

DUTIES LEGISLATION AMENDMENT BILL 2007

EXPLANATORY MEMORANDUM

The amendments in this Bill complement the new duties regime contained in the Duties Bill 2007. Together, these Bills seek to put in place a regime to replace the outdated stamp duty arrangements that are currently imposed by the *Stamp Act 1921* (the "Stamp Act").

The Bill proposes amendments to:

- the Stamp Act;
- the *Duties Act 2007* (the "Duties Act"); and
- the *Taxation Administration Act 2003* (the "TAA").

The proposed amendments to the Stamp Act ensure that the Stamp Act no longer applies to transactions that will be subject to duty under the Duties Act from 1 July 2008. These amendments also ensure that certain obligations under the Stamp Act remain for instruments executed, or transactions occurring, prior to 1 July 2008.

This Bill proposes amendments to the Duties Act that will commence on 1 January 2009 to put in place the vehicle licence duty rate scale announced as part of the 2007-08 Budget. This involves increasing each of the vehicle licence duty thresholds by \$5,000. The estimated cost of \$11 million in 2008-09, and \$71 million over the three years to 2010-11, was incorporated into the 2007-08 Budget.

This Bill also proposes amendments to the Duties Act to deliver on the Government's commitment to abolish duty on non-real business assets by removing business assets from the dutiable property list, and repealing a number of associated provisions, with effect from 1 July 2010. This commitment was announced in the 2006-07 Budget, with an estimated cost of \$119 million in 2010-11.

Despite the State Tax Review recommendation to abolish the principal place of residence and small business conveyance duty concession (which, in the case of businesses, mainly involves transactions relating to non-real business assets), this Bill continues the concession until 1 July 2010. The longer term future of the concession will be considered by the Government at that time.

The Bill also proposes amendments to the TAA and a range of other statutes. The amendments to the TAA facilitate the operation of the Duties Act by making necessary changes, such as updating the language to reflect the terminology and concepts of the Duties Act.

The Schedule to this Bill makes amendments to a number of other Western Australian statutes to include appropriate Duties Act references. While most of these amendments will have no material impact on the operation of these statutes, it should be noted that the Bill proposes to abolish the stamp duty that is currently

chargeable in accordance with the *Limited Partnerships Act 1909* on contributions of capital to limited partnerships. To continue the imposition of duty in these circumstances would be inconsistent with the new duties framework, and it is considered to be a nuisance tax that raises only a negligible amount of revenue.

This explanatory memorandum, together with the explanatory memorandum associated with the Duties Bill 2007, provides detailed information in relation to the new duties regime.

Part 1 - Preliminary

Clause 1: Short title

This clause provides that the short title of this Act is the *Duties Legislation Amendment Act 2007*.

Clause 2: Commencement

This clause sets out the commencement date of the Act. Different provisions of the Act come into operation on different dates, as follows:

- (a) clauses 1 and 2 come into operation on the day that the Act receives the Royal Assent;
- (b) Part 2 Division 2 Subdivision 2, which contains the new vehicle licence duty rate scale, comes into operation on 1 January 2009;
- (c) Part 2 Division 2 Subdivision 3, which contains provisions to abolish duty on non-real business assets, comes into operation on 1 July 2010; and
- (d) the remainder of the Act comes into operation 1 July 2008, which is aligned with the proposed commencement date of the Duties Act.

Part 2 - Amendments

Division 1 - *Stamp Act 1921* amended

Clause 3: The Act amended in this Division

This clause provides that the amendments contained in Division 1 of this Bill are to the Stamp Act.

Clause 4: Section 2 inserted

This clause inserts a new section into the Stamp Act to facilitate the expiration of the Stamp Act at a date to be proclaimed in the future.

Subsection (1) provides that the Stamp Act will expire on a date fixed by proclamation. This will allow flexibility in determining the expiry date, taking into account compliance and administrative issues that will need to be considered.

Subsection (2) provides that a proclamation under subsection (1) cannot be made unless the Commissioner has given to the Minister a signed certificate stating that the Stamp Act is no longer required.

Clause 5: Section 16 amended

This clause amends section 16 of the Stamp Act, which charges stamp duty on instruments.

Subclause (1) amends subsection (1) so that this subsection is also subject to the new subsection (5) that is inserted by this clause.

Subclause (2) inserts new subsections (5), (6) and (7).

Subsection (5) provides that duty is not chargeable under the Stamp Act on certain instruments specified in the Second Schedule that are executed on or after 1 July 2008, unless the instrument is a continuing instrument. A definition of a “continuing instrument” is contained in subsection (7).

Subsection (6) provides that a reference in subsection (5) to an instrument specified in the Second Schedule includes instruments that are chargeable as if they were such instruments. This would include, for example, certain instruments in relation to unit trusts that are chargeable with duty under item 4 of the Second Schedule.

Subsection (7) provides that a “continuing instrument” is an instrument of conveyance or transfer that replaces an instrument that was executed prior to 1 July 2008, or that is made in accordance with an arrangement entered into on or after 28 November 2007 (the date the Duties Bill was introduced into the Legislative Assembly) where the sole or principal purpose of the arrangement was to defer the transaction until the lower rates of duty contained in the Duties Bill come into force.

Clause 6: Section 31B amended

This clause contains amendments to section 31B of the Stamp Act, which requires a dutiable statement to be lodged in respect of certain acquisitions where there is not a dutiable instrument.

Subclause (1) amends subsection (8) so that a dutiable statement in relation to an acquisition is not required to be lodged where the acquisition is made on or after 1 July 2008.

Subclause (2) amends subsection (13) to include a reference to the new section 16(5) of the Stamp Act (as inserted by clause 5 of this Bill). This means that where there is a requirement to lodge a dutiable statement or give notification of an undocumented acquisition under section 31B, and an instrument evidencing the acquisition is executed after the acquisition was made, that instrument will be taken to be executed on the day the acquisition was made for the purposes of section 16(5). Section 16(5) states that duty is not chargeable on certain instruments executed on or after 1 July 2008. Duty will therefore continue to be charged on an instrument evidencing an undocumented acquisition that is executed on or after 1 July 2008, where the acquisition was made before 1 July 2008. This ensures that duty cannot be avoided by not documenting an acquisition that occurs prior to 1 July 2008, and subsequently documenting the acquisition after that date.

Clause 7: Section 31C amended

This clause amends section 31C of the Stamp Act, which requires a dutiable statement to be lodged in respect of certain transfers of property under the *Financial Sector (Transfers of Business) Act 1999*. This clause provides that a statement does not need to be lodged where the transfer occurs on or after 1 July 2008.

Clause 8: Section 73CA inserted

This clause inserts new section 73CA into the Stamp Act to limit the application of sections 73D, 73DAA, 73DE and 73E of the Stamp Act in the case of certain dispositions made, and instruments executed, on or after 1 July 2008.

Subsection (1) provides that the prohibition on registering a disposition of a unit set out in sections 73D(2) and 73E(2) and the obligation to lodge a statement in relation to a disposition of a unit set out in sections 73DAA(1) and 73DE(1), do not apply to dispositions that occur on or after 1 July 2008.

Subsection (2) specifies that the provisions relating to charging duty set out in sections 73D(4) and (6a) and 73E(4) and (6) do not apply to a transfer or instrument effecting a disposition that is executed on or after 1 July 2008. This subsection does not limit the operation of new section 16(5) and (6) (as inserted by clause 5 of this Bill).

Subsection (3) specifies that the provisions relating to charging duty set out in sections 73D(4) and (6a) and 73E(4) and (6) do not apply to an instrument evidencing a disposition that is made on or after 1 July 2008.

Subsection (4) clarifies that when the term “disposition” is used in relation to section 73E, it has the meaning given in section 73E(1) of the Stamp Act. The definition of the term in section 63 would apply in other cases.

Clause 9: Section 73D amended

This clause inserts references to the new section 73CA (as inserted by clause 8 of this Bill) so that the provisions relating to charging duty set out in section 73D(4) and (6a) are subject to section 73CA. This means that the charging provisions will not apply to a transfer or instrument effecting a disposition that is executed on or after 1 July 2008, or to an instrument evidencing a disposition that is made on or after 1 July 2008.

Clause 10: Section 73DAA amended

This clause inserts references to new sections 73CA (as inserted by clause 8 of this Bill) and 16(5) (as inserted by clause 5 of this Bill) in section 73DAA of the Stamp Act.

Subclause (1) provides that the obligation to lodge a statement set out in section 73DAA(1) of the Stamp Act is subject to section 73CA. This means that a statement will not be required to be lodged where the disposition is made on or after 1 July 2008.

Subclause (2) amends section 73DAA(7) to include a reference to section 16(5). This means that where there is a requirement to lodge a dutiable statement under section 73DAA(1) and a transfer or an instrument effecting or evidencing the disposition is lodged after the disposition was made, that transfer or instrument will be taken to be executed on the day the disposition was made for the purposes of section 16(5). Section 16(5) states that duty is not chargeable on certain instruments executed on or after 1 July 2008. Duty will therefore continue to be charged on a transfer or instrument effecting or evidencing a disposition that is executed on or after 1 July 2008, where the disposition was made before 1 July 2008. This ensures that duty cannot be avoided by not documenting a disposition that occurs prior to 1 July 2008, and subsequently documenting the disposition after that date.

Clause 11: Section 73DE amended

This clause inserts a reference to the new section 73CA (as inserted by clause 8 of this Bill) so that the obligation to lodge a statement set out in section 73DE(1) of the Stamp Act is subject to section 73CA. This means that a statement will not be required to be lodged where the disposition is made on or after 1 July 2008.

Clause 12: Section 73E amended

This clause inserts references to the new section 73CA (as inserted by clause 8 of this Bill) so that the provisions relating to charging duty set out in section 73E(4) and (6) are subject to section 73CA. This means that the charging provisions will not apply to a transfer or instrument effecting a disposition that is executed on or after 1 July 2008, or to an instrument evidencing a disposition that is made on or after 1 July 2008.

Clause 13: Section 75AH amended

This clause amends section 75AH of the Stamp Act, which provides relief to certain home buyers who have entered into a shared equity arrangement with the Department of Housing and Works and are purchasing a further interest in their home. The effect of this clause is that section 75AH will only apply to a further instrument evidencing the acquisition of a further interest that is executed before 1 July 2008. Further interests that are acquired after this date will be eligible for relief under Chapter 2 Part 6 Division 3 of the Duties Bill.

Clause 14: Section 75HA amended

This clause amends section 75HA of the Stamp Act, which requires a dutiable statement to be lodged and imposes a duty liability in relation to certain events that occur after a family farm exemption has been granted. The effect of this clause is that a dutiable statement does not need to be lodged where the event that triggers the requirement to lodge the dutiable statement occurs on or after 1 July 2008. However, clause 105 of the Duties Bill requires a statement to be lodged in respect of such events.

Clause 15: Section 75JA amended

This clause amends section 75JA of the Stamp Act, which provides an exemption for certain transactions in relation to corporate reconstructions.

Subclause (1) amends section 75JA(3)(d) so that a claw-back of the exempted duty does not apply where the relevant event that would otherwise trigger the claw-back occurs on or after 1 July 2008.

Subclause (2) inserts a new subsection (4) into section 75JA so that the transferee does not need to notify the Commissioner of relevant events that occur on or after 1 July 2008 in certain circumstances.

Those circumstances are where an application for an entity restructuring exemption under the Duties Bill has been made, or where a determination request or acquisition statement has been lodged under the landholder duty provisions of the Duties Bill. In all other circumstances, the notification requirement set out in section 75JA(3) will continue to apply.

Clause 16: Section 75JB amended

This clause amends section 75JB of the Stamp Act, which provides an exemption for certain transactions in relation to corporate reconstructions.

Subclause (1) inserts a new subsection (4a) into section 75JB so that the Commissioner is not required to be notified of events that occur on or after 1 July 2008 in certain circumstances.

Those circumstances are where an application for an entity restructuring exemption under the Duties Bill has been made, or where a determination request or acquisition statement has been lodged under the landholder duty provisions of the Duties Bill. In all other circumstances, the notification requirements set out in section 75JB(4) will continue to apply.

Subclause (2) amends section 75JB(5) so that a claw-back of the exempted duty does not apply where the cessation of association that would otherwise trigger the claw-back occurs on or after 1 July 2008.

Subclause (3) amends section 75JB(5f)(d) so that a claw-back of the exempted duty does not apply where the relevant event that would otherwise trigger the claw-back occurs on or after 1 July 2008.

Subclause (4) inserts a new subsection (5fa) into section 75JB so that the Commissioner is not required to be notified of relevant events that occur on or after 1 July 2008 in certain circumstances.

Those circumstances are where an application for an entity

restructuring exemption under the Duties Bill has been made, or where a determination request or acquisition statement has been lodged under the landholder duty provisions of the Duties Bill. In all other circumstances, notification in accordance with section 75JB(5f)(c) is required.

Subclause (5) amends section 75JB(6) so that a claw-back of the exempted duty does not apply where the distribution of assets that would otherwise trigger the claw-back occurs on or after 1 July 2008.

Subclause (6) amends section 75JB(7) so that a claw-back of the exempted duty does not apply where the transfer that would otherwise trigger the claw-back occurs on or after 1 July 2008.

Subclause (7) amends section 75JB(9) so that a claw-back of the exempted duty does not apply where the change in purpose that would otherwise trigger the claw-back occurs on or after 1 July 2008.

Subclause (8) amends section 75JB(11) so that a claw-back of the exempted duty does not apply where the transfer that would otherwise trigger the claw-back occurs on or after 1 July 2008.

Clause 17: Section 75JC amended

This clause amends section 75JC, which provides for a person to request the Commissioner to determine whether he would grant an exemption in respect of a proposed acquisition, transaction or transfer. The new subsection (6) inserted by this clause provides that a determination that an exemption would be granted does not have any effect if the relevant acquisition, transaction or transfer occurs on or after 1 July 2008.

Clause 18: Section 75JH inserted in Part IIIBAAA

This clause inserts a new section 75JH into the Stamp Act, which allows the Commissioner to revoke a corporate reconstruction exemption in certain circumstances. This is necessary because the claw-back no longer applies as a result of the amendments made by clauses 15 and 16. The circumstances in which the exemption can be revoked have been aligned with the circumstances in which the entity restructuring exemption can be revoked under Chapter 6 of the Duties Bill.

Clause 19: Section 75K inserted

This clause inserts a new section 75K into Part IIIBA of the Stamp

Act, which relates to the imposition of duty on certain acquisitions of interests in land-rich companies. The effect of this section is that Part IIIA will not apply to relevant acquisitions that occur on or after 1 July 2008.

Clause 20: Section 76AY inserted

This clause inserts new section 76AY into Part IIIC of the Stamp Act, which relates to imposition of stamp duty on grants and transfers of vehicle licences. The effect of this section is that Part IIIC will not apply to grants or transfer of licences that occur on or after 1 July 2008.

Subsection (1) provides that an application for the grant or transfer of a vehicle licence that is made on or after 1 July 2008 is not dutiable under Part IIIC of the Stamp Act.

Subsection (2) provides that the Stamp Act will continue to apply to the grant or transfer of a licence where an application for the grant or transfer was made prior to 1 July 2008. Further, the Stamp Act will also continue to apply in circumstances where an application for the grant or transfer of a licence has not been made, and the amount of duty chargeable has been assessed by the Commissioner under section 76K of the Stamp Act before 1 July 2008.

Clause 21: Section 77A amended

This clause amends section 77A of the Stamp Act, which relates to the duty chargeable on certain transactions involving leases. The effect of this clause is that this section will not apply to those lease transactions that occur on or after 1 July 2008.

Subclause (1) inserts a new subsection (2a) in section 77A. The effect of this subsection is that the obligation to lodge a dutiable statement in respect of transactions referred to in subsection (1) does not apply where that transaction occurs on or after 1 July 2008.

Subclause (2) amends section 77A(9) to include a reference to new section 16(5) (as inserted by clause 5 of this Bill). This means that where there is a requirement to lodge a dutiable statement or give notification of an undocumented transaction under section 77A, and an instrument evidencing the transaction is executed after the transaction was entered into, that instrument will be taken to be executed on the day the transaction occurred for the purposes of section 16(5). Section 16(5) states that duty is not chargeable on certain instruments executed on or after 1 July 2008. Duty will

therefore continue to be charged on an instrument evidencing an undocumented transaction that is executed on or after 1 July 2008, where the transaction occurred before 1 July 2008. This ensures that duty cannot be avoided by not documenting a transaction that occurs prior to 1 July 2008, and subsequently documenting the transaction after that date.

Clause 22: Section 91G inserted

This clause inserts new section 91G into Part IIIIF of the Stamp Act, which relates to the imposition of stamp duty on premiums paid in respect of policies of insurance. The effect of this section is that Part IIIIF will not apply to premiums paid on or after 1 July 2008, or to return periods commencing on or after 1 July 2008. This means that obligations such as lodging statements in respect of premiums received in a return period, will cease to apply to return periods commencing from 1 July 2008.

Division 2 - *Duties Act 2007* amended

Subdivision 1 - Preliminary

Clause 23: The Act amended in this Division

This clause provides that the amendments contained in Division 2 of this Bill are to the Duties Act.

Subdivision 2 - Amendments commencing on 1 January 2009

This Subdivision proposes amendments to the Duties Act to put in place the vehicle licence duty rate scale announced as part of the 2007-08 Budget. Clause 2 provides that the amendments in this Subdivision will come into operation on 1 January 2009.

Clause 24: Section 236 - Amount of duty payable amended

This clause amends the thresholds for the vehicle licence duty rate scale applying in respect of vehicles that are not heavy vehicles.

Paragraph (a) provides that where the dutiable value of the vehicle does not exceed \$25,000, duty is calculated at the rate of 2.75% of the dutiable value.

Paragraphs (b), (c) and (d) provide that where the dutiable value of the vehicle exceeds \$25,000 but does not exceed \$50,000, the rate at which duty is calculated varies between 2.75% and 6.5% and is

calculated using the formula:

$$R (\% \text{ of the dutiable value (DV)}) = 2.75 + \frac{DV - 25,000}{6,666.66}$$

The resulting percentage is to be rounded to two decimal places.

Paragraph (e) provides that where the dutiable value of the vehicle exceeds \$50,000, duty is calculated at the rate of 6.5% of the dutiable value.

Subdivision 3 - Amendments commencing on 1 July 2010

This Subdivision proposes amendments to the Duties Act to abolish duty on non-real business assets, in accordance with the Government's announcement as part of the 2006-07 Budget. Clause 2 provides that the amendments in this Subdivision will come into operation on 1 July 2010.

Clause 25: Section 9 amended

This clause removes the definitions of the terms "Western Australian business" and "Western Australian business asset" from section 9 of the Duties Act, as these will no longer be required following the abolition of duty on non-real business assets.

Clause 26: Section 15 amended

This clause amends the dutiable property list in section 15 of the Duties Act to remove the reference to a Western Australian business asset. Dutiable transactions involving Western Australian business assets will no longer be dutiable following the abolition of duty on non-real business assets.

Clause 27: Section 17 amended

This clause amends the new dutiable property list in section 17 of the Duties Act to remove the reference to intellectual property, a restraint of trade arrangement and a business identity. The acquisition of these Western Australian business assets on their creation, grant or issue will no longer be dutiable following the abolition of duty on non-real business assets.

Clause 28: Chapter 2 Part 5 Division 5 repealed

This clause repeals Chapter 2 Part 5 Division 5 of the Duties Act, which contains the provisions supporting the imposition of duty on dutiable transactions involving Western Australian business assets.

These provisions will no longer be required following the abolition of duty on non-real business assets.

Clause 29: Section 136 repealed

This clause repeals section 136 of the Duties Act, which charges nominal duty on certain dutiable transactions involving business licences under the *Fish Resources Management Act 1994*. This clause will no longer be required following the abolition of duty on non-real business assets.

Clause 30: Chapter 2 Part 6 Division 4 repealed

This clause repeals Chapter 2 Part 6 Division 4 of the Duties Act, which imposes a concessional rate of duty on certain transactions involving the purchase of businesses or residences for owner-occupation, where the dutiable value of the purchase does not exceed \$200,000.

Clause 31: Section 277 repealed

This clause repeals section 277 of the Duties Act, which prohibits the registering of certain transactions involving business licences. This clause will no longer be required following the abolition of duty on non-real business assets.

Clause 32: Schedule 2 Division 2 – Concessional rates amended

This clause amends Schedule 2 of the Duties Act, which sets out the rates of transfer duty, by removing the reference to the concessional transaction referred to in section 147 as a result of the repeal of Chapter 2 Part 6 Division 4 (as provided for by clause 30 of this Bill).

Division 3 – Taxation Administration Act 2003 amended

Clause 33: The Act amended in this Division

This clause provides that the amendments contained in Division 3 of this Bill are to the TAA.

Clause 34: Section 3 amended

This clause amends the list of Acts that are governed by the TAA by including the Duties Act in the list of taxation Acts contained in section 3 of the TAA.

Clause 35: Section 18 amended

This clause repeals section 18(3) of the TAA and replaces it with a new subsection. Section 18 deals with the effect of reassessments, and subsection (3) in particular provides that the Commissioner is able to stamp either the original instrument or a duplicate or copy of the instrument with a stamp denoting the reassessment. The replacement subsection refers to tax being payable on a transaction or event and the Commissioner endorsing the instrument, which is consistent with the approach and terminology of the Duties Bill.

Clause 36: Section 20 amended

This clause makes a number of amendments to section 20 of the TAA, which relates to the assessment of stamp duty in the absence of an instrument. These amendments are necessary to reflect the transaction based approach and terminology of the Duties Bill.

Clause 37: Section 23 amended

This clause amends section 23(2) of the TAA, which provides exceptions to the requirement under section 23(1) that the Commissioner issue an assessment notice when he makes an assessment. This clause replaces paragraph (b) with a new paragraph (b), which has been updated to reflect the terminology of the Duties Bill. The effect of this clause is that the Commissioner does not have to issue an assessment notice if the Commissioner assesses the amount of tax payable and immediately endorses an instrument to indicate the assessment. This deals with front counter assessments where a receipt is issued, but no assessment notice is actually issued. This is because the payment is made on an immediate basis and the documents are endorsed and returned.

Clause 38: Section 24 amended

This clause amends section 24 of the TAA, which sets out the form assessment notices are to take. This clause inserts new subsection (1a), which provides that an assessment notice must include the date on which it is issued. Although this is the practice of the Office of State Revenue, this subsection makes the inclusion of the issue date a legislative requirement. The issue date is relevant as a number of the provisions of the Duties Bill require payment within a specified period after the date that an assessment notice is issued.

Clause 39: Section 34 amended

This clause amends section 34 of the TAA, which sets out the rights of a taxpayer to object to an assessment or decision of the Commissioner.

Subclause (1) inserts new paragraphs (c) and (d) into section 34(1), which will allow a taxpayer to object to a decision of the Commissioner in relation to whether he would revoke an entity restructuring exemption or disregard a scheme under the general anti-avoidance provision. However, the taxpayer will not be able to object to such a decision if the exemption has already been granted, or the Commissioner has already disregarded a scheme, as the taxpayer will have the power to object to these subsequent decisions of the Commissioner. This will prevent two objections being on-foot in relation to the same transaction.

Subclause (2) replaces section 34(2)(b) with a new paragraph which contains terminology that is consistent with the Duties Bill. This provision prevents an objection being lodged to a duty assessment where the amount of duty is the subject of a traffic infringement notice, unless that duty and penalty tax has been paid.

Clause 40: Section 36 amended

This clause amends section 36 of the TAA, which sets out the time limit for lodging an objection, to be consistent with the terminology of the Duties Bill. The effect of this clause is that an objection to an official assessment that has been indicated by endorsement must be lodged within 60 days of the date the document was endorsed.

Clause 41: Section 43 amended

This clause amends section 43(2) of the TAA, which specifies the constitution of the State Administrative Tribunal in relation to matters brought before it under specified taxation Acts. This clause inserts a reference to the Duties Act.

Clause 42: Section 50 amended

This clause makes a number of amendments to section 50 of the TAA, which relates to special tax return arrangements between the Commissioner and a taxpayer or other person in relation to a taxpayer's obligations under a taxation Act. These amendments are necessary to reflect the transaction based approach and terminology of the Duties Bill.

Clause 43: Section 51 replaced

This clause repeals section 51 of the TAA, which provides specific stamping and endorsement provisions for instruments that are stamped under a special tax return arrangement. The replacement section 51 does not include an equivalent of the existing section 51(1), as the endorsement or certification of transaction records under special tax return arrangements is dealt with under Chapter 8 of the Duties Bill. The replacement section 51 provides that it is an offence for a person who endorses or certifies an instrument in a manner so as to indicate that the instrument has been properly endorsed or certified under a special tax return arrangement, unless it is done in accordance with the conditions of the arrangement. This is consistent with current section 51(2), but has been updated to reflect the terminology of the Duties Bill.

Clause 44: Section 55 amended

This clause amends section 55 of the TAA, which provides the circumstances when a taxpayer is required to pass on a refund to a third party, by inserting a reference in subsection (1) to insurance duty payable under Chapter 4 of the Duties Act. This means that where an insurer has paid insurance duty out of money provided by the insured person, or obtained reimbursement from the insured person for payment of the duty, any duty which is refunded or credited to the insurer must be reimbursed to the insured person.

Clause 45: Section 77A inserted

This clause inserts a new section in the TAA, which provides the circumstances where a memorial may be registered against land to secure unpaid transfer duty or landholder duty under the Duties Act. The provision is largely based on the current section 77 of the TAA, which deals with lodging memorials to secure stamp duty under the Stamp Act.

Subsection (1) provides that definitions of certain terms used in the Duties Bill apply to those terms when used in this section.

Subsection (2) provides that if transfer duty is payable on a transaction in relation to land and that duty has not been paid by the due date because the cheque given in payment is dishonoured as set out in subsection (6), the Commissioner is able to lodge a memorial to create a charge on the land.

Subsection (3) provides that if transfer duty is payable as a result of a

reassessment of a transaction that was chargeable with duty at the first home owner concessional rate because the first home owner grant was required to be repaid, and that duty has not been paid by the due date, the Commissioner is able to lodge a memorial to create a charge on the land.

Subsection (4) provides that if landholder duty is payable on a relevant acquisition of an interest in a landholder and that duty has not been paid by the due date, the Commissioner is able to lodge a memorial to create a charge on the land held by the landholder or a linked entity.

Subclause (5) clarifies that the charge on the land arises when the memorial is registered.

Subclause (6) provides that duty is considered not to have been paid by the due date for the purposes of subsection (2) when a cheque is dishonoured on first presentation (even though the due date for payment may have not arrived).

Subclause (7) provides that a memorial creating a charge on land for transfer duty cannot be lodged until the transaction in respect of which the duty is payable has been registered and the title transferred.

Clause 46: Section 78 amended

This clause amends section 78 of the TAA, which contains certain requirements in relation to land in respect of which a memorial has been lodged, so that it applies to memorials lodged under the new section 77A (as inserted by clause 45 of this Bill).

Clause 47: Section 80 amended

This clause amends section 80 of the TAA, which relates to issuing a certificate in relation to a charge on land, so that it applies to memorials lodged under the new section 77A (as inserted by clause 45 of this Bill).

Clause 48: Section 96 amended

This clause makes a number of amendments to section 96 of the TAA, which relates to the Commissioner's power to retain certain instruments in his possession. These amendments are necessary to reflect the transaction based approach of the Duties Bill.

Clause 49: Part 10 Division 5 heading amended

This clause amends the heading for Part 10 Division 5 so that it refers to “Regulations, practices and forms”. The amended heading more accurately describes the contents of this Division following the insertion of new section 128 by clause 50 of this Bill.

Clause 50: Section 128 inserted

This clause inserts a new section 128 into the TAA, which allows an approved form under a taxation Act to require information in the form to be substantiated by a statutory declaration.

This section replaces section 75AG(7) of the Stamp Act, which allows the Commissioner to request a statutory declaration to verify information contained in an application for the first home owner stamp duty concession.

Clause 51: Glossary amended

This clause amends a number of terms defined in the Glossary to update references and terminology to be consistent with the Duties Bill.

Division 4 – Miscellaneous amendments

Clause 52: Various Acts amended

This clause provides that Schedule 1 contains amendments to other statutes as a consequence of the Duties Bill.

Schedule 1 – Amendments to various Acts

The Schedule contains amendments to other Western Australian Acts that contain references to the Stamp Act and related terminology, to update those references to be consistent with the Duties Bill.

It should be noted that clause 20 of the Schedule amends the *Limited Partnerships Act 1909* by repealing section 11, which charges ad valorem stamp duty on the contributions of capital to limited partnerships. This is inconsistent with the framework of the Duties Bill.