exemption in subsection (3). A vehicle is a service demonstrator vehicle if:

- (a) a dealer uses the vehicle to loan to customers while their vehicles are being serviced or repaired, or otherwise undergoing mechanical work undertaken, by or on behalf of the dealer. This covers situations where the dealer arranges for repairs or mechanical work to be done by a third party on their behalf because they are not able to provide that service;
- (b) the loan of the vehicle to the customer is:
 - (i) provided without charge or for a nominal charge (such as minor fuel or insurance costs); and
 - (ii) for the purpose of demonstrating the vehicle to encourage the customer to purchase a new vehicle of the same make, model and model year from the dealer. This relates to the purpose of the loan and not the eventual outcome. If the customer decides to buy another vehicle this paragraph can apply so long as the purpose was satisfied;
- (c) the vehicle is of a make of vehicles that the dealer is authorised to supply under an agreement or arrangement with the manufacturer or principal distributor (for example, under a franchise agreement with a manufacturer). This creates a link

between the dealer's stock and the service demonstrator vehicle;
and

- (d) the model year of the vehicle is the latest model year released by the manufacturer in Australia for that model of vehicle. The 'model year' is a method of describing the version of a product that has been produced over multiple years and refers to the model cycle that the car is in. It may or may not be the same as the year it was manufactured. The requirement for the car to be the latest model year released in Australia ensures that the exemption cannot apply to superseded models. This links to the purpose of the loan to entice the customer to upgrade their vehicle after experiencing the features of the service demonstrator vehicle.

Paragraphs (b)(ii) and (d) limit the duration that a vehicle can be considered a service demonstrator vehicle if it is acquired under another exemption in section 246(1) or 247(1) and its use is changed to a service demonstrator vehicle. The change of use could only occur, without triggering a reassessment under section 249, while the vehicle was still the latest make and model and was still available for sale new by the dealer.

The section heading for section 246 is also amended.

Clause 12: Section 247 amended

Section 247 exempts duty on the grant or transfer of a licence to a dealer for a vehicle that is to be loaned for charitable or other similar purposes. Section 247(1)(b)(i) provides that the application for the grant of a licence for a vehicle acquired for charitable purposes must be accompanied by a declaration that the vehicle will not be used for another purpose except as trading stock or for demonstration purposes.

This clause makes a consequential amendment to section 247(1)(b)(i) to include a reference to proposed subsection (3)(a). The effect is that the declaration will now provide that while a dealer holds the licence, the vehicle will not be used for any purposes other than charitable purposes, as trading stock, for demonstration purposes, or as a service demonstrator vehicle.

Clause 13: Section 248 amended

Section 248 applies where the grant or transfer of a licence for a vehicle to a dealer is exempt because the vehicle was acquired solely for the purpose of selling it to another person, demonstrating it to prospective purchasers or loan by the dealer for charitable or similar purposes (exempt purpose), and the use of the vehicle changes to another one of those exempt purposes. When this occurs, the dealer is required to notify the Commissioner of the change of exempt use within one month of the change occurring.

This clause makes consequential amendments to section 248 to include a reference to the new exemption under section 246(3). A dealer is required to notify the Commissioner if the use of a service demonstrator vehicle is changed to another exempt use or vice versa.

Clause 14: Section 249 amended

Section 249 applies where the grant or transfer of a licence for a vehicle to a dealer is for an exempt purpose, and the use of the vehicle changes to a non-exempt purpose. When this occurs, the dealer must notify the Commissioner and duty is reassessed on the grant or transfer of the licence.

Section 249(1) provides that if the grant or transfer of a licence for a vehicle to a dealer is exempt because the vehicle was acquired solely for an exempt purpose, the dealer cannot use, or allow another person to use, the vehicle for a non-exempt purpose unless the dealer notifies the Commissioner within one month of the change occurring.

This clause amends section 249(1) to include a reference to the new exemption under section 246(3) so that a dealer must notify the Commissioner if the use of a service demonstrator vehicle is changed to a non-exempt purpose.

Clause 15: Section 250 amended

Section 250 sets out the circumstances in which a transfer of a licence for a vehicle is subject to nominal duty. Subsection (6) applies where a transfer of vehicle licence is charged with full duty and the transfer is in accordance with a matrimonial or de facto relationship instrument. In these circumstances, the taxpayer may apply to the Commissioner to reassess the transfer for nominal duty.

The provision replicates the effect of section 132 (in relation to dutiable transactions) for vehicle licence duty. This clause amends section 250(6)(b) to align the wording used with the amended wording in section 132, deleting the words 'was effected by or' (see clause 6 of the Bill).

Clause 16: Section 254 amended

Section 254 provides that a declaration required under certain clauses must be signed by the person making the application for the grant or transfer of the licence.

This clause makes a consequential amendment to include a reference to new section 246(3)(c). A declaration that accompanies the application for the grant of a licence for a service demonstrator vehicle must be signed by the person making that application.

Clause 17: Section 255 amended

Section 255 sets out the payment arrangements that apply to the duty and penalty tax collected by the CEO. It also requires the details of licences granted or transferred to be provided to the Commissioner including the duty and penalty tax paid on those licences.

This clause makes a consequential amendment to section 255 to provide that the vehicle licence duty and penalty tax the CEO must pay to the Commissioner does not include any amount refunded by the CEO under new section 244B(5). New section 244B(5) provides for a refund on reassessment of duty for a cancelled vehicle sale where the purchaser never takes possession of the vehicle (refer to clause 9).

Clause 18: Schedule 3 Division 10 inserted

This clause inserts new Division 10 at the end of Schedule 3. It contains transitional provisions for the amendments in Part 2 of the Bill.

**Division 10 – Provisions relating to
*Duties Amendment Act 2022***

55. Terms used

This clause defines the terms used in Division 10.

Subclause (1) defines **commencement day** to mean the day on which Part 2 of the *Duties Amendment Act 2022* comes into operation. This is the day after the day the Act receives the Royal Assent.

Subclause (2) provides that a term used in clause 56(1)(b) or (2) or (5) relating to vehicle licence duty has the same meaning as it has in Chapter 5 – Vehicle licence duty.

**56. Application of amendments made by
Duties Amendment Act 2022 Part 2**

Subclause (1) establishes a general rule that the amendments made under Part 2 of the Bill apply to transactions and grants or transfers of vehicle licences that occur on or after commencement day.

Subclause (2) provides an exception to the general rule in subsection (1). The new exemption in proposed section 244B can apply to a vehicle licence that was granted or transferred before commencement day if the vehicle was returned to the seller, or the agreement was cancelled before the purchaser took possession of the vehicle, on or after commencement day.

**57. Validation of certain reassessments and refund of vehicle
licence duty by CEO before commencement day**

The exemption in section 244B provides legislative support for the Department of Transport's longstanding practice of exempting vehicle licence duty for cancelled vehicle sales by a dealer where the purchaser does not take possession of the vehicle. This clause validates reassessments and refunds made by the Department of Transport from 1 July 2008 in these circumstances.

Subclause (1) provides that the clause applies if:

- (a) the CEO made a reassessment determining that no duty was payable on the grant or transfer of a vehicle licence in the period between 1 July 2008 and the day before commencement day;
- (b) the application for the grant or transfer was because of an agreement to purchase the vehicle from the dealer and was made by the dealer on the purchaser's behalf; and
- (c) the agreement was rescinded, annulled or otherwise terminated before the purchaser took possession of the vehicle.

Subclause (2) provides that the reassessment is, and is taken to have always been, validly made.

Subclause (3) provides that if, as a result of the reassessment, the CEO refunded vehicle licence duty, the refund is, and is taken to have always been, validly made.

Subclause (4) provides that the rights, obligations and liabilities of all persons are taken to be the same as if the reassessment had been validly made.

Subclause (5) provides that anything done, or purportedly done, before commencement day, is valid and effective, and is taken to have always been valid and effective, as it would have been if the reassessment had been validly made.

Part 3 – Amendments commencing on 1 July 2022

Clause 19: Chapter 2 Part 5 Division 7A inserted

Clause 19 inserts Chapter 2 Part 5 Division 7A. It provides a duty exemption for transactions for prospecting licences, unless they include other dutiable property.

Transactions involving prospecting licences raise limited revenue for the State, which is outweighed by the costs of administering the exemption.

The exemption lists a number of types of dutiable property related to prospecting licences under the *Mining Act 1978* (Mining Act). The exemption applies to a transaction that consists of any type of prospecting licence property (or a combination of types of property).

Division 7A – Prospecting licences and related dutiable property

91DA. Transactions as to prospecting licences or related dutiable property alone not usually dutiable.

Subsection (1) provides that duty does not apply to a transaction that only consists of any and all of the following:

- (a) a prospecting licence;
- (b) an estate or interest in a prospecting licence;
- (c) a derivative mining right in relation to a prospecting licence;
- (d) a right under an application for a prospecting licence; and
- (e) a part of, or an interest in a right under subsections (1)(c) or (d).

Subsection (2) provides that a transaction under subsection (1) is not exempt from duty if it is aggregated with another dutiable transaction. This prevents transactions from being structured to avoid paying duty on prospecting licences when they are transferred with other dutiable property.

Subsection (3) provides that a transaction relating to a prospecting licence under subsection (1) is not exempt from duty if it is part of substantially one arrangement with a landholder acquisition.

Landholder duty under Chapter 3 applies to certain acquisitions in companies or unit trust schemes that are entitled to land in Western Australia valued at \$2 million or more. Subsection (3) ensures the exemption in subsection (1) does not apply where a transaction relating to a prospecting licence is part of an arrangement with a landholder acquisition.

Subsection (4) provides that unless the Commissioner is satisfied to the contrary, a transaction relating to a prospecting licence and a landholder acquisition will be taken to arise from substantially one arrangement where they occur within 12 months and the person liable to pay duty is the same person.

Subsection (5) provides that a reference in subsection (4) to a person liable to pay duty is a person that would be liable to pay duty if the transaction were a dutiable transaction. This is required for subsection (4) to function correctly because a transaction under subsection (1) is not a dutiable transaction until it is aggregated.

Clause 20: Section 91H amended

Section 91H provides a duty exemption for the grant of a derivative mining right. A derivative mining right is an authorisation by the

holder of a mining tenement for another person to carry out mining activities on the tenement land.

The exemption applies when the holder of a prospecting licence grants a derivative mining right to another person. If the holder obtains a mining lease (replacing their prospecting licence) and grants a new derivative mining right (under the mining licence) to the same person, it is exempt from duty under section 91H. Subsection (1)(d) requires the first derivative mining right to be duty endorsed for the exemption to apply.

This clause makes consequential amendments to section 91H to make it consistent with proposed section 91DA. The effect is that the exemption will apply if the first derivative mining right was duty endorsed or was exempt from duty.

Clause 21: Chapter 2 Part 6 Division 4A deleted

Chapter 2 Part 6 Division 4A provides that transactions involving residential property are charged the concessional residential rate of duty.

This clause deletes Chapter 2 Part 6 Division 4A. The concessional residential rate will not be required because the general rate of duty (amended by clause 24) is reduced to the current concessional residential rate. The effect of the amendments is that the current concessional residential rate will apply to all transactions.

Clause 22: Section 147 amended

Section 147 provides that transactions involving residential or business property valued at less than \$200,000 are charged a concessional rate of duty. Subsection (3) provides that if a transaction qualifies for the residential and business concession and the concessional residential rate, the taxpayer can choose which concession is applied to the transaction. This allows taxpayers to choose the concession which charges the least duty.

This clause deletes subsection (3). Taxpayers no longer need to choose between the two concessions because the general rate of duty will be reduced to the current concessional residential rate of duty. Also, the residential or business property concessional rate will be adjusted so all eligible transactions will attract less duty than the new general rate of duty. The concessional residential rate will be removed. Refer to clauses 21 and 24 of the Bill.

Clause 23: Section 204E amended

Section 204E provides that the value of a mining tenement subject to a derivative mining right is determined having regard to the

derivative mining right. Subsection (2) requires the acquisition of the derivative mining right to be duty endorsed.

This clause makes consequential amendments to section 204E to make it consistent with proposed section 91DA. The effect is that section 204E will apply to acquisitions of derivative mining rights that are duty endorsed or are exempt from duty under the proposed section 91DA because they relate to a prospecting licence.

Clause 24: Schedule 2 amended

Schedule 2 contains the rates of transfer duty that can apply to a dutiable transaction. These rates include the general rate, concessional residential rate and residential and business property concessional rate.

This clause amends Schedule 2 to reduce the general rate to be the same as the residential concessional rate. The effect is that the current residential concessional rate will be applied to all dutiable transactions.

The amendments also remove the concessional residential rate of duty. When the general rate is reduced, the concessional residential rate will become redundant and should be deleted.

The amendments adjust the residential and business property concessional rate. The effect is that the residential and business property concession will provide a concession for all eligible taxpayers compared to the general rate of duty.

Clause 25: Schedule 3 clause 11A deleted

Schedule 3 Clause 11A is a transitional provision related to the concessional residential rate of duty. The removal of the concessional rate (clauses 21 and 24 of the Bill) means this clause is no longer required and should be deleted.

This clause deletes Schedule 3 Clause 11A.

Clause 26: Schedule 3 clause 58 and 59 inserted

This clause inserts transitional provisions related to Part 3 of the Bill.

**Clause 58. Application of amendments made by
*Duties Amendment Act 2022 Part 3***

Subclause (1) establishes a general rule that the amendments in Part 3 of the Bill apply only in relation to transactions or acquisitions that occur on or after 1 July 2022.

Subclause (2) provides clarification of the rule in subsection (1) in relation to proposed section 91DA.

Section 91DA provides a duty exemption for transactions relating to prospecting licences, unless they include other dutiable property. Subsections (2) and (3) provide that transactions for prospecting licences are dutiable if they are aggregated with another dutiable transaction, or are part of substantially one arrangement with a landholder acquisition.

Subclause (2) provides that transactions for prospecting licences are dutiable under subsections (2) or (3) regardless of when the other dutiable transaction or landholder duty acquisition takes place. The effect is that the exemption for prospecting licences only applies to transactions that occur on or after 1 July 2022, but it will not apply if the transaction is aggregated with a dutiable transaction or part of substantially one arrangement with a landholder acquisition, regardless of whether that transaction or acquisition occurs before or after 1 July 2022.

Clause 59. Provision relating to residential concession

Division 4A (sections 147A-G) provides a concession for transactions involving residential land. This concession will be deleted by clause 21 of the Bill.

Under section 147F a transaction assessed at the general rate of duty can be reassessed under the concessional residential rate if the owner constructs a residence on the land. Section 147G requires an application for reassessment under section 147F must be made in the approved form.

This clause provides that the reassessment rules in sections 147F-G apply to eligible transactions, despite the repeal of those sections. The effect is that eligible transactions occurring before 1 July 2022 charged at the current general rate can still be reassessed at the current residential rate of duty.

Subclause (1) defines **former Chapter 2 Part 6 Division 4A** to mean Chapter 2 Part 6 Division 4A as in force before its repeal by section 21 of the Bill.

Subclause (2) provides that despite the repeal of former Chapter 2 Part 6 Division 4A, sections 147F and 147G will continue to apply to eligible transactions that occurred before 1 July 2022.

Subclause (3) is based on the deleted section 147(3). It applies to transactions that occurred before 1 July 2022 that are eligible for assessment or reassessment under both section 147 (Chapter 2 Part 6 Division 4) and former Chapter 2 Part 6 Division 4A.

The taxpayer may choose for the transaction to be assessed or reassessed under Chapter 2 Part 6 Division 4 or former Chapter 2 Part 6 Division 4A. The Commissioner may also treat an application under one of the Divisions as an application under the other Division.

This ensures eligible transactions that were assessed at the general rate before 1 July 2022 can still be reassessed under either Division 4 or 4A despite the removal of Division 4A and section 147(3).

Subclause (4) provides that subclauses (2) and (3) do not limit the effect of clause 58(1) or the *Interpretation Act 1984* section 37.

Part 4 – Amendment taken to have commenced on 13 June 2019

Clause 27: Schedule 3 amended

Clause 27 inserts transitional provisions for sections 91F, 91G, 91H and 204E of the Duties Act, which were inserted by the RLA Act.

The RLA Act brought contractual mining rights back into the duty base following a Court of Appeal decision in 2014 (*Abbotts*) that determined these rights do not create an interest in a mining tenement.⁵

Sections 91F and 91H ensure that double duty does not apply to a re-grant of a derivative mining right in certain circumstances. Sections 91G and 204E contain special rules to take into account the effect of a derivative mining right when determining the value of a mining tenement that is transferred subject to that right. These sections operate in favour of the taxpayer, and only apply if the prior acquisition of the derivative mining right is duty endorsed.

Following the *Abbotts* decision and prior to the commencement of the RLA Act, the grant of a contractual derivative mining right was not a dutiable transaction.

Transactions that are not dutiable are not required to be lodged for duty endorsement. This means that any transaction involving a derivative mining right after the *Abbotts* decision but before the start of the RLA Act cannot be duty endorsed.

It is an undesirable outcome to charge duty to the re-grant of a right, or be unable to consider the effect of a right on the value of a mining tenement, when the original grant is not duty endorsed because it was not a dutiable transaction.

This clause inserts transitional provisions to provide that a derivative mining right does not need to be duty endorsed for sections 91F, 91G, 91H and 204E to apply if the acquisition of that

⁵ *Commissioner of State Revenue v Abbotts Exploration* [2014] WASCA 211 (*Abbotts*).

right was not a dutiable transaction. This amendment is backdated to the commencement of these provisions on 13 June 2019.

Clause 54. Provisions about derivative mining rights

Section 91F(3) provides that duty does not apply to the grant of a derivative mining right where a mining tenement is sold and the new holder is required to re-grant a derivative mining right to the person who held a right in relation to the tenement before the transfer (the previous right). Duty does not apply if the acquisition of the previous right is duty endorsed.

Subclause (1) ensures that the exemption in section 91F(3) applies despite the acquisition of the previous right not being duty endorsed if the right was acquired before 13 June 2019 and was not a dutiable transaction.

Section 91G provides that the unencumbered value of a mining tenement will be determined taking into account the effect of a derivative mining right on the value of a mining tenement if the acquisition of the right is duty endorsed.

Subclause (2) ensures that section 91G can still apply even though the acquisition of the derivative mining right was not duty endorsed if the right was acquired before 13 June 2019 and was not a dutiable transaction.

Section 91H provides that duty does not apply on the grant of a new derivative mining right in relation to a prospecting licence or exploration licence that is converted into a mining lease. The exemption only applies if the acquisition of the previous right is duty endorsed (as required by section 91H(1)(d) prior to the amendment in clause 20 of this Bill).

Subclause (3) ensures the exemption in section 91H applies even if the acquisition of the previous derivative mining right in relation to the prospecting licence or exploration licence was not duty endorsed if the right was acquired before 13 June 2019 and was not a dutiable transaction.

Section 204E provides that the unencumbered value of a mining tenement will be determined taking into account the effect of a derivative mining right on the value of the tenement for landholder duty purposes if the acquisition of the right is duty endorsed (as required by section 204E(2) prior to the amendment in clause 23 of this Bill).

Subclause (4) ensures that section 204E can still apply even though the acquisition of the derivative mining right was not duty endorsed if the right was acquired before 13 June 2019 and was not a dutiable transaction.