EXPLANATORY MEMORANDUM

FINANCIAL RELATIONS AGREEMENT (CONSEQUENTIAL PROVISIONS) BILL 1999

The purpose of the Bill is to put in place a number of measures to reform Commonwealth-State financial relations, as agreed by the Commonwealth and all States and Territories in June this year.

The full agreement, known as the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*, is set out in Schedule 1 of the Bill.

National Tax Reform and the Intergovernmental Agreement

The Intergovernmental Agreement is part of the Commonwealth's national tax reform package, the centrepiece of which is the introduction of a goods and services tax, or GST, at a 10% rate from 1 July 2000. The GST will replace the Commonwealth's existing wholesale sales tax and some State taxes.

The tax reform package also includes substantial income tax cuts, compensation for those adversely affected by the GST, simplification of the tax payment and reporting system, and a reduction in fuel costs for business, including farmers. In addition, business tax reforms are now being considered.

The Intergovernmental Agreement sets out those aspects of the Commonwealth tax reform package which directly impact on the States. Under the Agreement, States and Territories will receive all the revenue from the GST, commencing 1 July 2000.

The GST will replace the existing Commonwealth financial assistance grants and replacement revenues for the State's previous franchise fees on tobacco, fuel and alcohol.

The GST will also compensate for reductions in State taxes:

- gambling taxes will be reduced, or reimbursements provided, from 1 July 2000 to ensure that the net tax impost on gambling does not increase;
- financial institutions duty and stamp duty on quoted marketable securities will cease to apply from 1 July 2001;
- debits tax could cease to apply by 1 July 2005 on current projections; and
- further business stamp duties could cease to apply at a later date.

States' expenditure responsibilities will also be affected by the GST:

- States will set up an assistance scheme for first home owners to help offset the effect of the GST on house prices; and

- States will pay the Australian Taxation Office for the cost of administering the GST.

However, States will also receive expenditure savings from the abolition of their fuel subsidies and the elimination of indirect taxes currently embedded in goods purchased by the State.

The Commonwealth has guaranteed that State budgets will be no worse off, and will top up the GST in the initial years to meet that commitment.

Other major provisions of the Agreement include:

- a commitment by all parties to fully implement the GST in the public sector;

- the States facilitating the monitoring by the Commonwealth of price exploitation in areas outside the Commonwealth's Constitutional jurisdiction;

- a Commonwealth commitment not to cut specific purpose payments to the States as part of the reforms;

- the requirement that changes to the GST will require unanimous agreement of the Commonwealth and States; and

- establishment of a Ministerial Council of Commonwealth and State Treasurers to oversee the operation of the GST and the Intergovernmental Agreement.

Benefits of Tax Reform to Western Australia

Western Australia stands to benefit significantly from the GST in a number of ways.

Business costs will fall due to the abolition of sales tax and some State taxes, and the effective reduction in fuel costs, which are a major burden in Western Australia due to the large distances over which goods must be transported.

The GST will be of particular benefit to exporters, as exports will be GST - free. Western Australia is a heavily export-oriented State, contributing 25% of the nation's exports despite having only 10% of the population.

In the first few years, the new arrangements are financially neutral for the State Government. However, in the longer term, the GST should grow more rapidly than the Commonwealth grants and State taxes that it will replace, reflecting that the GST is a broadly based tax that will grow in line with the economy.

The benefits of the reforms to the Western Australian budget have been estimated at between $700 million and $ 1.5 billion over the first ten years, depending on the extent to which the State abolishes business stamp duties in the future.

The additional revenues will help the State to meet rapidly growing demands for social services such as health, education and law and order.

Scope of the Bill

This Bill gives effect to a number of measures contained in the Intergovernmental Agreement.

Other measures that are being dealt with separately are:

- price monitoring legislation;
- legislation for the State to voluntarily comply with the GST, which is being brought before the House concurrently with this Bill;
- legislation for first home owners assistance, which will be introduced shortly; and
- regulations for changed liquor and gambling arrangements, which are intended to be laid before the House later in this session.

Part 1 - Preliminary

Clause 1: **Short title**

This clause provides that the Act may be cited as the *Financial Relations Agreement (Consequential Provisions) Act 1999*.

Clause 2: **Commencement**

This clause provides when the provisions of the *Financial Relations Agreement (Consequential Provisions) Act 1999* come into operation.

Subclause (1) provides that all provisions except those described in subclauses (2) and (3) come into operation on the day the Act receives the Royal Assent.

Subclause (2) provides that Part 5 Division 2 (relating to marketable securities) and clause 38 (relating to the *Marketable Securities Transfer Act 1970*), come into operation on 1 July 2001.

Subclause (3) provides that Part 6 (relating to the *Tobacco Sellers Licensing Act 1975*) and clause 39 (relating to the Taxation (Reciprocal Powers) Act 1989), come into operation on 1 July 2000.

<u>Clause 3:</u> **Objectives**

This clause explains the main objectives of the Bill. These are:

- to record the intention of Western Australia to comply with, and give effect to, the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*; and
- to implement, in part, measures described in that agreement.

A copy of the Agreement is set out in Schedule 1 to the Bill.

Part 2 - *Financial Institutions Duty Act 1983*

Part 2 of the Bill deals with proposed amendments to the *Financial Institutions Duty Act 1983*.

Financial institutions duty is levied on receipts of financial institutions and on liabilities and investments of short term money market dealers.

This Part provides for financial institutions duty to cease to apply from 1 July 2001, in accordance with the Intergovernmental Agreement.

Western Australian taxpayers will save approximately $130 million in 2001-2002, when there will be an 11 month cashflow impact, and $142 million in a full year.

To facilitate the abolition of financial institutions duty, this Bill seeks to amend the Act to ensure that no liability will arise in respect of receipts or dealings after midnight 30 June 2001.

In addition, amendments are proposed to ensure that no returns will be required to be lodged in respect of receipts or dealings arising in any month after June 2001.

Furthermore, to facilitate the future removal of record keeping requirements, it is proposed to provide an ability to make a regulation to remove the record keeping obligations after all audits by the State Revenue Department are complete. This will benefit financial institutions that bear a compliance cost as a result of having to maintain certain records for duty purposes.

All other provisions of the Act will be retained, pending finalisation of audits of the pre-1 July 2001 liability of all financial institutions.

Clause 4: **The Act amended**

This clause identifies the Financial Institutions Duty Act 1983 as the Act amended in this Part.

Clause 5: **Section 12A inserted**

This clause inserts a new section 12A into Part III of the Act for the purpose of removing the trigger that gives rise to a liability for financial institutions duty.

Subsection (1) ensures that a receipt of money by a financial institution after 30 June 2001 does not give rise to a liability for financial institutions duty.

Subsection (2) applies to short term dealers whose liability is worked out by reference to the sum of certain short term liabilities or short term investments at the close of certain days. This subsection ensures that no liability arises in respect of any day after 30 June 2001.

Subsection (3) applies to depositors who are liable to financial institutions duty on deposits of money with a financial institution, other than a registered financial institution, in certain circumstances. This subsection ensures that no liability arises in respect of deposits of money after 30 June 2001.

Clause 6: **Section 12B inserted**

This clause inserts a new section 12B into Part IV of the Act which deals with exempt accounts. In general, once the liability for duty ceases, the provisions authorising exempt accounts will no longer be required.

Subsection (1) provides that Part IV, other than sections 18, 19 and 21 no longer applies after 30 June 2001.

Section 18 allows a Local Government Authority to obtain an exemption for an account kept in its name and for the exemption to apply from 1 June 1984, or on the date on which the account was opened, which ever is the later. It also allows an association comprised solely of Local Governments to obtain an exemption for an account and for the exemption to apply from 1 January 1986, or on the date on which the account was opened, whichever is the later. As this section permits the exemption to apply retrospectively, it has been retained.

Section 19 is similar to section 18 and applies to a Department of the Government of the Commonwealth, a State or a Territory. It allows a Government Department account to be exempt from duty and for the exemption to apply from 1 January 1984 or on the date on which the account was opened, whichever is the later. As it permits the exemption to apply retrospectively, it has also been retained.

Section 21 requires a person in whose name an exempt account is kept to furnish a certificate to the Commissioner within 2 months of the end of a financial year stating whether or not all amounts paid into the exempt account were paid in accordance with the Act. Where any amount was paid into an exempt account in contravention of the Act, there is a requirement to pay the appropriate amount of financial institutions duty to the Commissioner. This section is retained so that the liability for such duty remains in respect of amounts paid into an exempt account in contravention of the Act prior to 1 July 2001.

Subsection (2) limits the application of section 21(1) so that a certificate is only required in respect of the financial year ending on 30 June 2001 and prior years.

Clause 7: **Section 21A inserted**

This clause inserts a new section 21A in Part V of the Act which deals with registration, certification and returns, and limits the application of certain provisions within the Part.

Subsection (1) limits the application of section 22(1), (2) and (3) so that a financial institution is not required to apply for registration as a financial institution after 30 June 2001. However, this does not affect the requirement that a person had to apply for registration prior to that date.

Subsection (2) limits the application of section 23 so that a registered financial institution, or one that is required to be registered, is not required to lodge a return relating to any month ending after 30 June 2001. A return for the month of June 2001 is still required to be lodged within 21 days of the end of that month.

Subsection (3) provides that where the Commissioner has given approval to lodge a return for a financial year rather than monthly returns, a return is not required in respect of any financial year commencing after 30 June 2001. Furthermore, where a financial year for the purposes of section 24(1) commenced after 30 June 2000, the financial year is taken to end on 30 June 2001. For example, if approval was given on 1 September 2000 to lodge a return for a financial year (a 12 month period), that financial year is taken to end on 30 June 2001. Accordingly, the return would cover a 10 month period.

Subsection (4) prevents a person from applying for certification as a certified short term dealer under section 26 after 30 June 2001. As a certification under section 26 cannot have retrospective application, any certification made after 30 June 2001 would have no effect.

Subsection (5) limits section 27 of the Act and ensures that a certified short term dealer is not required to furnish a return relating to a month or any other period commencing after 30 June 2001. Where the Commissioner has approved the lodging of returns for periods longer than a month and such a period would extend beyond 30 June 2001, the period is taken to end on 30 June 2001.

Subsection (6) limits the application of section 29(1) such that a depositor is not required to apply for registration as a depositor after 30 June 2001.

Subsection (7) ensures that a depositor registered under section 29 is not required to furnish a return under section 30 relating to any month ending after 30 June 2001.

Subsection (8) provides that where the Commissioner has given approval to a depositor to lodge a return for a financial year rather than monthly returns, a return is not required in respect of any financial year commencing after 30 June 2001. Furthermore, where a financial year for the purposes of section 31(1) commenced after 30 June 2000, the financial year is taken to end on 30 June 2001. For example, if approval was given on 1 September 2000 to lodge a return for a financial year (a 12 month period), that financial year is taken to end on 30 June 2001. Accordingly, the return would cover a 10 month period.

Subsection (9) restricts the Commissioner's ability to call for a return, a further return or a fuller return under section 25, 28 or 32, to a period for which a return was required. Accordingly, the Commissioner could not call for a return in respect of any period after 30 June 2001.

Clause 8: **Section 69A inserted**

This clause inserts a new section 69A into the Act. The section allows for the making of a regulation to remove the obligations relating to liquidators in section 48, agents in section 49 and record keeping in section 69. A regulation would not be made under this section until audits of all registered financial institutions had been completed.

Part 3 - *Fuel Suppliers Licensing Act 1997*

Part 3 of the Bill seeks to amend the *Fuel Suppliers Licensing Act 1997* to provide for the cessation of diesel fuel subsidies with effect from 1 July 2000.

This Act was part of the safety net arrangements put in place in response to an adverse High Court decision in August 1997, which cast doubt on the constitutionality of the business franchise fees which operated up to that time. These cumbersome arrangements were always intended to be temporary.

The complete abolition of the fuel subsidies is also supported by the petroleum industry.

Under the Intergovernmental Agreement, GST revenues are to replace all the section 90 safety net payments from 1 July 2000.

The Commonwealth will effectively take over most of the off-road subsidies by expanding its current industry-specific off-road diesel fuel rebate scheme to rail and marine diesel, and increasing the amount of the rebate to 100% of the excise for all eligible uses.

Accordingly, it is proposed that Western Australia's off-road subsidies will cease in respect of diesel fuel supplied from 1 July 2000. These subsidies currently amount to around $147 million per year.

The cessation of off-road subsidies is fully consistent with the Intergovernmental Agreement, which includes these savings in the calculation of the Commonwealth's guarantee that State budgets will be no worse off.

The farming and fishing sectors will continue to pay no effective tax on diesel fuel, as they will qualify for a full rebate of the diesel excise and an input credit for the GST component. The mining sector will be better off, as the current 93% rebate under the Commonwealth's rebate scheme will increase to 100%.

Some diesel fuel users who presently receive the State off-road subsidy will be worse off under the proposed arrangements because the expanded Commonwealth rebate scheme will still be less than comprehensive. In particular, diesel fuel used in power generation other than as part of an eligible mining operation, construction, manufacturing, and recreational activities will not get the Commonwealth rebate.

However, for business users, including Western Power, this will be largely offset by the reduction in diesel excise to make room for the GST, and the fact that they will be able to claim back an input credit of around 7 cents per litre for the GST component.

Unlike business users, recreational users of diesel fuel will not be able to claim an input credit for the GST component, and will therefore face higher fuel costs. To put this in perspective, a recreational off-road four wheel driver filling their tank for say $60, would pay about $7 extra.

The Bill also proposes the abolition of the much smaller on-road diesel subsidies in Western Australia. These apply at a rate of only 0.66 cents per litre, reflecting the difference between the previous franchise fee rate and the Commonwealth surcharge that replaced it.

The saving to the State from abolishing these subsidies is estimated to be about $8 million per year.

The main consumers of on-road diesel are transport firms, which will get a much larger benefit from the general reduction in fuel excise and GST input credits. They may also receive an additional grant from the Commonwealth which will reduce the effective excise rate from the current rate of around 43 cents per litre to 20 cents per litre for:

- transport vehicles over 4.5 tonnes in rural areas; and
- all other vehicles over 20 tonnes.

While the diesel fuel payments will cease in respect of fuel supplied from 1 July 2000, the provisions of the Act will continue to operate in respect of fuel supplied before that date.

This will not only ensure that compensation can be paid for fuel supplied at the subsidized price prior to 1 July 2000, but will also ensure that legislative support remains in place to enable audit activity to continue in respect of such subsidies.

Moreover, persons purchasing fuel for off-road purposes will remain subject to the conditions which apply to such purchases. In particular, if such fuel is ultimately not used off-road, the certificate holder will continue to be required to make a compensatory payment to the Commissioner of State Revenue equivalent to the unjustified benefit received.

Clause 9: The Act amended

This clause identifies the *Fuel Suppliers Licensing Act 1997* as the Act that is amended in this Part.

Clause 10: Section 23 amended

This clause amends section 23 by inserting a new subsection (1a), which has application to authorized distributors that have made a request for compensation to a licensed supplier or another authorized distributor, for diesel that they have supplied to an off-road diesel (ORD) certificate holder at the ORD price.

The amendment ensures that even though a person ceases to be an authorized distributor:

- that person has an obligation to pay the Commissioner an amount equal to any incorrect compensation that they have received or will receive; and

- the Commissioner may collect incorrectly claimed compensation and penalties from a person who has not already voluntarily returned any unjustified compensation to the Commissioner.

<u>Clause 11:</u> **Section 29 amended**

This clause amends section 29 by inserting a new subsection (3), which ensures that even though a person ceases to hold an ORD user's certificate, that person must:

- keep records, in accordance with the Commissioner's written directions, of supplies of diesel that they have obtained at a subsidized price; and

- comply with the diesel use conditions imposed by section 31, for supplies of diesel that they have obtained at a subsidized price.

<u>Clause 12:</u> **Section 48 amended**

This clause amends section 48 by inserting a new subsection (1a), which applies to licensed suppliers that have made an application to the Commissioner for the payment of a subsidy for diesel that they have supplied or used at a subsidized price.

The amendment ensures that even though that person ceases to be a licensed supplier:

- that person has an obligation to pay the Commissioner an amount equal to any incorrect benefit that they receive, or will receive; and

- the Commissioner may collect incorrectly claimed subsidies and penalties from a person who has not already voluntarily returned such subsidies to the Commissioner.

<u>Clause 13:</u> **Section 66 replaced**

This clause repeals the existing section 66 and replaces it with a new section 66.

Section 66 currently provides the Minister with the ability to order that the payment of subsidies and the supply of subsidized diesel is to cease.

As the scheme is intended to be shut down by this legislation, and it is not envisaged that there will be a need for the payment of subsidies and the supply of subsidized diesel to cease prior to that time, the section in its current form is redundant.

In its place, a new section 66 is to be inserted.

The proposed subsection 66(1) ensures that, notwithstanding any other provision of the Act, this section has primacy.

The proposed subsection(2) provides that on and after 1 July 2000:

(a) licensed suppliers are no longer required to supply diesel to others at the general subsidized price;

(b) licensed suppliers and authorized distributors are no longer required to supply diesel to others at the ORD subsidized price; and

(c) subsidies are not available to licensed suppliers for diesel supplied or used by a licensed supplier on or after 1 July 2000.

This provision ensures that licensed suppliers are not compelled to supply diesel to others at the general subsidized price and nor are they, or authorized distributors, compelled to supply diesel to others at the ORD subsidized price on or after 1 July 2000. Licensed suppliers will be unable to receive a subsidy for the supply of any subsidized diesel on or after 1 July 2000.

Furthermore, licensed suppliers will be precluded from claiming a subsidy for diesel that they consume on or after 1 July 2000.

The proposed subsection (3) ensures that on 1 July 2000:

(a) the Act does not apply to or for diesel that is <u>supplied</u> by a licensed supplier or an authorized distributor on or after 1 July 2000.

    This relieves any person from complying with all the provisions of the Act relating to diesel that is supplied on or after 1 July 2000. More importantly, however, it prevents a distributor from obtaining compensation from a supplier or another distributor for diesel that the distributor has supplied on or after 1 July 2000, which also prevents a supplier from obtaining a compensatory payment for the supply of that diesel;

(b) the Act does not apply to or for diesel that is <u>used</u> by a licensed supplier on or after 1 July 2000. This relieves suppliers from complying with all the provisions of the Act relating to diesel that they use for their own purposes after 30 June 2000, including the record keeping requirements; and

(c) persons will not be required to:

    - be licensed to carry on a business of:

- ⇒ making initial supplies of diesel to places in Western Australia;

- ⇒ supplying diesel to anyone in Western Australia from another State or Territory; and

- ⇒ supplying diesel from Western Australia to a person in another State or Territory;

- return their supplier's licence, distributor's authority or ORD user's certificate to the Commissioner, where they cease to be eligible to apply for one of those permits; or

- advise the Commissioner if they lose their supplier's licence, distributor's authority or ORD user's certificate.

As the making of compensatory payments and the supply of subsidized diesel is to cease on 1 July 2000, it is no longer considered appropriate to require a person to obtain a fuel supplier's licence to undertake the activities outlined above.

Moreover, persons should not be required to return their permits to the Commissioner or to advise the Commissioner of lost permits, if the permits are no longer of any use.

The proposed subsection (4) ensures that a person that is not a licensed supplier, who obtains a supply of diesel at the ORD price prior to 1 July 2000 is nonetheless required after that date to:

- keep records for the supply of that diesel in accordance with the Commissioner's written directions under section 29(1)(a);

- comply with the diesel use conditions imposed by section 31 for that diesel;

- pay the Commissioner an amount equal to the value of any benefit that the person has obtained for the supply of that diesel, where they have contravened a diesel use condition in respect to that diesel; and

- pay the Commissioner a penalty determined by the Commissioner, where the person has contravened a diesel use condition in respect of that diesel and has failed to voluntarily pay that unjustly obtained benefit to the Commissioner.

This is to clarify that notwithstanding that those provisions will no longer apply for diesel supplied after that date, ORD certificate holders' obligations continue in respect of diesel supplied prior to that date at the ORD subsidized price.

The proposed subsection (5) provides a capability to prescribe a date from which licensed suppliers, authorized distributors and ORD certificate holders are no longer required to keep records in respect of diesel that they have supplied, obtained and/or used prior to 1 July 2000.

It is intended that once all audits of pre-1 July 2000 supplies and usage are complete, there may no longer be a use for such records for the purposes of this Act. To the extent that there is a compliance cost associated with keeping such records, any prescription would enable that cost to be removed.

Clause 14: **Section 69 repealed**

This clause repeals section 69, which requires the Minister to review the Act soon after 12 December 2001, and to prepare a report of the review which must be tabled in Parliament. Such a review is considered unnecessary, given that the scheme is intended to have ceased some 18 months prior to the date on which the Ministerial review would be required.

Part 4 - *Pay-roll Tax Assessment Act 1971*

Parts 4 and 5 of the Bill contain proposed amendments to State tax legislation to clarify how specific State tax bases are to interact with the goods and services tax.

Part 4 of the Bill seeks to amend the *Pay-roll Tax Assessment Act 1971* to clarify the pay-roll tax treatment of certain payments defined as, or deemed to be, “wages” for the purposes of that Act, which may also be subject to GST.

Examples include:

- payments made by an employment agent to a person who was engaged to perform services for a client of the employment agent; and

- payments made under prescribed classes of contract.

To ensure consistency in all cases with the general rule that activities done as an employee or other PAYE earner are not taxable supplies and therefore are not subject to GST, this Bill proposes that pay-roll tax is not to be charged on any increase in payments that are defined as, or deemed to be, wages where the increase is directly attributable to the GST.

This will ensure that the amount of pay-roll tax paid by employers will not be increased by reason of the introduction of the GST.

Clause 15: **Section 3D inserted**

This clause inserts a new section 3D into the *Pay-roll Tax Assessment Act 1971* to clarify how the pay-roll tax base is to be adjusted in cases where the person receiving wages (as defined in that Act) is also required to pay GST.

Subsection (1) provides that the amount or value of wages for the purposes of the *Pay-roll Tax Assessment Act 1971* shall be reduced in such a case by the relevant proportion (if any) of the amount of GST payable by that person on the supply to which the wages relate.

Subsection (2) provides definitions relevant to the operation of the section.

“consideration” is defined to have the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth. This term is used in the definition of “relevant proportion”.

“GST” is also defined to have the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, however, that meaning is further extended to include payments by a person that is a State entity made under *the State Entities (Payments) Act 1999*.

“relevant proportion” is also a defined term which is used in subsection (1). It is best explained by way of example.

Assume a contractor makes a GST inclusive “taxable supply” of his services to a client under a prescribed class of contract. He is paid $330 by the client of which $220 is attributable to labour and $110 relates to expenses incurred (eg. materials).

The amount that is attributable to labour is “wages” for the purposes of the *Pay-roll Tax Assessment Act 1971* (refer paragraph (b) of the definition of “wages” in section 3(1)).

In this example, it is assumed that the full $330 is “consideration” and would be subject to GST. The amount of GST payable on the supply to which the wages relate would therefore total $30 (ie 1/11th of $330).

In the absence of the proposed amendment, pay-roll tax would be imposed on wages of $220. However, the person providing the services must return $20 GST on that amount, leaving them with a net amount after GST of $200. The $200 amount is the amount that we are seeking to impose tax upon.

As there is an amount of GST payable by that person on the supply to which the wages relate, the proposed section 3D will operate.

That section allows a reduction in the amount or value of wages paid or payable to the contractor equal to the “relevant proportion” of the amount of “GST”.

In this example;

- the amount of "GST" is $30;

- the amount or value of the "wages" is $220; and

- the "consideration" for the supply to which the wages relate is $330.

Accordingly, the "relevant proportion" is 220/330 or 2/3.

The reduction in the amount or value of wages authorised by section 3D would therefore be $20 (ie. 2/3 x $30).

As a result, the amount or value of wages upon which pay-roll tax would be charged after the operation of section 3D would be $200 (ie. $220 - $20).

As a variation on the above example, were the full $330 to be attributable to labour and hence "wages" for the purposes of the *Pay-roll Tax Assessment Act 1971*, the "relevant proportion" would have been 100%, and a $30 reduction (equivalent to the full amount of the GST payable by that person on the supply to which the wages relate) would be applicable.

Pay-roll tax in that case would be charged on an amount or value of $300.

Part 5 - *Stamp Act 1921*

Part 5 of the Bill seeks to amend the *Stamp Act 1921* to:

- clarify the interaction of the existing stamp duty bases with the GST; and
- give effect to the requirement under the Intergovernmental Agreement that stamp duty cease to apply from 1 July 2001 to transfers of quoted marketable securities.

Unlike pay-roll tax, the various heads of stamp duty generally apply to values that directly or indirectly include wholesale sales tax. For example, sales tax is directly included in the market value of new motor vehicles for stamp duty purposes. In other cases, sales tax is an embedded cost that increases the price of property such as a home, which is subject to stamp duty when sold.

As the GST is to replace the current wholesale sales tax regime, it is appropriate that stamp duty be based on the GST inclusive price, value or consideration.

This was also the approach taken in the United Kingdom and New Zealand, and recognises the impracticality of applying stamp duty to a GST-exclusive value when the GST is an embedded cost. Furthermore, it is understood that this is the approach that all other States and Territories are currently proposing to adopt.

While it is arguable that the Stamp Act as currently drafted may already achieve this result, the experience in both the United Kingdom and New Zealand, was that disputes could and did arise, which in the case of New Zealand, required clarifying legislation. To avoid such confusion, this Bill proposes a number of amendments which seek to put this question beyond doubt.

Under this approach, some revenue bases are still likely to go down because the 10% GST is replacing a much higher wholesale sales tax. This is likely to occur in the case of motor vehicle stamp duty, rental business duty and car and home contents insurance policies.

However, there will be increases in other stamp duty bases, particularly property conveyances and insurance premiums paid by business, which are likely to more than offset the decreases.

Although not addressed in this Bill, I note that a particular problem arises in relation to stamp duty on insurance and rental business in a GST environment.
This relates to the fact that the business rather than the customer is currently liable for the stamp duty.

The result is that stamp duty recovered from the customer as part of the premium or hiring charge would also be subject to GST, while the GST would also itself be subject to stamp duty. This would lead to a multiple compounding of GST and stamp duty and is clearly an undesirable outcome.

Work is currently underway with other jurisdictions and industry representatives to develop a solution to this problem, which may require a legislative response. If this is necessary, it is proposed that such legislation would have retrospective application, to recognise the fact that insurance companies are already issuing policies spanning 1 July 2000 that have a pro rata GST component.

The amendments in Part 5 of the Bill also seek to abolish the stamp duty liability arising on the transfer of shares which are quoted on a recognised stock exchange. In accordance with the Intergovernmental Agreement, the abolition is intended to occur in respect of transfers which occur on or after 1 July 2001.

It is estimated that revenue of around $18.5 million per annum will be forgone by abolishing the duty on quoted marketable securities. As in the case of financial institutions duty, this revenue will be replaced by revenue to the State from the goods and services tax.

The specific amendments included as part of this measure seek to ensure:

- the removal of the charging provision for securities quoted on a recognised stock exchange;
- the removal of the broker return arrangements which allow brokers to pay duty by return in respect of their on-market trades;
- the removal of the CHESS provisions, which allow participants to pay duty by return for off-market trades of quoted marketable securities;
- the removal of the United Kingdom Stock Exchange provisions which allow approved persons to pay duty by return in respect of any changes in beneficial ownership of WA company shares that are quoted on the UK Exchange; and
- the removal of the concessional rate of duty for transfers of short-dated shares.

Even though the liability to duty for these share trades is to be removed from 1 July 2001, audit activity will continue after that date in respect of liabilities that arose prior to 1 July 2001. Saving provisions are contained in the Bill to ensure the investigation powers, record keeping requirements, assessment authority, objection and appeal provisions and other supporting powers still operate past 1 July 2001.

A mechanism has also been included to remove the record keeping obligations by prescription once all audits are completed.

As a result of the proposed changes, the marketable securities duty base will be limited to the conveyance or transfer of marketable securities or rights in respect of shares in entities which are not quoted on a recognised stock exchange.

Division 1 - Preliminary

Clause 16: The Act amended

This clause specifies that the Act being amended in Part 5 of the Bill is the *Stamp Act 1921*.

Division 2 - Marketable securities and rights in respect of shares

The provisions in this Division come into operation on 1 July 2001.

Clause 17: **Section 4 amended**

Subclause (1) amends section 4 of the Stamp Act by inserting definitions for "overseas transfer" and "recognized stock exchange".

"overseas transfer" was previously located in section 112A of the Act and relates to the provisions in Division 6 of Part IVA.

The definition specifies certain types of marketable security transfers which may be registered on an overseas stock exchange without Western Australian duty having been paid. The act of registering by the company has the effect of transferring the liability from the shareholder to the company, and the company must prepare and lodge a return with the Commissioner and pay the relevant duty.

After the amendments in this Bill take effect, the overseas transfer provisions of the Act will only operate for shares quoted on a stock exchange that is not a recognized stock exchange under the Act.

"recognized stock exchange" is a new term that will be used to draw the distinction between marketable securities upon which duty will be required to be paid when conveyed or transferred, and those where duty will not be required to be paid.

The amendments in this Bill will abolish stamp duty on marketable securities which are quoted on a recognized stock exchange.

At present, details of the exchanges that are to be prescribed under this clause have not been finalised. It is important that all jurisdictions use the same criteria to determine which exchanges will be recognized, to ensure that the abolition proposal is implemented on a uniform basis across Australia.

An interjurisdictional exercise is under way at present to determine the appropriate criteria for recognition and to formulate a uniform list of exchanges. It is currently proposed that the Australian Stock Exchange (ASX) and all major overseas stock exchanges will be prescribed.

Subclause (2) makes a minor amendment to paragraph (c)(i) of the definition of "marketable security". This amendment remedies current inconsistencies in the Act, which refer to shares or units being "listed" on a stock exchange. These references are in some cases dated, and the ASX has advised that the current laws reflect that the shares or units are "quoted" on the exchange, while a company or trust is admitted to the official list of the exchange, and hence, "listed" on the exchange.

Subclause (3) deletes the current definition of "right in respect of shares" and inserts an amended version in its place. The new definition no longer contains the portion of the definition that subjected certain derivative products, such as instalment receipts, to duty. As these derivative products are only subject to duty over quoted marketable securities, there is little point in taking duty on a derivative product when the underlying marketable security is not itself dutiable.

Clause 18: **Section 20 amended**

This clause makes a minor amendment to section 20 to remove a reference to a section that is to be deleted by this Bill.

Clause 19: **Section 39 amended**

This clause makes two minor amendments to section 39(2) to remove references to sections that are to be deleted by this Bill.

Clause 20: **Section 73E amended**

This clause seeks to amend section 73E to remove the definitions of "share" and "stock exchange" and substitute a definition of "share".

Section 73E deals with dispositions of shares in a trustee company that is a trustee of a discretionary trust. Conveyance duty is charged on certain share dispositions where the disposition causes a beneficial interest in the property of the discretionary trust to change.

The current definitions of "share" and "stock exchange" exclude dispositions in certain types of shares from the operation of the section.

The new definition alters the section, to the extent that dispositions of shares or interests in shares are excluded if the company is listed on a recognized stock exchange. Previously, only companies listed on a "local stock exchange" as defined in section 9 of the Corporations Law were excluded. Section 9 included the Australian Stock Exchange Limited, several minor or defunct exchanges (eg. Australian Stock Exchange (Perth) Limited, the Stock Exchange of Bendigo Limited, Stock Exchange of Ballarat Limited, the Stock Exchange of Newcastle Limited, and any stock exchange approved under section 769 of the Corporations Law).

Clause 21: **Section 75D amended**

This clause makes amendments to the definition of "farming company" in section 75D of the Act. As noted above, the amendments are to remedy incorrect references to "listed" and replace them with "quoted".

Clause 22: **Section 75JA amended**

This clause amends section 75JA(1a)(c). This clause allows corporate reconstruction exemptions to foreign incorporated companies, providing the company lists on a prescribed stock exchange within 6 months of the acquisition for which exemption was granted.

It is expected that the amendment will not have any practical effect, as the stock exchanges now prescribed for the purposes of this section should all be prescribed as "recognized stock exchanges".

Clause 23: **Section 76AI amended**

This clause deletes paragraph (a) of section 76AI(1) and substitutes a new paragraph.

This section specifies the types of WA companies to which the land-rich provisions apply. Once a WA company is land-rich, the disposition of a majority or further interest in its shares results in duty being paid at the higher conveyance rates, rather than at share duty rates.

These provisions do not currently apply to shares of listed companies because this section can only operate for shares of a WA company that are not listed on a recognized stock exchange. The amendment will provide clarity to the existing section, because "recognized stock exchange", is not defined. Under the proposed definition, recognized stock exchanges will be those exchanges in a finite, prescribed list.

Clause 24: **Section 76AP amended**

This clause deletes paragraph (b) of section 76AP(1) and substitutes a new paragraph.

The amendment has the same impact as that mentioned in the clause above. However, section 76AP applies to corporations incorporated outside of Western Australia and certain other companies, whereas section 76AI applies to WA companies.

Again, the amendment provides clarity to the existing section by using the defined term "recognized stock exchange".

Clause 25: **Section 112B amended**

This clause inserts a definition of "relevant company" that was previously located in section 112A of the Act. The term was also relevant to a number of deleted sections, however, as the only place it now occurs is in section 112B(1)(d), the definition has been placed in this section.

Clause 26: **Section 112BA amended**

Section 112BA allows "unlisted marketable securities" to be valued on the basis that their governing rules provide the same rights to all types of shareholders.

Subclause (1) amends section 112BA(1)(a) of the Act. As noted above, the amendments are to remedy incorrect references to "listed" and replace them with "quoted".

Subclause (2) replaces a reference to a "prescribed stock exchange" with "recognized stock exchange".

Previously, the prescribed stock exchanges included the Australian Stock Exchange Limited, the Stock Exchange of Bendigo Limited, Stock Exchange of Ballarat Limited and the Stock Exchange of Newcastle Limited. This will result in a larger number of "unlisted marketable securities", as it is expected that a number of international exchanges will be prescribed as recognized stock exchanges. However, this will have little practical effect, given that trading stock exchanges will not usually allow shares with different rights to be traded.

Clause 27: **Section 112C amended**

Section 112C prevents share transfers being registered by the corporation to which they relate unless the transfer is stamped.

This clause repeals section 112C(1) and inserts in its place two new subsections.

Subsection (1) is largely the same as the existing section 112(1)(a) and generally prohibits the registration or recording by a corporation of changes in legal ownership of shares or units without a transfer instrument in the correct form being delivered to the corporation and the instrument being stamped in accordance with the Stamp Act.

Subsection (1a) limits the operation of subsection (1) so that it does not apply in the case of shares quoted on a recognized stock exchange or overseas share transfers. As duty will no longer be charged in relation to shares of listed companies after 1 July 2001, the prohibition will no longer be necessary after that date. The exclusion of overseas transfers is consistent with the current legislation and recognises that there are separate registration rules surrounding such transfers elsewhere in the Act.

Clause 28: **Section 112FS amended**

Section 112FS sets out the types of records that must be kept if a company registers an overseas transfer. An overseas transfer is currently defined in section 112A, and as noted in clause 17, that definition will be moved to section 4 of the Act.

This clause inserts two new subsections into section 112FS.

Subsection (7) provides that an obligation to keep records under section 112FS (1) can be overridden by a regulation. This power has been inserted so that the record keeping requirements may be dispensed with prior to the 5 years set out in section 112FS(4), should no other need exist once final audits of the relevant companies have been completed by the Commissioner of State Revenue.

The requirement will only apply to those companies that are listed on a recognized stock exchange and as such, will have no obligation to pay duty on transfers of their shares after 1 July 2001.

The overseas transfers provisions will continue to operate for WA companies that are not listed on a recognized stock exchange, and as such, the regulation will only be made to apply for companies that are listed on recognized stock exchanges.

Subsection (8) inserts a definition of "transfer value" for the purposes of subsection (2)(d). This term was previously defined in section 112A, and like other definitions, is now only relevant to one section. Accordingly, the definition has been moved to the appropriate section.

Clause 29: **Section 112HA amended**

This clause amends section 112HA(7) by deleting references to repealed items within the Second Schedule of the Act. Section 112HA(7) is a charging clause for the duty payable on certain types of share cancellations.

Clause 30: **Second Schedule amended and consequential amendments**

Subclauses (1) and (2) amend the charging provisions in item 4A of the Second Schedule which relate to the conveyance or transfer of a marketable security or right in respect of shares. The amendments remove all charging provisions, other than those for duty payable on WA incorporated companies and trusts which have a nexus to this State and which are not listed on a recognized stock exchange.

Subclause (3) amends item (6) of the Second Schedule to ensure that duty is not payable at nominal rates on those transfers upon which ad valorem duty has been abolished. For example, without this amendment, it is likely that duty could be charged at $20.00 on each transfer of shares in a listed company as such shares would be "property" for the purposes of the Act. In many cases, this would be higher than the amount charged at the ad valorem rate already payable.

Clause 31: **Provisions repealed**

This clause repeals the following sections, Divisions, Parts and Third Schedule items as a result of the abolition of duty on marketable securities quoted on a recognized stock exchange.

Section 9(1c) provides an exception to the general secrecy obligation placed on the Commissioner by authorising him to communicate with SCH. SCH is a securities clearing house registered by the

Commissioner under Division 5 of Part IVA. As the CHESS provisions dealing with SCH are being repealed, there will be no need for the Commissioner to communicate with SCH. Appropriate savings provisions have been inserted for this repeal.

Section 31B(5a) clarifies the interaction between section 31B and Part IVAB. That Part provides a separate mechanism for UK brokers to return duty on dispositions of shares where there is a change in beneficial ownership of shares, but no change in legal ownership. Section 31B applies a general obligation to all persons to create a statement and pay duty where there is a change in the beneficial ownership of shares. The exception was necessary to ensure that the same obligations did not arise under both provisions. As Part IVAB is being repealed, this section is no longer required.

Section 112A is an interpretation clause for Part IVA, which deals with marketable securities and rights in respect of shares. The definitions in subsection(1) are no longer required, as the sections containing the terms are to be repealed. There are three exceptions to this, namely the definitions of “overseas transfer”, “relevant company” and “transfer value”. These definitions have been relocated to other parts of the Act. The provisions in subsections (2) and (3) provide interpretive provisions for short-dated securities, which have also been repealed.

Section 112B(2) is a nexus provision for certain types of derivative products which were described in paragraph (b) of the definition of “right in respect of shares”. These derivative products will no longer be subject to duty.

Section 112D provides certain timing restrictions in relation to executed transfer documents and their subsequent replacement by electronic transfers under the CHESS system. The section prevents an executed paper transfer instrument from being substituted by an electronic transfer after more than 30 days of it being signed. The provision is no longer required as the CHESS provisions are to be repealed. Appropriate savings provisions have been inserted to ensure duty cannot be avoided by substituting electronic transfers after the date of abolition.

Section 112E provides an exemption for certain transfers to an entrepot account under the CHESS provisions. An entrepot account is a holding account of brokers, in which uncertificated securities are held pending settlement. The provision is no longer required as the CHESS provisions are to be repealed.

Section 112EA is an exemption provision that allows the exchange of certain types of marketable securities. As the provision could only apply in respect of quoted securities, it is no longer necessary after abolition of duty on quoted securities.

Section 112F is a securities lending exemption, which allowed quoted securities to be borrowed in certain circumstances without the payment of duty. Use of this exemption has been limited in recent years, as activity in the securities lending industry was severely curtailed as a result of changes to the Commonwealth tax laws. The exemption is most commonly used by brokers who, for various reasons, can not produce the required number of shares at settlement. The shortfall is borrowed and repaid after settlement. The exemption is no longer necessary.

Division 3 of Part IVA contains provisions allowing brokers to pay duty by return on their on-market share trading. Use of these provisions is restricted to on-market trading of shares quoted on the Australian Stock Exchange. Duty on these trades will be abolished. Appropriate savings provisions have been inserted to ensure that duty on pre 1 July 2001 trades can be collected after that date.

Division 4 of Part IVA contains provisions allowing CHESS participants to pay duty by return to the securities clearing house. This system was introduced to facilitate electronic transfers of marketable securities, and operates in respect of stock exchange quoted securities. With the abolition of duty on these trades, use of these provisions will no longer be required. As with broker trading, appropriate savings provisions have been inserted to ensure that duty on pre 1 July 2001 trades can be collected after that date.

Division 5 of Part IVA contains provisions which require the securities clearing house to return duty to the Commissioner, after it has been received from all CHESS participants. This will not be required and has been repealed with appropriate savings provisions.

Part IVAB contains return provisions which allow duty to be paid on marketable securities that are traded by members of the UK stock exchange. It applies in respect of trades where there is a change in the beneficial ownership of shares in a WA company, but no change in the legal ownership. As this provision can only operate where the WA company is listed on the UK exchange, and it is anticipated that that is to be a prescribed exchange for the purposes of the definition of “recognized stock exchange”, the provisions will not be required. Appropriate savings provisions have been inserted.

Third Schedule, items 2(2), 2(3), 2(4), 2(10), 2(12), 2(13), 2(14), 2(16), 2(16a) and 2(17) all provide exemptions for transfers or transactions the duty upon which is to be abolished. Accordingly, the exemptions are no longer required.

<u>Clause 32:</u> **Savings**

Subclause (1) provides savings provisions to ensure the continued operation of the Act after 1 July 2001 for all matters that occurred prior to that date. This includes continued record keeping obligations in respect of pre 1 July 2001 transfers.

Subclause (2) allows regulations to be made which terminate the record keeping obligations under the sections listed. This has been inserted so that record keeping obligations may cease before the requisite period (5 years in most cases) by the making of a regulation. It is envisaged that such a regulation may be made once the Commissioner of State Revenue has completed all required audits of brokers and other persons under the repealed arrangements.

Subclause (3) defines “former provisions” for the purposes of the savings sections. This definition allows all the provisions of the Stamp Act, whether they have been repealed or not, to operate in respect of the matters listed in subsection (1). The definition also has relevance to the sections listed in subclause (2).

Divison 3 - Other amendments

Clause 33: Section 4A inserted

This clause inserts a new section 4A into the Stamp Act.

The proposed subsection (1) provides that no discount is to be allowed for the amount of GST that is payable on the supply of a thing, to determine the value or consideration of that thing for the purposes of the Stamp Act.

This definition is similar to that used in the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* to define the meaning of the "GST inclusive market value".

The effect of this proposed subsection is that stamp duty is to be calculated on the GST inclusive amount of the consideration or market value of any property that is subject to duty.

The proposed subsection (2) provides that the term "purchase price" contained in Part IIIC of the Stamp Act (which contains the motor vehicle licensing and transfer provisions) means the GST inclusive purchase price payable on the supply of the vehicle.

The proposed subsection (3) provides that references contained in Part IIID of the Stamp Act (which relates to leases), or in item 12 of the Second Schedule, to the rent under a lease, refers to the amount of the rent payable by the lessee and the amount that the lessee is obliged to pay for GST, where the amount of GST is not already included in the rent that the lessee must pay.

The effect of this provision is that from the date of Royal Assent, lease duty is to be calculated on the amount of rent payable by the lessee plus the GST applicable to that rent, irrespective of whether the amount of GST is included in the rent or not. Obviously, this will not apply to the lease of properties where GST is not charged for the supply of those properties (eg. residential premises).

The proposed subsection (4) contains definitions of:

- **"GST"** is defined to have the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, however, that meaning is further extended to include payments by a person that is a State entity made under *the State Entities (Payments) Act 1999*.

- **"lease"** includes an agreement for a lease;

- **“leasing”** means the supply to which the rent under a lease relates; and

- **“supply”** is defined to have the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

Clause 34: Section 112I amended

This clause amends section 112I, which provides the interpretation for Part IVB of the Act which relates to rental business. The purpose of the clause is to clarify that the stamp duty base is GST inclusive in the case of rental business.

Subclause (1) provides a definition of **“customer”** which is used in the proposed section 112I(1a).

Subclause (2) inserts two new subsections.

112I(1a) provides that the total amount received in respect of rental business includes:

(a) any amount received from a customer as stamp duty or on account of stamp duty; and

(b) any amount received from a customer that is for GST.

This amendment recognises that the duty base includes a component for stamp duty which is later removed when calculating the amount upon which duty is calculated.

The duty base also includes any amount received from a customer that is for GST. This would not include amounts received from the Australian Taxation Office in relation to the rental business as a result of associated input credits, as these would not be sourced from the customer. Put simply, stamp duty will be payable on the GST inclusive amount received by a rental business.

The subsection 112I(1b) defines **GST** for the purposes of section 112I(1a).

“GST” is defined to have the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, however, that meaning is further extended to include payments by a person that is a State entity made under *the State Entities (Payments) Act 1999*.

Clause 35: Section 112K amended

This clause amends section 112K.

Section 112K currently provides that a person who is registered with the Commissioner as a rental business, is required to lodge a statement with the Commissioner outlining certain information in respect of that business and pay the amount of stamp duty calculated in accordance with that section.

This clause repeals section 112K(1b), as this section has been replaced by the proposed section 112I(1a).

Part 6- *Tobacco Sellers Licensing Act 1975*

Part 6 of the Bill seeks to repeal the *Tobacco Sellers Licensing Act 1975*.

As already noted, the Intergovernmental Agreement provides that “the temporary arrangements for the taxation of petrol, liquor and tobacco under the safety net arrangements announced by the Commonwealth on 6 August 1997 will cease on 1 July 2000”.

The State Revenue Department currently administers a tobacco sellers licensing scheme which exists primarily to provide information to monitor safety net payments.

No ad valorem licence fee is levied, however, a nominal annual licence fee of $1,200 for wholesalers and $600 for retailers is levied.

Twelve wholesalers are currently licensed. No retailers hold licences.

As the safety net arrangements are now to cease, it is considered that there is no longer a need to maintain this licensing scheme. On these grounds, it is considered that the total abolition of the licensing scheme with effect from 1 July 2000 is desirable.

This will involve repealing the *Tobacco Sellers Licensing Act* with effect from that date. Abolition of the licensing arrangements from 1 July 2000 is expected to result in $14,000 being foregone each year.

Clause 36 **Tobacco Sellers Licensing Act 1975 repealed**

This clause repeals the *Tobacco Sellers Licensing Act 1975*. In conjunction with clause 2(3) of the Bill, that Act and the associated requirements for persons that wholesale or retail tobacco to do so under the authority of a licence will cease with effect from 1 July 2000.

<u>Clause 37</u> **Saving of secrecy provisions**

Notwithstanding the repeal of the *Tobacco Sellers Licensing Act 1975*, this clause provides that the secrecy provisions contained in section 5 of that Act continue to apply.

This is considered appropriate given that information in the possession of the Commissioner of State Revenue as a result of the operation of this Act would have come into his possession under force of statute.

Currently the Act requires that that information be protected, particularly as some of it may be commercially sensitive. Without the continued operation of section 5, that protection would cease and it might, for example, be possible for someone in dispute with a licence holder to require production of that information in a court to establish certain matters pertinent to that dispute.

Part 7 - Related amendments

Arising from the repeal, certain references in the *Taxation (Reciprocal Powers) Act 1989* to the tobacco legislation will no longer be required.

Part 7 of the Bill proposes consequential amendments to the reciprocal powers legislation to remove those references.

In addition, this Part also makes consequential amendments to the *Marketable Securities Transfer Act 1970* as a result of changes to the marketable securities duty provisions of the Stamp Act contained in Part 5 of the Bill.

<u>Clause 38</u> ***Marketable Securities Transfer Act 1970* amended**

Subclause (1) amends the definition of “broker” in section 3(1) of the *Marketable Securities Transfer Act*. This definition previously referred to the Stamp Act definition of “broker” which has been repealed by these amendments. An updated reference to the Corporations Law definition has been used.

Subclause (2) amends the definition of “broker’s agent” in section 8(4) of the *Marketable Securities Transfer Act*. This definition previously referred to the Stamp Act definition of “broker’s agent” which was repealed some time ago. An updated definition using appropriate references to the Corporations Law has been used.

<u>Clause 39</u> ***Taxation (Reciprocal Powers) Act 1989* amended**

This clause seeks to amend section 3(1) of the Taxation (Reciprocal Powers) Act 1989 by removing from the definition of “State Taxation Act” the item relating to the *Tobacco Sellers Licensing Act 1975*.

This will no longer be required when the tobacco licensing scheme is abolished with effect from 1 July 2000.

Schedule 1 - Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations

This Schedule sets out a copy of the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* which was signed by the Honourable Richard Fairfax Court, the Premier of the State of Western Australia, on 29 June 1999.