

STAMP AMENDMENT BILL 2001

EXPLANATORY MEMORANDUM

This explanatory memorandum provides detailed notes on the operation of each clause of the Stamp Amendment Bill 2001.

This Bill has deleted the majority of the administrative provisions of the Stamp Act. The administrative provisions common to four major taxation Acts are located in the Taxation Administration Bill 2001. The explanatory memorandum indicates the appropriate new section number where repealed Stamp Act provisions have been transferred to the Taxation Administration Bill. Relevant saving provisions of repealed or amended sections can be found in the Taxation Administration (Consequential Provisions) Bill 2001. Additional consequential amendments are also located in the Taxation Administration (Consequential Provisions) (Taxing) Bill 2001.

Clause 1: Short title

This clause provides that the Act is to be cited as the Stamp Amendment Act 2001.

Clause 2: Commencement

This clause provides for the Act to operate on the day on which the Taxation Administration Act 2001 comes into operation. A combined operation date for both Acts is necessary as the Taxation Administration Bill contains the relevant administrative provisions applicable to stamp duty. It is proposed that the commencement date of the Taxation Administration Act will be 1 July 2002.

Clause 3: The Act amended

This clause specifies that it is the Stamp Act 1921 that is being amended by this Act. This explanatory memorandum refers to the Stamp Act throughout as "the Act".

Clause 4: Sections 2A and 3 repealed

This clause repeals sections 2A and 3. Section 2A is not necessary, as all legislation is subject to the legislative powers of the State. Section 3 has previously been omitted under section 7(4)(f) of the Reprints Act 1984.

Clause 5: Section 4 amended

This clause makes a number of amendments to section 4 of the Act.

Subclause (1) inserts new subsections (1a) and (1b).

Subsection (1a) provides that the Stamp Act 1921 and the Taxation Administration Act 2001 are to be treated as if they were

the same Act. This ensures that concepts within the Acts do not have to constantly refer to each other.

Subsection (1b) provides that the Glossary at the end of the Taxation Administration Bill contains definitions for some of the words or expressions used in the Stamp Act.

Subclause (2) deletes certain definitions in section 4(1). The reason for the deletion of the following terms is noted below.

"adhesive coupon" will be provided for as a method of endorsing the payment of duty by the prescription power in proposed section 17C(2).

"adhesive stamp" is being deleted due to the abolition of adhesive stamps as a stamp duty payment mechanism.

"Commissioner" is defined in the Glossary of the Taxation Administration Bill.

"die" is being removed as part of updated arrangements dealing with the embossing of stamp duty on instruments.

"duty" is being removed and replaced by a new definition (inserted by subclause (3)).

"executed" and "execution" are considered to be superfluous and the ordinary meaning of the terms will be relied on.

"instrument" is being removed and replaced by a new definition (inserted by subclause (3)). It should be noted that this term is also defined in the Taxation Administration Bill, and that definition will partly apply for the purposes of the Stamp Act.

"overseas transfer" is being removed from section 4 and inserted into proposed new section 100.

"paper" is being deleted as stamped paper is no longer produced or used.

"person" is being deleted as the term is defined in the Interpretation Act 1984.

"record" is a defined term in the Glossary of the Taxation Administration Bill.

"several" is being deleted as each reference to "several" in the Act is amended to incorporate the previously defined meaning.

"stamp" is being deleted and replaced by a new definition (inserted by subclause (3)).

"stamped" is being deleted as the meaning of the term can be read from the proposed definition of "stamp".

"the Crown" is being deleted, as clause 5 of the Taxation Administration Bill deals with this issue.

"unencumbered value" is being deleted and replaced by a new definition (inserted by subclause (3)).

Subclause (3) inserts a number of definitions into section 4(1) of the Act.

In addition to the reinserted terms already defined, new defined terms for "dutiabale statement", "interstate duty", "Part IIIA statement", "section 76AG statement", "section 76AN statement" and "stamp Act" are included.

With regard to the definition of "instrument", it should be noted that the Stamp Act definition shows a contrary intention to the definition in the Glossary of the Taxation Administration Bill. This definition excludes a return, requiring that the term "instrument" in the Stamp Act be read to exclude a return. The term "instrument" in the Taxation Administration Bill should be read inclusive of a return.

Clause 6: Section 4A amended

This clause amends section 4A(1) by deleting "for the purposes of this Act". The effect of this amendment ensures that the valuation provisions in the Taxation Administration Bill (proposed sections 21 and 22) will operate effectively.

Clause 7: Part II repealed (sections 5 to 15B)

This clause repeals sections 5, 6, 7, 7A, 8, 9, 10, 11, 12, 15, 15A and 15B of the Act.

Section 5 (Act administered by Commissioner) is replaced by clause 7 of the Taxation Administration Bill.

Section 6 (Power of Commissioner to delegate) is replaced by clauses 10 and 11 of the Taxation Administration Bill.

Sections 7 (Powers of Commissioner in relation to entry and documents) and 7A (Power of Commissioner to obtain information and evidence) are replaced by corresponding powers in Part 8 of the Taxation Administration Bill. Section 7(3), which provides a power to impound unstamped instruments, is replaced by proposed section 113.

Section 8 (Power of Commissioner to use information) is replaced by clause 105(2)(a) of the Taxation Administration Bill.

Section 9 (Exchange of information and obligation of secrecy) is replaced by clause 105 of the Taxation Administration Bill.

Section 10 (Governor to prescribe stamps, dies, etc.) is repealed. Proposed section 17C(2) provides a prescription power that will detail the methods available to endorse instruments.

Section 11 (Commissioner to issue stamps) is repealed and no equivalent section has been inserted.

Section 12 (Commissioner may license vendors of adhesive stamps) is repealed on the basis that adhesive stamps are to be abolished as a stamp duty collection mechanism.

Section 15 (Spoiled stamps), which primarily applied to adhesive stamps and nominal duty, is to be repealed and only partially replaced. Proposed section 20 of the Act, which replaces section 15A of the Act, will now apply in respect of nominal and ad valorem duty. This will allow duty to be refunded on instruments stamped with nominal duty that are not carried into effect.

Section 15A (Refund of duty on cancelled instruments) is replaced by proposed section 20.

Section 15B (Commissioner may destroy instruments) is replaced by proposed section 114.

Clause 8: Section 16 amended

This clause makes two minor amendments to section 16 of the Act (Charge of duties on instruments).

Subclause (1) deletes the reference to "subject to this Act" .

Subclause (2) amends subsection 16(3) to ensure that the reference to "this Act" refers to the defined term "stamp Act" . This defined term includes both the Stamp Act and the Taxation Administration Act.

Clause 9: Section 17 replaced

Section 17 (Duties to be paid in accordance with Act and regulations) has been repealed and no corresponding section is to be inserted. The decision to remove this section is based on the fact that the Stamp Act and Taxation Administration Bill provide for the payment and denoting of stamp duty. In addition, the new definition of "stamp" and the provisions in proposed section 17C will provide for appropriate endorsement methods.

New sections 17, 17A, 17B and 17C have been inserted.

Section 17 (Liability to pay duty) has been inserted to specify the parties who are liable to pay duty under the Stamp Act. This section is an amalgamation of a number of different provisions from the existing Act.

Subsection (1) specifies the persons liable to pay duty on an instrument.

Paragraph (a) is a general requirement which recognises that stamp duty is payable by the persons specified in the Second Schedule as the liable party.

Paragraph (b) provides for those circumstances where the provisions of the Stamp Act may override the Second Schedule

and make another person liable to duty. An example of this type of provision occurs in section 73E(8).

Paragraph (c) covers those circumstances where the instrument is a dutiable statement and paragraphs (a) and (b) do not apply. If this is the case, the person required to prepare the dutiable statement is liable to pay the duty. An example of this occurs in Division 3 of Part IIIA, where the corporation owning the Western Australian land is required to lodge the statement and pay the duty.

Paragraph (d) covers any other circumstances where the party to the instrument is liable to pay the duty if the instrument is held on their behalf. This provision is equivalent to repealed section 39(4).

Subsection (2) is equivalent to repealed section 39(7). This section provides that the specification of who is liable to pay the duty does not exonerate any other person from the liability imposed under the Stamp Act or exempt any instrument or matter to which duty is liable under the Stamp Act.

Subsection (3) specifies that a person who is liable to pay duty is also liable to pay any penalties, interest or other amount payable under a stamp Act in connection with the duty. An example of this would be a liability to pay penalty tax under clause 27 of the Taxation Administration Bill.

Section 17A (Time for payment of duty) is a new provision which corresponds to repealed section 20 of the Act. This new section replaces the repealed three month lodgement and three month payment requirement for instruments under the Stamp Act, with a new requirement for instruments to be lodged and duty to be paid within four months of first execution.

This provision was first mooted in the explanatory memorandum that accompanied the Taxation Administration Bill when it was released for public comment in 1997.

This payment arrangement, which is similar to that applying in New South Wales, Victoria, South Australia, the ACT and Tasmania, is intended to address inefficiencies with the current stamp duty payment system.

An extensive public awareness campaign and education seminars are to be conducted to explain these new payment arrangements (including the application of penalty tax under the Taxation Administration Bill and the guidelines issued in respect of stamp duty under clause 30 of that Bill).

Subsection (1) provides that the liability to pay duty on an instrument arises when the instrument is first executed or if the instrument is a dutiable statement, when the obligation to prepare the statement arises. The meaning of first executed is a

well understood stamp duty principle, generally taken to mean the time when the instrument becomes a complete document (ie. when it first becomes effective as an instrument).

Subsection (2) provides that duty is payable within four months after the date on which the liability to pay the duty arises. These dates are specified in subsection (1). This requirement replaces the repealed requirement to lodge within three months of first execution and pay within three months of receiving an assessment notice.

Subsection (3) overrides subsection (2) if a provision of the Stamp Act provides an alternative payment period. Some examples of these alternatives are found in Part IIIC (Vehicle licensing provisions), section 84, Part IIIF (Policies of insurance) and Part IVB (Rental business).

Subsection (4) provides that failure to pay duty within the time required by subsection (2) is an offence for which a maximum penalty of \$5,000 is payable.

Section 17B (Requirement to lodge instrument) creates an obligation to lodge an instrument. Even though the previous obligations to separately lodge instruments and pay duty have been amalgamated in this Bill, it is still necessary to retain this provision to ensure that the instruments are lodged with the Commissioner when duty is paid.

Subsection (1) creates an offence with a maximum penalty of \$5,000 if a person who is or may be liable to pay duty on an instrument does not lodge it with the Commissioner within the time required to pay the duty. In most cases, this will be 4 months from the execution of the instrument, as specified in proposed section 17A(1).

Subsection (2) provides that the offence in subsection (1) does not apply if another provision of the Act provides for the instrument to be lodged at a different time. An example of this occurs under proposed section 76F of the Act in relation to the payment of duty on the grant or transfer of a vehicle licence.

Section 17C (Instruments to be endorsed when duty paid etc.) sets out the requirements of how an instrument is to be endorsed in various circumstances. It should be noted that the new definition of "stamp" in section 4 refers to this section. When an instrument is endorsed as required under this section, it will be considered stamped.

Due to the construction of this section, and the combination of the actual endorsement method (ie. the old definition of stamp) and the requirement that the stamp reflect the status of the instrument, references in this Act and other legislation to a "duly stamped" instrument are not required. The meaning of "duly

stamped" is now replaced by this clause, indicating that an instrument must be properly endorsed to reflect the duty paid or other status required under the Act.

Subsection (1) sets out the circumstances when the Commissioner must endorse an instrument.

Paragraph (a) requires duty paid on an instrument to be endorsed.

Paragraph (b) requires penalty tax that is payable on an instrument to be endorsed when it is paid.

Paragraph (c) requires an endorsement to be made when the duty on an instrument or any other amount payable under a "stamp Act" in respect of the instrument is waived. Clause 56 of the Taxation Administration Bill allows tax to be waived up to a prescribed amount.

Paragraph (d) requires an endorsement to be made when the Commissioner assesses an instrument as not being chargeable with duty. It should be noted that this only covers the requirements in the Stamp Act to endorse an instrument where no duty is payable. Examples include an endorsement under section 74(4) or 74A of the Act. If an instrument is not chargeable with duty because the Act does not raise the charge, no endorsement is necessary. An example of this type of instrument is an instrument that evidences the issue of shares by a trading WA company that is not land rich under Part IIIA.

Paragraph (e) requires an endorsement to be made when the Commissioner exempts an instrument from duty. Such endorsements are only required where the exemption arises under a specific section of the Act. Examples include charitable exemptions under sections 75A (previously section 75AA), 80A and 90A and the exemption for transfers by bankruptcy trustees under section 75ABA.

Notably, section 112S of the Act overrides this requirement by providing that an instrument that is exempt under section 112Q or 112R does not have to be lodged with the Commissioner for assessment.

This requirement would also not apply to instruments that are exempt under the Third Schedule to the Stamp Act. Historically, it has been the practice of the Commissioner that such instruments do not have to be presented for stamping, due to the lack of an endorsement requirement in respect of those exemptions. This provision, in conjunction with proposed section 17C(5), confirms that such instruments are not required to be endorsed as exempt.

Paragraph (f) requires an endorsement to be made when the Commissioner allows a reduction of duty payable on an

instrument. Reductions of the duty payable commonly occur under section 87 of the Act.

Subsection (2) requires an endorsement under subsection (1) to be made in a prescribed manner. The regulations will authorise endorsements to be made by electronic register imprints, adhesive coupons and other manual stamps that are consistent with current stamping practices.

Subsection (3) authorises the endorsement of a copy or memorandum of an instrument created under clause 20 of the Taxation Administration Bill. If the copy or memorandum is endorsed in the manner prescribed by subsection (2), it will be deemed to be endorsed under subsection (1).

Subsection (4) provides that the grant or transfer of a licence is taken to be endorsed in accordance with subsection (1) when the licence is granted or transferred. The term "licence" takes the defined meaning from proposed section 76B for the purposes of this section.

Subsection (5) is an evidentiary provision that allows the endorsement under subsection (3) to be prima facie evidence of the duty payment or other matters set out in subsection (1).

Subsection (6) is a provision that authorises the Commissioner to endorse an instrument as exempt from duty under the Third Schedule to the Act at the request of a party to the instrument. As noted above, there is no requirement in the Act for the Commissioner to endorse an instrument as exempt from duty under the Third Schedule to the Stamp Act. Such instruments are rarely lodged with the Commissioner. However, on occasion, parties to an instrument that is exempt under the Third Schedule request that it be endorsed. This provision gives legitimacy to that practice.

Clause 10: Section 18 amended

This clause amends section 18 (How instruments to be written and stamped) by removing the requirements in relation to stamped paper.

Subclause (1) removes the numbering designation of subsection (1).

Subclause (2) removes the provisions dealing with how instruments should be written on stamped paper. Stamped paper has not existed for many years, and the provisions referring to it are being removed.

Clause 11: Section 19 amended

This clause amends section 19 (Instruments to be separately charged with duty in certain cases) by replacing the previously defined term "several" with its actual meaning.

Clause 12: Sections 20, 21 and 23 replaced

This clause repeals sections 20 (Stamping instruments after execution), 21 (Cancellation of adhesive stamps) and 23 (Commissioner or authorized person to determine amount of duty and fine). The requirements of repealed section 20 have been redrafted in proposed section 17A.

Repealed section 21 is not being replaced due to the abolition of revenue stamps as a payment mechanism.

Repealed section 23 will be partially replaced by proposed sections 13 and 15(2)(a) of the Taxation Administration Act.

Section 20 as inserted by this clause is a replacement for repealed section 15A. The new section contains a number of policy adjustments to the duty refund power on cancelled instruments, which address some inequities that have been present in the section for some time.

A new section 20 has been inserted.

Section 20 (Reduction of duty if matter not carried into effect) contains the refund power previously located in section 15A of the Act.

Subsection (1) provides that the stamp duty payable on an instrument may be reduced in respect of a matter in the instrument if the Commissioner is satisfied as to a number of matters. These are that:

- the matter has not been and will not be carried into effect;
- the taxpayer has not and will not receive a benefit (within the meaning of subsections (4) and (5)) in respect of the matter; and
- the reason the matter was not and will not be carried into effect was not merely to enable a replacement transaction (as defined in subsection (8)) to be entered into.

This subsection rectifies some technical deficiencies existing in the previous section and ensures that duty will be payable if the instrument, or one or more particular matters in the instrument where the instrument includes 2 or more several and distinct matters, is carried into effect.

Subsection (2) provides a partial refund power where a person receives a benefit (within the meaning of subsections (4) and (5)), but that benefit is less than the amount of stamp duty paid in respect of the matter. Where this occurs, the Commissioner must still be satisfied that:

- the instrument has not been and will not be carried into effect;
- a benefit was received or will be received;

- the value of the benefit is less than the full duty payable; and
- the reason the matter was not carried into effect was not merely to enable a replacement transaction to be entered into.

Subsection (3) provides that the amount of duty payable on the instrument is reduced by the difference between the value of the benefit in subsection (2)(b) and the full amount of duty payable in respect of the particular matter. This determines the amount of the partial refund of duty payable to the taxpayer.

Subsection (4) provides that a “benefit” is received by a taxpayer if the taxpayer, or an independent person (as defined in subsection (8)), with the consent of or at the direction of the taxpayer receives an amount of money, or a right, property or service as a result of the matter not being carried into effect. In this subsection, the amount of the benefit is the amount of money or the value of the right, property or service.

Subsection (5) provides that the taxpayer receives a “benefit” in respect of an instrument chargeable with duty as a conveyance or transfer if:

- the instrument provides for or contemplates for the conveyance or transfer of the property to an independent person. In this circumstance, such a provision will be a term of the conveyance contract or transfer;
- an agreement, arrangement or understanding exists between the taxpayer and another party that the property has been or is to be conveyed or transferred to that other party or to another person. It should be noted that where there are two persons jointly purchasing a property, the “taxpayer” is considered to be both those parties. Any agreement, arrangement or understanding that exists between both those persons to convey or transfer the property to only one of those persons would be considered to be another party, and consequently such arrangements would not be eligible for a refund of duty under this section; or
- the taxpayer obtains exclusive use or control of the property under a term contract, whether or not the contract is fully carried into effect. An example of this type of provision could occur where a person buys a block of vacant land under a vendor finance arrangement. The person takes exclusive possession of that land and begins to develop it, but will not be registered on the title until the vendor is fully paid. If the person subsequently defaults on the arrangements, and the land reverts back to the vendor, the arrangement would be considered to have been carried into effect and no refund would be payable.

Subsection (6) provides that where a benefit is received under subsection (5), the amount of the benefit is the amount of duty paid. Accordingly, no refund of duty would be payable.

Subsection (7) is a new provision that was not previously covered by repealed section 15A. It provides that for the purposes of calculating the amount of a benefit under subsection (4), no account is to be given to an amount that is paid to restore the taxpayer to the position he or she would have been in had the matter in respect of which duty is payable not occurred.

This subsection has been inserted to cover a common scenario where a vendor and purchaser enter into a contract. The vendor wishes to break the contract and the purchaser incurs certain costs to protect his rights under the contract. If a settlement is negotiated that results in the purchaser being reimbursed legal costs, settlement fees or other amounts of this nature, the repealed section operated so that this amount was deducted from the stamp duty refund when the property transfer was cancelled. This provision ensures that the purchaser would receive a full refund by allowing such amounts to be paid.

However, it should be noted that if an amount of damages were paid as a result of the contract being cancelled in these circumstances, the amount in excess of direct reimbursements would still constitute a benefit under subsection (4).

Subsection (8) provides that the Commissioner is to make any reassessment to give effect to this section, subject to the time limitations in clause 17 of the Taxation Administration Bill.

Subsection (9) provides a number of defined terms for the purposes of this section.

Notably, the definition of "replacement transaction" is drafted to ensure duty is payable on novated contracts or on sales, as it relates to a transaction between the taxpayer and an independent person. This ensures that a sale of property by a vendor to a genuine new purchaser after a contract is cancelled with a previous purchaser is not a replacement transaction.

Clause 13: Section 26 amended

This clause amends section 26 (Facts and circumstances affecting duty to be set forth in instrument) to make a number of grammatical changes.

Subclause (1) amends section 26(1) by making a number of grammatical changes to change the tense of the section. It also includes a specific penalty, rather than relying on the repealed general penalty provision in section 116 of the Act. The penalty amount, in line with the increase in penalty amounts under the Taxation Administration Bill, will be \$20,000.

Subclause (2) amends section 26(2) by deleting "duly". Due to the new definition of "stamp" and the provisions of proposed section 17C, the term "duly" is no longer necessary.

Subclause (3) similarly deletes a reference to "duly" in section 26(3). It also makes an amendment authorising the Commissioner to reassess the amount of duty payable on an instrument where the instrument has been altered in a manner that increases its liability to duty.

The requirement to reassess comes from the Taxation Administration Bill, where any adjustment to a previous assessment occurs through the reassessment mechanisms.

A specific offence penalty of \$20,000 is also inserted in subsection 26(3). This removes the need to rely on the repealed general penalty amount in section 116 of the Act.

Clause 14: Section 27 amended

This clause makes a number of amendments to section 27 (Instruments not duly stamped inadmissible except in criminal proceedings) to ensure the section is consistent with the concepts introduced by the Taxation Administration Bill.

Subclause (1) amends section 27(1) to remove a reference to "this Act" and replaces it with a reference to the defined term "stamp Act". It also deletes a reference to "duly".

Subclause (2) amends section 27(2)(b)(i) to make reference to a "dutiable statement", in accordance with the proposed definition in section 4.

Subclause (3) amends section 27(3) to insert references to "dutiable statements".

Clause 15: Section 28 amended

This clause makes a number of amendments to section 28 (No instrument to be registered, etc, unless stamped).

Subclause (1) makes amendments to section 28(1) by deleting references to "duly" and inserting references to "dutiable statements". A specific penalty amount of \$20,000 has been inserted in this clause as a result of the repeal of section 28(5), which previously provided the offence for failure to comply with any of the requirements of the section.

Subclause (2) amends section 28(3) by deleting "duly".

Subclause (3) repeals section 28(4) and (5) and inserts new subsections (4), (5) and (6) to properly take into account the caveat registration processes of the Department of Land Administration and the Department of Mineral and Petroleum Resources.

Subsection (4) requires the registrar (defined in subsection (6) to be the Registrar of Titles or a mining registrar within the meaning of the Mining Act) to reject a caveat that relates to an instrument which is liable to duty or a document that relates to a transaction under section 27(2), unless the instrument or document has been stamped or the Registrar is satisfied that the document has been lodged with the Commissioner for stamping.

The penalty amount of \$20,000 for failure to comply with this section has been moved from section 116 of the Act to specifically apply in these circumstances.

Subsection (5) has been inserted to allow the Registrar to reject a caveat in respect of an unstamped document unless sufficient information is provided to the Registrar to enable him to establish that no duty is payable on the instrument or other document. This mechanism provides certainty, allowing the Registrar to make a judgement with relevant facts at hand, rather than requisition the caveat.

Subsection (6) provides two defined terms for the purposes of subsections (4) and (5).

Clause 16: Section 29 amended

This clause makes a number of amendments to section 29 (Omission or insufficiency of stamp, etc.), mainly to ensure the provision is consistent with the processes introduced by the Taxation Administration Bill.

Subclause (1) amends section 29(1) by updating the terminology relating to omissions and insufficient stamps. It also updates the terminology regarding the preparation and lodgement of statements to ensure it refers to the new dutiable statement procedures.

Subclause (2) amends section 29(2) to remove the reference to fines payable under the Stamp Act and insert the reference to penalty tax raised in respect of an instrument under clauses 26 and 27 of the Taxation Administration Bill.

Subclause (3) amends section 29(2a) to refer to the new procedures regarding the preparation and payment of duty on a dutiable statement. It also replaces a reference to "statement" with a reference to a "dutiable statement" and updates a reference from "fine" to "penalty tax".

Subclause (4) amends section 29(3) to refer to the new dutiable statement and updates a reference from "fine" to "penalty tax".

Subclause (5) repeals section 29(4) and inserts new subsections (4) and (5).

Subsection (4) ensures the requirements placed on an officer of the court, arbitrator or referee are consistent with the assessment procedures and assessment notice provisions set down by the Taxation Administration Bill.

Subsection (5) overrides clause 23(3) of the Taxation Administration Bill, to ensure that the assessment notice does not have to be served on the taxpayer, but may instead be given to the officer of the court, arbitrator or referee as provided in subsection (4).

Clause 17: Section 30 amended

This clause makes a number of amendments to section 30 (Secondary evidence) to ensure it is consistent with the processes of the Taxation Administration Bill.

Subclause (1) makes a numerical change to the subsection, deletes the reference to "duly" and replaces the reference to "fine" with a reference to "penalty tax". It also updates the reference to statements and replaces them with dutiable statements.

Subclause (2) inserts new subsections (2), (3) and (4). These amendments ensure that the payment and assessment processes in section 30 are consistent with those that apply under section 29.

Subsection (2) requires on receiving a payment under subsection (1), the officer of the court, arbitrator or referee must transmit the instrument or statement with any duty and applicable penalty tax to the Commissioner.

Subsection (3) requires the Commissioner, on receiving the instrument or dutiable statement, to make an assessment of the duty payable and return the stamped instrument or statement to the officer of the court, arbitrator or referee with the assessment notice.

Subsection (4) overrides the requirement in proposed section 23(3) of the Taxation Administration Act to serve the assessment notice on the taxpayer. This allows the assessment notice to be forwarded to the officer of the court, arbitrator or referee as required by subsection (3).

Clause 18: Sections 31, 31AA, 31AB, 31AC, 31A repealed

This clause repeals sections 31 (Assessment of duty by Commissioner), 31AA (Reassessment of duty), 31AB (Effect of reassessment), 31AC (Payment of reassessed duty) and 31A (Default assessments). The equivalent of each of these sections is covered by the assessment powers in the Taxation Administration Bill.

Clause 19: Section 31B amended

This clause makes a number of amendments to section 31B (Payment of duty on statements in absence of dutiable instruments).

Subclause (1) amends references in section 31B(1) to "the State" and replaces that term with "Western Australia". These changes are consistent with amendments in the Taxation Administration package to ensure that references to the geographical place are to Western Australia.

This subclause also makes amendments to require the preparation of a dutiable statement. This change is consistent with the removal of the separate lodgement and payment requirements previously contained in section 20 of the Act. This clause also inserts a specific penalty amount of \$20,000, as a consequence of the repeal of section 31B(7).

Subclause (2) repeals section 31B(2) and replaces it with new subsections (1b), (1c) and (2).

Subsection (1b) partially replaces requirements previously located in subsection (1). It requires a dutiable statement to be in an approved form and prepared within 4 months of the transaction occurring.

Subsection (1c) replaces repealed subsection (4) by deeming a dutiable statement prepared under subsection (1) to be an instrument that effects or evidences a transaction to which it relates.

This subsection also provides that the statement is chargeable with duty as if it were the instrument. This means that the appropriate rate in the Second Schedule will apply in respect of the transaction type.

Subsection (2) replaces existing subsection (2) by requiring each party to the transaction, other than the party required to prepare the dutiable statement, to notify the Commissioner in an approved form that the transaction has been entered into. Such notification must be made within 4 months of entering into the transaction.

In most cases where the transaction is a conveyance, this will involve notification by the vendor that the transaction has taken place. A penalty of \$20,000 applies where the person or persons fail to make the notification.

Subclause (3) amends section 31B(2a) by replacing references to the lodgement of a statement with references to a requirement to prepare and lodge a dutiable statement. It also updates the reference to deleted subsection (7) with references to the new offence penalty provisions now located in subsection (1) or (2).

Subclause (4) amends section 31B(2b) by replacing the reference to section 20(1) with a reference to section 17A. It should be noted that subsection (2b) has been retained, due to its specific application to subsection (2a).

Subclause (5) modernises the provision by inserting a regulation making power to exempt certain types of transactions from the application of section 31B. It is intended that the regulations currently made under this subsection will remain in the Stamp Regulations.

Subclause (6) repeals section 31B(4) and (5) and inserts a new section 31B(4).

Subsection (4) allows interstate duty (which is to be defined in section 4) to be offset against the duty payable under the mortgage provisions on a transaction to which subsection (1)(c) applies. This subclause is effectively an equivalent provision to section 84 of the Act to allow a reduction for duty paid in other States where the transaction has nexus to more than one jurisdiction.

Subclause (7) repeals section 31B(7). The offences previously contained in this provision have been moved as specific offence penalties into section 31B(1) and (2) and updated to an amount of \$20,000.

Clause 20: Sections 32 to 35 replaced

This clause repeals sections 32 (Objection to assessment), 33 (Appeal from assessment), 33A (Interest on amounts refunded by the Commissioner), 34 (Commissioner may state case), 34A (Appeal against refusal to extend time for objection or appeal), 34B (Costs of appeals), 34C (Liability to pay duty subject to objection, appeal or case stated) and 35 (Duplicates and counterparts). Each of these provisions is covered in Part 4 of the Taxation Administration Bill, with the exception of section 35, which has been reproduced as new section 34.

New sections 33 and 35 have also been inserted.

Section 33 (Valuation of land or other property) partially replaces section 75A of the Act and a number of specific valuation provisions that were previously located elsewhere in the Act (eg. section 76AA). The general valuation power is relevant to other tax types and has been inserted into proposed sections 21 and 22 of the Taxation Administration Act.

This provision applies the valuation powers for the purposes of the Act, rather than for assessment purposes. On this basis, the specific valuation provisions in Part IIIBA are no longer required.

Subsection (1) reproduces general valuation assumptions applying to the valuation of land or other property previously located in repealed subsections 75A(3), (4) and (5). The valuation assumptions now apply for the purposes of a stamp Act.

Paragraph (a) allows the existence of any overriding power of revocation or reconveyance to be disregarded.

Paragraph (b) specifies that the value of an undivided share in the land or other property is to be ascertained by multiplying the total share of the land or other property by the share expressed as a fraction. This power applies whether the land or other property is held jointly or in common.

Paragraph (c) provides direction in certain circumstances when applying ordinary principles of valuation.

In the first instance, it is to be assumed that a hypothetical purchaser would, when negotiating the price, have knowledge of all existing information relating to the land or other property. No account is to be taken of any amount a hypothetical purchaser would have to expend to reproduce or otherwise acquire existing information relating to the land or other property.

The provisions of paragraph (c) were previously located in both section 75A and section 76AA.

Subsection (2) reproduces repealed subsection 75A(4a). The amendments in this subsection and subsection (3) were

introduced into the Stamp Act in 1997 as a result of a Victorian Supreme Court case which opened up the potential for avoidance of stamp duty on transfers of property. The situation addressed by the provisions concerns the fact that the case allowed a lease of the property, which depressed the market value, to be taken into account when determining the value of the property. These provisions ensure that transactions (usually between non-arms length parties) cannot be structured by entering into a lease transaction that depresses the value prior to effecting the transfer of the property, then terminating the lease by agreement between the parties.

Accordingly, this section provides that when valuing property for the purposes of a stamp Act:

- an encumbrance on the land or other property; or
- any interest, agreement or arrangement that is not an encumbrance that was granted or made on or after 27 December 1996 and has the effect of reducing the value of the land or other property is to be disregarded.

The date of 27 December 1996 is the date the amendments to section 75A, which introduced these provisions, took effect.

Subsection (3) provides that the interest, agreement or arrangement should not be disregarded if the Commissioner can be satisfied that the interest, agreement or arrangement was granted or made for a reason other than to reduce the value of the property.

In addition, the Commissioner must also be satisfied that the interest, agreement or arrangement did not involve certain persons likely to benefit via lower stamp duty if such an arrangement is ignored. Specifically, the Commissioner must be satisfied that the interest, agreement or arrangement was not granted or made in favour of:

- the taxpayer;
- where the instrument is chargeable with duty under item 19 of the Second Schedule to the principal Act:
 - the person on whom the land or other property is settled or agreed to be settled;
 - a person to whom the property is given or agreed to be given; or
 - a person for whom it is declared to be held in trust;
- a person who acquired the majority interest or further interest where the valuation is made in respect of a relevant acquisition to which Division 3 of Part IIIA applies; or

- a person who is associated with or related to a person referred to above (within the meaning of section 76).

Subsection (4) defines "land" for the purposes of section 33.

Section 34 (Duplicates and counterparts) was previously section 35 and it has been redrafted and relocated by this clause. It now provides that a duplicate or counterpart is chargeable with duty under item 9 of the Second Schedule. A corresponding amendment to item 9 of the Second Schedule has been made to ensure that the original and the duplicates can be identified.

Section 35 (Liability of person in possession of unstamped conveyance or transfer) is a new provision. This provision was first proposed in the explanatory memorandum that accompanied the Taxation Administration Bill when it was released for public comment in 1997. However, unlike the suggested provision, this section has been drafted as an offence (as opposed to a requirement to pay a portion of the late payment penalty) and has been limited to only those instruments that are chargeable with duty under item 4 of the Second Schedule to the Stamp Act.

Subsection (1) applies to an:

- independent person (as defined in subsection (3)) who has custody or control of an unstamped transfer (defined in subsection (3) to be an instrument chargeable with duty under item 4 of the Second Schedule to the Stamp Act); or,
- an independent person who in dealing with property the subject of an unstamped transfer, acts on the authority of, in reliance on or in pursuance of the transfer.

That person must either lodge the instrument for assessment or notify the Commissioner about the transfer. The independent person must make the notification as soon as practicable after the person:

- becomes aware that that transfer is an unstamped transfer; or
- ought reasonably to have become aware that the transfer was an unstamped transfer.

Failure to lodge the instrument or notify the Commissioner is an offence for which a maximum penalty of \$20,000 is payable.

Subsection (2) sets out the information that must be included in the notification to the extent that it is known to the person or can be ascertained from the transfer. The information required is:

- the nature of the transfer;
- the names of the parties to the transfer;
- the date on which the transfer was first executed;

- a summary of the principal terms of the transfer (which includes but is not limited to the property to which the transfer relates and the consideration paid or payable for the transfer); and
- any prescribed information.

Where such notification is received, the Commissioner will investigate the whereabouts of the transfer, or alternatively, create a memorandum under clause 20 of the Taxation Administration Bill and assess the duty payable.

Subsection (3) contains definitions of independent person, transfer and unstamped transfer for the purposes of this section.

Clause 21: Section 36 amended

This clause replaces the reference in section 36 (Mode of calculating *ad valorem* duty in certain cases) to "this State" with a reference to Western Australia. As noted above, this is to distinguish the use of Western Australia when it is referred to in a geographical context.

Clause 22: Sections 37 to 39A replaced

This clause repeals sections 37 (Contingent duties), 38 (Instruments held in escrow), 39 (Liability for omission to stamp instruments) and 39A (Recovery of duty and fines). Section 38 is reinserted.

Repealed section 37 has been removed on the basis that proposed section 17C allows the Commissioner to include in an endorsement whatever information he considers appropriate. It should be noted that repealed section 37 was discretionary in its application and the current practices of the Commissioner in this regard will continue.

Section 38 (Instruments held in escrow) is reinserted with slight wording changes to take account of the defined term "a stamp Act".

The recovery provisions in Part 6 of the Taxation Administration Bill have replaced repealed sections 39 and 39A.

Clause 23: Section 49A amended

This clause amends section 49A (Exempt cheques) to repeal the transitional provision inserted with the Stamp Act Amendment Act 1979, which is no longer operational. The required section numbering adjustment is also made.

Clause 24: Section 50 amended

This clause makes a number of minor amendments to section 50 (Stamping of bills) of the Act.

Subclause (1) repeals and reinserts subsection (1), changing the tense of the offence provision. It also inserts a specific offence penalty under subsection (1) of \$20,000.

Subclause (2) deletes the reference to "duly" in section 50(2).

Subclause (3) repeals subsections 50(3) and (4). Subsection (3) is deleted on the basis that revenue stamps are being abolished under this Bill. It should be noted that this provision applied in respect of foreign bills and promissory notes (excluding foreign cheques) and its operation was very limited. Alternative payment arrangements are available under special tax return provisions in Division 2 of Part 5 of the Taxation Administration Bill. An approval granted under that section is likely to be granted on the same terms and conditions.

Clause 25: Section 50A repealed

This clause repeals section 50A (Cancellation of adhesive stamps on bills) on the basis that adhesive stamps will no longer be available under the Stamp Act. As noted above, alternative payment arrangements for any of the limited circumstances where the adhesive stamps are still used will be available under the Taxation Administration Act.

Clause 26: Section 50B amended

This clause amends section 50B (One bill in set only to be stamped) in subsections (1) and (2) by deleting the references to "duly".

Clause 27: Section 50D amended

This clause makes a numerical amendment to the subsection designations in section 50D (Provision for stamping foreign bills) and deletes the reference to "duly" in subsection (1) in both places it occurs. It also repeals subsections (2), (3) and (4) as these subsections deal with adhesive stamps, which are being abolished.

Clause 28: Section 52 repealed

This clause repeals section 52 (Printing of "Stamp Duty Paid" on cheques). These return arrangements will now operate under Division 2 of Part 5 of the Taxation Administration Act. The transitional provision in clause 45 of the Taxation Administration (Consequential Provisions) Bill 2001 ensures that persons already authorised to use section 52 of the Stamp Act will automatically be authorised under the new Taxation Administration Act provisions.

Clause 29: Heading deleted

This clause amends the heading "Conveyances on Sale" immediately before section 63. This heading and other headings in the section have been deleted, as they are unnecessary.

Clause 30: Section 63 amended

This clause amends section 63(4)(a)(i) by deleting the reference to body corporate and replacing it with "corporation". The term "corporation" is defined in section 4 of the Stamp Act.

Clause 31: Section 63A amended

This clause amends section 63A (Duty on certain decrees and orders) to ensure the proposed new processes under the Taxation Administration Act apply to the Stamp Act.

Subclause (1) provides an exception provision to ensure that the duty on a decree or order referred to in section 63A(1) is assessed with duty that does not exceed an amount equal to the value referred to in a decree or order. This ensures that the valuation provisions contained in clause 33 and proposed sections 21 and 22 of the Taxation Administration Act cannot be used to determine a market value higher than the value stated in the decree or order.

Subclause (2) amends the requirements in section 63A(2) to denote the duty on the decree or order on the basis that these requirements are provided for in proposed section 17C.

Clause 32: Section 65 amended

This clause amends section 65 (How *ad valorem* duty to be calculated in respect of securities and periodical payments) by removing the reference in subsection (1) to "in accordance with the provisions of this Act". This has been done on the basis that the proposed valuation provisions contained in the Taxation Administration Act will also apply.

Clause 33: Section 66 amended

This clause deletes the reference in section 66 (How conveyances in consideration of a debt or subject to future payment, etc., to be charged) to "in accordance with this Act" and replaces it with the similar term "accordingly".

Clause 34: Section 67 amended

This clause deletes a superfluous subsection designation.

Clause 35: Section 69 amended

This clause amends section 69 (Conveyance duty in cases where conveyance made at request or by direction of intermediary) in subsection (1) to reflect current drafting style and to insert the defined meaning of "several", which was previously located in section 4.

Clause 36: Section 70 amended

This clause makes a number of minor amendments to section 70 (Certain transfers of chattels dutiable).

Subclause (1) is amended to correct previous drafting oversights and delete a reference to "motor", on the basis that a motor vehicle licence will now be referred to as a "vehicle licence" under new Part IIIC of the Act.

Subclause (2) amends section 70(3)(a)(ii) to replace the previously defined term "several" with its actual meaning.

Clause 37: Section 71 amended

This clause amends section 71 (Where several instruments, the principal instrument only is to be charged with *ad valorem* duty) to replace the previously defined term "several" with its actual meaning.

Clause 38: Heading deleted

This clause deletes the superfluous heading of "Transfer of mortgages".

Clause 39: Section 72 amended

This clause makes a number of minor amendments to section 72 (Transfer or assignment of mortgages for value)

Subclause (1) amends section 72(2) to replace the previously defined term "several" with its actual meaning.

Subclause (2) amends section 72(4) by removing the requirements to denote duty on an instrument. The provisions of proposed section 17C have replaced this requirement.

Clause 40: Heading deleted

This clause deletes the superfluous heading "Documents Treated as Conveyances".

Clause 41: Section 73 amended

This clause amends section 73 (As to conveyances on any occasion except sale or mortgage) to make a minor numbering adjustment to the section and update the reference to "this Act" with a reference to the newly defined term "stamp Act".

Clause 42: Section 73A amended

This clause amends section 73A (Conveyance subject to an option) to make minor changes and ensure that the refund of duty under the section is consistent with the proposed reassessment and refund provisions of the Taxation Administration Act.

Subclause (1) amends subsection (1) to remove two superfluous phrases. It also replaces the phrase at the end of the subsection with two new paragraphs, to avoid any doubt arising that both amounts are to be taken into account.

Subclause (2) amends section 73A(5) and inserts two new paragraphs (c) and (d).

Paragraph (c) provides that when the requirements of paragraphs (5)(a) and (b) are met, the amount of duty payable is a reduced amount that is equal to the ad valorem duty that would have been payable if the consideration was only the amount in subsection (1)(a).

Paragraph (d) also requires that the amount of duty payable on any reconveyance or retransfer of the property referred to in (b) be charged in accordance with item 6 of the Second Schedule.

Subclause (3) inserts two new subsections (5a) and (5b).

Subsection (5a) provides that despite section 17 of the Taxation Administration Bill, the Commissioner must make a reassessment to give effect to section 73A. The result of the reassessment will be that the amount of overpaid duty is refunded under section 54(1)(a) of the Taxation Administration Act.

Subsection (5b) provides an alternative date by which the reassessment must be made under subsection (5a). This is the later of the 5 years from the:

- date of the reconveyance or retransfer referred to in subsection (5)(b)(i); or
- expiry of the time within which the option could have been exercised as referred to in subsection (5a).

Clause 43: Section 73AA amended

This clause makes a number of minor amendments to section 73AA (Duty on conveyance not passing a beneficial interest).

Subclause (1) makes a minor grammatical change to section 73AA(1)(c).

Subclause (2) makes a minor grammatical change to section 73AA(1)(d) and replaces the term "natural person" with "individual". The term "individual" has been used throughout the Taxation Administration Act and the replaced taxation Acts when referring to a "natural person".

Subclause (3) makes a minor change to the wording in section 73AA(1)(f). The effect of the amendment does not change the meaning of the provision.

Clause 44: Section 73B amended

This clause amends section 73B (Conveyance agreement subject to unilateral determination) in a manner similar to the amendments made to sections 73A and 73C.

Subclause (1) amends section 73B(1) by removing superfluous phrases.

Subclause (2) amends section 73B(3) by removing a superfluous phrase and redrafting the refund requirements. The section will now provide that the amount of duty paid on the agreement under subsection (1) is to be reduced to the amount of duty that would have been paid had the consideration (ie. that referred to in subsection (1)) been the amount of the payment(s) paid or due or payable by the determiner at the time of the determination.

Subclause (3) inserts new subsections (4) and (5).

Subsection (4) provides that despite section 17 of the Taxation Administration Act, the Commissioner must make a reassessment to give effect to section 73B. The result of the reassessment will be that the amount of overpaid duty is refunded under section 54(1)(a) of the Taxation Administration Act.

Subsection (5) provides an alternative date by which the reassessment must be made under subsection (4). This is 5 years from the date the determination was made.

Clause 45: Section 73C amended

This clause amends the refund provision in section 73C (Option to purchase with right to renew).

Subclause (1) amends section 73C(3) to ensure that the instrument is reassessed if the circumstances in subsections (3)(a) or (b) occur before the final occasion. In that case, the duty payable on the instrument is reduced to the amount that would have been payable if the consideration had been equal to the amount paid or payable in respect of the occasion or occasions in the instrument that have actually occurred.

Subclause (2) inserts new subsections (4) and (5).

Subsection (4) provides that despite section 17 of the Taxation Administration Act, the Commissioner must make a reassessment to give effect to section 73C. The result of the reassessment will be that the amount of overpaid duty is refunded under section 54(1)(a) of the Taxation Administration Act.

Subsection (5) provides an alternative date by which the reassessment must be made under subsection (4). This is 5 years from the date the person exercised the option or failed to renew the right of option.

Clause 46: Section 73D amended

This clause makes minor amendments to section 73D (Disposition of units in unit trust schemes).

Subclause (1) amends section 73D(1) by making a minor grammatical change in the definition of "disposition" and by deleting a superfluous reference to "and" after the definition of "transfer".

Subclause (2) amends section 73D(2) to reflect the new definition of "stamped". It also inserts a specific offence penalty under subsection (2) rather than relying on the repealed offence previously located in subsection (3). The amount of the penalty is now \$20,000.

Subclause (3) repeals the offence located in section 73D(3) for recording an unstamped disposition of units in a unit trust scheme. The offence is now located in subsection (2) where the recording obligation is created.

Subclause (4) amends section 73D(4)(a) by updating the reference to "the State" to "Western Australia".

Subclause (5) amends section 73D(6a) to refer to the defined term "interstate duty" and section (6a)(c) to update the reference to "the State" to "Western Australia".

Subclause (6) amends section 73D(8) to make the period for retaining a transfer or instrument consistent with the five year record keeping provision in clause 79 of the Taxation Administration Bill.

Subclause (7) deletes the offence penalty in section 73D(9), on the basis that the offence is linked to clause 79 of the Taxation Administration Bill.

Clause 47: Section 73DA amended

This clause makes amendments to section 73DA (Shares owned by unit trust deemed to be land in certain cases).

Subclause (1) repeals and replaces subsection (1) to correct a grammatical error.

Subclause (2) amends section 73DA(2) to replace a reference to " the State" with a reference to " Western Australia" .

Subclause (3) amends section 73DA(3)(a) to replace a reference to " and" with a reference to " or" . This amendment is on the basis that the defined term company cannot be a company under Division 2 of Part IIIBA and Division 3 of Part IIIBA at the same time.

Clause 48: Section 73E amended

This clause makes minor amendments to section 73E (Disposition of shares in discretionary trustee companies).

Subclause (1) amends section 73E(2) to make a grammatical change. It also updates a reference to " stamped" and inserts a specific offence penalty of \$20,000 for an offence under subsection (2).

Subclause (2) repeals section 73E(3) on the basis that the offence penalty is now part of subsection (2).

Subclause (3) amends subsection 73E(9) by requiring that the transfer or instrument be kept for the five year period provided in clause 79 of the Taxation Administration Bill.

Subclause (4) repeals section 73E(10). This offence is provided by clause 79 of the Taxation Administration Bill.

Clause 49: Section 73F amended

This clause makes a number of minor amendments to section 73F (Acquisition of a licence to carry on a business activity). Each reference in the section to " the State" is being replaced with a reference to " Western Australia" . A superfluous reference is also being removed from subsection (3).

Clause 50: Section 74 amended

This clause amends section 74 (Certain contracts to be chargeable as conveyances on sale) to remove a reference to " duly" and update subsection (4) to delete the specific requirements to denote the payment of duty on an instrument. These requirements are now contained in proposed section 17C of the Act.

Clause 51: Section 74A amended

This clause amends section 74A (Duty chargeable on certain conveyances of corporation property) by making three amendments to insert the words " and" and " or" in appropriate places.

Clause 52: Section 75 amended

This clause makes minor amendments to section 75 (Duty chargeable on conveyance for less than full consideration).

Subclause (1) makes a minor grammatical change to section 75(3)(c).

Subclause (2) makes a minor grammatical change to section 75(3)(d) and changes a reference to "natural person" to "individual" .

Subclause (3) makes a minor grammatical change to section 73(3)(f).

Subclause (4) repeals section 75(4) on the basis that the requirements for the Commissioner to express his opinion on instruments have been removed with the deletion of section 31 of the Act.

Clause 53: Sections 75A and 75AA replaced

This clause repeals section 75A (Valuation of property for assessment purposes) and section 75AA (Power of exemption or refund for certain purposes). Section 75A has been partially replaced by the powers in clauses 21 and 22 of the Taxation Administration Bill and by the insertion of proposed section 33 of the Act.

Section 75AA has been reinserted as section 75A. Where duty is paid on an instrument and a refund is subsequently sought, the exemption would be allowed under this section and the proposed reassessment and refund provisions in Part 3 and clause 54 of the Taxation Administration Bill. The application of the Taxation Administration Bill in this manner means the reassessment would be subject to the five year time limit where duty is paid on the instrument.

Clause 54: Section 75AB amended

This clause amends section 75AB (Power of exemption in respect of certain funds or schemes) to relocate the exemption operation of the section. Where the Commissioner is satisfied that the requirements of the provision are met, he will exempt the ad valorem duty payable on any instrument. If duty has been assessed and paid on an instrument, the reassessment provisions, including the five year time limit will apply, and any refund of overpaid duty will be refunded in accordance with clause 54 of the Taxation Administration Bill.

Clause 55: Section 75ABA amended

This clause amends section 75ABA (Power of exemption for transfers by bankruptcy trustee to bankrupt) by deleting the requirement to endorse the instrument in subsection (1). That requirement will be provided in proposed section 17C of the Act.

Clause 56: Section 75AE replaced

This clause repeals section 75AE (Rebate of duty for certain dwellinghouses and businesses) and replaces it in more contemporary language.

Subsection (1) is the provision that allows concessional duty to be assessed on a conveyance or transfer of residential property or business property under item 4(5) of the Second Schedule to the Stamp Act. This rate is lower than the rates applying under item 4(1) of the Second Schedule.

Paragraph (a) requires that the conveyance or transfer instrument, if not for the concession provided by this section, would have been charged with duty under item 4(1) of the Second Schedule. This means that a gift of residential or business property that is subject to duty under item 19 of the Second

Schedule would not qualify for concessional assessment under this provision.

Paragraph (b) provides the value of the residential property or business property cannot exceed \$135,000. In the case of business property, this reference is taken to be the value of the business property that is chargeable with duty. For example, in a sale of a lease-hold business where section 70 of the Act does not apply, the value of chattels conveyed or transferred as business property would not be included for the purposes of ascertaining whether the other business property meets this value limit.

Paragraph (c) requires that the residential or business property be conveyed or transferred to an eligible purchaser where there is only one purchaser.

Where there are two or more purchasers of business property, each purchaser must be an eligible purchaser.

Where there are two or more purchasers of residential property, each purchaser must be an eligible purchaser, unless one or more purchasers is a government body. However, if there are two purchasers, both of them cannot be government bodies.

Subsection (2) requires that a reassessment be made to give effect to this section. This applies subject to the time limits in proposed section 17 of the Taxation Administration Act.

Subsection (3) provides a number of definitions that operate for the purposes of section 75AE. The definitions have been formulated from requirements that already exist in section 75AE.

It should be noted that the definition of "eligible purchaser" is different depending on the type of property being purchased. In the case of the purchase of residential property, the purchasers must be individuals (ie. natural persons). In the case of business property, the purchasers must be persons. This means the concession would be available if, for example, business property was purchased by a company.

Clause 57: Section 75AF amended

This clause amends section 75AF (Computation of duty where several instruments) to replace the previously defined term "several" with its actual meaning.

Clause 58: Section 75AG replaced

Section 75AG (Rebate or refund of duty for first home owners) has been repealed and replaced. The repealed section had developed a number of inconsistencies due to the number of amendments to the original 1989 provision. The redrafted version has adopted a better structure to ensure that the rebate operates in the manner intended.

Subsection (1) sets out the circumstances in which a reduction in the duty payable will be allowed in respect of the purchase of "residential property". "Residential property" is defined in subsection (8) to be property that includes a dwellinghouse.

The reduction is available if duty on the conveyance or transfer is payable under item 4(1), 4(5) or 19 of the Second Schedule to the Stamp Act. These items respectively relate to normal conveyance duty, the concessional rate of conveyance duty under section 75AE and conveyance duty payable on a gift of property.

The qualifying criteria for the reduction are:

- Each purchaser (or donee where item 19 of the Second Schedule is applicable) must intend to occupy the dwellinghouse as a principal place of residence. Where the purchaser is a trustee (within the meaning of the definition in subsection (8)), it must be intended that the person on whose behalf the trustee purchased the property occupy the property as a principal place of residence. It should be noted that the reduction is not available where the property is purchased by a trustee of a discretionary trust or unit trust;
- At least one of the purchasers or donees must be a first home owner (within the meaning of the definition in subsection (8)). In the case of a trustee, at least one of the persons for whom the property is held on trust by the trustee must be a first home owner;
- The value of the property being purchased by or gifted to the first home owner must be valued at:
 - \$202,500 or less if the property is located above the 26th parallel of south latitude (as a general guide this is a line of latitude that runs in an easterly direction from a point just south of Denham in the Shire of Shark Bay); or
 - \$135,000 or less if the property is situated south of this line of latitude.

Subsection (2) provides a formula for calculating the amount of the reduction. This is necessary to address those circumstances where only a partial reduction is available because not all purchasers are first home owners or where the duty payable was less than the maximum reduction or refund amount of \$500.

Notably, where a proportion of a property is purchased with a government body (as defined in section 4) and a first home owner or a trustee holding the property on trust for a first home owner, the full amount of the reduction is still available.

Subsection (3) sets out the circumstances in which a refund of the duty payable will be allowed in respect of the purchase of vacant land (or property treated as if it were vacant land). The

difference in the structure of this subclause reflects the fact that the reduction of duty payable is not made until after the construction of the dwellinghouse on the land commences. Hence, it is a refund of duty, rather than a reduction made at the time of stamping the instrument of conveyance or transfer.

The refund is available to a first home owner or a trustee of a first home owner if duty on the conveyance or transfer is payable under item 4(1), 4(5) or 19 of the Second Schedule to the Stamp Act. As noted above, these items respectively relate to normal conveyance duty, the concessional rate of conveyance duty under section 75AE and conveyance duty payable on a gift of property.

The qualifying criteria for the reduction are:

- The first home owner or trustee on behalf of a first home owner must purchase either vacant land or residential property that is not occupied.
- Within 48 months of the purchase, the first home owner or trustee must commence the construction of a dwellinghouse (if vacant land was purchased) or a new dwellinghouse (if residential property that is not occupied was purchased).
- Each owner of the land (or donee where item 19 of the Second Schedule is applicable) must intend to occupy the dwellinghouse as a principal place of residence. Where a government body is an owner, it is not required to meet this criterion. Where the owner is a trustee (within the meaning of the definition in subsection (8)), it must be intended that the person on whose behalf the trustee owns the property occupy it as a principal place of residence. It should be noted that the reduction is not available where a trustee of a discretionary trust or unit trust purchases the property.
- The value of the vacant land or residential property that is not occupied must be \$52,000 or less at the time of the conveyance or transfer.

Subsection (4) provides a formula for calculating the amount of the refund. This is necessary to address those circumstances where only a partial refund is available because not all owners are first home owners or where the duty payable was less than the maximum refund amount of \$500.

As noted in subsection (1), where a proportion of a property is purchased with a government body (as defined in section 4) and a first home owner or a trustee holding the property on trust for a first home owner, the full amount of the reduction is still available.

This section accommodates partial refunds of duty where not all owners are first home owners, due to the reference in subsection

(3) to the first home owner and the manner that the variable " D" is constructed in this subsection.

Subsection (5) provides that if the conveyance or transfer is chargeable with duty under item 19 of the Second Schedule, the Commissioner must be satisfied that the first home owner actually paid, or will pay, the duty chargeable. This provision is necessary in relation to duty under item 19 of the Second Schedule, as it is the donor, rather than the donee, who is liable to pay the duty. The reduction of the duty payable will not be allowed unless documentary evidence of the payment by the first home owner can be provided.

Subsection (6) directs that the Commissioner must make a reassessment of the duty payable to give effect to this section. This power is subject to clause 17 of the Taxation Administration Bill, meaning that the time limits for reassessments set out in that clause must be observed.

Subsection (7) includes a number of defined terms for the purposes of the section.

Clause 59: Section 75C amended

This clause makes a number of minor changes to section 75C (Power of exemption for certain conveyances between spouses).

Subclause (1) amends section 75C(3) by deleting the requirement that the application be in writing. The application must now be in an approved form. An application form for this exemption is available from the Office of State Revenue.

Subclause (2) amends section 75C(3a) by removing the endorsement requirement. This requirement is now provided in proposed section 17C of the Act.

Subclause (3) repeals section 75C(3b). The offence previously provided in this section is now located in clause 98 of the Taxation Administration Bill.

Subclause (4) amends section 75C(4) in paragraph (a) of the definition of "lot" by deleting the reference to the superseded Land Tax Assessment Act 1976. The provision now refers to the Land Tax Assessment Act 2001.

Clause 60: Section 75D amended

This clause makes several minor amendments to section 75D (Interpretation).

Subclause (1) amends subsection (1) in the definition of "family member" to make clear that the former spouse of the person who makes the transfer is a family member, while the former spouse of any other person in paragraphs (a), (b), (c) or (d) of the definition is not a family member.

Subclause (2) amends subsection (1) in the definition of "instrument of conveyance" by replacing the reference to a statement required to be lodged under Part IIIBA, with the new defined term "Part IIIBA statement".

Clause 61: Section 75E amended

This clause makes a number of minor amendments to section 75E (Application of this Part).

Subclause (1) amends section 75E(1) by deleting the application of the defined term "transferor", insofar as it applies to section 75HA. A specific provision has been inserted into section 75HA to define "transferor" for the purposes of that section.

A minor amendment is also made to the end of subsection (1)(d) by replacing a reference to "and" with a reference to "or".

Subclause (2) amends section 75E(5) by removing the specific reference to refunds. This is consistent with the Taxation Administration Bill reassessment and refund provisions, which provide the mechanics for reassessing duty payable where an exemption is applicable.

Subclause (3) amends section 75E(6) for the same reasons as the amendment to section 75E(5).

Clause 62: Section 75F replaced

This clause repeals and replaces section 75F (Exemption or refund of duty for farming property).

Section 75F now provides an exemption power where the Commissioner is satisfied that the Part applies to an instrument of conveyance and an application has been received under section 75H.

As noted earlier, if duty has been paid on the instrument of conveyance, and the provisions of that part were applicable to that instrument, the reassessment provisions of the Taxation Administration Bill would apply and any overpaid duty is refunded in accordance with clause 54 of the Taxation Administration Bill.

Clause 63: Section 75G amended

This clause makes a number of minor amendments to section 75G (Partial exemption or partial refund of duty) to update obsolete references to the Stamp Act and replace them with the defined term "stamp Act". References to the previous valuation provision in section 75A have been updated to refer to section 33 of the Stamp Act and clauses 21 and 22 of the Taxation Administration Bill.

Clause 64: Section 75H replaced

This clause replaces section 75H (Application for exemption or refund) and substantially simplifies the operation of the provision.

Section 75H now refers only to an application for an exemption, rather than an application for an exemption or refund. As noted earlier, the reassessment and refund provisions of the Taxation Administration Bill will apply where duty is paid on an instrument and this Part is subsequently found to apply.

Clause 65: Section 75HA amended

This clause makes a number of amendments to section 75HA (Subsequent liability for duty in certain circumstances) including a replacement of subsections (5) to (10).

Subclause (1) replaces the definition of “farming exemption” in section 75HA(1). The new definition now refers to an exemption or partial exemption rather than an exemption and refund or partial exemption or partial refund. This subclause also makes a minor punctuation change and inserts the definition of “the transferor” which previously applied under the authorisation of section 75E.

Subclause (2) amends section 75HA(3) by replacing the reference to an exemption that has been allowed with an exemption that has been granted. The subclause also updates the reference to a statement lodged under this section with a dutiable statement in respect of a taxable event. This subclause also inserts a specific offence penalty of \$20,000, which has been relocated from existing subsection (10).

Subclause (3) inserts a new subsection (3a), which is a requirement for a dutiable statement to be in an approved form.

Subclause (4) amends section 75HA(4) by removing references to the lodgement of a statement and replacing them with references to the preparation of a dutiable statement.

Subclause (5) repeals section 75HA(5) to (10) and inserts new subsections (5) to (8).

Subsection (5) is equivalent to the existing subsection. The section provides that a statement pertaining to a farming exemption previously granted for a transfer of farming property, or an interest in a farming partnership, is to be charged with duty as if it were an instrument operating as a voluntary disposition under section 75(1) of the Act of the farming property, or interest in the farming partnership, that is still owned by the discretionary trust at the date of the taxable event. This provision ensures that the dutiable statement falls within the charging provisions of the Act and Second Schedule.

Subsection (6) is equivalent to the existing subsection. This subsection applies to a dutiable statement pertaining to a

farming exemption previously granted for a transfer of shares in a farming company where a Part IIIA statement was prepared in relation to that transfer and the farming company still owns any part of the farming land that was subject to the Part IIIA statement.

In these circumstances the statement is to be subject to duty as if it were an instrument operating as a voluntary disposition of that proportion of farming land or part of the farming land that bears the same proportion as the number of exempted shares held by the discretionary trust at the date of the taxable event to the total number of entitled shares as defined in section 75HA(1) in the farming company.

Subsection (7) applies to a statement pertaining to a farming exemption previously granted for a transfer of shares in a farming company, where either a statement under Part IIIA was not required to be prepared in respect of the transfer or, a Part IIIA statement was prepared but the farming company no longer holds the farming land which was the subject of the Part IIIA statement.

In these circumstances, the dutiable statement is to be subject to duty as if it were a voluntary disposition of all the shares still owned by the discretionary trustee at the date of the taxable event and is to be charged with duty at marketable security rates only.

Subsection (8) provides the duty on a statement in respect of an instrument or conveyance referred to in section 75E(1)(e)(ii) (an interest in a farming partnership) or section 75E(1)(e)(iii) (a share in a farming company) is to be reduced by the amount of duty paid on the transfer instrument.

The requirements previously located in subsection (9) are now covered by proposed section 17 of the Stamp Act.

The requirements of existing subsection (10) have been inserted into subsection (3) in the case of the offence for failing to lodge the dutiable statement, and in the case of an offence for providing a statement that is false in a material particular, the provisions of clause 98 of the Taxation Administration Bill apply.

Clause 66: Section 75I replaced

This clause repeals and replaces section 75I (Part IIIA companies) of the Act.

Subsection (1) reconstitutes existing subsection (1), removing the requirement to refund or partially refund duty paid on a Part IIIA statement. As noted with earlier clauses, the reassessment and refund provisions will automatically apply once the Commissioner exempts or partially exempts the statement.

Subsection (2) is equivalent to existing subsection (2), however, it corrects three errors in the existing subsection. The first is in relation to the meaning of "A" which previously only referred to farming land, rather than farming property.

The second correction is in the meaning of "B", which only referred to the value of all land the subject of the Part IIIA statement. This now correctly refers to the value of land and chattels the subject of the Part IIIA statement.

The third error was located in the meaning of "C", which did not take account of the reduction available under section 76AH(3), in respect of marketable security duty paid on the Part IIIA statement. This has been corrected.

Subsection (3) reinstates the existing subsection (3), such that the exemption is only available within the twelve months period after which the Part IIIA statement was stamped. This overrides the five year reassessment limit in clause 17(1) of the Taxation Administration Bill.

Clause 67: Section 75J amended

This clause makes a number of minor amendments to section 75J (Interpretation in this Part).

Subclause (1) amends section 75J(1) by inserting "or" in the meaning of foreign person to distinguish between paragraphs (a) and (b). It also deletes the definition of "Part IIIA statement", which has been inserted in section 4 of the Act. The subclause also amends the definition of "section 31B statement" to refer to a dutiable statement prepared under section 31B, rather than a dutiable statement lodged under that section.

Subclause (2) repeals section 75J(4). To the extent required, the provision has been reinserted as new section 75JA(6).

Clause 68: Section 75JA amended

This clause amends section 75JA (Corporate reconstructions: exemptions).

Subclause (1) amends section 75JA(1a)(c) to make it clear that it is the stock exchange that must be situated in the country where the transferee is incorporated.

Subclause (2) amends section 75JA(2)(b) by replacing the reference to "lodged" with a reference to "prepared". This change reflects the new stamp duty payment arrangements in proposed section 17A.

Subclause (3) amends section 75JA(3) by inserting a reference to the defined term "Part IIIA statement" and requiring the notification to be in an approved form.

Subclause (4) inserts new subsections 75JA(5) and (6).

Subsection (5) specifies that a decision by the Commissioner under section 75JA(3) is a non-reviewable decision. This reproduces the removal of the objection right that was previously located in section 32(6).

Subsection (6) partially reproduces repealed section 75J(4), to provide that an instrument does not include a section 31B statement for the purposes of this section.

Clause 69: Section 75JB amended

This clause makes a number of minor amendments to section 75JB (Corporate reorganizations: exemption from duty on conveyances between associated bodies corporate).

Subclause (1) amends section 75JB(1) by making a minor amendment to paragraph (b) regarding the exemption being under the Stamp Act. The terminology and dutiable statement requirements have also been updated in subsection (1)(d)(iii).

Subclause (2) amends section 75JB(2)(b) by inserting the defined term "interstate duty".

Subclause (3) amends section 75JB(3)(b) by updating the reference to "lodged" to a reference to "prepared".

Subclause (4) amends section 75JB(4) by deleting a superfluous reference to "or" after paragraph (b) and requiring that the notification of the relevant event be given to the Commissioner in an approved form.

Subclause (5) amends section 75JB(5f)(c) and (5h) by requiring that the notification and application should respectively be in an approved form.

Subclause (6) repeals section 75JB(5i), as the Taxation Administration Bill provides the necessary power for the Commissioner to require the person making the application to provide any information or evidence necessary for the purposes of section 75JB(5g).

Subclause (7) amends section 75JB(8) by changing a reference from "fine" to "penalty tax" in order to maintain consistency with the terminology of the Taxation Administration Bill.

Subclause (8) inserts a new subsection (9) that makes a decision by the Commissioner under section 75JB(7) a non-reviewable decision. This reinstates the previous status of a decision under this subsection as one that cannot be objected to. This restriction was previously located in section 32(6) of the Act.

Clause 70: Section 75JBA amended

This clause makes two minor amendments to section 75JBA (Operation of clawback – application for pre-determination in certain cases).

Subclause (1) updates section 75JBA(3) by requiring that the request be made in an approved form.

Subclause (2) repeals section 75JBA(4), as the Taxation Administration Bill contains powers that will ensure the Commissioner can require any person making a request to provide information or evidence that the Commissioner needs to make the determination.

Clause 71: Section 75JC amended

This clause makes amendments to section 75JC (Corporate reorganizations: application for pre-determination).

Subclause (1) replaces subsection (1) in an easier to read format. The operation of this subsection has not changed. It provides the ability for any person proposing to be a party to a transaction to request that the Commissioner give a pre-determination as to the exempt status of the proposed instrument or Part IIIA statement that is to evidence the transaction.

Subclause (2) amends section 75JC(2) by requiring that a request under section 75JC(1) be made in an approved form.

Subclause (3) amends section 75JC(5)(a) by replacing the reference to "lodged" with a reference to "finalised". This change reflects the new payment arrangements in proposed section 17A of the Act.

Clause 72: Section 75JD amended

This clause amends section 75JD (Corporate reorganizations: application for exemption).

Subclause (1) repeals and replaces subsections (1), (2) and (3).

Subsection (1) requires an exemption application under section 75JA or 75JB to be made in an approved form.

Subsection (2) overrides the 5 year reassessment application period in proposed section 17(1) of the Taxation Administration Act, and requires that an application for an exemption under the relevant sections be made to the Commissioner within twelve months of the execution of the instrument or twelve months after the date of the relevant acquisition in the case of the Part IIIA statement.

Subsection (3) requires the Commissioner to make any reassessment necessary to give effect to the exemption in accordance with section 17 of the Taxation Administration Act. This would result in the overpaid duty being refunded to the taxpayer.

Subclause (2) amends section 75JD(4) by deleting the reference to "fine" and replacing it with a reference to "penalty tax" under the relevant sections. It also adjusts the date to which the

amount is to be calculated to the date the assessment notice is issued by the Commissioner.

Clause 73: Section 75JDA amended

This clause amends section 75JDA (Exemption may be withheld in certain cases).

Subclause (1) amends section 75JDA(2) by removing the reference to a "statement" and replacing it with a reference to the defined term "Part IIIBA statement". A reference to "lodged" is also replaced with a reference to "finalised". This last amendment results from the changed payment arrangement set out in proposed section 17A of the Act.

Subclause (2) amends section 75JDA(3) and (4) by removing the references to a "statement" and replacing them with references to the defined term "Part IIIBA statement".

Clause 74: Section 75JE amended

This clause makes a number of minor amendments to section 75JE (Claw-back (instruments)).

Subclause (1) amends section 75JE(1) by:

- Making a numbering adjustment;
- Deleting the reference to "fine" and replacing it with a reference to "penalty tax" in paragraphs (b), (c), (d), (da), (e) and (f);
- Adjusting a date to which the amount may be calculated to the date the assessment notice is issued by the Commissioner under paragraph (c); and
- Removing a reference to "duly" stamped in paragraph (f), which is no longer necessary.

Subclause (2) repeals subsection 75JE(2). The penalty tax remission power is relocated in the Taxation Administration Bill.

Clause 75: Section 75JF amended

This clause makes a number of minor amendments to section 75JF (Claw-back (Part IIIBA statements)).

Subclause (1) amends section 75JF(1) by:

- Making a numbering adjustment;
- Removing the reference to a "statement" in paragraphs (a), (b) and (f) and replacing it with a reference to the defined term "Part IIIBA statement";
- Deleting the reference to "fine" and replacing it with a reference to "penalty tax" in paragraphs (b), (c), (d), (e) and (f);

- Adjusting a date to which the amount may be calculated to the date the assessment notice is issued by the Commissioner under paragraph (b);
- Amending paragraph (c) to require that the duty and penalty tax be paid within one month of the date the assessment notice is issued;
- Updating references to statements lodged under sections 76AG and 76AN in paragraph (d) and replacing the references with the defined terms; and
- Removing a reference to "duly" stamped in paragraph (f), which is no longer necessary.

Subclause (2) repeals subsection 75JF(2). The penalty tax remission power is relocated in the Taxation Administration Bill.

Clause 76: Section 75JG amended

This clause makes amendments to section 75JG (Offences and recovery of duty etc.).

Subclause (1) repeals and reinserts subsection (1), which deals with the offences under the Part for failure to notify of a relevant event under section 75JA(3)(c), 75JB(4) or 75JB(5f)(c).

This subsection also specifies that an officer of a body corporate who is knowingly a party to the contravention commits an offence. The meaning of "officer" is adopted from section 9 of the Corporations Act, which states:

"officer of a corporation means:

- (a) a director or secretary of the corporation; or
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
 - (ii) who has the capacity to affect significantly the corporation's financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or
- (c) a receiver, or receiver and manager, of the property of the corporation; or
- (d) an administrator of the corporation; or

- (e) an administrator of a deed of company arrangement executed by the corporation; or
- (f) a liquidator of the corporation; or
- (g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else."

The new section updates the flat component of the penalty to an amount of \$20,000, rather than the \$10,000 amount that previously applied under repealed section 116 of the Act. The multiplier component of the penalty remains unchanged.

Subclause (2) amends section 75JG(2) by deleting the reference to "fine" and replacing it with a reference to "penalty tax".

Subclause (3) amends section 75JG(3) to update the flat component of the penalty to an amount of \$20,000, rather than the \$10,000 amount that previously applied under repealed section 116 of the Act. The multiplier component of the penalty remains unchanged.

Clause 77: Section 76 amended

This clause makes a number of minor amendments to section 76 (Interpretation in Part III BA).

Subclause (1) amends section 76(1) to relocate the word "or" between the paragraphs in the definition of "acquire". An amendment is also made to paragraph (c) of that definition by removing a reference to "declared by this Act to be".

An amendment is also made to the definition of "chattels" in section 76(1) to remove the reference to "motor" and to insert the word "or" between paragraphs (b) and (c).

An amendment is also made to the definition of "minerals" to update the reference to "earth". The definition of "mining tenement" is amended to delete the now redundant reference to the Mining Act 1904, as mining tenements are no longer held under this Act.

Subclauses (2), (3) and (4) include amendments to section 76(2)(a)(v), (2)(b), (3)(a), (3)(d) and (3)(e) to make various replacements of the terminology "natural person". These terms are substituted with "individual", which is the standard term used in all the taxation Acts.

Clause 78: Sections 76A to 76AF replaced

This clause repeals sections 76A (Lodgement of statements by trustees), 76AA (Valuation of land), 76AB (Basis for Assessment of Duty), 76AC (Memorial may be registered on title), 76AD (Charge on land), 76AE (Power of sale) and 76AF (Application of proceeds of sale).

Section 76AA is no longer necessary due to the changes made to the general Stamp Act valuation power (proposed section 33) and clauses 21 and 22 of the Taxation Administration Bill.

Sections 76AC, 76AD, 76AE and 76AF have all been replaced by corresponding provisions in Division 2 of Part 6 of the Taxation Administration Bill.

A new section 76A has been inserted and section 76AB has been reinserted as proposed section 76AA.

Section 76A provides certain deeming arrangements that apply to a relevant acquisition made by a trustee.

Subsection (1) operates to ensure the relevant acquisitions by a trustee are not, on the basis of the definition of "acquire" in section 76, disaggregated to each beneficiary of the trust. For example, where a trust has 5 equal beneficiaries, and the trustee acquires an 80% interest in a land rich company, this provision operates to ensure that the trustee acquires an 80% interest, not the beneficiaries each acquiring a 16% interest each.

Subsection (2) deals with a possible consequence of making the trustee the acquirer.

If a person related (within the meaning of section 76(3)) to the trustee also acquired an interest, both acquisitions would be aggregated to determine if a majority interest was acquired. However, because the trustee is only acquiring the interest on behalf of the beneficiaries of the trust, the aggregation of interests also needs to be directed at acquisitions by other persons related to the trust beneficiaries.

This subsection provides that if the combined acquisitions of beneficiaries and persons related to them is greater than the combined acquisitions of the trustee and a person related to the trustee, the greater interest is taken to be the interest acquired. The following illustrates one example of how the provision would work.

John Smith as the trustee of the Brown Discretionary Trust acquires 40% of a land-rich company. Peter Brown and his children, Joshua and Emily are the beneficiaries of the trust.

Alice Smith, John's wife acquires a 20% interest. Debbie Brown, who is Peter's wife, but not a beneficiary of the trust, acquires a 40% interest.

Subsection (2) allows duty to be charged on the aggregated related interests of the Browns (80%), rather than that of the Smiths (60%), which is appropriate because John Smith was acquiring his interest as trustee for the Browns.

Subsection (3) provides a number of definitions for the purposes of this section.

Section 76AA (Assessment in the absence of a dutiable statement) provides the Commissioner with a default assessing power in respect of a suspected relevant acquisition under Division 3 of Part IIIA. This power is necessary in circumstances where the Commissioner is unable to obtain the necessary information to clarify the circumstances or where a statement under section 76AN is not prepared and lodged as required. Where the Commissioner suspects that a corporation is required to prepare a dutiable statement under section 76AN, he is able to use the powers in proposed sections 19 and 20 of the Taxation Administration Act to raise an assessment.

When this occurs, clause 69(3) of the Taxation Administration Bill will allow the Commissioner to lodge a memorial on the relevant land as soon as an assessment is made.

Clause 79: Division heading amended

This clause amends the heading of Division 2 in Part IIIA by deleting the reference to "the State" and replacing it with a reference "Western Australia".

Clause 80: Section 76AG amended

This clause makes a number of minor amendments to section 76AG (When statement to be lodged).

Subclause (1) amends section 76AG(1) by updating the requirement to lodge a statement. It also relocates the offence penalty for failure to prepare the dutiable statement from subsection (5e) to subsection (1). The amount of the offence penalty is increased from \$10,000 to \$20,000.

Subclause (2) amends section 76AG(2) by updating the reference to a "statement" to a "dutiable statement".

Subclause (3) repeals and reinserts section 76AG(3). The new subsection requires that a dutiable statement be in an approved form and prepared within 4 months after the acquisition occurs (ie. the relevant acquisition in subsection (1)).

Subclause (4) amends section 76AG(4) by updating a reference to dutiable statement. It also deletes a reference to a statement being in a form approved by the Commissioner, as this is now covered by proposed subsection (3).

Subclause (5) amends paragraphs 76AG(4)(d) and (da) by updating the reference to "the State" with a reference to

" Western Australia" and clarifying that the date referred to is the date of the acquisition.

Subclause (6) amends paragraph 76AG(4)(e) to clarify that the date referred to is the date of the acquisition.

Subclause (7) amends paragraph 76AG(4)(f) to a dutiable statement that is prepared, rather than a "statement that is lodged" .

Subclause (8) repeals and replaces section 76AG(5). The purpose of the subsection remains the same, in that it deems a dutiable statement to be an instrument evidencing a relevant acquisition and ensures that duty can be applied accordingly.

Subclause (9) amends section 76AG(5a) by updating the references to statements lodged and replacing them with references to dutiable statements prepared.

Subclause (10) amends paragraphs 76AG(5b)(b) and (c) to make it clear that the subsidiary referred to is any subsidiary of the WA company.

Subclause (11) amends section 76AG(5c) to adopt the altered arrangements applicable to the preparation and lodgement of a dutiable statement. The reference to "written" is also deleted.

Subclause (12) amends section 76AG(5d) to adopt the altered arrangements applicable to the preparation and lodgement of a dutiable statement and remove references to "in writing" and "written" .

Subclause (13) repeals subsections 76AG(5e) and (6). Repealed subsection (5e) is now covered by the insertion of the offence penalty in subsection (1). Subsection (6) is covered by clause 98 of the Taxation Administration Bill.

Clause 81: Section 76AH amended

This clause amends section 76AH (Statement chargeable with duty).

Subclause (1) amends section 76AH(1) by removing particular references to "statements" and inserting a reference to the defined term "section 76AG statement" .

Subclause (2) amends section 76AH(2) in the definition of "A" by deleting the reference to "the State" and replacing it with a reference to "Western Australia" . As noted with earlier changes of this nature, this usage distinguishes references to "the State" where it is used in a geographical context.

Subclause (3) amends section 76AH(3) by inserting references to the defined term "section 76AG statement" and updating references to "lodge" with "prepare" .

Subclause (4) amends section 76AH(4) by inserting references to the defined term "section 76AG statement", making a minor insertion of the word "or" between paragraphs (b) and (c) and updating the reference to "the State" with a reference to "Western Australia".

Subclause (5) amends section 76AH(5) by inserting references to the defined term "section 76AG statement".

Clause 82: Section 76AI amended

This clause makes minor amendments to section 76AI (Companies to which this Division applies).

Subclause (1) amends section 76AI(2)(a) and (b) by updating the references to "the State" with references to "Western Australia".

Subclause (2) repeals section 76AI(2a), (2b) and (2c). These requirements have been consolidated and reinserted as subsection (2a). The effect of this substitution is to ensure a person is not disadvantaged by a determination made by the Commissioner under subsection (2). Where such a determination is made, this subsection operates to avoid late payment penalties that would apply if the actual date of the relevant acquisition was adopted.

Clause 83: Section 76AL amended

This clause amends section 76AL (How dutiable value is determined) by updating references to "the State" with references to "Western Australia". A superfluous reference to "in this section called" in the meaning of "dutiable value" in subsection (1) is also deleted.

Clause 84: Section 76AM amended

This clause makes minor amendments to section 76AM (Liability for duty).

Subclause (1) repeals section 76AM(1). A corresponding provision is located in proposed section 17 of the Act.

Subclause (2) amends section 76AM(2) by deleting a subsection designation. It also makes an amendment to ensure the specification of the duty liability in subsection (2) is not overridden by proposed section 17(1)(c). It also partially replaces the direction as to what duty is chargeable previously located in subsection (1).

Clause 85: Division heading amended

This clause replaces the reference to "the State" with the reference to "Western Australia" in the Division 3 heading.

Clause 86: Section 76AN amended

This clause amends section 76AN (When statement to be lodged) in the same manner as clause 80 amends section 76AG.

Subclause (1) amends section 76AN(1) by updating the requirement to lodge a statement. It also relocates the offence penalty for failure to prepare the dutiable statement from subsection (4e) to subsection (1). The amount of the offence penalty is increased from \$10,000 to \$20,000.

Subclause (2) repeals and reinserts section 76AN(2). The new subsection requires that a dutiable statement be in an approved form and prepared within 4 months after the acquisition (ie. the relevant acquisition in subsection (1)) occurs.

Subclause (3) amends section 76AN(3) by updating a reference to dutiable statement. It also deletes a reference to a statement being in a form approved by the Commissioner, as this is now covered by proposed subsection (2).

Subclause (4) amends section 76AN(3)(d) and (da) by updating the reference to "the State" with a reference to "Western Australia" and clarifying that the date referred to is the date of the acquisition.

Subclause (5) amends section 76AN(3)(e) to clarify that the date referred to is the date of the acquisition.

Subclause (6) amends section 76AN(3)(f) to a dutiable statement that is prepared, rather than a "statement that is lodged" .

Subclause (7) repeals and replaces section 76AN(4). The purpose of the section remains the same, in that it deems a dutiable statement to be an instrument evidencing a relevant acquisition and ensures that duty can be applied accordingly.

Subclause (8) amends section 76AN(4a) by updating the references to statements lodged and replacing them with references to dutiable statements prepared.

Subclause (9) amends section 76AN(4c) to delete the reference to "written" .

Subclause (10) amends section 76AN(4d) to remove references to "in writing" and "written" .

Subclause (11) repeals section 76AN(4e) and (5). Repealed subsection (4e) is now covered by the insertion of the offence penalty in subsection (1). Subsection (5) is covered by clause 98 of the Taxation Administration Bill.

Clause 87: Section 76AO amended

This clause amends section 76AO (Statement chargeable with duty).

Subclause (1) amends section 76AO(1) by removing particular references to "statements" and inserting a reference to the defined term "section 76AN statement" .

Subclause (2) amends section 76AO(2) in the definition of "A" by deleting the reference to "the State" and replacing it with a reference to "Western Australia" . As noted with earlier changes of this nature, this usage distinguishes references to "the State" where it is used in a geographical context.

Subclause (3) amends section 76AO(3) by inserting references to the defined term "section 76AN statement" and updating references to "lodge" with "prepare".

Subclause (4) amends section 76AO(4) by inserting references to the defined term "section 76AN statement", making a minor insertion of the word "or" between paragraphs (b) and (c) and updating the reference to "the State" with a reference to "Western Australia".

Subclause (5) amends section 76AO(5) by inserting references to the defined term "section 76AN statement".

Clause 88: Section 76AP amended

This clause makes minor amendments to section 76AP (Corporations to which this Division applies).

Subclause (1) amends section 76AP(1)(a)(i), (2)(a) and (b) by updating the references to "the State" with references to "Western Australia".

Subclause (2) repeals section 76AP(2a), (2b) and (2c). These requirements have been consolidated and reinserted as subsection (2a). The effect of this substitution is to ensure a person is not disadvantaged by a determination made by the Commissioner under subsection (2). Where such a determination is made, this subsection operates to avoid late payment penalties that would apply if the actual date of the relevant acquisition were adopted.

Clause 89: Section 76AS amended

This clause amends section 76AS (How dutiable value is determined) by updating references to "the State" with references to "Western Australia". A superfluous reference to "in this section called" in the meaning of "dutiable value" in subsection (1) is also deleted.

Clause 90: Section 76AT repealed

This clause repeals section 76AT (Liability for duty). A corresponding provision is located in proposed section 17 of the Act.

Clause 91: Sections 76AU to 76AY replaced

This clause repeals section 76AU (Definitions and operation), 76AV (Request for reassessment of liability for duty), 76AW (Reassessment), 76AX (Effect of reassessment) and 76AY (Refund of duty or payment of reassessed amount). The provisions of these sections have been consolidated and redrafted as section 76AU. The intent of the sections has not changed. It should be noted that a new requirement has been included in proposed subsection (4) to ensure that these specific reassessment

provisions apply in addition to the reassessment provisions set out in Part 3 of the Taxation Administration Act.

Clause 92: Part IIIC replaced (sections 76B to 76CB)

The provisions of Part IIIC of the Act have been repealed and replaced with completely rewritten provisions. There are some policy changes reflected in this redrafted provision, however, the general operation of the motor vehicle licence provisions will be substantially unchanged.

Section 76B (Interpretation in Part IIIC) provides a number of definitions and an interpretation provision that will operate for the purposes of Part IIIC.

Subsection (1) contains the defined terms necessary for the Part.

Subsection (2) applies in respect of the use of vehicles by dealers where an exemption is provided under section 76D(4) and (5).

Section 76C (Non-beneficial change of ownership) provides the ability for vehicle licence transfers to be charged with only nominal duty if it can be shown that there is no change in beneficial ownership of the vehicle to which the licence relates. This section is not relevant to the grant of a vehicle licence for new vehicles.

Subsection (1) provides that the Commissioner may authorise duty to be charged in accordance with section 76D(2) on the application of a person if:

- The Commissioner is satisfied that the change or proposed change in the legal ownership of a vehicle to which a licence relates will not be accompanied by a corresponding change in the beneficial ownership of the vehicle; and
- The transferee of the licence acquired the vehicle to which the licence relates in the capacity of trustee, discretionary trustee or unit trustee (as the case requires) and paid duty on the grant or transfer of the licence at that time.

Subsection (2) requires that an application for the Commissioner to make the above authorisation must be in an approved form. The Office of State Revenue produces a standard application form for this purpose.

Subsection (3) sets out the circumstances, for the purposes of subsection (1)(a), where the change in legal ownership does not result in a change in the beneficial ownership. These are where:

- (a) the legal ownership is changed to effect the appointment of a new trustee or the retirement of the current trustee, whether the trust is express or implied. Due to the definition of "trustee", this requirement does not apply to the appointment or retirement of a trustee of a discretionary or

unit trustee. Such changes must meet the requirements of subsection (3)(f);

- (b) the legal ownership of a vehicle passes to a beneficiary of an express or implied trust by the trustee or other person acting in a fiduciary capacity. Again, a discretionary trustee or unit trustee is excluded from this provision, through both the definition of trustee in section 76B(1) and expressly from being a person acting in a fiduciary capacity;
- (c) the legal ownership of a vehicle passes from the discretionary trustee to a beneficiary under an express or implied discretionary trust other than in exercise of a power of appointment. This covers the vesting of property to a default beneficiary upon the winding up of a discretionary trust, where no specific power of appointment is made;
- (d) the legal ownership of a vehicle passes to a beneficiary under a discretionary trust from the discretionary trustee under the exercise by the trustee of a power of appointment. The following circumstances must be met for this provision to apply:
 - the beneficiary must be an individual (ie. the beneficiary cannot be a company);
 - the beneficiary must acquire the trust property for his or her own use (ie. the property cannot be acquired in any trustee capacity for another person);
 - the beneficiary must have been named in the trust deed or other instrument as a beneficiary or a member of a class of beneficiaries at the time the trustee acquired the vehicle;
- (e) the legal ownership of a vehicle passes from the unit trustee to the holder of a unit in a unit trust scheme, providing the change in legal ownership does not:
 - have the effect of reducing the rights of the transferee (ie. unit holder) in respect of the trust property to the extent of the value of the vehicle; and
 - have the effect of varying, abrogating or altering the rights of the other unit holders in the unit trust in respect of the remaining property; and
- (f) the change in the legal ownership of the vehicle:
 - does not pass a beneficial interest in the vehicle;
 - is not made in contemplation of such an interest passing; and

- is not part of, or pursuant to, a scheme under which a vested or contingent beneficial interest in the vehicle has passed, or will or may pass.

Section 76D contains provisions that set out how stamp duty is to apply to the grant or transfer of a vehicle licence.

Subsection (1) provides that, unless otherwise provided in this section, duty is payable on the grant or transfer of a licence in accordance with item 14 of the Second Schedule to the Act. In this regard it should be noted that the term “grant” is defined to include the renewal of a licence. A renewal of a licence will be subject to duty where it does not fall within the exemption contained in item 9(2) of the Third Schedule to the Act. To be exempt under this item, the licence must be renewed in the name of the person to whom the vehicle was last licensed.

Subsection (2) provides three circumstances where duty will be payable on the transfer of the licence under item 6 of the Second Schedule to the Act. It should be noted that these exceptions do not apply to the grant of a licence.

Paragraph (a) provides that a vehicle that is transferred under a testamentary instrument or upon intestacy will be subject to nominal duty, providing the transfer is made in accordance with the terms of the will or the Administration Act.

Paragraph (b) provides that nominal duty under item 6 of the Second Schedule to the Act will be payable where the Commissioner grants an authorisation under section:

- 76C(1) (ie where he is satisfied that there is no change in beneficial ownership on the transfer of the vehicle licence); or
- 112UE(2) (certain transfers made as result of the conversion of public unit trusts to managed investment schemes). It should be noted that this clause will have limited operation, due to the requirement that all schemes be converted under the Corporations Act within a specific period.

Subsection (3) provides that duty is not payable on the grant of a licence if no fee is payable under the Road Traffic Act for the grant of the licence. Duty is also not payable on the transfer of a licence where no fee under the Road Traffic Act would be payable if the licence had been granted to the transferee on that date rather than transferred.

Subsection (4) provides an exemption for motor vehicle dealers (as defined in proposed section 76C), where the dealer acquires a vehicle upon the transfer of the licence. For the exemption to apply, the vehicle must be acquired solely for the purpose of reselling it to another person, the resale must be in the ordinary course of the dealer’s business and a certificate of certification of that use must accompany the application for transfer. It should

be noted that proposed section 76B(2) applies in interpreting this provision to authorise the use of the vehicle for minor incidental purposes.

Subsection (5) provides an exemption for dealers on the issue of a licence if the dealer acquired the vehicle solely for selling it to another person in the ordinary course of the business or demonstrating it to prospective purchasers. The application for the grant of the licence must be accompanied by a certificate of certification of that use.

Subsection (6) provides concessional duty treatment where certain specialised equipment (as defined in section 76B) is transferred from one eligible vehicle (as defined in section 76B) to another.

The duty concession applies to the grant or transfer of a licence for an eligible vehicle (" **vehicle B** ") where:

- the applicant holds, or previously held, the licence for another eligible vehicle (" **vehicle A** ");
- the applicant is the last person to hold the licence for vehicle A;
- duty was paid on the grant or transfer of the licence for vehicle A by the applicant on the market value of the vehicle including the specialised equipment (" **original equipment** ");
- the original equipment is moved from vehicle A to vehicle B;
- the application for the grant or transfer of the licence for vehicle B is accompanied by a certificate made by the applicant, indicating that while the applicant holds the licence for vehicle B:
 - vehicle B will not be used if the original equipment is removed from it; or
 - if the original equipment is removed and vehicle B is used with different equipment, the original equipment will not be attached to any other vehicle for which the applicant intends to become the licence holder.

The above conditions ensure that the same equipment cannot be relocated from vehicle to vehicle, allowing the duty on each vehicle that is licensed to be assessed at the net value (as defined in section 76B).

Subsection (7) provides that a certificate submitted to the Commissioner under subsections (4)(c), (5)(b) or (6)(e) must be in an approved form and signed by the licence applicant.

Subsection (8) provides that the Commissioner must make any reassessment necessary to give effect to this section, subject to the time limits set out in section 17 of the Taxation Administration

Act. For example, this provision would operate to allow a refund of duty paid, where at the time of granting a licence, a fee was charged that was subsequently found not to apply.

Section 76E provides powers in relation to the determination of vehicle values and the assessment of duty by the Director General of Transport. It should be noted that the powers of the Director General in respect of these functions arise under the authorisation of this section, not under the Taxation Administration Act.

Subsection (1) requires that upon the making of an application for the grant or transfer of a licence, the Director General is to assess the duty payable on the grant or transfer.

Subsection (2) provides that the Director General is to determine the market value or net value of the vehicle to which the licence relates in order to assess the duty payable. This provision only applies where the duty is payable under item 14 of the Second Schedule to the Stamp Act.

Subsection (3) provides the Director General with power to require the applicant to provide evidence of the market value of the vehicle, by issuing a notice to the applicant. The applicant must provide the evidence within the period stated in the notice or an offence is committed. A maximum offence penalty of \$20,000 applies.

Subsection (4) provides that an assessment made by the Director General is an official assessment for the purposes of the Taxation Administration Act. This means that the penalty tax provision of that Act will apply in respect of the assessment if payment is not made within the required timeframe.

Section 76F requires that the duty payable on the grant or transfer of a licence and any penalty tax is payable to the Director General in accordance with the Road Traffic Act. This means the Road Traffic Act payment and assessment requirements will apply, rather than those set out in the Taxation Administration Act.

However, where the Commissioner issues an assessment under section 76K or reassesses the duty payable on a licence grant or transfer under the Taxation Administration Act powers, the duty would be payable to the Commissioner.

Section 76G requires a person who applies under the Road Traffic Act for the grant or transfer of a licence to include in the application a signed statement setting out:

- the applicant's estimate of the market value of the vehicle at the time of the application; and
- if the vehicle was purchased by the applicant, the purchase price paid for the vehicle.

This requirement does not apply to an application for a transfer that is covered by the circumstances in section 76D(2).

Failure to include the statement is an offence for which a penalty of up to \$20,000 is payable.

Section 76H sets out the obligations of the seller or transferor of a motor vehicle.

Subsection (1) requires the person ceasing to be the owner of a vehicle who is required under the Road Traffic Act to notify the Director General of the new owner to include in the notification a signed statement setting out the:

- purchase price (if any) received for the vehicle to which the licence relates; and
- person's estimate of the market value of the vehicle at the time of the application.

This requirement does not apply to an application for a transfer that is covered by the circumstances in section 76D(2).

Failure to include the statement is an offence for which a penalty of up to \$20,000 is payable.

Subsection (2) requires that a dealer who sells a new vehicle must provide a signed statement setting out the:

- purchase price received for the vehicle; and
- dealer's estimate of the market value of the vehicle at the time the vehicle was sold.

The statement must be provided within 7 days after the sale, however, the purchase price and market value are required as at the date of the sale. This requirement is consistent with the requirement applying under subsection (1) to vehicle transfers under section 24(1) of the Road Traffic Act. Failure to comply with the requirement is an offence, for which a maximum penalty of \$20,000 is payable.

Subsection (3) provides that the seller of a vehicle may be jointly liable for a portion of the stamp duty where the seller understates the purchase price or estimated market value of the vehicle in a notification under this section, and the duty on the grant or transfer is assessed on a value less than the vehicle's proper market value. Where this provision applies, the seller is jointly and severally liable with the purchaser to pay the difference in the amount of duty initially assessed and that assessed on the proper market value of the vehicle. This provision includes a minor policy change from repealed section 76C(12), dealing with the manner in which the seller's liability is calculated.

Section 76I is an offence and duty assessment power that applies where a dealer uses a vehicle for which an exemption has been

granted under section 76D(4) and (5) for purposes other than those related to the exemption.

Subsection (1) provides that it is an offence for the dealer, or a person with the dealer's consent, to use a vehicle that has been granted an exemption under section 76D(4) or (5) for purposes other than those specified in those sections. The offence is applicable while the dealer remains the licensee of the vehicle. It should be noted that section 76B(2) authorises the use of the exempt vehicle for minor incidental purposes. The maximum offence penalty is \$20,000.

Subsection (2) retrospectively removes the exemption previously applicable if a dealer contravenes the requirement in subsection (1). As a consequence of this, the duty must be paid that would have been payable on the licence at the time of issue or transfer. The duty would be assessed on the market value of the vehicle at the time of issue (as declared on the exemption application under proposed section 76D(4) or (5)). The grant or transfer of the licence is also charged with penalty tax equal to the amount of duty payable on the licence. The duty and penalty tax must be paid within one month of the assessment notice being issued. The penalty tax is capable of being remitted by the Commissioner under clause 29 of the Taxation Administration Bill. The ability to retrospectively assess in this manner is a policy change, as no power previously existed to reassess duty where the requirements of the exemption were not observed.

Section 76J is an offence and duty assessment power that applies where a person who paid duty on the grant or transfer of a licence for an eligible vehicle on the net value of the vehicle, attaches the specialised equipment to another vehicle for which the person intends to become the licensee.

Subsection (1) provides an offence where a person who paid duty on the grant or transfer of a licence for an eligible vehicle (as defined in proposed section 76B) on the net value of the vehicle, attaches the specialised equipment (as defined in proposed section 76B) to another vehicle for which the person intends to become the licensee. A maximum offence penalty of \$20,000 applies.

Subsection (2) retrospectively removes the exemption previously applicable if a person contravenes the requirement in subsection (1). As a consequence of this, the duty must be paid on the market value of the vehicle (including the value of the specialised equipment) that would have been payable at the time of issue or transfer of the licence. The grant or transfer of the licence is also charged with penalty tax equal to the amount of duty payable on the licence. The duty and penalty tax must be paid within one month of the assessment notice being issued.

The penalty tax is capable of being remitted by the Commissioner under proposed section 29 of the Taxation Administration Bill. The ability to retrospectively assess in this manner is a policy change, as no power previously existed to reassess duty where the specialised equipment was moved to another vehicle to reduce the duty payable upon licensing.

Section 76K provides assessment and penalty imposition powers to deal with circumstances where a person fails to apply for a licence as required by the Road Traffic Act 1974.

Subsection (1) deems that failure to apply for the transfer of a licence under the Road Traffic Act 1974 when required to do so is a contravention of a taxation Act for the purposes of section 26 of the Taxation Administration Act. This means that the Director General or the Commissioner can impose penalty tax in these circumstances.

Subsection (2) authorises the Commissioner to use the powers set out in proposed section 20 of the Taxation Administration Act where it appears that a person has failed to apply for a licence as required by the Road Traffic Act.

Section 76L provides a summary of the powers of the Director General and the Commissioner under this Part.

Subsection (1) gives the Director General the functions of the Commissioner under clauses 26 and 29 of the Taxation Administration Bill. This means that where stamp duty is not paid in accordance with the requirements set down by the Road Traffic Act, the Director General can impose penalty tax, and remit the penalty tax where he considers it appropriate.

Subsection (2) gives the Commissioner all the functions of the Director General under Part IIIC. This means where a power is conferred directly on the Director General, the Commissioner is also able to exercise the power.

Subsection (3) is an interpretation provision to ensure the Taxation Administration Act interacts correctly with Part IIIC, in circumstances where powers are conferred on the Director General under this Act. This provision operates to ensure that anything done by the Director General in the exercise of a function is deemed to have been done by the Commissioner for the purposes of the Taxation Administration Act.

Section 76M sets out the payment arrangements that apply in respect of the stamp duty and penalty tax collected by the Director General.

The Director General is required to provide the Commissioner with details of licences granted or transferred and the duty and penalty tax paid in relation to them. He is also required to remit the duty and penalty tax to the Commissioner. Both matters must

be done in accordance with any agreement between the Director General and the Commissioner.

Clause 93: Section 77 amended

This clause amends section 77 (Agreement for any lease to be charged as a lease).

Subsection (2) is amended by removing the endorsement requirements that are now provided for in proposed section 17C of the Act.

Clause 94: Section 78 amended

This clause amends section 78 (Leases – how to be charged in respect of produce etc.).

Subsection (2) is amended by deleting two references to “duly”. As noted earlier, the new definition of “stamped” in the Act replaces the concept of “duly stamped”.

Clause 95: Section 79 amended

This clause makes a number of amendments to section 79 (Directions as to duty in certain cases), one of which is a policy change relating to the power of the Commissioner to value leases.

Subclause (1) deletes the reference to “duly” in section 79(3).

Subclause (2) repeals subsections (4) and (5) and replaces them with a new subsection (4).

Subsection (4) allows the Commissioner to determine the fair market rent for a property that is, or is to be, the subject of a lease. The Commissioner will be permitted to make such a valuation where rent under the lease or agreement for lease is nil, nominal, less than the fair market rent or unascertainable at the time of granting or entering into the lease or agreement for lease.

Repealed subsections (4) and (5) did not allow the Commissioner to value the fair market rent where the lease or agreement for lease provided that there was no rent payable or the amount of rent was less than that the Commissioner considered to be fair market rent. New subsection (4) also allows the Commissioner to assess the duty payable on the lease or agreement for lease as if the amount determined by the valuation was the actual rent paid or payable under the lease.

Subclause (3) amends section 70(6) by deleting a superfluous reference to “in this Act”.

Clause 96: Section 80A amended

This clause amends section 80A (Power of exemption or refund for certain purposes) by removing the specific requirement for

the Commissioner to refund any duty paid on an exempt lease. The refund provisions will operate through the Taxation Administration Bill reassessment and refund powers in Part 3 and section 54 respectively.

Clause 97: Section 83 amended

This clause makes a number of minor amendments to section 83 (Security for future advances, how to be charged).

Subclauses (1) and (2) replace the term "natural person" with "individual" in sections 83(1a)(b) and (1b). The term "individual" has been used throughout the Taxation Administration Bill and the replaced taxation Acts when referring to a "natural person", rather than the Interpretation Act definition of a "person".

Subclause (3) amends section 83(3) by inserting a reference to "first" so that the instrument is deemed to be a new and separate instrument of security that is first executed in Western Australia. This section is also amended to remove references to sections 20 and 39 of the Act, which are repealed by this Bill.

Subclause (4) repeals section 83(6) and inserts a new subsection (6).

Subsection (6) provides that the additional duty is to be paid as further advances or loans are made or as indebtedness is increased. The requirement to endorse the duty paid has been relocated to proposed section 17C.

Subclause (5) amends section 83(7) to remove references to the affixing of stamps. This is no longer a stamping mechanism.

Clause 98: Section 84 amended

This clause amends section 84 (Charges secured on property in and out of the State) by making a number of changes to incorporate the defined term "interstate duty".

Subclause (1) amends subsection (1) to replace the reference to "out of the State" with a reference to "outside Western Australia". This change is consistent with other changes replacing "State" with "Western Australia".

Subclause (2) amends subsection (2) to insert a reference to the new defined term "interstate duty". The use of this defined term does not change the intent of the legislation. A similar amendment is made in subsection (2)(b).

Subclauses (3), (4) and (5) make similar amendments to insert the defined term "interstate duty" in section 84(2a)(b), 84(2b)(b) and 84(2c).

Subclause (6) amends section 84(4) to remove a reference to "in writing" and to insert the defined term "interstate duty".

Subclause (7) amends section 84(4)(a) to insert the defined term "interstate duty".

Subclause (8) repeals and replaces section 84(4)(b), (c) and (d). Unlike the remaining general arrangements which require duty on most instruments to be paid within 4 months of first execution, this provision retains the requirement for the instrument to be produced showing proof of payment of the interstate duty to the Commissioner within 3 months of the assessment notice being issued. If the proof is not provided, the previous assessment remains payable within 3 months of the assessment notice being issued. An extension of time for payment is available under clause 47 of the Taxation Administration Bill.

Clause 99: Section 87 amended

This clause makes a number of amendments to section 87 (Collateral, additional or substituted securities), by deleting the reference to "duly" in section 87(1) and (2). Section 87(1a) is also amended by requiring the necessary information to be provided in an approved form. Section 87(3) is repealed on the basis that the endorsement requirement is located in proposed section 17C of the Act.

Clause 100: Section 88 amended

This clause amends section 88 (Instruments that can become securities on a future act or event).

Section 88(2)(b) is repealed and reinserted. The provision ensures the instrument is deemed to have been first executed on the day the option or right was granted.

Clause 101: Section 88A amended

This clause amends section 88A (Instruments held outside the State that become securities).

Subclause (1) amends subsection 88A(1) to ensure the date of deemed first execution of the instrument is specified.

Subclause (2) repeals section 88A(2) as a result of the amendment to subsection (1).

Clause 102: Section 90A amended

This clause amends section 90A (Power to exempt certain instruments of security from duty).

Section 90A is amended to delete the refund requirement. Where duty is paid under this section and subsequently exempted, the reassessment and refund provisions of the Taxation Administration Bill will apply to refund the duty to the taxpayer.

Clause 103: Section 92 amended

This clause amends section 92 (Interpretation in Part IIIF) by deleting both references to “the State” and replacing them with references to “Western Australia”. As noted earlier, these changes throughout the Bill are made to distinguish references to the geographic area.

Clause 104: Section 92A replaced

This clause replaces section 92A (Duty payable on returns where policy issued out of the State).

The new section makes the obligation under this section a dutiable statement, rather than a return. This change is made on the basis that the obligation to pay duty under the section is more akin to a dutiable statement for a single dutiable event, rather than a return for multiple dutiable events.

Subsection (1) requires every person resident in Western Australia who effects a policy of life insurance or any insurance in respect of property in Western Australia or a risk in Western Australia, where the policy is to be issued or renewed outside Western Australia to prepare and lodge a dutiable statement with the Commissioner in respect of the insurance. Failure to do so is an offence, for which a maximum offence penalty of \$20,000 is payable.

Subsection (2) requires that the dutiable statement be in an approved form.

Subsection (3) deems a dutiable statement prepared under subsection (1) to be a policy of insurance in respect of the insurance it relates to. Duty is chargeable on that basis.

Subsection (4) provides that the duty payable on a dutiable statement prepared under subsection (1) is payable by the person who effected the insurance and must be paid within one month of the insurance being effected. This provision ensures consistent duty payment arrangements for all insurance policies that are chargeable with duty in Western Australia.

Subsection (5) overrides subsections (1) to (4) if the actual policy of insurance is stamped before the dutiable statement is required to be prepared and stamped. Such arrangements may apply where the insurer who issued the insurance policy stamps the policy under a special tax return arrangement provided in Division 2 of Part 5 of the Taxation Administration Bill.

Subsection (6) prevents a Western Australian resident from accepting payment of, or agreeing to have allowed on account of, any money on or in respect of any insurance policy issued or renewed outside Western Australia unless the policy or a dutiable statement has been stamped. Failure to comply with this requirement is an offence, for which a maximum penalty of \$20,000 applies.

Clause 105: Section 92AA repealed

This clause repeals section 92AA (Duty payable on returns where insurer not liable).

The section operated prior to the privatisation of a certain insurer. At that time, the insurer had an exemption under its own legislation. This provision ensured that the insurer's customers did not have an advantage by requiring that duty be paid on policies issued. The insurer's exemption is no longer available and this provision is not required.

Clause 106: Section 92B amended

This clause amends section 92B (Returns to be made in respect of certain insurance) in a manner consistent with the amendments to section 92A. These provisions work in tandem, such that the insured person must prepare the statement and pay the duty under section 92A and the insurer must make a statement containing the relevant particulars under this section.

Subclause (1) makes a number of amendments to subsection (1) to delete references to "the State" and replace them with references to "Western Australia". It also requires that the notification of the insurance be by way of a statement, rather than a return. Paragraph (c) is amended to delete the reference to "in writing" and inserts a specific offence and penalty of \$20,000 for failure to make the statement. The offence previously applied under repealed subsection (4).

Subclause (2) amends references in subsection (5) to the "return" to instead refer to the "statement".

Subclause (3) repeals subsections (3) and (4). The penalty is now specifically provided in subsection (1).

Subclause (4) amends references in subsection (5) to the "return" to instead refer to the "statement". A corresponding grammatical change is also made.

Clause 107: Section 94 amended

This clause amends section 94 (Penalty for not making out policy) to update the requirements.

Subclause (1) repeals subsection (1) and reinserts new subsections (1) and (1a) in a different grammatical form.

Subsection (1) inserts an offence for a person who receives or takes credit for any premium or consideration for a contract of insurance and does not, within 3 months of taking the amount, make out, execute and stamp the policy of insurance. An offence penalty of \$20,000 applies.

Subsection (1a) inserts an offence for a person who makes, executes, delivers out, pays or allows in account or agrees to pay

or allow in account any money in respect of an unstamped insurance policy. An offence penalty of \$20,000 applies.

Subclause (2) amends subsection (2) to change the obligation on persons who effect insurance on behalf of an insurer (for example, insurance brokers), from a requirement to issue a note or memorandum of the policy and stamp it to a requirement to notify the Commissioner of the policy. Failure to comply with the requirement is an offence, for which a penalty of \$20,000 applies. The Commissioner would assess the duty payable on the policy, using the powers under clause 20 of the Taxation Administration Bill if necessary.

Subclause (3) repeals subsection (3) on the basis that the specific penalty has been inserted into subsection (2).

Subclause (4) makes two amendments to subsection (3a) to delete references to "the State" and replace them with references to "Western Australia".

Subclause (5) makes amendments to subsection (4) to update references to a dutiable statement under section 92A, rather than a return. An amendment to replace the reference to "the State" and replace it with reference to "Western Australia" has also been made.

Clause 108: Section 95 amended

This clause amends section 95 (Policies of reinsurance to be exempt from duty) to remove the obsolete exemption for the transfer or assignment of a fire insurance policy. The clause also updates the reference to a policy in respect of which reinsurance is made to refer to a policy of insurance that has been stamped.

Clause 109: Section 95A repealed

This clause repeals section 95A. The powers of that section have been replaced by the special tax return arrangements in Division 2 of Part 5 of the Taxation Administration Bill. The Taxation Administration (Consequential Provisions) Bill contains transitional arrangements relating to the transfer of section 95A.

Clause 110: Section 96 amended

This clause amends section 96 (No duty chargeable on amount received on account of duty) to remove the transitional requirement that is no longer relevant. A superfluous reference to "under this Act" is also deleted.

Clause 111: Section 97 repealed

This clause repeals section 97 (Workers' compensation policies, refunds of excess duty) on the basis that the reassessment provisions of the Taxation Administration Act will operate to allow such duty to be refunded. A transitional provision has been

inserted in the Taxation Administration (Consequential Provisions) Bill to cover the change in refund periods from two years to five years.

Clause 112: Part IVA replaced (sections 112AB to 112FU)

This clause repeals sections 112AB to 112FU and reinserts the provisions as sections 100 to 107.

Section 100 (Interpretation) provides a number of definitions for terms used in Part IV.

Section 101 (Share buy-back) reproduces the powers previously located in section 112AB of the Act. The provision deems a share buy-back to be a transfer of shares or stocks, where the buy-back is in accordance with Division 4B of Part 2.4 of the Corporations Law as in force immediately before the commencement of Schedule 1 to the Company Law Review Act 1998 of the Commonwealth or Division 2 of Part 2J.1 of the Corporations Act.

It should be noted that due to the repeal of the broker provisions, there is no need for the share buy-back to be deemed to be a transfer that gives effect to the sale and purchase of shares, as previously provided by repealed section 112AB.

Section 102 (Securities situated in Western Australia) reproduces the power in repealed section 112B. This provision sets out the nexus arrangements applying to marketable securities.

Subsection (1) provides that for the purposes of a Stamp Act, a security (as defined in proposed section 100) of a WA company (as defined in section 4 of the Act) is situated in Western Australia. This provision applies for the purposes of the Act, regardless of:

- where the register on which the security is kept is situated;
- section 1070A(4) of the Corporations Act; or
- any other law.

Subsection (2) provides that, a security of a foreign company (as defined in section 4 by reference to section 9 of the Corporations Act) is situated in Western Australia if it is registered on a register kept by the company in Western Australia.

Section 9 of the Corporations Act defines foreign company as:

" (a) a body corporate that is incorporated in an external Territory, or outside Australia and the external Territories, and is not:

- (i) a corporation sole; or
- (ii) an exempt public authority; or

(b) an unincorporated body that:

- (i) is formed in an external Territory or outside Australia and the external Territories; and
- (ii) under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary

or of an officer of the body duly appointed for that purpose; and

(iii) does not have its head office or principal place of business in Australia."

Subsection (3) provides that, a unit in a unit trust scheme is situated in Western Australia if:

- the scheme's principal register is kept in Western Australia; or
- where that is not the case, the scheme's manager, or if the scheme does not have a manager, the trustee, is:
 - an individual resident in Western Australia;
 - a Western Australia company;
 - a foreign company with a registered office under the Corporations Act in Western Australia.

Subsection (4) provides that where a security is taken to be incorporated in a State or Territory other than Western Australia, it is not situated in Western Australia even if it is registered here. This provision ensures that double duty does not arise for those securities that have a common law nexus (ie. place of register) to Western Australia.

Subsection (5) provides that subsection (1) is a displacement provision for the purposes of section 5G of the Corporations Act in relation to section 1070A(4) of that Act.

Section 5G of the Corporations Act provides the ability for the State to specifically authorise the non-application of the Corporations Act in particular circumstances.

Item 3 in the table in subsection 5G(3) provides that the State provision must meet the following requirement:

"the State provision is declared by a law of the State or Territory to be a Corporations legislation displacement provision for the purposes of this section (either generally or specifically in relation to the Commonwealth provision)".

Section 103 (Prohibition on registration of unstamped transfer) places an obligation on companies in respect of the registration of transfers of unlisted WA securities (as defined in proposed section 100).

Subsection (1) provides that the issuer (as defined in proposed section 100) of an unlisted WA security must not register a transfer of the security unless the issuer is given an instrument of transfer that sets out:

- the consideration for the transfer;

- if the transfer is to give effect to the sale, the date of the sale of the security; and
- the date on which the instrument was executed by each party to it.

The transfer must also be stamped or not chargeable with duty. This provision does not apply to an overseas transfer (as defined in proposed section 100), which is covered by proposed section 104.

Failure to comply with the requirement is an offence, for which a maximum penalty of \$20,000 is applicable.

Subsection (2) ensures that the right or title of the transferee or subsequent holder of the security is not invalidated due to the failure of the issuer to comply with the requirement in subsection (1).

Section 104 (Registration of an overseas transfer) sets out the requirements that apply to the registration of an overseas transfer. This section replaces repealed sections 112FS and 112FT. An overseas transfer is defined in proposed section 100 as:

“ a transfer of an unlisted WA security that –

- (a) is quoted on a financial market that is situated outside Australia and is not a recognised financial market; and
- (b) is registered outside Australia on a branch register of the WA company.”

This definition adopts terminology that is consistent with the Financial Services Reform Act 2001 of the Commonwealth that is proposed to commence in March 2002. Recognised financial markets will be consistent with those markets currently prescribed as a “ recognised stock exchange” .

Subsection (1) provides that a WA company is not prevented from registering an overseas transfer, whether an instrument exists or not and whether duty has been paid or not. This subsection, along with non-application of proposed section 103 to overseas transfers, removes any restriction that would otherwise prevent a WA company from registering an overseas transfer.

Subsection (2) requires that a WA company prepare a dutiable statement in respect of the overseas transfer before it registers a share transfer for which no instrument of transfer exists. Instruments of transfer would not exist where the financial market upon which a WA company was listed utilised electronic transfers.

Subsection (3) requires that a dutiable statement be in an approved form.

Subsection (4) deems a dutiable statement prepared under subsection (2) to be an instrument of transfer of the unlisted WA securities that is the subject of the overseas transfer. This ensures that it can be charged with the duty payable under item 4A of the Second Schedule to the Act.

Subsection (5) transfers the liability to pay the duty from the transferee to the WA company if a WA company registers an overseas transfer in respect of which duty has not been paid. This includes the duty payable on the instrument of transfer, where one exists, or a dutiable statement under subsection (2).

Subsection (6) directs that the payment of duty arising on a dutiable statement be made by a return under proposed section 105.

Section 105 (Return of overseas transfers and payment of duty) provides a payment mechanism for the duty payable on overseas transfers. This section replaces repealed section 112FU.

Subsection (1) provides that a WA company that registers an overseas transfer must, within 15 days of the end of the month in which the registration took place:

- lodge a return with the Commissioner in an approved form detailing all overseas transfers registered by the WA company in that month. Overseas transfers that are exempt from duty are not required to be included in the return; and
- pay the duty payable on the instruments of transfer or dutiable statements to which the overseas transfers relate when lodging the return.

Failure to lodge the return is an offence, for which a maximum penalty of \$20,000 is payable.

Subsection (2) deems the instrument of transfer or dutiable statement to be stamped upon payment of the duty under subsection (1).

Subsection (3) ensures that the right or title of the transferee or subsequent holder of the security is not invalidated due to the failure of the issuer to comply with the requirement in subsection (1).

Section 106 (Valuing an unlisted WA security) provides power relevant to determining the value of an unlisted WA security. It replaces repealed section 112BA.

Subsection (1) provides that the value of an unlisted WA security is to be determined –

- (a) as if the constitution or governing rules of the issuer (as defined in proposed section 100) satisfied any requirements of the Australian Stock Exchange Limited that are required in order for the security to be quoted on the Australian Stock Exchange Limited. This requirement will generally ensure that all securities in particular classes have similar rights attached to them; and
- (b) by disregarding provisions in the constitution or governing rules of the issuer that determine how that security is to be valued.

Subsection (2) also provides the Commissioner with a valuation power that allows the value of the security to be determined as the amount the Commissioner considers the holder of the security would have received if the issuer were voluntarily wound up on the date of the transfer.

Section 107 (Retention of instruments of transfer) is a record keeping requirement that requires an instrument of transfer or a dutiable statement prepared under proposed section 104 to be kept for at least 5 years after registration of the overseas transfer. This requirement is consistent with repealed section 112FS(4).

Clause 113: Section 112HA amended

This clause amends section 112HA (Certain capital reductions dutiable) to ensure the statement requirements under the section are consistent with the arrangements relating to dutiable statements introduced by this Bill.

Subclause (1) repeals section 112HA(4), (5), (6) and (7) and reinserts new subsections (4), (5) and (6).

Subsection (4) reproduces the existing requirement in subsection (4) to prepare a statement in relation to a capital reduction or rights alteration and share cancellation. This clause now has a specific offence penalty attached to it, rather than relying on the offence provision previously contained in repealed subsection (12).

Subsection (5) requires that a dutiable statement be in an approved form and prepared within 4 months of the capital reduction or share cancellation. The requirements of section 17A will also require that duty be paid within that period.

Subsection (6) reproduces existing subsection (7) to ensure that the dutiable statement is an instrument and is therefore chargeable with duty at marketable security rates on the dutiable value.

Subclause (2) repeals section 112HA(10), as that provision is covered by the information gathering powers in the Taxation Administration Bill.

Subsection (3) amends section 112HA(11) to update the reference to "dutiable statement".

Subsection (4) repeals section 112HA(12) and (13). Subsection (12) has been inserted as a specific offence penalty in new subsection (4) and the offence for providing a statement that is false in a material particular is covered by clause 98 of the Taxation Administration Bill. The offence previously located in subsection (13) is now located in clause 21(3) of the Taxation Administration Bill.

Clause 114: Section 112I amended

This clause amends section 112I (Interpretation in Part IVB).

Subclause (1) amends section 112I(1) to remove the reference to "in writing" in the definition of "service costs".

Subclause (2) amends section 112I(1a)(a) by deleting a superfluous reference to "under this Act".

Clause 115: Section 112J amended

This clause amends section 112J (Persons carrying on rental business required to be registered).

Subclause (1) deletes the reference to "the State" and updates it with a reference to "Western Australia" in subsection 112J(1) and inserts the offence penalty specifically in subsection (1). The penalty amount is \$20,000. The multiplier component of the previous penalty will no longer be applicable.

Subclause (2) repeals subsection (1a).

Subclause (3) deletes the reference to "the State" and updates it with a reference to "Western Australia" in subsection 112J(2).

Subclause (4) amends section 112J(3) by requiring the application for registration to be made in an approved form.

Subclause (5) deletes the reference to "the State" and updates it with a reference to "Western Australia" in subsection 112J(3a)(b).

Clause 116: Section 112K amended

This clause makes a number of amendments to section 112K (Statements to be lodged with Commissioner by registered persons).

Subclause (1) amends section 112K(1) by requiring the statement to be in an approved form and replacing the reference to "statement" with "return". This change is consistent with the payment arrangements made with return based taxes. The requirement for a person to lodge a statement under section 112K is not consistent with the use of dutiable statements elsewhere in the Act. The payment mechanism is commonly referred to as a return and this section has been amended to reflect that usage. This subclause also redrafts subclause (1)(a)(iii) and (iv) in easier to understand language.

This subclause also inserts a specific offence penalty for failure to lodge the return to be an amount of \$5,000. Previously offences of this type were an offence under section 116 for which a penalty of \$10,000 applied as well as an amount equal to double the duty that would have been paid had the provisions been complied with.

Subclause (2) amends section 112K(1a) by updating the reference from "statement" to "return". It also inserts a specific offence penalty for failure to lodge a nil return when required of \$5,000.

Subclause (3) amends section 112K(1c) by updating the word "statement" with "return".

Subclause (4) amends section 112K(2) to make similar amendments to those in subsection (1) and insert a specific offence penalty of \$5,000.

Subclause (5) amends section 112K(2a) by requiring the notice of an election under subsection (2) to be in an approved form.

Subclause (6) amends section 112K(3) to update the references to "statement" and replace them with references to "return" and insert a penalty of \$5,000 for failing to pay the amount of duty required to be lodged with a return.

Subclause (7) removes references to "in writing" in subsection 112K(4).

Subclause (8) repeals section 112K(5). These offences are now specifically provided for in the individual subsections and clause 98 of the Taxation Administration Bill.

Clause 117: Section 112KA amended

This clause amends section 112KA (Exemption from duty).

Subclause (1) amends subsection (1) by deleting the words before paragraph (a) and inserting a specific exemption provision. The provisos contained in paragraphs (a) and (b) remain. References to a statement are also deleted from these paragraphs.

Subclause (2) repeals subsection (2) on the basis that a refund of duty will automatically occur when the Commissioner makes a reassessment at the end of each year. If duty has been overpaid, it will be refunded under proposed section 54(1)(a).

Clause 118: Section 112L amended

This clause amends section 112L (Amounts to be included in statement) in paragraphs (d)(i), (ii) and (iii) by deleting the references to "the State" and replacing them with references to "Western Australia".

Clause 119: Section 112N amended

This clause amends section 112N (Matters not required to be included in statement).

Subclause (1) amends section 112N(1) by inserting an appropriate reference to interstate duty.

Subclause (2) repeals section 112N(2). The information gathering powers previously located in this subsection are provided for in the Taxation Administration Bill.

Clause 120: Section 112O amended

This clause amends section 112O (Registered person to keep records).

Subclause (1) amends section 112O(1) by altering the requirement for a person to keep or cause to be kept in the State records, to a requirement for a person to make or cause to be made records and for those records to be retained in Western Australia. This subclause also amends the reference to "statement" to a reference to "return".

Subclause (2) repeals section 112O(1a), (2) and (2a). These requirements are provided for in Part 7 of the Taxation Administration Bill. This subclause also inserts a new subsection (2), which is a requirement for a registered person to make available for inspection books and records as referred to in subsection (1).

Subclauses (3) and (4) amend section 112O(3) and (4) by updating references to "statement" to references to "return".

Subclause (5) amends section 112O(5) to delete a reference to "in writing".

Clause 121: Section 112P amended

This clause amends the requirements regarding rental business transactions with persons who are unregistered.

Subclause (1) amends references to "the State" to references to "Western Australia". It also requires that a person who is domiciled or resident in Western Australia and transacts business with a person who is not registered under this Part and should be so registered, or who carries on rental business outside Western Australia, to prepare a dutiable statement in relation to the transaction.

This requirement previously existed in subsection (1), however, the person was required to make a note or memorandum. The note or memorandum concept has been removed and replaced with a dutiable statement. An offence penalty of \$5,000 has been provided for failure to prepare the dutiable statement.

Subclause (2) repeals section 112P(2), (4) and (5) and redrafts the provisions as new subsection (2).

Subsection (2) requires that a dutiable statement be in an approved form and be prepared within 4 months of the transaction or offer being made. Proposed section 17A would require payment of the required duty to be made within the same period.

Subclause (3) amends section 112P(6) to update the references to Western Australia and the requirement to prepare a dutiable statement.

Clause 122: Section 112Q amended

This clause amends section 112Q (Certain residential agreements with charitable bodies exempt) in subsection (1) by updating the reference to " this Act" with the reference to " a stamp Act" .

Clause 123: Section 112R amended

This clause amends section 112R (Certain aged care agreements exempt) in subsection (1) by updating the reference to " this Act" with a reference to " a stamp Act" .

Clause 124: Section 112UA amended

This clause amends section 112UA (Interpretation in Part IVD) by deleting superfluous references to the " Parliament of the State of Western Australia" and the " Parliament of the Commonwealth" .

Clause 125: Section 112UB amended

This clause amends section 112UB (Application of Part IVD) in subsection (2) by updating the terminology.

Clause 126: Section 112UC amended

This clause makes minor amendments to section 112UC (Duty on maintenance agreements and orders) to update the reference to " this Act" to a reference to " a stamp Act" .

Clause 127: Section 112UD amended

This clause makes minor amendments to section 112UD (Duty on conveyance or transfer under maintenance agreement or order) to update the reference to " this Act" to a reference to " a stamp Act" and remove a reference to " duly" stamped.

Clause 128: Section 112UE amended

This clause amends section 112UE (Duty on certain instruments for the purpose of managed investment schemes).

Subclause (1) makes a minor amendment to section 112UE(2)(c) by deleting the reference to " motor" . This is due to the change in Part IIIC to refer to vehicle licences, rather than " motor vehicle" licences.

Subclause (2) repeals subsections (5), (6) and (7) and replaces them with a new subsection (5), which requires an application to be made in an approved form.

Clause 129: Sections 112V to 118 replaced

Sections 112V (Payment of duty by returns), 113 (Defacing adhesive stamps), 114 (Penalties for obstructing officers, and similar offences), 115 (Attempted offences), 116 (General penalty), 117 (Limitation of criminal proceedings) and 118 (Institution of prosecutions) have been repealed. New sections 113 and 114 have been inserted.

The repealed sections are all now contained in the Taxation Administration Bill, with the exception of section 113. That section was deleted on the basis that adhesive stamps as a payment mechanism are to be repealed. An equivalent to section 115 for attempted offences has not been reinserted.

Section 113 was previously located in section 7(3) of the Act.

Section 114 was previously located in section 15B of the Act. Minor amendments have been made to that section to ensure it is consistent with the proposals under the Taxation Administration Bill in relation to the issue of assessment notices.

Clause 130: Section 119 amended

This clause repeals section 119(7) (Certain exemptions where the State etc. is a party) to remove the endorsement requirement in relation to an exemption given under this section. The endorsement requirements are now set out in proposed section 17C of the Act.

Clause 131: Section 120 replaced

This section repeals and replaces section 120 (Regulations).

Subsection (1) authorises the Governor to make regulations for all matters that are required or permitted by a Stamp Act to be prescribed, or that are necessary or convenient to be prescribed to give effect to a stamp Act.

Subsection (2) provides two specific matters in respect of which regulations may be made. These are the fees payable under a stamp Act and records required to be kept for the purposes of a stamp Act.

Subsection (3) provides that the regulations may create offences and provide for penalties not exceeding \$5,000 in respect of those offences.

Clause 132: First Schedule repealed

This clause repeals the First Schedule, which has previously been omitted under section 7(4)(f) of the Reprints Act 1984.

Clause 133: Second Schedule amended

This clause makes minor amendments to the Second Schedule. Corresponding amendments, which are considered to impose taxation due to the repeal and replacement of the particular provision, are located in the Taxation Administration (Consequential Provisions) (Taxing) Bill 2001.

Subclause (1) provides that the amendments in this clause are to the Second Schedule.

Subclause (2) amends item 4(5) to ensure the wording of the charging item in the Second Schedule is consistent with the new terminology used in proposed section 75AE.

Subclause (3) amends item 9 to clarify that duty on a duplicate or counterpart can only be charged where a stamped instrument exists. For practical purposes, where five copies of the same instrument are submitted for stamping, one will become the stamped original and the remaining four will be stamped as duplicates upon payment of the duty being made.

Subclause (4) deletes the reference in item 13(1) to "duly".

Subclause (5) amends item 14 to:

- change references to "issue" and replace them with "grant". This is consistent with recent amendments to the Road Traffic Act 1974;
- update section references as a result of the changes in Part IIIC; and
- remove the reference to "motor" as a result of the new definitions in Part IIIC.

Subclause (6) amends item 16 to update the reference to the Pay-roll Tax Assessment Act 1971 to the Pay-roll Tax Assessment Act 2001.

Subclause (7) updates references in item 16(1)(a)(i)(B) to particular sections of the Pay-roll Tax Assessment Act to correspond with the 2001 version.

Subclause (8) makes an amendment to item 16 to ensure it refers to the person liable to pay duty under section 92A.

Clause 134: Third Schedule amended

Subclause (1) provides that the amendments in this clause are to the Third Schedule.

Subclause (2) amends item 1(4) by including a reference to " or" between paragraphs (c) and (d).

Subclause (3) amends item 3(1)(a) and (b) by deleting the reference to " duly" .

Subclause (4) repeals and replaces item 6(1) in an easier to read format.

Subclause (5) amends item 7(4) by updating the reference to " the State" with " Western Australia" .

Subclause (6) amends item 8(2) by updating the reference to " the State" with " Western Australia" .

Subclause (7) amends the heading of item 9 of the Third Schedule by deleting the reference to " motor" . This is consistent with changes to Part IIIC.

Subclause (8) amends item 9 of the Third Schedule by deleting the references to " motor" and updating the use of " issue" and " issued" with " grant" and " granted" . This is consistent with changes to Part IIIC.

Subclause (9) amends item 9(3) to remove references to vehicle types that are no longer mentioned in the Road Traffic Act 1974.

ATTACHMENT

CONVERSION TABLE – STAMP ACT 1921 PRIOR TO STAMP AMENDMENT BILL 2001

OLD SECTION	OLD SECTION NUMBER	STAMP ACT OR TAXATION ADMINISTRATION BILL EQUIVALENT SECTION	NEW SECTION NUMBER
Act to be construed subject to legislative powers of the State	2A	No equivalent	N/A
Act administered by Commissioner	5	Administration of taxation Acts	7 TAA
Power of Commissioner to delegate	6	Delegation	10 TAA
Power of Commissioner in relation to entry and instruments and records	7	Obtaining tax records and other information Commissioner may impound unstamped instruments	Div 2 Part 8 TAA, 113
Power of Commissioner to obtain information and evidence	7A	Obtaining tax records and other information	Div 2 Part 8 TAA,
Power of Commissioner to use information	8	Confidentiality	105(2)(a) TAA
Exchange of information and obligation of secrecy	9	Confidentiality	105 TAA
Governor to prescribe stamps etc, dies, etc.	10	No equivalent	N/A
Commissioner to issue stamps	11	No equivalent	N/A
Commissioner may license vendors of adhesive stamps	12	No equivalent	N/A
Spoiled stamps	15	Reduction of duty if matter not carried into effect	20
Refund of duty on cancelled instruments	15A	Reduction of duty if matter not carried into effect	20
Commissioner may destroy instruments	15B	Commissioner may destroy instruments	114
Duties to be paid in accordance with Act and regulations	17	Various	17 – 17C
Stamping instruments after execution	20	Time for payment of duty	17A
Cancellation of adhesive stamps	21	No equivalent	N/A
Assessment of duty by Commissioner	31	Assessments of tax	Part 3 TAA
Effect of reassessment	31AB	Effect of reassessment	18 TAA
Payment of reassessed duty	31AC	When tax is due for payment	45(3) &

OLD SECTION	OLD SECTION NUMBER	STAMP ACT OR TAXATION ADMINISTRATION BILL EQUIVALENT SECTION	NEW SECTION NUMBER
		& Form of assessment notice	24(4) TAA
Default assessments	31A	Assessments of tax	Part 3 TAA
Objection to assessment	32	Objections and appeals	Part 4 TAA
Appeal from assessment	33	Objections and appeals	Part 4 TAA
Interest on amounts refunded by Commissioner	33A	Objections and appeals	Part 4 TAA
Commissioner may state case	34	Objections and appeals	Part 4 TAA
Appeal against refusal to extend time for objection	34A	Objections and appeals	Part 4 TAA
Costs of appeals	34B	Objections and appeals	Part 4 TAA
Liability to pay duty subject to objection, appeal or case stated	34C	Objections and appeals	Part 4 TAA
Duplicates and counterparts	35	Duplicates and counterparts	34
Contingent duties	37	No direct equivalent	N/A
Liability for omission to stamp instruments	39	Liability to pay duty, Recovery of unpaid tax, Averments in complaints	17, 60 & 115 TAA
Recovery of duty and fines	39A	Recovery generally	Div 1, Part 6 TAA
Cancellation of adhesive stamps on bills	50A	No equivalent	N/A
Printing of "stamp duty paid" on cheques	52	Special tax return arrangements	Div 2, Part 5 TAA
Valuation of property for assessment purposes	75A	Valuation of land or other property	33
Power of exemption or refund for certain purposes	75AA	Power to exempt instruments made for charitable or similar purposes	75A
Lodgement of statements by trustees	76A	Relevant acquisitions by trustees	76A
Valuation of land	76AA	Valuation of land or other property	33
Basis for assessment of duty	76AB	Assessment in the absence of a dutiable statement	76AA
Memorial may be registered on title	76AC	Charge on land to secure stamp duty, Prohibition on dealing with certain charged land	69 & 70 TAA
Charge on land	76AD	Charge on land to secure stamp duty, Priority of charge	69 & 71 TAA
Power of sale	76AE	Orders for sale of land	77 TAA
Application of proceeds of sale	76AF	Orders for sale of land	77 TAA
Liability for duty	76AT	Liability to pay duty	17

OLD SECTION	OLD SECTION NUMBER	STAMP ACT OR TAXATION ADMINISTRATION BILL EQUIVALENT SECTION	NEW SECTION NUMBER
Definitions and operation	76AU	Reassessment where deeming provision applied	76AU
Request for reassessment of liability for duty	76AV	Reassessment where deeming provision applied	76AU
Reassessment	76AW	Reassessment where deeming provision applied	76AU
Effect of reassessment	76AX	Reassessment where deeming provision applied	76AU
Refund of duty or payment of reassessed amount	76AY	Reassessment where deeming provision applied	76AU
Duty payable on returns where policy issued out of the State	92A	Dutiable statement required if policy issued outside Western Australia	92A
Duty payable on returns where insurer not liable	92AA	No equivalent	N/A
Alternative to stamping of individual insurance policies	95A	Special tax return arrangements	Div 2 Part 5 TAA
Workers' compensation policies, refunds of excess duty	97	Assessments	Div 1 part 3 TAA
Share buy-back	112AB	Share buy-back	101
Where marketable securities etc. situated	112B	Securities situated in Western Australia	102
Valuing unlisted marketable securities	112BA	Valuing an unlisted WA security	106
Prohibition of registration of transfers unless in proper form and duty stamped	112C	Prohibition of registration of unstamped transfer	103
Interpretation	112FR	Interpretation	100
Record of overseas transfers	112FS	Registration of overseas transfer	104
WA company liable for duty on registered overseas transfers	112FT	Return of overseas transfers and payment of duty	104(5)
Return of overseas transfers and payment of duty	112FU	Return of overseas transfers and payment of duty	105
Retention of instruments of transfer	107	Registration of overseas transfer	112FS(4)
Payment of duty by returns	112V	Special tax return arrangements	Div 2 Part 5 TAA
Defacing adhesive stamps	113	No equivalent	N/A
Penalties for obstructing officers, and similar offences	114	Obstructing or misleading an investigator	99 TAA
Attempted offences	115	No equivalent	N/A
General penalty	116	General penalty provision	96 TAA

OLD SECTION	OLD SECTION NUMBER	STAMP ACT OR TAXATION ADMINISTRATION BILL EQUIVALENT SECTION	NEW SECTION NUMBER
Limitation of criminal proceedings	117	Time for commencing prosecutions	102 TAA
Institution of prosecutions	118	Authority required for prosecution	103 TAA