

EXPLANATORY MEMORANDUM

REVENUE LAWS AMENDMENT (ASSESSMENT) BILL 1999

PART 1 - PRELIMINARY

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

Clause 1: Short title and citation.

Clause 2: Subclause (1) provides that the Revenue Laws Amendment (Assessment) Bill 1999 is to commence on the day it receives the Royal Assent, subject to the exceptions noted in the following subclauses.

Subclause (2) provides that section 4 is deemed to have come into effect on 1 July 1998.

Section 4 contains amendments to section 63 of the Stamp Act to give recognition to unit trust structures constituted under the Corporations Law before and after the Managed Investments Act 1998 came into operation.

Although this provision authorises a retrospective commencement for the amendment, there is no material effect as the Corporations Law recognises that the provisions relating to both managed investment schemes and prescribed interest schemes, under Division 5 of Part 7.12 of the old law, have application from 1 July 1998.

Subclause (3) includes the commencement provisions relating to the motor vehicle licensing amendments to the Stamp Act 1921 and the Road Traffic Act 1974.

If the Act receives the Royal Assent on or before 1 July 1999, then the amendments will commence on 1 July 1999. If the Act receives the Royal Assent after 1 July 1999, those amendments will commence on the date of Royal Assent.

PART 2 - STAMP ACT 1921 AMENDED

This Part contains amendments to the Stamp Act 1921 that relate to:

- new invoicing arrangements proposed by the Department of Transport to collect transfer fees and stamp duty on motor vehicle licence issues and transfers; and
- concessional stamp duty treatment for managed funds that are compelled to undertake certain transactions to comply with the requirements of the Commonwealth's Managed Investments Act 1998.

The amendments regarding the new invoicing arrangements are located in Division 3 of Part 2. Part 3 also contains amendments to the Road Traffic Act 1974 which relate to the same matter.

The amendments relating to the Managed Investments Act are located in Division 2 of Part 2 of the Bill.

Managed Investments Act 1998

The Commonwealth's Managed Investments Act came into operation on 1 July 1998 to change the way in which the managed funds industry is regulated under the Corporations Law.

As part of these regulatory changes, funds are required to consolidate their operating structures so that only one entity is responsible for the management and administration of a managed investment scheme. Previously, one entity was responsible for the administration and investment decisions of a scheme, while another was responsible for the scheme assets and ensuring that the scheme's investments conformed to the trust deed.

This mandatory consolidation process will involve numerous transactions, including the transfer of fund property from one entity to another. These transactions may, in some instances, be subject to stamp duty at ad valorem rates. Such an outcome would unfairly penalise funds that are compelled to undertake these transactions in order to comply with Commonwealth laws.

Where schemes are acting to comply with the transitional requirements of the Managed Investments Act, and there is no resulting change in the beneficial interests of scheme property, the Bill seeks to amend the Stamp Act to provide for the imposition of nominal duty of \$20 upon:

- the transfer or conveyance of scheme property;
- the resettlement of a trust;
- the transfer of a motor vehicle licence; and
- instruments, such as property leases, executed to secure the rights and obligations of the newly appointed responsible entity to replace those contracts that may become invalid upon the retirement of the existing trustee, where the new instruments are on the same terms and conditions as the previous instrument.

These stamp duty concessions will only be available for those transactions that are undertaken during the transitional period permitted by the Corporations Law.

It is proposed that the amendments in relation to this matter will have retrospective application from 6 April 1999, the date that the Government announced its decision to legislate on the issue.

Clause 3: This clause identifies that the amendments in Part 2 (clauses 4 through 7) are to the Stamp Act 1921.

Clause 4: This clause repeals the current section 63(2)(a), which defines what constitutes a private unit trust scheme for stamp duty purposes, and replaces it with a new section 63(2)(a).

Private unit trust schemes and public unit trust schemes are differentiated as different rates of duty apply to the disposition of units in private and public unit trusts.

Section 73D of the Act provides that the disposition of units in a private unit trust scheme is separately chargeable on the proportionate value of the real Western Australian property and chattels of the scheme represented by the units at conveyance duty rates. Duty at the lower marketable security rate is charged on the residual value.

Units in public unit trusts are generally treated as marketable securities, and duty at the lower marketable security rate is charged on the transfer of those units.

The proposed section 63(2)(a) provides that a unit trust scheme is a private unit trust scheme for the purposes of section 63(2), if the scheme is not:

- (i) one to which the Corporations Law provisions relating to prescribed interest schemes, as in force immediately before the commencement of the Managed Investments Act 1998, applied; or
- (ii) a managed investment scheme registered under the Corporations Law,

or is a scheme referred to in subparagraph (i) or (ii) but no units have been issued to the public or an insufficient number of persons are beneficially entitled to the units in the scheme.

This amendment seeks to replicate the existing requirements of section 63(2)(a), with the addition of a provision to cater for managed investment schemes. It also acknowledges the concurrent application of the Corporations Law to both prescribed interest schemes and managed investment schemes.

Clause 5: This clause amends section 76C(1) by inserting a reference to section 112UE(2). This amendment will ensure that nominal duty of \$20, where authorized by the Commissioner under the proposed Part IVE relating to managed investment schemes, can be paid to the licensing authority to which an application is made for the transfer of a motor vehicle licence.

Clause 6: This clause inserts a new Part IVE into the Stamp Act, comprising new subsections 112UE(1) through to (7) and deal with managed investment schemes.

Subsection (1) inserts a definition of an “**old public unit trust**”, which is referred to throughout the Part.

Subsection (2) enables the Commissioner to authorize duty to be charged on the transactions referred to in paragraphs (a), (b) and (c), at a nominal duty rate of \$20, where ad valorem duty would otherwise be payable.

Paragraph (a) refers to a conveyance or transfer.

Paragraph (b) refers to a deed of settlement or deed of gift.

Paragraph (c) refers to a transfer of a motor vehicle licence.

As an example, nominal duty would apply to each transfer of dutiable property that is registered in the name of the existing trustee of a prescribed interest scheme, when that property is transferred to the initial single responsible entity (ie. the new trustee under the managed investment requirements) of the managed investment scheme.

In order for subsection (2) to apply to a transaction, an application must be made to the Commissioner. If the Commissioner is satisfied that subsection (4) applies to that transaction, then nominal duty will be charged.

Subsection (3) is a further provision that enables the Commissioner to charge duty on instruments, other than those described in subsection (2), at the nominal \$20 rate. As is the case for instruments described under subsection (2), an application is required to be made to the Commissioner. The Commissioner must also be satisfied that the instrument:

- (a) - is one that subsection (4) applies to;
- (b) - replaces another instrument; and
- (c) - is on the same terms and conditions as the instrument that it replaces.

This provision could apply to a replacement lease agreement drawn in the name of the initial single responsible entity.

The proposed subsection (4) outlines two conditions that must be met before those instruments identified in subsection (2) and (3) qualify for stamping at nominal duty rates under those subsections.

Paragraph (a) requires that the instrument is entered into on or after 6 April 1999 and is for the purpose of, or as a consequence of, an old public unit trust becoming a registered managed investment scheme in accordance with the Corporations Law.

Paragraph (b) requires the members of a managed investment scheme to hold the same beneficial interests in the scheme property as they had in the old public unit trust's property, both before and after the instrument is executed.

It should be noted that the intention of these provisions is only to facilitate transfers arising from the Managed Investments Act 1998. Where changes to the beneficial interests of unit holders are made, whether actual or contingent, for other purposes such as restructuring the unitholder entitlements, then nominal duty will not be applied.

These provisions will enable schemes that are undergoing a conversion to a managed investment scheme to transfer property, for example, directly from the retiring trustee to an agent of the responsible entity, even though the transitional provisions of the Corporations Law do not refer to the appointment of an agent. This is because the appointment of an agent of the responsible entity that is required under other provisions of the Corporations Law can be said to be made for the purpose of, or as a consequence of, the conversion process.

Subsection (5) relates to transfers of motor vehicle licences that occur as part of the conversion process. This section ensures that the transferor and transferee of the licence do not have to provide particulars relating to the purchase price and market value of the vehicle as required by section 76C(8). In the case of these types of transfers, the licence can be transferred by the licensing authority upon production of an authorization by the Commissioner under subsection (2).

Subsection (6) requires an application that is made for the purposes of subsection (2) or (3), to be in a form approved by the Commissioner.

Subsection (7) makes it an offence under the Stamp Act if a person makes a statement in an application to the Commissioner that is materially false. The general penalty of \$10,000 as provided in section 116 of the Stamp Act would apply.

Motor Vehicle Licence Invoicing Arrangements

The proposed changes to the motor vehicle licensing provisions of the Stamp Act and Road Traffic Act support new invoicing arrangements to be administered by the Department of Transport for the payment of transfer fees and stamp duty associated with the issue or transfer of a vehicle licence.

These arrangements are designed to provide greater payment flexibility, while also allowing the Department of Transport to reject transfer applications which do not comply with the compulsory vehicle engine immobiliser scheme.

The amendments are necessary as the Stamp Act does not currently allow the purchaser to separate the making of an application to issue or transfer a licence, from the obligation to pay the appropriate stamp duty at the time of application.

These provisions in their current form are considered too restrictive in terms of effective administrative design. The proposed changes will allow the Department of Transport to produce invoices using the notification details provided by the vehicle seller or purchaser as required by the Stamp Act.

As part of these arrangements, the transfer will not be made until the Department of Transport is satisfied that the vehicle engine immobiliser requirements have been met. In such a case, a purchaser will be notified that a licence cannot be issued or transferred until those requirements are satisfied.

The new invoicing arrangements will also support a broader range of more convenient payment arrangements for purchasers.

In addition to payment at licensing centres, the invoice will be capable of being paid by telephone, mail, in person at an Australia Post agency, and in the near future, via the internet.

The purchaser will have 28 days to make payment of the transfer fee and duty from the date the invoice is issued.

The notification requirements of the vehicle seller and buyer are also to change under the proposed amendments. Under current Road Traffic Act requirements, when the seller disposes of a vehicle he must notify the Department of Transport "forthwith".

In an effort to make the obligations clearer, the seller will now be required to provide the details within 7 days of selling the vehicle.

The buyer will be required to apply for the transfer of a licence upon purchasing a vehicle within 14 days of purchase. Currently, a buyer must apply within 28 days, but must also make payment of the transfer fee and duty within that period.

It is considered that the arrangements supported by this legislation will be more effective in both ensuring transfers comply with stamp duty and licensing requirements while providing greater payment flexibility for purchasers in meeting those requirements.

Clause 7: This clause amends the Stamp Act to authorise new invoicing arrangements proposed by the Department of Transport.

Subclause (1) amends section 76C(8) of the Stamp Act to remove the obligation for an applicant to pay the appropriate amount of stamp duty at the time they apply for a motor vehicle licence to be issued or transferred.

Paragraphs (a), (b) and (c) make minor grammatical and punctuation changes.

Paragraph (d) deletes the obligation to pay stamp duty at the time of making an application to issue or transfer a motor vehicle licence.

Although the payment obligation is removed, section 76C(8) still requires the seller and buyer to supply details of the purchase price and market value of the vehicle. The payment obligation in the Stamp Act is replaced with an invoicing arrangement located in the Road Traffic Act.

Subclause (2) amends section 76C(10B) of the Stamp Act. This amendment allows duty assessed by the licensing authority under Part III C of the Stamp Act, and any fine included in that assessment, to be recovered by issuing a traffic infringement notice or on a complaint against section 24(2c) of the Road Traffic Act.

The licensing authority is specifically authorised under section 76C(9) and (10) to make an assessment of the stamp duty payable. Moreover, a general power of assessment is given under sections 23 and 76C(1) of the Stamp Act. These last mentioned sections authorise the licensing authority to assess duty outside the circumstances described in section 76C(9) and (10).

Subclause (3) makes a minor amendment to section 76C(13C) to update the offence reference from section 24(2) of the Road Traffic Act to section 24(2c).

PART 3 - ROAD TRAFFIC ACT 1974 AMENDED

Clause 8: This clause identifies that the amendments in Part 3 (clauses 8 through 10) are to the Road Traffic Act 1974.

Clause 9: This clause amends section 24 of the Road Traffic Act to alter a number of requirements in relation to the obligations of buyers and sellers to:

- notify the Director General of changes to motor vehicle licence ownership particulars; and
- pay the transfer fee and stamp duty upon the transfer of the licence.

Subclause (1) amends section 24(1) of the Act by more clearly defining the time period within which the seller of a licensed motor vehicle must notify the Director General of the ownership change.

The existing arrangement requires the seller to notify the Director General "forthwith". This obligation tends to cause confusion and has been altered to a more defined period, namely "within 7 days after ceasing to be the owner".

Subclause (2) repeals the existing section 24(2) and replaces it with new subsections (2), (2a), (2b), (2c) and (2d). These provisions include

powers relevant to the issue and payment of invoices in respect of transfer fees and stamp duty.

The proposed section 24(2) replaces an existing requirement for the buyer to make application to the Director General for the transfer of a licence upon becoming the owner of a licensed vehicle. The existing requirement is for the buyer to make application and pay within 28 days. The new section requires the buyer to make application within 14 days. The payment requirements are set out in proposed subsection (2c).

The proposed section 24(2a) provides that the licensing authority must issue the new owner with a notice that sets out their obligations in relation to satisfying vehicle security requirements (where the Director General reasonably suspects that the vehicle does not meet the standards) and the payment of transfer fees and stamp duty.

This subsection authorises the licensing authority to issue the notice upon receipt of notification of the change in vehicle licence ownership by the seller under section 24(1), the buyer under section 24(2) or in any other case.

The notice is to include:

- a requirement where necessary to cause the vehicle to be modified so that it meets prescribed standards or requirements relating to the security of the vehicle; and
- an amount to be paid, comprising the prescribed transfer fee and the stamp duty assessed under the Stamp Act by the Director General.

The prescribed vehicle security standards and requirements mentioned above can be found in the Road Traffic (Vehicle Standards) Regulations 1977 and the Road Traffic (Licensing) Regulations 1975.

The prescribed transfer fees are located in Schedule 1 of the Road Traffic (Licensing) Regulations 1975.

The proposed subsection (2b) requires the Director General to transfer the licence to the new owner where the vehicle security requirements and standards are met and the fee and duty is paid within 28 days of the issue of the notice. The Director General has the ability to extend the 28 day period.

The obligation to transfer the licence is subject to existing requirements in section 24(5) of the Act, which enable the Director General to refuse to transfer the licence in the same circumstances where he is empowered to refuse to issue a licence.

Furthermore, under subsection (5) the Director General can also refuse to transfer the licence if any of the motor vehicle licence requirements in Part IIIC of the Stamp Act are not met. An example of this could include a failure to supply details of the market value or the purchase price of the vehicle as required under section 76C(8).

The proposed subsection (2c) provides two different penalties if the person does not meet the vehicle security requirements or pay the transfer fee and stamp duty.

Where the person fails to cause the vehicle to be modified to meet the security requirements or standards, the Director General can cancel the licence, whether the transfer fee and stamp duty have been paid or not.

If the person does not comply with any other requirements of the notice issued under subsection (2a), the new owner commits an offence.

The proposed subsection (2d) provides that where the Director General cancels a licence because of failure to modify the security requirements or standards of a vehicle, he must refund any stamp duty or transfer fee paid in respect of the application for the licence transfer.

Subclause (3) amends section 24(3) of the Road Traffic Act by updating the reference to the offence. This subsection directs the court, when convicting a person of an offence for failing to make application to transfer a licence and pay the associated fee and duty, to make an order for the payment of those monies. The offence referred to in section 24(3) is now committed under section 24(2c), rather than under 24(2).

Clause 10: This clause amends section 102 of the Road Traffic Act, which deals with traffic infringement notices.

Subclause (1) amends section 102(2a). This section currently allows the transfer fee and stamp duty to be included in a traffic infringement notice, providing the offence is prescribed for the purposes of section 102. The amendment changes the offence to one committed under section 24(2c), rather than under 24(2).

A corresponding amendment to the Schedule of the Road Traffic (Infringements) Regulations 1975 will be required.

Subclause (2) amends section 102(2b), to change the offence reference from 24(2) to 24(2c). Section 102(2b) provides specific postal service authority for traffic infringement notices.