

State Tax Review

Reference Group Committee

CHAIRMAN'S REPORT

11 April 2007

STATE TAX REVIEW

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1. Background

- 1.1 The Western Australian Government, in presenting its May 2005 State Budget undertook to implement a State Tax Review in consultation with the Western Australian community. The announced purpose of the Review was to make recommendations on reform of the State tax system for the next five years, in consultation with and reflecting the priorities of the Western Australian community.

In announcing the Terms of Reference for the Review the Treasurer indicated that the over-arching objectives of the Review were to enhance the competitiveness, equity, and efficiency of the State tax system in Western Australia, including minimising distortions to economic activity and compliance costs for taxpayers. The Review was not be restricted to a revenue-neutral outcome, but aimed to provide genuine, aggregate tax relief to the Western Australian community within the constraints of the community's demand for services and infrastructure and the requirement for responsible financial management. It was to have a broad scope covering all State taxes but not extend to the GST, a Commonwealth tax, nor mining royalties or user charges such as for electricity and water.

The Terms of Reference provided for the Department of Treasury and Finance ("DTF") to coordinate the Review, in two stages. The first requiring public consultation, consideration of submissions and delivery to the Government of preliminary findings for reform and tax relief, for consideration in the 2006-07 budget process. The second to encompass publication of the preliminary findings and then further public consultation, consideration of further submissions and delivery of final recommendations for consideration by the Government in the 2007-08 budget process.

Role of Reference Group Committee

The Reference Group Committee's role in the process was to provide a 'sounding board' and feed-back to DTF, in relation to the public's initial submissions and in that way assist DTF in reflecting broad community views in its Interim Report of preliminary findings. The Committee was to then have a similar initial role in relation to public submissions on those preliminary findings to assist DTF in coming to final recommendations reflecting broad community expectations and priorities. The Committee's final role was to provide the Government with advice, independent of DTF, as to whether the DTF's Final Report recommendations had broad community support. That advice was to take the form of a report to the Treasurer by the Committee Chairman.

Reference Group Committee

The Treasurer appointed the Reference Group Committee. Consultation took place with community organisations representing interests across a broad spectrum of the community but appointments were personal to each appointee with a view to them being representative of the community generally, with specific knowledge of the aspirations and concerns of different interest groups, and not constrained by the particular aspirations and concerns of an organization. Appendix 1 details the membership of the Committee.

As Chairman of the Reference Group Committee I record my appreciation and thanks to each member for the considerable time and effort that they have contributed into the Review and to their diligently contributing to that process and this independent advice as member's of the wider community, rather than any organisation with whom affiliated. Divorcing oneself from such affiliations, to arrive at a fair and equitable result beneficial to the wider community, had its difficulties but I am satisfied it was achieved.

Technical Committee

Additionally, the Treasury appointed a Technical Committee of specialists (listed in Appendix 2) to assist the Reference Group Committee and DTF by analysis and recommendations in relation to technical papers prepared by officers of the Office of State Revenue. Those technical papers dealt with tax policy and tax administrative issues arising from the various public submissions in relation to suggested tax reforms.

As Chairman of the Reference Group Committee I record my appreciation and thanks to each member of the Technical Committee for the considerable time and effort they have also contributed into the Review. Their technical input and recommendations have been of invaluable assistance to the main Committee.

Outcomes

The first stage of the Review was completed by DTF with the release of its "May 2006 Interim Report". 136 public submissions, listed in Appendix B of DTF's "May 2006 Interim Report", were considered by DTF in this first stage with the Reference Group Committee also reviewing those submissions and acting as a 'sounding board' for DTF. Those submissions can be accessed on DTF's website <http://www.dtf.wa.gov.au/> through the Treasury and State Tax Review links.

Taxation measures announced by the Government in March 2006 and in the 2006-07 State Budget took into account the early priorities for tax reform that emerged during Stage 1 of the Review. These included:

- abolition of stamp duties on the hire of goods (from 1 January 2007)
- abolition of stamp duties on mortgages (staged abolition by 1 July 2008)
- abolition of stamp duties on non-real property transfers (from 1 July 2010)
- extension of the Land Tax exemption period for the construction of new homes (to two assessment years)
- a Land Tax concession for parents providing independent accommodation for disabled children.

29 public responses, listed in Appendix 3, were received and considered in Stage 2 of the Review.

Stage 2 of the Review will be completed by delivery of this Chairman's Report of the Reference Group Committee to the Treasurer.

The Review Process

- 1.2 The process of a review must of necessity cause implementation delay in the time taken to consult and determine what is to be implemented. This does result in the problem that, as reform will reduce future tax collections, the time taken in the review will result in an over collection of taxes that would have been reduced by an earlier introduction of those reforms. The review process does however bring out differing views. That has been very much the case in relation to the Committee's deliberations and it must be noted that there were views expressed by a minority group of the Committee that there should not be tax reductions and that the additional taxes and those already collected, which might be viewed as collections in excess of expectations arising from the property boom increase in land values and general economic boom in Western Australia, should be returned in their entirety to the community as a social dividend. It was recognised by the

Committee that the boom and returns from the boom do not and have not gravitated down to those less privileged in our community and that they are in fact suffering a detriment for instance in areas of affordability of home purchases and in the home rental market. On that basis the minority view was that there should not be a reduction in taxes but the increased already produced and that will be produced in the future be used to fund infrastructure and services for the whole community; particularly focussed on those who have reaped little or no return from the boom. The Committee, as a whole, recognised that the DTF's recommendations in relation to a lifting of the thresholds for the first home buyer grant are to be regarded as a social dividend, by providing an offsetting of the barrier to housing affordability for the younger generation and consequent likely supply/demand flow through into the housing rental market.

Constraints on Visionary Tax Reform

1.3 The DTF's presentations to the Committee as to Commonwealth/State sharing arrangements and in relation to DTF's reaction to a suggested tax on labour indicated the constraints to visionary tax reform. These constraints have, however, been previously recognised in the community consultation associated with the 2001-02 Western Australian "Business Tax Review" (a summation of the constraints identified in the BTR consultation are set out in Appendix 4). It is noted that, notwithstanding those recognised constraints, the Reference Group to the BTR recommended that the Western Australian Government undertake further investigation of a broader based tax on provision of labour services as part of it taking a national lead in visionary tax reform. It is disappointing that DTF have not taken the opportunity, over the 2 years of the current State Tax Review, to take up that recommendation but merely reiterated the need for a national approach to such a tax on labour (whilst recognising it had in-principle merit on efficiency and equitable grounds) and declining the opportunity now and, it appears in the future, to take that lead, save in a narrow, administrative, Pay-roll Tax Consistency Project.

1.4 The Committee recognises that without national reforms the States are effectively left with a tax base of:

- Pay-roll Tax
- Land Tax
- a range of stamp duties (on such things as property transfers, insurance policies and motor vehicle licence transfers)
- taxes on gambling (which the Western Australian Government, with community support, confirmed by 2001-02 "Business Tax Review", declines to take up).

The Committee also recognises that the range of exemptions, common to all States (i.e. the payroll tax exemption for small employers and the land tax exemption for principal places of residence), means that these taxes are relatively narrowly based and this significantly limits the revenue raising options and scope for visionary tax reform available to the States.

1.5 The need for a national approach has not, in the Committee's view, been the only constraint to visionary reform. The process of the Review has added additional constraints.

- 1.6 The Committee was of the view that the State Tax Review provided an opportunity to deliver meaningful reform to the State taxation system. While recognising that tax reform must be sensitive to the impact on the State's operating performance and the need for expenditure on infrastructure and services the Government must, in the Committee's view give a high priority to tax reform and be willing to take a national lead.
- 1.7 The release of the DTF's State Tax Review Interim Report did not deliver on these expectations. The tax relief indicative package put forward by DTF and lack of recommendation to the Government to take a lead in a national reform has left the Committee frustrated and it recommends more significant immediate tax relief and that the Government commits to a process to take such a lead.
- 1.8 Constraints imposed by the Review's process have been that the agenda, and therefore the process, has been largely in the hands of DTF with the Terms of Reference providing for it to make recommendations (be it taking into account of community expectations to be drawn out through use of the Committee as a "sounding board"). Constraint was also imposed by the Treasurer's "Foreword" to the Interim Report explicitly ruling out Government support for any introduction of a state personal income tax and broader based or higher rate GST.
- 1.9 These constraints have lead to some of the recommendations in DTF's Final Report not reflecting the general community's aspirations (as reflected through the Committee).

The Committee identifies in this area the apparent inclusion of Pay-roll Tax in the prioritisation ranking of tax relief (and therefore inclusion in the DTF's indicative package of reform based on that prioritisation), which does not fit neatly with a general Committee rationale that tax relief be prioritised to those areas that have created the excess of revenue collections over expectation. DTF have, it is acknowledged, reduced their indicative Pay-roll Tax relief from that contained in an earlier draft of their report but lack of modelling leaves the Committee with real doubt that the lesser indicative Pay-roll Tax relief meets the Committee's prioritisation rationale.

The Committee also identifies the areas of recommendation in relation to tax administration reform where recommendations have been made in relation to introduction of a general anti-avoidance provision and to changes to the SAT legislation, based upon submissions from within the DTF, that in the Committee's view have not been independently critically assessed. The Committee particularly notes:

- the Technical Committee's recommendation to the Committee expressed concerns as to the uncertainty for taxpayers that would be introduced by the OSR's submissions for a general anti-avoidance provision and the Technical Committee's indication of at least the desirability for certainty, as to application of any such anti-avoidance provision, requiring introduction of a Private Ruling system (see the Technical Committee conclusions in the Technical Appendices accompanying the May 2006 Interim Report)
- the Technical Committee expressed concerns in relation to the OSR submissions in relation to the onus of proof on appeals to the State Administrative Tribunal. The Committee endorsed DTF's preliminary finding in the Interim Report on the basis that further consultation would be had with SAT in stage 2 of the Review – the Final Report indicates that the Stage 2 analysis endorses the recommendation for reinstatement yet my independent consultation, as Committee chairman, with the president of SAT, Barker J., indicates a quite contrary view.

- The Technical Committee's conclusion that despite the OSR's perceptions of difficulties and cost "Nonetheless they are still of the opinion that [a system of private Binding Rulings] is desirable and the Reference Group should give consideration as to whether [such a system] is desirable from a policy point of view" and that the Reference Group Committee is clearly of the view that such a system is desirable and warranted.

1.10 More generally the DTF agenda, with the Committee as a 'sounding board, meant that it was DTF and not the Committee that made decisions as to the level of analysis and research with the Committee having a reactive rather than active role in relation to what was given detailed review.

This has led to frustration in the Committee, reflective of the general community frustration, of there being no substantive agenda for visionary reform. This is demonstrated in the area of possible visionary reform for Pay-roll tax to be replaced by a lower rate tax on a broader provision of labour rather than the present narrow employee services base (see paragraphs 4.5.3 and 6.3.1 later in this Report). DTF appear to have given this only cursory analysis and deferral on the basis that a national approach is necessary and reluctance for Western Australia to proactively lead that approach.

As one Committee member stated, with a general endorsement of other Committee members, "the Committee's position could be likened to that of seagulls in a car park – each attempting to get their share of a chip". Be that as it may, Committee members diligently sought to fulfil their role largely putting aside sector interests and have been able to come to what I believe is a general consensus in relation to the recommendations as outlined in this Report even though frustrated that the Review has not produced more.

1.11 The Committee accepts that the constraints upon visionary reform, of the federal/state revenue and tax sharing arrangements, imposed the greatest barrier to the State Tax Review bringing forward recommendations of a visionary nature, as they quite simply would not have been capable of implementation by the Western Australian Government. The Committee also recognised that it would have been a meaningless exercise for the State Tax Review to bring forward proposals that would merely reduce the State's already limited tax base and potentially remove any meaningful role of the State in the federal system. The understandable political reluctance to rely upon any increase in GST payments or other grants from the Commonwealth effectively rule out the States support for an expanded GST, which would be followed by 'calls' for reduction in the States' already narrow independent tax bases and therefore further limit scope for intra-state visionary reforms. This is generally reflected in the DTF's Final Report and the DTF's recommendation being confined to a generalised recommendation for the Government to seek to improve the Commonwealth/State revenue sharing arrangements.

1.12 The Committee endorses the approach and recommendation of DTF (page 26 of the Final Report) of the government "enlisting a small independent 'alliance' to examine and make the public aware of the general Commonwealth/State revenue sharing arrangements and scope for fairer return to Western Australians.

The Committee goes further, however, and recommends that the Government establish and fund an independent research resource to advise the Government upon future tax reform. That would create a body independent of DTF, which the Committee feel must be constrained in what it can bring forward as reforms to the Government it serves, and provide the Government with recommendations upon which it can make decisions that will allow Western Australia to take a lead in what must be a national tax reform approach.

The Committee strongly recommends that the Government not regard the limited reforms proposed in DTF's Final Report as a conclusion to tax reform required for the Western Australian tax system. There should be an ongoing forum tasked with the responsibility to seek submissions for reform, itself identify reform opportunities and to review and advise the Government on a pro-active and ongoing basis. It should do so in a context of the States' tax system being continually refined so that it works in support of the economic well being of the State in a broader sense than of simply and exclusively being directed to raising revenue. In short the tax system should be refined on a pro-active basis so that Western Australia offers economic opportunities that enhance its ability to attract investment and resultant increased economic activity to the State in competition to other jurisdictions. The expanded tax base, of a greater investment community and expanded taxpayer base, is in the Committee's view the 'way forward' in tax reform.

The proposed ongoing forum should:

- not look at tax reform in isolation. Rather a holistic and adventurous approach, which incorporates consideration of other policies such as royalty rates and attraction of investment to the State, is required to explore means to be more competitive in attracting and maintaining industry in Western Australia;
- invite on-going submissions from the business community for tax reforms and/or concessions that would attract and maintain industry in Western Australia;
- be comprised of a cross section of the business and wider community and not be confined to those involved in the States' tax system as designers, collectors or payers;
- consider the abolition of further State taxes funded by new sources of State tax;
- consider means to support a fairer sharing of Commonwealth revenues and an increase in GST to fund the abolition of a wider range of State taxes than is permitted by exclusion of food from and the present rate of GST;
- be more adventurous in consideration of more radical State tax reforms such as the 'flagged' possibility of replacing the Pay-roll Tax system with the broader/lower rate tax on provision of labour services;
- adopt a 'stretch' target for tax reform to have Western Australia become the most tax competitive state by measurement of tax impacts by a wider set of comparative measures than the present comparison based on taxes as a proportion of GDP, which the Committee views as decidedly narrow and that foster a complacent approach of growing taxes (and expenditure) while leaving many in the community with no 'social dividend'; and
- be independent of DTF and other Government agencies and be independently funded to undertake its own research and analysis.

Having regard to the fact that the low fruit of tax reform has already been "picked" following the 2001-02 Western Australian "Business Tax Review" 2002 (with changes implemented in the 2003/2004 budget) and by changes already implemented in the 2006-07 budget referable preliminary findings in the "May 2006 State Tax Review Interim Report" it is acknowledged by the Committee there is little room for visionary

reform of State taxes other than by a national approach. DTF's Final Report leaves visionary reform for the future. The Committee encourages the Government to take a national lead.

- 1.13 During the course of stage 2 of the Review, DTF provided Committee members with a copy of a visionary model for a better "State Taxation and Fiscal Federalism" authored by Robert Carling, a visiting fellow at the Centre For Independent Studies, as a basis for visionary reform that might be looked at in the future. I can safely say that the Committee would have liked to have seen a greater expenditure by DTF in modelling something along the lines of that visionary reform so that it could have become part of the Committee process and, if appropriate, have then brought forward as a recommendation for visionary reform as part of the Final Report. It would in any event be a good starting point for review by the independent on-going tax reform forum, recommended by the Committee, to allow Western Australia to lead visionary reform rather than simply put it aside as something requiring national reform presumably to be lead or left adrift by the Commonwealth or other states. The executive summary and a blueprint for more state tax efficiency and fiscal autonomy are quoted in the following pages of this Report as an example of visionary reform for further evaluation.

State Taxation and Fiscal Federalism" - Robert Carling Visiting Fellow of the Centre for Independent Studies

"Executive Summary"¹

The fiscal reforms that ushered in the Goods and Services Tax (GST) in 2000 had among their objectives an overhaul of the deeply flawed systems of state taxation and Commonwealth-State financial relations. Six years on, a raft of undesirable state stamp duties has been abolished and more are set to be removed over the next six years. In Commonwealth-State relations, the allocation of GST revenue to the states has strengthened the reliability and buoyancy of state revenues and reduced the risk that states will resort to more economically harmful sources of financing.

These are significant reforms, but it is a mistake to think that all the reform work in these areas has been done. In state taxation, payroll tax and land tax are too narrowly based to function as efficiently as they could, and a number of undesirable stamp duties remain even though they suffer many of the shortcomings that led to other stamp duties being abolished.

In the arena of Commonwealth-State financial relations, while the GST is delivering more revenue to the states, it has failed to bolster their financial autonomy from the central government. The states neither individually nor collectively determine GST policy. Their dependence on GST revenue transfers from the Commonwealth, while making life easier for them, preserves the culture of state financial dependency that for decades has drained the lifeblood from Australian federalism. Reinforcing that trend is the magnitude and design of tied grants (specific purpose payments) to the states, which have blurred accountability and given the Commonwealth a growing influence on state policies in many areas of service delivery.

¹ *Executive Summary of "State Taxation and Fiscal Federalism" (pages 7-8) – Published September © 2006 by The Centre for Independent Studies Limited. This publication is available from The Centre for Independent Studies. PO Box 92, St Leonards, NSW 1590 Australia • p: +61 2 9438 4377 f: +61 2 9439 7310 e: cis@cis.org.au*

One approach to further reform of state taxation would be to transform payroll tax and land tax into comprehensive, low rate taxes. This would both reduce the economic distortions that accompany the existing plethora of exemptions and concessions and provide the funds to scrap the remaining stamp duties on property transfers, insurance and motor vehicles. However, state policies have eroded the payroll and land tax bases to such an extent that it is difficult to see them being reconstituted in a broad-based form in the face of fierce resistance to land tax on owner-occupied housing and payroll tax on small business.

An alternative approach is to rely on the GST to fund the removal of all the remaining stamp duties. This is an extension of the current approach, whereby a portion of the growth in GST revenue flowing to the states is replacing the revenue from various stamp duties as they are abolished. The states are not, however, committed to removing other stamp duties (those on property transfers, insurance and motor vehicles) through this mechanism and would not do so because the additional revenue foregone would be large relative to their GST revenue gains. An increase in the GST rate would be needed. An increase to 12.5% would replace most of the revenue from the remaining stamp duties, while leaving some of the cost to be met out of states' existing sources.

Reform of Commonwealth-State financial relations to strengthen federalism requires a shift from state dependence on Commonwealth grants towards wider access to broad-based taxes that the Constitution would allow the individual states to control. State control of a broad-based consumption tax would best meet the criteria for a 'good' state tax but appears unattainable given constitutional and administrative constraints. Income tax is the best choice, given those constraints. The states had their own income taxes before the Second World War and could easily have them again.

The best basic model for a state income tax is the Canadian provincial income tax system—which 'piggy-backs' on the federal income tax base with a single administration—modified to exclude the states from company income tax. To facilitate the change and avoid an increase in overall income tax, the Commonwealth needs to make room for the state tax by reducing its personal income tax rates. Over time, state income tax rates would vary, but with competition limiting any upward drift. The state income tax could take various forms but there is much to be said for a flat rate, with any progressive component being left to the Commonwealth.

This blueprint does not aim to change the overall level of government revenue, which is a separate issue. The budgetary impact on the Commonwealth would be neutralised by matching the reduction in Commonwealth personal income tax with a reduction in Commonwealth grants to the states. I suggest a one-third reduction in Commonwealth income tax, making room for a flat state income tax rate of around 10%.

For the Commonwealth, this would be offset by retaining 5 percentage points of the GST and eliminating most specific purpose payments to the states. The states would receive 7.5 percentage points of the GST and one-third of existing personal income tax revenue but forego all stamp duty revenue and most specific purpose grants from the Commonwealth. Their financial and policy autonomy would be strengthened by the power to set their personal income tax rates and the withdrawal of Commonwealth policy influence through specific purpose payments."

"10. Bringing it together—A blueprint for more state tax efficiency and fiscal autonomy"²

Bringing together the elements of reform developed in sections 4–9 provides a blueprint for a more economically efficient state tax system and greater fiscal autonomy for the states consistent with a renewal of fiscal federalism in Australia. The precise details will be different in each state but the picture sketched here will be broadly representative.

A. Reform existing state taxes

- (i) *Abolish the remaining stamp duties not currently scheduled to be abolished—namely, property transfer duty and the duties on motor vehicles and insurance, along with fire services levies on insurance in those states that still have them.*
- (ii) *Finance (i) mainly through an increase in the GST rate to 12.5%, with the balance of the cost to be covered from states' existing sources such as automatic GST revenue growth and broadening of payroll tax and land tax bases.*
- (iii) *Ideally, as part of this reform, payroll tax and land tax would be restructured as broadbased, low rate taxes.*

B. Reform fiscal federalism

- (i) *The Commonwealth to retain five percentage points of the new 12.5% GST rather than pass 100% of it to the states. The states to receive 7.5 percentage points.*
- (ii) *Most Commonwealth Specific Purpose Payments to the States to be eliminated as part of a fundamental review of the roles and responsibilities of the Commonwealth and the states.*
- (iii) *The Commonwealth to use the budgetary savings from (i) and (ii) to reduce its personal income tax by one-third in the form of a flat percentage points reduction in all existing personal income tax rates.*
- (iv) *The states to legislate flat state-specific personal income tax rates for their residents, initially equivalent to the one-third withdrawal by the Commonwealth. The states would use the same definition of the income tax base as the Commonwealth and the same tax free threshold. The Australian Taxation Office would administer both the Commonwealth and state income taxes, but taxpayers' liabilities to the different governments would be separately identified.*
- (v) *Over time the states would have the freedom to vary their income tax rates, but only through increases or reductions in their flat rates.*

These reforms would leave the states with several major tax revenue sources under their own control that are relatively efficient and buoyant: personal income tax; payroll tax; land tax; gambling taxes; and motor vehicle usage taxes. In addition, they would share in GST revenue. Table 2 shows the resulting composition of state revenues using 2006–07 estimates. The states' self-funding ratio would rise to 75%, which would be more in line with other federations such as Canada, Germany and the United States. The proposals are pragmatic in that they recognise the real world constraints on the theoretically superior option of handing states control of a broad-based consumption tax and give less prominence to payroll and land tax reform than the full force of economic logic would suggest should be the case.

² "State Taxation and Fiscal Federalism" (page 22) - Robert Carling Visiting Fellow of the Centre for Independent Studies – Published September © 2006 by The Centre for Independent Studies Limited.

This is intended as a revenue-neutral package and as such is not aimed at raising or lowering the size of government. That is a separate issue. But by making government at all levels more accountable for their spending, the package would give greater grounds for confidence that the size as well as the composition of government expenditure is an accurate reflection of the public's choices."

2. Introduction - Priorities for Taxation Relief (Chapter 2 of DTF's Final Report)

2.1 This Report summarises the Reference Group Committee's reaction to the recommendations contained in the DTF's State Tax Review Final Report. It is to be emphasized that that Final Report has not, as yet, been made publicly available and that the Committee has not seen it. The Committee has, however, had the benefit of the published "May 2006 Interim Report, briefings from officers of DTF and from me summarising the content of DTF's Final Report. I am satisfied that those members of the Committee who provide me with 'feed back' at the final meetings of the Committee held on 30 March and 3 April 2007, from which I have developed this Report, were sufficiently well informed as to enable them to properly form the views that I pass on in this Report. It is unfortunate that their task was made more difficult by the Final Report not being published to the Committee by reason of a Cabinet decision, be it a quite understandable decision, to withhold publication by reason of a 'leak' to the Press in relation to the 16 March 2007 DTF briefing as to content of the Final Report. It must also be emphasized that other commitments prevented full attendance at the final 2 meetings of the Committee so that not all Committee members were a party to all the views I express on behalf of the Committee, generally. However I have given each Committee member the opportunity to advise me of any substantive disagreement to the views I so generally express by exposure of a draft of this Report to each member before my delivery of it to the Treasurer.

2.2 Affordability and Funding of Tax Relief

A target amount of State tax relief was not identified in the Terms of Reference or in DTF's Final Report.

The Committee recognises that State taxes are a key source of funding for State services and infrastructure, including health, education and law and order, and that the Terms of Reference confirm the need for tax relief to be balanced against community expectation in these areas. It must be noted that Committee members associated with the less privileged in our community expressed a view, dissenting from that of the majority, that Western Australia's taxes should not be lowered but returned to the less privileged in the form of a 'social dividend' of higher State funded services and infrastructure in the form of affordable housing.

2.3 I am satisfied that the majority of the Committee endorses the views expressed in the DTF's Final Report that tax relief is required and do not regard the provision of a 'social dividend' and tax relief as mutually exclusive. The Committee as a whole recognised that the DTF's recommendations as to increased thresholds for the first home buyers' Stamp Duty exemption, increased thresholds effectively lowering Stamp Duty and 'flattening' of Land Tax scale were a 'social dividend' directed to more affordable housing and a flow-on into the 'supply and demand curve' of reduction in housing rental. Specific

recommendations directed to the disabled are also contained in the DTF's recommendations.

- 2.4 The Committee recognises that the Terms of Reference reserve to the Government the decision as to the aggregate tax relief to be provided and that the packages put forward by DTF in its Final Report are intended as only indicative of the likely split of relief dependent upon the Government's decision. Although supporting the DTF's assessment of community expectations for prioritisation of tax relief the Committee emphasises that it does not support the DTF's indicative packages of tax relief.

The Committee does not endorse the indicative packages for tax relief put forward in DTF's Final Report, for the following reasons.

- 2.4.1 Firstly, the Committee is of the view that the rationale, indicated by indicative packages put forward by Committee members during the Review and general discussions of the Committee, was that tax relief should be prioritised proportionately to the sector contributions to over-collections of taxes in excess of projected expectation.

The Committee questions whether the level of relief against Pay-roll Tax shown in the DTF's highest indicative (\$350 million) package reflects that prioritisation and believes the Committee's prioritisation rationale would see less relief for Pay-roll Tax and greater relief for taxes higher in the prioritisation ranking.

The indicative level of Pay-roll Tax relief appears to be to more broadly distribute relief and to placate calls by the business community than recognise the wider community's prioritisation. It is not consistent with the general thrust of the Committee's discussions in relation to priority that benchmarked relief by reference to those sectors that had contributed to the excess of tax collections over expectation nor the "May 2006 Interim Report" preliminary findings³. Although working from figures for the period 2001-2005 (and recognising there could have been changes in the proportions by reference to increased pay-roll tax collections reflective of a greater number of people being employed, and by reference to the mining industry perhaps at higher pay rates, rather than any general increase in wages) Pay-roll Tax increased by one percentage point whilst conveyance Stamp Duty increased by nine percentage points. This suggests a greater weighting for relief in the conveyance Stamp Duty area than the weighting given to Pay-roll Tax relief in DTF's indicative package.

If the level of Pay-roll Tax relief was moved back to the one against 9 weighting, in line with the Committee's rationale, the available additional amount exposed in a package (at \$350 million or more) could be allocated to areas such as:

- relief in the form of a general calculation of Stamp Duty on GST exclusive basis (rather than confined to that calculation only on insurance premiums)
- relief from Stamp Duty directed to a policy of safer and cleaner motor vehicles

³ Interim Report page 136 - "Reducing payroll tax is not currently considered a high priority on the basis of the Review principles of competitivenessor efficiency.....Reductions in other State taxes are likely to generate larger economic welfare gains except to the extent that adverse perceptions about payroll tax (because of its direct incidence on wages) impact on business behaviour significantly more than economic theory suggests."

if the Government was minded to take up suggestions that had a general endorsement of the Committee (referred to later in this Report) of if not, in order of prioritisation:

- general Stamp Duty relief (by a greater increase in thresholds than DTF's indicative 15% or by a general reduction in rates)
- greater relief for Stamp Duty on motor vehicles (by a greater increase in thresholds than DTF's indicative \$10,000 for vehicles under \$50,000 or by a general reduction in rates).

It must be noted that membership of the Committee was not struck on the basis of any proportionate representation of community sectors. As the membership turned out it can be said that those associated with larger employer sector were a disproportionate minority. It is only reasonable therefore that I record that CCI, though supporting the Committee's prioritisation rationale (giving priority to Stamp Duty relief), have expressed a strong view that the tax relief package needs to be balanced and should include meaningful Pay-roll Tax relief. This highlights the need for a greater total relief package, than DTF's indicative of \$350 million, within which the CCI's view could be accommodated within the Committee's rationale at the levels indicated in DTF's indicative package.

2.4.2 Secondly, there is a question mark as to whether the 15% increase in general conveyance rates provide tax relief in the indicative figure of \$58 million. Based on figures provided to the Committee earlier in the Review a costing undertaken by REIWA showed an indicative cost of \$160 million for a 50% increase in the thresholds - proportionately a 15% increase should give an indicative figure around \$48 million. The Committee sees a figure of \$10 million that is available within DTF's highest indicative package (of \$350 million or more) to be applied to the prioritised relief referred to in paragraph 2.4.1, above.

2.4.3 Thirdly in each of DTF's indicative packages there has been a rounding up of the indicative aggregate packages cost from the costings within the packages. This carries through into DTF's highest indicative package so that the \$350 million indicative package is a rounding up by \$20 million from the aggregate costings of each item of indicative relief at \$330 million. The Committee sees a figure of \$20 million that is available within DTF's highest indicative package (of \$350 million or more) to be applied to the prioritised relief referred to in paragraph 2.4.1, above.

2.4.4 Fourthly, the prioritisation given to Pay-roll Tax relief in DTF's indicative package, as against conveyance Stamp Duty, is not reflective of the relativities shown in REIWA's submissions, supported by there having been no change in the past 25 years to thresholds and value ranges in item 4 of the Second Schedule to the Stamp Act (relating to conveyances of land under the Transfer of Land Act). In that 25 year period, not unexpectedly, there has, been a significant increase in the median price of housing. Property prices have increased by something in the vicinity of 40%, in the past 12 months, but there has been no like corresponding increase in wages (and it is suggested any aggregate growth in wages by numbers employed) of anywhere near that magnitude.

The lack of reform in relation to the Stamp Act threshold and value ranges highlights the need for a significant reform in this area by an increase in those thresholds by something in the vicinity of 50% rather than the 15% increase in DTF's indicative

package. As mentioned earlier in this Report, at paragraph 2.4.1, a Committee recommended package greater than that of DT's total indicative package would accommodate the views of larger employers, as to the need for Pay-roll Tax relief (at the levels indicated in DTF's indicative package) and also significant increases in Stamp Duty thresholds (supported by the Committee's prioritisation rationale).

The table provided by REIWA, set out below, shows that 25 years ago the median price fell into the lowest threshold bracket (the median price attracting duty at 1.5%) but now the median price at \$460,000 falls into the second highest bracket (that median price attracting duty at 4.1%).

Stamp Duty – Median Price Bracket Creep

March 82 to June 88 (SD = 1.5% of median)	1st Threshold < \$80,000
Sept 88 to June 92 (SD = 1.8% to 2.0% of median)	2nd Threshold \$80,000-100,000
Sept 92 to Dec 03 (SD increase from 2.0% to 3.9%)	3rd Threshold \$100-250,000
March 04 to present (SD now 4.1% of \$460k revised Dec 06 median)	4th Threshold \$250-500,000

REIWA indicates that a further 8% rise in median price (likely by Dec 2007) will push more than half of Perth house sales into top threshold, applying above \$500,000.

REIWA questions the absence of real reform in the threshold and particularly notes that there needs to be a significant (much greater than the 15% increase recommended by DTF) to effectively remove the two lowest threshold brackets (of under \$80,000 & \$80-\$100,000) justified by the table below, provided by REIWA, showing there has only been 7% of total house, unit and land sales across WA in 1st half of 2006-07 that have been below \$150,000.

House & Unit Sales / Threshold Distribution – WA					
Thresholds	<\$80K	\$80-100K	\$100-250K	\$250-500K	>\$500K
2000-01	12	10	61	15	3
2001-02	8	8	61	19	4
2002-03	5	5	60	24	5
2003-04	5	3	53	31	7
2004-05	3	2	43	42	10
2005-06	2	1	22	57	18
2006-07	1	1	10	58	30

2.4.5 Fifthly, the total of DTF's highest indicative package falls well below the Committee's view of the tax relief expectations of the community. The Committee is of the view that the figures shown in the DTF's 2006-07 Mid Year Financial Projections Statement – December 2006 support an indicative package of at least \$400 million and that should be more in the vicinity of \$500 million, for the first year. The surpluses projected in that mid-year review are:

2006-07 - \$1,739 million

2007-08 - \$1,438 million

2008-09 - \$1,195 million

2009-10 - \$912 million

Over the 2006-07 and 'out-years' the average surplus is projected at \$1,321 million. Within those surpluses are the following amounts that would be collections greater than the expectations (projections) contained in the 2005-06 Budget:

2006-07 - \$464 million

2007-08 - \$549 million

2008-09 - \$625 million

2009-10 - \$465 million

That is collections greater than the 2005-06 Budget expectations (projections) averaging over those years \$526 million per annum.

Leaving aside the Committee's view that surpluses should not be budgeted for (as large budgeted surpluses, rather than a balanced budget of revenue and expenditure including expansion of services and infrastructure, are viewed by the Committee as just as fiscally bad as budgeting of deficits) greater than expectation (budgeted) collections, in the Committee's view well and truly justify a generosity on the part of the Government of a indicative tax package in the range of \$400 - \$500 million.

The Committee's view is that such an increased, \$400 – 500 million package should incorporate a tax relief in the tax areas proportionately disclosed in the DTF's Final Report (subject to adjustments referred to in paragraphs 2.4.1-2.4.3, above)

The Committee's majority view was that the Western Australian community will view with cynicism any delay in provision of tax relief of anything less than a magnitude of \$400 - \$500 million.

The Committee's noted that its perception of the communities view appeared supported by the CCI Survey on the Performance of the WA Government 2006⁴, which showed a

⁴ CCI Survey on the Performance of the WA Government 2006 *Conducted by CCI in the two-week period ending 24 November 2006 - The December survey included 361 businesses operating in WA, employing 25,000 Western Australians*

negative perception in relation to taxes, with 74 per cent of respondents indicating a poor performance. This was up from a proportion of 54 per cent in a similar CCI December 2002 survey and 67 per cent in December 2004. The Committee noting that the DTF's State Tax Review May 2006 Interim Report had been published in June 2006.

The Committee believes that the Western Australian Government must use the 2007-08 Budget to demonstrate that it is committed to delivering genuine taxation reform and relief. Once again it must be pointed out that members associated with groups representing the less privileged of our community expressed the view that tax collections in excess of projected expectations should be returned a 'social dividend' by increased Government funded services and infrastructure.

3. Committee's Position as to Specific Recommendations

(Chapter 2 of DTF's Final Report)

3.1. Priorities for Taxation Relief (Chapter 1 of DTF's Final Report)

- 3.1.1. The DTF's Final Report indicates a priority ranking for taxation relief (from highest to lowest) is reducing conveyance duty (including by increasing the first home buyer exemption and the thresholds of the general scale), investing in reform of the land tax scale, reducing insurance duty by adopting a GST-exclusive base, reducing motor vehicle duty for light vehicles (and introducing an exemption for caravans) and reducing the payroll tax rate.
- 3.1.2. The Committee generally endorses that priority ranking but emphasises that it does not, for the reasons set out in paragraph 2.4 earlier in this report, endorse the DTF's indicative package. The DTF's highest indicative package is, in the context of Western Australia's booming economy and particularly tax collections dramatically in excess of budgeted significant surpluses, seen quite simply as mean. **The Committee recommends a tax relief package for 2007-08 in the range of \$400-500 million.** That relief should be prioritised broadly in line with DTF's recommendations subject to adjustments in response to the issues raised earlier in this Report (at paragraphs 2.4.1 – 2.4.4 earlier in this Report).
- 3.1.3. The Committee notes that lifting the first home buyers exemption from Stamp Duty threshold to a range of \$400,000 –500,000 will, on DTF's figures lift 72% of first home buyers into the fully exempt category at a cost to revenue of around \$3 million. **The Committee recommends that the tax relief package provide for Stamp Duty exemption for first home buyers on homes and units up to a \$400,000 with a phased exemption in the value range of \$400–500,000.** It is noted that this could be achieved at a small cost to revenue costed by DTF at \$3 million for 2007-08.
- 3.1.4. It is noted there has been no reform of the stamp duty scale thresholds in 25 years! (see paragraph 2.4.4 ,earlier in this Report).

There needs to be a real reform of the threshold scales and such a low figure as a 15% increase in the thresholds raises a real concern in the Committee as to any commitment of DTF to real reform (although it is acknowledged that DTF's

packages are intended only as indicative of what can be achieved if the Government's tax relief is confined to the maximum \$350 million package).

It is to be noted that on REIWA's figures a further 8% rise in median price (they expect by December 2007) would push the median house price up to a figure nudging the top threshold (threshold over \$500,000) with the excess over that threshold attracting a top rate of 5.4%. REIWA indicates that more than half of Perth house sales would be into that over \$500,000 e top threshold bracket.

The lower threshold brackets are really meaningless in the current market, as indicated by REIWA's research showing only 7% of total house sales, units and land fell into the two lower threshold brackets in the first half of 2006-07. A significant percentage lift would effectively abolish those two lower threshold brackets.

The Committee recommends that an upward \$ adjustment of the available tax relief package should be applied to a significant percentage increase in the thresholds of item 4 of the Second Schedule to the Stamp Act (in the vicinity of a 50% increase in those thresholds). Alternatively some part of the tax relief might be applied in a reduction in the Stamp Duty rates as this, from a community perception view point, would be more likely seen as real relief, although the Committee recognises that relief would be achieved by threshold changes and this could be easily demonstrated in communication of a threshold or combination threshold/rate relief package.

It is recognised that the item 4 of Second Schedule Stamp Act rates are imported by reference into the conveyance duty item 6 (relating to property other than land) and those relating to exchanges settlements and deed of gift (items 10 and 19). Items 4, 10 and 19 might require consequential amendments. Although as the threshold for those items has not changed for 25 years it would be reasonable to have the lower rates of Stamp Duty apply at much higher values by removal of these lower threshold brackets.

3.2. Taxation Reform Priorities (Chapter 2 of DTF Final Report)

(see also paragraphs 1.3 – 1.13 earlier in this Report)

The Committee recommends that the Government go beyond the DTF's view that the scope for visionary reform lies in a more informed community debate and its limited recommendation that the Government consider enlisting a small independent 'alliance' of business, community and union leaders, ex-politicians and academics to help improve public awareness of the general Commonwealth-State relations environment in which States operate (and the scope for fairer returns to Western Australia that could also be in the national interest).

The Committee recommends that the Government establish and fund an independent research forum to advise the Government upon future tax reform. That would create a body independent of DTF to provide the Government with recommendations upon which it can make decisions that will allow Western Australia to take a lead in what must be a national tax reform approach. The proposed ongoing forum should be independent of DTF and other Government agencies and be independently funded to undertake its own research and analysis and thereby avoid the process difficulties that have frustrated the Reference Group Committee in the area of visionary reform.

The Committee further recommends that the Government task the forum, as a priority, to adopt a 'stretch' target for reforms to make Western Australia the most tax competitive state by measurement of tax impacts by a wider set of comparative measurers than the present comparison based on taxes as a proportion of GDP, which the Committee views as decidedly narrow and that foster a complacent approach of growing taxes (and expenditure) while leaving many in the community with no 'social dividend'.

The Committee believes that the general communities view is that measurement of taxes solely as a proportion of the State's GDP does not encourage fiscal responsibility in tax collections (or expenditure). It encourages expenditure on economic growth while masking the impacts upon the community of higher taxes; justified by relativity with an increased GDP fostered by that that economic growth, when many in the community see no 'social dividend' from the higher taxes. Even if this is merely a community perception problem, which the Committee does not believe it is, it needs to be addressed in addressing the 'good tax principles' espoused by the Terms of Reference of the State Tax Review. The Treasurer having expressed in those Terms of Reference that "*The purpose of the Review is to make recommendations on reform of the State tax System in consultation and reflecting the priorities of the Western Australian community. The over-arching objectives of the Review are to enhance the competitiveness, equity and efficiency of the State tax system in Western Australia*" (my emphasis and particularly noting the combination of "*competitiveness, equity and efficiency*"). It is noted that the latest ABS data, released last week, shows that WA taxes have increased from \$1,186 per person in 2000-01 to \$3,015 last year – in terms of equity, for many in the community who do not perceive themselves to have received a 'social dividend', an increase of 60% in taxes moving WA from a ranking of 4th highest taxed taxpayers, behind NSW, Victoria and ACT, to now the highest taxed

3.3. Stamp Duty for Conveyances

3.3.1. Implement the Landholder Model

3.3.1.1. The Committee endorses DTF's recommendation for introduction of a landholder model but emphasises that to the extent that this reform proves to be revenue positive, its implementation should coincide with reduction in conveyance duty rates commensurate with the additional revenue otherwise raised. **The Committee recommends that a monitoring system should be put in place to clearly identify the level of and projection of any positive increase in revenue collections and that as soon as the level of increases is projected that tax relief is given immediately to offset those projections.**

3.3.1.2. Underlying this DTF recommendation, and the Committee's support, is the goal of a consistent principle in application of Stamp Duty no matter the 'entity' that owns the relevant property. Application of that principle means that decisions as to the appropriate entity to own property are not driven by tax considerations (a measure of a good tax law). That goal should be commonly applied in relation to the other State tax relating to land, namely Land Tax. Generally that is the position under the Land Tax Assessment Act, in relation to rates and exemptions. However the principle is not consistently applied in that Act in relation to the principal

place of residence exemption from which corporate and trust owners of land are excluded.

On the basis that measures of a good tax law require consistency of principle, justifying the introduction of the Stamp Act Landholder provisions, **the Committee recommends that the consistent principle should be extended to the PPR land tax exemption** (see paragraph 3.4.1.2, below).

3.3.1.3. The Committee recommends that further consideration be given to the administration of the both the existing land rich provisions and the new landholder regime to provide reasonable timeframes for the provision of information by taxpayers.

Under the existing land rich provisions, taxpayers are required to provide information in relation to a land rich acquisition or in respect to a land rich ruling within 2 months of the transaction. In many instances, the land rich status of a company or the duty payable depends on obtaining significant information and evidence (including valuations). This can often take longer than 2 months. While the OSR presently adopts a lenient attitude to provide information, the extension has no legislative basis and leaves taxpayer, strictly, open to penalties. The provisions should provide the Commissioner with discretion to extend the time for provision of information.

3.3.2. Broaden the Corporate Reconstruction Concession Provisions

The Committee endorses DTF's recommendation that, as part of the Stamp Act re-write project, the corporate reconstruction exemption provisions of the Stamp Act be extended to unit trusts.

However, the Committee does not support DTF's recommendation that this extension of corporate reconstruction exemption provisions be dependent upon introduction of a general anti-avoidance provision to the Stamp Act. This condition on DTF's recommendation is viewed by the Committee as an acceptance of OSR's unsupported assertions that such an anti-avoidance provision is required without any independent critical examination by DTF— see earlier in this Report at paragraph 1.9. and later in this Report at paragraph 3.8.1.

Specific anti-avoidance provisions are presently contained in the corporate reconstruction provisions and also the land rich company provisions, of the Stamp Act). The Technical Committee and the Committee are of the view that those specific anti-avoidance provisions properly address any endeavours for avoidance by arrangements considered not within the policy of the provisions. While these specific anti-avoidance provisions sometimes have a broader unintended impact, they allow the specific issue to be dealt with in an effective manner that does not add a significant layer of uncertainty to taxpayers.

The Committee notes the DTF's "May 2006 Interim Report" indicated that *"The appropriate scope and policy basis of the corporate reconstruction stamp duty relief provisions should be further investigated in Stage 2 of the Review, taking into any move [to introduce the a landholder regime]."* The Committee further noted that the Stage 1 Technical Committee conclusion that there was a chasm

between the views of OSR and industry as to the Government's policy intent and that such a further review was required in Stage 2 in order that the policy could be clearly ascertained and applied to the various concerns raised by submissions in relation to perceived problems with the provisions. The matter was not brought forward in DTF's Stage 2 meetings. The DTF's Final Report is confined to an issue of extension of the reconstruction provisions to unit trusts as part of the introduction of a landholder regime.

There was strong support in the Technical Committee for the reconstruction exemption provisions to be amended to reduce the pre and post association tests. Presently, there are many instances where companies seek to rearrange their corporate structure to improve productivity and efficiency but do not meet the strict pre and post association tests for relief. An example is a corporate group being forced to wait 3 years to restructure a company that has been recently acquired. Another example is a corporate group not being permitted restructure relief to allow it to float part of its operations. The Committee considers that these tests are out of step with corporate reality and inconsistent with other jurisdictions and that they require amendment as part of the Stamp Duty re-write project to at least 'bring them into line' with the provisions in other jurisdictions.

The Committee recommends that DTF be directed that all issues raised in submissions, and outlined in the "Technical Appendices" to the "May 2006 Interim Report"⁵, be taken up and addressed in consultation with the tax profession in development of the landholder regime provisions as part of the Stamp Act re-write project.

3.3.3. Concession for Trusts Established for a Family Member with a Disability

The Committee endorses DTF's recommendation for Stamp Duty relief for property gifted to the trustee of a Special Disability Trust as defined by section 1209L of the *Social Security Act 1991*. See later in this Report the Committee's recommendation for Principal Place of Residence exemption from Land Tax for property in such a Special Disability Trust.

3.3.4. Ensuring Equitable Application of Stamp Duty to Petroleum Titles

The Committee endorses DTF's recommendation that the Treasurer seek an increase in the present 1.5% registration fee on petroleum title transfers to equate it with conveyance duty and an expansion to apply the fee on transfers of indirect interests. **The Committee recommends that a monitoring system should be put in place to clearly identify the level of and projection of any positive increase in revenue collections and that as soon as the level of increases is projected that tax relief is given immediately to offset those projections (by reductions in general conveyance rates and a commensurate reduction in the % registration fee on petroleum title transfers earlier increased under this proposal).**

3.3.5. Extend Farm-In Concession to a Right to Extract Minerals

The Committee endorses DTF's recommendation to extend the farm-in concession to a right to extract minerals as part of the Stamp Act rewrite project.

⁵ "Technical Appendices" (to the "May 2006 Interim Report") pages 99- 105.

3.3.6. Extend Family Farm Exemption to Allow Related Entities to Farm the Land

The Committee endorses DTF's recommendation to extend the availability of the family farm exemption to situations where a related family entity intends to continue to use the farming property for the purposes of primary production as a part of the Stamp Act rewrite.

3.3.7. Abolish Stamp Duty on Nuisance Deeds

The Committee endorses DTF's recommendation that as part of the Stamp Act rewrite project, the nominal (\$20) duty on deeds be abolished.

However, the Committee does not support DTF's recommendation that the abolition of this nuisance tax be dependent upon introduction of a general anti-avoidance provision to the Stamp Act. This condition on DTF's recommendation is viewed by the Committee as an acceptance of OSR's unsupported assertions that such an anti-avoidance provision is required without any independent critical examination by DTF— see earlier in this Report at paragraph 1.9. and later in this Report at paragraph 3.8.1.

3.3.8. Abolish Stamp Duty on Non-Real Conveyances

The Committee endorses DTF's recommendation that the abolition of Stamp Duty on non-real business assets be brought forward to 1 July 2008 to coincide with the commencement of the Stamp Act rewrite legislation or if this cannot be accommodated in the Government's priorities, amendments to effect the subsequent abolition should be included in that legislation.

3.3.9. Abolish the Principal Place of Residence and Small Business Concession

The Committee endorses DTF's recommendation that the PPR and small business conveyance duty concession should be abolished on the basis that resultant increased collections of Stamp Duty be used to partly fund (indicated by DTF to be relatively minor) the significant percentage increases in Stamp Duty threshold brackets, recommended by the Committee elsewhere in this Report).

3.3.10. Reassess Stamp Duty where the Consideration Paid for the Purchase of the Property is Reduced

The Committee endorses DTF's recommendation that, as part of the Stamp Act rewrite project, provision be made for Stamp Duty to be assessed (or reassessed where applicable) on a lower amount where the consideration for property has been reduced prior to the property being transferred.

3.3.11. Provide a Stamp Duty Exemption for Certain Transfers of Property Upon the Dissolution of a Marriage or De Facto Relationship

The Committee endorses DTF's recommendation that, as part of the Stamp Act rewrite project, provision be made to extend the availability of the personal relationship concession, for transfers of property out of superannuation trusts, upon the dissolution of a marriage or de facto relationship.

3.4. Land Tax

3.4.1. Reduce the Progressivity of the Land Tax Scale

3.4.1.1. The Committee endorses DTF's recommendation that the Government commit to the DTF's recommended strategy of flattening the land tax scale in order to reduce inherent bracket creep and problems caused by aggregation provisions.

3.4.1.2. Underlying this DTF recommendation to introduce the Stamp Act Landholder regime, and the Committee's support, is the goal of a consistent principle in application of Stamp Duty no matter the 'entity' that owns the relevant property. Application of that principle means that decisions as to the appropriate entity to own property are not driven by tax considerations (a measure of a good tax law). That goal should be commonly applied in relation to the other State tax relating to land, namely Land Tax. Generally that is the position under the Land Tax Assessment Act, in relation to rates and exemptions. However the principle is not consistently applied in that Act in relation to the principal place of residence exemption from which corporate and trust owners of land are excluded. On the basis that measures of a good tax law require consistency of principle, justifying the introduction of the Stamp Act Landholder provisions, **the Committee recommends that the consistent principle should be extended to the PPR land tax exemption - that is the Land Tax PPR exemption should be extended to:**

- (a) **Special Disability Trusts owning the property in which a disabled person resides as a PPR** (an extension of the recommendation to give Stamp Duty exemption to transfers of property to such trusts – see paragraph 4.3.3, below); and
- (b) **a corporation or a trust owning the property that is occupied by the underlying individual beneficial owners as a PPR** (with appropriate provisions, as previously existed in the Act, identifying the underlying interests as shareholder, unit holder or discretionary beneficiary that would attract that PPR exemption).

This would also have a consistency with DTF's recommendation, referred to in paragraph 4.4.4, below, for a PPR exemption to be introduced for individuals who have a future right to ownership of a property, under the terms of a will, which they occupy as a PPR in the interim until they become the owner.

3.4.2. Introduce a Scheme to Allow the Deferral of Land Tax on Non-Income Producing Property

The Committee endorses DTF's recommendation that a land tax deferral scheme for owners of non-income producing residential property, subject to certain qualifying conditions, be introduced with effect from 30 June 2008 (so as to apply to the 2008-09 Land Tax assessment year).

3.4.3. Provide a Land Tax Exemption for Private Aged Care Providers

The Committee endorses DTF's recommendation that a land tax exemption be provided to private aged care facilities.

3.4.4. Introduce a Principal Place of Residence Exemption for Individuals who have a Future Right to a Property Under the Terms of a Will

The Committee endorses DTF's recommendation that a principal place of residence exemption should be introduced in certain circumstances for individuals who have a future right to a property under the terms of a will.

3.4.5. Removing Taxation Barriers for People with Disabilities

The Committee endorses DTF's recommendations that:

3.4.5.1. the requirement that no rent or other income be derived from property occupied by a relative with a disability as their primary residence, in order for the exemption/concessions to apply, should be removed.

3.4.5.2. the definition of a disabled person and a disabled beneficiary for the purposes of the exemption/concessions should be widened by the adoption of the Commonwealth criteria for the person to be eligible to receive a disability support pension.

3.5. Payroll Tax

3.5.1. Reduction in Rate

The Committee endorses DTF's recommendation that there be a reduction in Pay-roll tax rate but with the qualification that any reduction should be proportionately consistent with the Committee's rationale as to the priority for tax relief (see paragraph 2.4.1, above).

The Committee recommends that the Government have DTF recalculate the proportion of relief that should be given to Pay-roll Tax, of an increased tax relief package in the range \$400-500 million commencing 2007-08, and that appropriate reduction in the rate of Pay-roll Tax be introduced as part of that increased package. As mentioned earlier in this Report, at paragraph 2.4.1, this highlights the need for a greater total relief package, than DTF's indicative of \$350 million, within which the CCI's view, for a balanced package incorporating meaningful Pay-roll Tax rate reductions, could be accommodated within the Committee's rationale as to the higher priority ranking relief to be given in relation to conveyance Stamp Duty.

3.5.2. Payroll Tax Consistency Project

The Committee endorses DTF's recommendation that Western Australia continue to lead the process, currently underway, to examine and implement increased interstate consistency in the 'administration' of Pay-roll Tax.

3.5.3. Western Australia lead National/State Taxation and Fiscal Reform (see also paragraphs 1.3 – 1.13 and 4.2 earlier in this Report)

The Committee recommends that the Government establish and fund an independent research resource to advise the Government upon future tax reform. That would create a body independent of DTF to provide the Government with recommendations upon which it can make decisions that will allow Western Australia to take a lead in what must be a national tax reform approach. The proposed ongoing forum should be independent of DTF and other Government agencies and be independently funded to undertake its own research and analysis and thereby avoid the process difficulties that have frustrated the Reference Group Committee in the area of visionary reform.

The proposed independent research forum should take the lead in examining tax reform proposals such as to broader labour services tax (referred to earlier in this Report at paragraph 1.10 and later in this Report at paragraph 5.3.1) and the broader type of reforms to the federal/state fiscal relationship referred to earlier in this report at paragraph 1.13. The Committee encourages the Government to take a national lead.

3.6. Stamp Duty on Insurance

The Committee endorses DTF's recommendation that:

- (a) the Government engage with the Commonwealth on the proposed treatment of Discretionary Mutual Funds (DMFs) and Direct Offshore Foreign Insurers; and
- (b) Subject to Commonwealth reforms and appropriate industry consultation, the insurance duty base should be broadened to include DMFs and to rationalise the treatment of Direct Offshore Foreign Insurers.

3.7. Stamp Duty on Motor Vehicle Transfers

3.7.1. Lifting Thresholds by \$10,000

Western Australia is the most uncompetitive State in relation to motor vehicle taxes, courtesy of its very high rates of duty relative to other States. Queensland has a flat rate of 2 % against Western Australia's top rate of 6.5%.

Those Committee members associated with the motor industry have advised the Committee that a return to a single rate regime is an important reform to the State taxation system. It would reduce inherent inequities associated with the current system. The introduction of a single rate of, say, four per cent on all vehicles would not involve a significant cost to budget, and could be further reduced over time to address competitiveness issues with other states (such as Queensland) where stamp duty on motor vehicles is much lower.

Other members of the Committee were concerned with the uncompetitive rate of duty being imposed upon Western Australian purchasers of motor vehicles and also to the fact that purchasers of higher priced vehicles and of those who buy in bulk (those having fleets and rental businesses) are advantaged by purchasing out of the State avoid WA Stamp Duty. The latter at two levels in that out of State purchasers created an inequity for those without the ability to purchase out of State and also at the level of loss of sales by businesses in this State with consequent loss of business revenue.

The DTF's recommendation, to introduce a specific anti-avoidance provision, that would bring out-of-State purchases of vehicles, subsequently brought into the State, within the WA tax provisions addresses was generally viewed by the Committee as really addressing the result rather than cause of the problems. That problem being that Stamp Duty on vehicles is out of touch with that applying in other States. There was also a concern that although the proposed anti-avoidance provision might deter prevent individual purchasers it would be unlikely that it would deter bulk purchasers, who for the large part have businesses operating across state borders, as Constitutional restraints on interference with inter-state trade would likely apply.

Having regard to WA's booming economy the Committee, while of the view that tax relief should be given in accordance with the Committee's rationale (relief proportionate to the sectors that have contributed to the excess of tax collections over projected expectations) there should be room in an increased package of \$400-500 million to make a start on addressing the cause of the problems by reducing rates and therefore tax on motor vehicles by more than will result from DTF's recommended increase in thresholds (by \$10,000 for vehicles under \$50,000). **The Committee recommends that there be a reduction in the higher rates with a view over time to all removing the inequity of Western Australians paying significantly higher Stamp Duty than purchasers in other states. It sees this as a better solution than maintaining the high rates and having an anti-avoidance provision (to enforce that inequity) when the anti-avoidance provision is likely to result in only individuals and not big business being 'caught'.**

3.7.2. Introduce a Single Rate for all Heavy Vehicles

The Committee endorses DTF's recommendations that a single flat stamp duty rate of 3% apply to all new or used heavy vehicles, in the interest of fairness and simplifying the tax system, but as part of a wider reduction to create over-all fairness and simplifying the tax system in its application to WA purchasers of all motor vehicles.

3.7.3. Anti-Avoidance Provision for the Transfer of Motor Vehicles Registered in Other Jurisdictions

The Committee does not support DTF's recommendation for an anti-avoidance provision but rather an addressing of the underlying reason for avoidance – see paragraph 4.7.1 earlier in this report

However if the Government is of the view that it can justify to Western Australian taxpayers why they should pay the significantly higher rates, against those paid by purchasers in other states, and that the anti-avoidance provision will not (through the Constitutional protections of inter-state trade) see individual purchasers only left to pay those higher rates then the Committee endorses DTF's recommendation for introduction of an effective anti-avoidance provision.

3.7.4. Imposition of Motor Vehicle Transfer Duty – New Vehicles

The Committee endorses DTF's recommendation that:

- (a) there be no change to the list price basis of calculating duty for motor vehicles or to the dealers' exemptions;
- (b) the period for determining whether a vehicle qualifies as new car should be reduced to two months; and
- (c) there be further examination of the appropriate treatment of multiple list prices undertaken by the OSR in conjunction with the industry.

3.8. Tax Administration

3.8.1. Introduce a General Anti-Avoidance Provision into the Stamp Act

The Committee does not support DTF's recommendation for introduction of a general anti-avoidance provision in relation to Stamp Duty.

The Committee is of the view that there has been no adequate testing of OSR's submission seeking such a provisions that is largely based upon other states having such a provision and therefore so should WA. The Committee notes the Technical Committee' earlier, Stage 1, recommendation to the Committee expressing its concerns as to the general uncertainty for taxpayers that would be introduced by the OSR's submissions for a general anti-avoidance provision and the desirability that if there was to be an anti-avoidance provision then at the very least it needed to be accompanied by introduction of a Private Ruling system (see the Technical Committee conclusions in the Technical Appendices accompanying the May 2006 Interim Report).

The Committee believes that the uncertainty and resultant cost to WA taxpayers of having to test all commercial transactions against an anti-avoidance provision has not been justified by OSR producing anything other than an 'ambit claim' with general anecdotal assertions and not any demonstrable indication that there has been wide spread avoidance or demonstration of any \$ figure loss of revenue that would not have been recovered if there had been an anti-avoidance provision. The OSR assertions that an anti-avoidance provision will only apply to blatant avoidance schemes, and will not therefore create uncertainty (and resultant cost) for taxpayers in entering into transaction regarded as normal and commercial, is quite frankly viewed, by those on the Committee having tax expertise, as non-sense. It flies directly in the face of assertions to the same effect, made in relation to introduction of Part IVA to the Commonwealth's Income tax assessment, to which the Court's have since held not to be relevant to the interpretation of that anti-avoidance provision – it has since been applied to what even a draftsman of the Part, the late Justice Hill, expressed to be commercial transactions that were not in his contemplation. Notwithstanding Part IVA identifying objective criteria against which it was to be tested the 25 years since its introduction are still seeing cases going to the High Court endeavouring to establish the boundaries. For OSR to say that modelling the proposed WA anti-avoidance provision on those part IVA criteria will give certainty is in the opinion of the tax professional members', of the Committee,

an overstatement - just how far that will be so is a moot point given the very different basis of Stamp Duty from that of income tax and that Stamp Duty of necessity is much more closely linked to commercial transactions, leaving aside that there are on-going Part IVA cases still seeking to give it certainty.

Unless the OSR can show, which they have not to-date, that there are significant amounts of revenue that can be identified as lost through absence of an anti-avoidance provision (so as to justify its cost of uncertainty as to its application to commercial transactions) then as Chairman of the Committee I believe I can safely say that the **Committee would recommend that the preferable route is for:**

- (a) specific avoidance provisions to be introduced as and when any avoidance arrangements, having a potentially significant revenue loss, are identified (as with the proposed inter-state motor vehicle licensing arrangements, be it in that case there has been no significant loss actually identified and OSR assertions that there is no more than anecdotal evidence of some relatively small revenue 'leakage'). The specific provisions being capable of being tailored to ensure that they actually 'catch' the avoidance arrangement and are affective (i.e. as to the proposed inter-state licensing of vehicles that they are so framed, if possible, to avoid offending the Constitutional protections as to inter-state trade, which could not be contained in any general anti-avoidance provision leaving application of such a general anti-avoidance provision likely to offend those Constitutional protections and fail); and
- (b) introduction of avoidance disclosure legislation (referred to later in this Report , at paragraph 5.4.2) as the means to practically identify avoidance and permit timely introduction of a tailored anti- avoidance provision.

Although this alternative route might be regarded by the Government as involving an element of legislative 'catch -up' it is a route that will not involve WA taxpayers in costly uncertainty of a general anti-avoidance provision, which have not been justified by OSR by any specific evidence of significant loss (which could not have been addressed by provisions if this alternative route had been in place) and with uncertainty of application for the Revenue of applying such a generalised anti-avoidance provision rather than one specifically targeted and tailored

3.8.2. Provide the Commissioner of State Revenue with the Power to Make a Compromise Assessment in Certain Circumstances

The Committee endorses DTF's recommendation for:

- (a) a compromise assessment power to be introduced into the Taxation Administration Act; and
- (b) the Commissioner to have the general administration of the various WA taxation Acts.

3.8.3. Onus of Proof on the Taxpayer for Appeals under the Taxation Administration Act

The Committee does not support DTF's recommendation for the onus of proof to be on a taxpayer to show the Commissioner's assessment is wrong in proceedings before the State Administrative Tribunal.

As mentioned earlier in this Report I have, as Chairman of the Committee, discussed this matter with the President of SAT, Barker, J., and he is of the view that it would not, as OSR suggest, be a matter of re-instating the reversal of the onus of proof in matters before SAT. In his view SAT was established as a review tribunal empowered to come to the preferred and correct decision as to all administrative decisions (including assessment and other decisions of the Commissioner, under WA tax laws). In his view, as a party directly involved in the enquiry as to SAT's establishment he was of the view that position, as to all matters before SAT, was deliberately established and as to tax matters as a reversal as to what had applied in the very different appeal process that previously applied on appeals of tax decisions to the Supreme Court. In his view there was a deliberate intent in the SAT legislation, that tax reviews, would be no different than for any other "reviewable decision" within SAT's jurisdiction; that is no need for the applicant to first establish that the "reviewable" decision was wrong. Rather as with all "reviewable decisions" all relevant material was to be brought before the Tribunal by the parties and the Tribunal would decide what was the preferred and correct decision (without needing any finding as to whether the original decision, including a tax assessment, was correct or not – although obviously a decision by SAT that corresponded with the original would show it to have been correct or vice versa).

The submission by OSR has not been independently and critically tested by DTF.

The Committee Chairman's own examination has disclosed that the President of SAT is of the view that, as with all other 'reviewable decisions', SAT has appropriate powers under its legislation which it enforces and will continue to enforce to ensure that all relevant material is before it and that there is no need to have any reversed onus of proof on a taxpayer to ensure that all such material, within the possession of a taxpayer, comes before the Tribunal. In short the Committee adopts the views of the President of SAT, Barker J., that insertion into SAT legislation of such a reversal of onus of proof, in tax matters is not necessary and would be contrary to the very administrative review (as opposed to appeal) process that underlies the SAT legislation.

3.8.4. Amend the Taxation Administration Act to Enable the Commissioner of State Revenue to Place a Memorial on Mining Tenements and Clarify Memorials for Increasing Amounts of Land Tax

The Committee endorses DTF's recommendation that the *Taxation Administration Act 2003* (and other legislation as required) should be amended to allow the Commissioner to place a memorial over mining tenements and to clarify that a single memorial should suffice for both the original amount of land tax that remains unpaid and for subsequent liabilities.

3.8.5. Introduce Legislative Measures to Support Current Practice of Giving Verbal Approval for Extensions of Time to Pay Land Tax of One Month or Less

The Committee endorses DTF's recommendation that the TAA and the SAT regulations should be amended to allow verbal approval of requests for extensions of time of one month or less to pay land tax.

In this regard it is noted that those provisions of the consequential amendments to the TAA, making a section 47 deferral decision a "reviewable decision", have not been proclaimed and it is timely that that be done.

3.8.6. Introduce Measures to Improve the Administration of Small Tax Credits

The Committee endorses DTF's recommendation that a mechanism should be introduced to improve the administration and refund of small tax credits to taxpayers.

3.9. Other Issues

Abolish the On-Road Diesel Subsidy

The Committee endorses DTF's recommendation that the Treasurer should write to the Commonwealth Treasurer to seek agreement to the abolition of the on-road diesel subsidy from 1 July 2008, with the expenditure savings to be used to fund WA taxation reform.

4. **Committee's Position as to Tax Reform Options Requiring Further Examination** (Chapter 3 of DTF's Final Report)

4.1. Metropolitan Region Improvement Tax

The Committee endorses DTF's recommendation that there be further examination of the hypothecation arrangements under the Metropolitan Region Improvement Tax (MRIT), including options for absorbing MRIT into the land tax scale over the longer-term, in consultation with the Western Australian Planning Commission and the Department for Planning and Infrastructure.

4.2. Land Tax

The Committee endorses DTF's recommendation that DTF continue to liaise with the Department of the Environment and Conservation on its investigation of financial disincentives to conservation activities.

4.3. Perth Parking Levy

The Committee endorses DTF's recommendation that the Government should commission an independent review of the Perth Parking Levy.

4.4. Other Issues

4.4.1. Review of Tax Exemptions and Concessions (including Means Testing)

The Committee endorses DTF's recommendation that the Government should consider a review of social concessions to State tax concessions, including an examination of whether better and more cost effective targeting could be achieved by means testing. It is noted that the DTF recommendation indicates that regard needs to be had to the significant resources required to undertake such a review and associated cost/benefit issues.

4.4.2. Avoidance Disclosure Requirement

The Committee endorses DTF's recommendation that a review, in consultation with tax professional bodies, should be undertaken as to insertion into the TAA of provisions imposing obligation on promoters of avoidance arrangements to disclose them to the Commissioner.

This is seen as a preferable route of preventing avoidance, by timely identification to allow early application of specific anti-avoidance provisions in relation to arrangements likely to have a significant detriment to the States' revenue, rather than the uncertainties and resultant unjustified cost to taxpayers of a general anti-avoidance provision.

- 4.5. Whilst recognising the volume of material that has been analysed and research that has been undertaken by DTF in the State Tax Review the Committee expresses its concern that sufficient resources were not made available or not availed of by DTF, during the two years of the Review, to permit a recommendation to be made in relation to MRIT as part of the Final Report.

Although making this criticism of the Review process the Committee records its appreciation to the DTF and OSR officers who have clearly 'moved a mountain of material', in keeping the Committee well informed on issues it has addressed, and have conducted their briefings and interaction with the Committee in an open and frank manner without which the Committee simply would not have been able to have effectively functioned in the Review process.

5. **Committee's Position as to Tax Reform Proposals Not Supported** (Chapter 4 of DTF's Final Report)

5.1. Stamp Duty on Conveyances

5.1.1. Lodgement and Payment Provisions

The Committee endorses DTF's recommendation that the preliminary findings of the Interim Report be adopted that there be no changes to the current Stamp Act provisions in relation to:

- a proposal for stamp duty liabilities to only arise at settlement (but recognising that OSR intended consultation with industry (including financiers) to identify means to alleviate the financial burden on property purchasers from obligations to pay duty when there was a long settlement lead-time;

- a proposal to align the conditional contract provisions with time periods that apply commercially to due diligence and approval periods;
- a proposal to replace the conditional contract provisions with a requirement for all contracts (whether conditional or not) to be lodged for assessment within two months of execution (but with the stamp duty payment date linked to completion of the contract);
- proposals generally for substantially extending the payment period for eligible conditional contracts; and
- a proposal for put and call option arrangements to be treated as a form of conditional contract.

5.1.2. Exploration Licences

The Committee endorses DTF's recommendation that exploration licences continue to be specifically taxable in the same manner as land for stamp duty purposes, both in relation to direct transfers and indirectly as part of the proposed landholder regime.

5.1.3. Stamp Duty on Real Non-Residential Conveyances

The Committee endorses DTF's recommendation that an across-the-board reduction in conveyance duty rates and increases in thresholds, funded from both the Budget surplus and a broadening of the Stamp Duty base (through the landholder regime and other recommendations for changes supported by the Committee in this Report), is the preferred tax relief than full abolition of stamp duty on conveyances of real business property.

5.1.4. Conveyance Duty on GST-Exclusive Prices

Although the Committee endorses DTF's assessment that an overall rate reduction has a higher tax relief prioritisation ranking than amendments to exclude the GST component of purchase prices from a 'double tax' of Stamp Duty payable **the Committee does not support the DTF's recommendation deferring this issue.** There is a very clear cynicism in the community's perception of 'double tax' that could be very readily removed by amendments excluding the GST component. Largely the DTF's practical rejection of this proposal appears based upon a lack of independent critical analysis of OSR's assertion that the proposal raises insurmountable administrative and cost of implementation difficulties.

The ICAA have put forward a submission indicating that the exclusion of the GST component could be readily implemented with minimal administrative difficulties or cost. That proposal is set out below and **the Committee recommends that the Government have DTF cost this into an increased tax relief package (as recommended by the Committee of a range of \$400-500 million) as a measure that would be well received by the WA community as an indication of the Government taking a lead in removing what is clearly perceived as inequitable and abhorrent 'double tax'.**

ICAA submission - Stamp Duty calculated exclusive of GST component

“Summary

There is an overwhelming case to amend the Stamp Act to levy stamp duty on a GST-exclusive basis.

In the most basic terms, the breadth of feeling in the community about the lack of fairness in the concept of paying a ‘tax on a tax’ justifies the change.

In discussions about the merits of moving to a GST exclusive regime, much has been made of the practical difficulties associated with such a change.

In our view, there is a simple solution that:

- will allow stamp duty to be levied on a GST exclusive basis;*
- does not involve any material difference to the present regime for the Commissioner of State Revenue in administering the Stamp Act; and*
- does not involve any material difference to the present regime for taxpayers in complying with the Stamp Act.*

This represents a clear opportunity for Western Australia to take a lead on an issue, which is important to the community.

Background

Stamp duty is imposed on a GST inclusive basis, i.e. stamp duty is assessed by reference to value or consideration paid and this includes any GST payable. As such, the Western Australian Government (as well as the Governments of the other States and Territories) assesses stamp duty to be paid by taxpayers on the amount of a separate tax, in addition to charging duty on value or consideration paid.

It is widely recognised that this practice is not sound taxation policy, it is highly visible to taxpayers and a large percentage of the community strongly disagrees with it.

Also, the differing GST treatment for transactions leads to distortions between taxpayers as to the stamp duty payable on transactions. Less stamp duty is imposed on transactions where no GST is payable. For example, purchasers of new homes will pay more stamp duty than purchasers of existing homes, as existing homes are not subject to GST. Purchasers of discrete assets will pay more stamp duty than purchasers of assets that constitute a going concern for GST purposes.

We understand that Government and Treasury understand these concerns. However, various issues have been put forward which are said to call into question the merit of amending the present regime. The Department of Treasury and Finance (“DTF”) in the State Tax Review Interim Report (May 2006) raised various administration issues associated with imposing stamp duty on a GST exclusive basis for transfer duty, motor vehicle duty and insurance duty.

An alternative that has been raised is to return to taxpayers the additional stamp duty raised from the GST component of dutiable transactions by way of general rate reductions.

Solution to impose stamp duty on a GST exclusive basis

In general terms, the simple solution is to provide that where the GST exclusive price is clearly identified on a dutiable document, stamp duty will payable on that GST exclusive price. In the instances where the taxpayer does not make this clear in the document, stamp duty will apply as it does now, on the GST inclusive price. Draft legislation to implement the regime is set out below.

The administration issues identified in the DTF Interim Report and how the suggested solution meets these issues is discussed below.

Transfer Duty

DTF has stated that there are numerous difficulties in determining what the GST exclusive value of a contract actually is. DTF has also stated that administrative costs would increase considerably for taxpayers and the Office of State Revenue ("OSR") if stamp duty were to be imposed on a GST exclusive basis. The reason given for this is that complexities within the GST legislation make it extremely difficult for any person who does not have specialist knowledge of the GST legislation to determine what the GST exclusive value of a contract should be.

If the GST exclusive consideration or value only applies where this is clearly identified in the document, this issue falls away. Imposing stamp duty on a GST exclusive basis when the GST exclusive value or consideration is stated in the document should not increase administrative costs for the OSR.

The proposal to impose stamp duty on a GST exclusive basis only where the GST exclusive value or consideration is stated in the document provides taxpayers with a simple choice. If taxpayers state the GST exclusive value in the document, stamp duty will calculated on a GST exclusive basis. If a taxpayer chooses not to state the GST exclusive value in a dutiable document, stamp duty will be calculated on the GST inclusive value.

In this respect, the solution will not mean that all transfers of property will be assessed for duty on a GST exclusive basis. It does however provide a mechanism for taxpayers to be assessed for duty on a GST inclusive basis if they wish to do so. It is recognised that in some instances, this will require co-operation of both the vendor and purchaser, in which case this may be an issue for negotiation between the parties. However, it is very common for tax issues to be treated as such.

Motor Vehicle Duty

DTF has stated that to introduce a GST exclusive price regime will significantly increase compliance costs and would raise issues regarding whether stamp duty should be paid on a luxury car tax exclusive price.

The DTF Interim Report notes that the Motor Traders Association endorses the calculation of stamp duty on motor vehicle registrations on a GST exclusive basis. It would be a simple calculation to identify the GST exclusive list price for a vehicle or the GST exclusive market value of a used vehicle. This would involve a simple change to existing systems.

DTF concerns as to the calculation of stamp duty on luxury car tax fail to appreciate public concerns in relation to calculating stamp duty on GST. Most new vehicle purchases are subject to GST. Only purchases of new vehicles with a value of at least \$57,009 are subject to luxury car tax. Accordingly, a taxpayer has a choice as to whether they purchase a new vehicle subject to luxury car tax. They do not have a choice as to whether they purchase a new vehicle subject to GST.

Insurance Duty

[This section of ISCAA's submission not reproduced as earlier in this Report the Committee endorses DFT's recommendations for removal of the GST component in calculation of Stamp Duty on insurance premiums].

Other comments

Removing stamp duty on GST is a very transparent and affordable form of tax relief for the community that is likely to have significant benefits beyond tax relief. For example, encouraging consumers not to under insure.

The suggestion that general rate reductions could be used to compensate for stamp duty being imposed on GST, fails to acknowledge the public perception held by the community. Further, any reduction in rates would fail to address the distortions that apply by virtue of the interaction between GST and stamp duty.

The fact that the other jurisdictions would be out of step with WA is not a disadvantage. There are significant differences between the jurisdictions that already require different systems for administering transfer duty, motor vehicle duty and insurance duty.

In imposing duty on a GST exclusive basis in WA, the WA Government would be shown to be receptive to community concerns and progressive in its approach to stamp duty.

The solution requires the legislation to rely on the identification of an amount as a basis for assessing duty. There are a number of examples presently within the Stamp Act where conditions are specified that impact on liability and rely on the identification of an amount in a document. Accordingly, the principle that underpins the solution is not novel in the Stamp Act.

Draft Legislation

Transfer Duty

Section 4A of the Stamp Act 1921 (WA) ("the Act") should be amended to read as follows:

- (1) In ascertaining the value of anything or the consideration for anything, if the GST exclusive value or consideration is not clearly identified in*

the instrument, the value or the consideration is the GST inclusive value or consideration.

- (2) *In ascertaining the value of anything or the consideration for anything, the value or consideration is to be the GST exclusive value or consideration if the GST exclusive value or consideration is not clearly identified in the instrument.*

Motor Vehicle Duty

The current section 4A(2) of the Act should be deleted.

The definition of market value in section 76B of the Act should be amended so that:

- in relation to a new vehicle the market value is the "list price" exclusive of GST; and*
- in relation to any other vehicle the market value is the amount for which the vehicle might reasonably be sold, free of encumbrances, in the open market less the amount of any input tax credit to which the person in whose name the licence is granted is entitled.*

Insurance Duty

Section 94A of the Act should be amended such that the assessable amount for insurance duty purposes is the premium or instalment (to the extent the premium or instalment is attributable to general insurance) exclusive of GST."

5.1.5. Stamp Duty (House and Land Packages)

The Committee endorses DTF's recommendation that there be no Stamp Duty concession directed to house and land packages and endorses DTF's assessment that a general reduction in conveyance duty rates is to be preferred over any such a concession.

5.1.6. Stamp Duty (Sustainable Housing)

The Committee endorses DTF's recommendation that there be no specific taxation concession for 'sustainable housing' and endorses DTF's assessment that a general reduction in conveyance duty rates is to be preferred.

A difference of view was expressed between members of the Committee as to whether it was preferable to support the DTF's recommendation that any concession for sustainable housing be by reference to a rebate subsidy scheme rather than tax relief. On balance the majority view appeared to be that a rebate subsidy scheme would be likely to achieve better targeting of relief.

5.1.7. Mortgage Backed Security Exemption

The Committee endorses DTF's assessment that it was not possible to provide any recommendation in relation to the submission for changes to the Stamp Act in respect to mortgage backed securities as there was insufficient information in support of the proposal to identify the issues.

5.1.8. Associations that Transfer from the Associations Incorporation Act 1987 to Another Act

The Committee endorses DTF's assessment that further consideration of Stamp Duty relief for associations transferring from the Associations Incorporation Act to another Act should be deferred pending public comments on and refinement of the *Associations Incorporation Bill 2006*. However **there was general support of the Committee for the principle that conveyances imposed upon parties by changes to the law should be exempted from Stamp Duty.**

5.2. Land Tax

5.2.1. Aggregation

The Committee endorses DTF's recommendation that the aggregation provisions be retained and that progressivity impacts of Land Tax on owners of multiple taxable properties be addressed by the recommended, and Committee endorsed, flattening of the Land Tax scale (referred to earlier in this Report at paragraph 3.4.1)

5.2.2. Land Tax Concession for Caravan Parks

The Committee endorses DTF's recommendation that Land Tax concession for caravan park operators be kept at the present 50% concession.

5.2.3. Five-Year Claw Back of Land Tax when Land is Subdivided

The Committee endorses DTF's recommendation that the removal of the five year land tax claw back arrangements be retained.

5.2.4. Land Tax Developers' Concession

The Committee endorses DTF's recommendation that there be no re-introduction of the Land Tax concession for developers.

5.3. Payroll Tax

5.3.1. Labour Services Tax

The Committee endorses DTF's assessment that the WA Government should not, in isolation from other jurisdictions, pursue the introduction of a labour services tax but the Committee recommends that the WA Government take a national lead in assessing this visionary type of tax reform and not merely continue to put it to one side (see earlier in this report at paragraphs 1.10 and 3.5.3).

It is to be noted that the Reference Group to 2001-02 Western Australian "Business Tax Review" recommended further examination of this potential for reform (see Appendix 5 extract from 29 October 2002 Report of Chairman of BTR Reference Group).

The BTR Reference Group Chairman's summary of the position, after the relatively short period of the BTR (of only one year), was:

"While there is merit in the proposal on efficiency and equity grounds, it is only conceptual at this stage. There are significant issues and considerable detail to be worked through before the proposal could be progressed, this process could take several years. It is considered that the proposal is beyond the scope of the current review of state business taxes."

Upon re-introduction of the issue into the current "State Tax Review the DTF's Interim Report supported the merit of the proposal on efficiency and equity grounds⁶ but, disappointingly, the opportunity for anything but a cursory examination was not taken up by DTF in the two years of this current "State Tax Review"⁷. Clearly there is no possibility of introducing this type of visionary reform into the national debate unless someone 'picks up the ball' by clearly identifying and addressing the difficulties that any new proposal taxes proposal will have; Western Australia should take the lead.

5.3.2. Skills Shortage Training Fund

The Committee endorses DTF's recommendation that hypothecating Pay-roll Tax revenue is not be the preferred means for boosting funding for vocational training. However it strongly endorses the Government provide general funding through grants or rebates that can be better targeted than through use of tax relief.

5.4. Stamp Duty on Motor Vehicle Transfers

5.4.1. Stamp Duty Rebate for Fuel Efficient and Safer Vehicles

Although the Committee endorses DTF's assessment that an overall rate reduction has a higher tax relief prioritisation ranking than amendments to provide Stamp Duty concessions promoting the use of safer or more fuel efficient/low-emission vehicles **the Committee recommends that the Government should further investigate this proposal.** In doing so the Committee appreciates that the proposal is contrary to one of the perceived pillars of good tax law that simplicity dictates that taxes are not used as a means to drive non-tax policy objectives. A number of the members of the Committee take the view that critical policy areas may require an abandonment of that 'simplicity of tax law' objective where attitudes must be changed and are unlikely to be changed by grants or rebates (generally seen as the preferred model). Those members highlight the policy area of 'climate change' and this instance, the sub-set of fuel efficient motor vehicles, and the further area of promotion of safer motor vehicles, as policy areas where use of tax relief would be the more effective means of 'driving' attitude change.

⁶ Preliminary Finding in DTF's May 2006 Interim Report - "While there would seem to be merit in extending payroll tax to a tax on payments for all labour services on efficiency and equity grounds, there would be major practical issues and it is unlikely that such a proposal could be fully developed in the timetable for the Review."

⁷ Recommendation in DTF's Final Report - "Western Australia should not pursue the introduction of a broader labour services tax in isolation from other jurisdictions."

The Committee flags that it does not generally endorse the DTF's assessment, in this instance, that Stamp Duty arrangements are not the preferred means for promoting the use of safer more fuel efficient/low-emission vehicles, or improving road safety more generally.

In the interests of stimulating debate a summation of the views of Rod Slater, a past President of the Royal Automobile Club of WA, are set out below:

"Whilst I acknowledge that these 'key points' [hand out at DTF's 16 March 2007 briefing on their Final Report"] are not (at this stage) the views of the Government, I am concerned regarding item 4.4.1 which states: " Stamp duty arrangements are not the preferred means for promoting the use of safer or more fuel efficient/low-emission vehicles, or improving road safety generally"

My concern is that whilst there is scope, justification and opportunity for stamp duty relief on motor vehicles, we should not let this unique opportunity to bring about two very important reforms pass us by.

By linking Stamp Duty reduction to behavioural change the state and its people clearly derive an ever increasing and lasting indirect benefit, in respect to road trauma and the environment.

Research confirms that in countries where people drive higher safety rated cars the road trauma is falling. For example the road death toll in France was 7400 in 2002, by 2004 that had fallen to 4900.

Why, because the French manufacturers made a conscious decision to invest in increased safety equipment as standard equipment across their entire range of passenger vehicles, bringing safer cars within the reach of the majority of people.

Whilst by comparison recent efforts, in Western Australia, aimed at addressing road deaths appears to have failed and sadly there is perhaps no better example than the 9 road deaths in WA over the past weekend!

Ask the families, friends and fellow workers of those 9 persons who's lives were lost on WA roads in just one 48 hour period, for their thoughts and opinions. I would be very surprised if they would not support an initiative to use taxation concessions as a means to encourage people to invest in safer cars?

It is blatantly clear that attempts to educate constantly fail. People die on roads for a number of reasons, the number one reason being people themselves, who by their actions are the major contributor to road trauma. They need to be protected from their own actions and to be inside a safer car would be the single most significant contributor to their survival.

The WA Road Safety Committee has failed to address the issue. Their thrust would appear to be primarily focused on education and penalties for non-compliance. However increased fines have not worked, increased demerit points have not worked.... So 'new' initiatives must be developed.

There are 3 initiatives that have been proven to work and they are:

1. *Safer Cars*
2. *Safer Roads*
3. *Safer Drivers*

It is 'Safer Cars' that now presents itself as an 'opportunity' and the State is in a position where it can influence people to invest in higher safety rated cars, or cars with additional safety equipment, by way of stamp duty concessions.

The benefit will be enjoyed by the people of Western Australia for the rest of time. Not only in a significant reduction in road deaths, but also in a reduction in serious road injury, which currently costs the State far more than the stamp duty reductions that may apply, making this reform an investment rather than a cost.

Western Australia is in a key position to lead our nation and the rest of the World in utilising taxation relief as an incentive to purchase cleaner and safer cars, for the benefit of all in society, we should not let this opportunity slip out of our grasp".

Other members of the Committee have expressed the view that the dangers, becoming ever more the apparent, of climate change dictate that all governments will need to take a role in influencing attitudes to emissions control and it cannot be left to manufactures and governments who can legislate in relation to manufacturers. This an area where targeted tax relief, rather than subsidy or rebate schemes, can be used by the WA government to influence consumer choice and thus add a further pressure to manufacturers, outside our jurisdiction, to produce vehicles with lower emissions for sale in our jurisdiction.

5.4.2. Stamp Duty (Written-Off or Stolen Vehicles)

Although offering equity benefits, a stamp duty exemption for the replacement of written-off vehicles should not be introduced, as it would benefit only a small number of taxpayers and require complex administrative arrangements.

5.4.3. Stamp Duty (road use Tractor Based Mobile Cranes)

Special purpose vehicles that use public roads should remain subject to stamp duty.

5.5. Tax Administration

5.5.1. Indexation of Tax Thresholds

The Committee endorses DTF's recommendation that annual review as part of the budget process should be preferred to general indexation of taxation thresholds. However if changes to the methodology for forward projections do not dramatically improve the accuracy of those projections then the proposals for indexation or greater involvement of experts, outside DTF, need to be reconsidered.

Members of the Committee have expressed the view, with general endorsement, that surpluses should not be budgeted nor should there be a continuance of budget projections that practically produce a large surplus, as large surpluses, rather than a balanced budget of revenue and expenditure including expansion off services and infrastructure, are just as fiscally bad as budgeting of deficits. This becomes particularly apparent when it comes to returning large over expectation collections of state taxes, which are for the large part transaction based, and the over-collections difficult to return to those who paid them. A general community cynicism then arises as to governments' commitment to tax relief particularly where over –collections continue during the period needed to undertake reviews such as this current Sate Tax Review.

5.5.2. Right of Client to Sue a Lawyer for not Giving Tax Avoidance Advice

The Committee endorses DTF's recommendation that a client retain the right to sue a lawyer who fails to properly advise a client upon any tax issue and strongly recommends that there be no legislative interference with the right of client to seek or breadth of advice required to be given by any layer on the impact of tax on any transaction.

5.5.3. Private Binding Ruling System

The Committee does no support DTF's recommendation that a private binding rulings system should not be introduced into the Tax Administration Act. To the contrary the Committee recommends that such a system should be introduced in the interest of creating certainty of application of Western Australian tax laws.

It is noted that DTF recognise that certainty and reduction in compliance costs have been seen by other States to justify the expense of them introducing binding Private Ruling regimes. The Committee is of the view that this should be no different in Western Australia – the expense of a system that gives certainty of interpretation must be viewed as a proper cost of the State collecting revenue.

Private rulings on State taxation matters can be obtained in New South Wales (Revenue Ruling No.G6 - since 2001, Victoria (Revenue Ruling GEN.009 - since 1998, Queensland (Revenue Ruling Duties Act - 16.5 since 2002 and Tasmania (PUB-GEN-2005-5 - since 23 February 2001). The underlying premise of the rulings system in these jurisdictions is to provide certainty to taxpayers. The conditions where rulings are provided are similar and include:

- where the amount of duty depends on the exercise of a discretion;
- where there are drafts of standard form documents that are to be widely used by a taxpayer;
- where the taxpayer is unable to decide whether to proceed without receiving advice;
- where a public ruling or legislation is unclear;
- where the transaction is significant to the State and involves issues where a ruling is required.

The Committee notes that each of these jurisdictions is a re-write jurisdiction and the Committee does not expect the re-write of the Western Australian Stamp Act to cure the Act of ambiguity giving rise to the need for certainty for taxpayers in entering into particular transactions.

The conditions on which rulings are provided in these jurisdictions also exclude certain situations where the rulings process may be abused. This provides an appropriate check on the use of the process and prevents unnecessary expense to the administration of the tax system.

The Committee is of the view that as with tax administration submissions put forward by OSR, there has been a distinct lack of independent a critical scrutiny by DTF in the decision of DTF, in relation to this measure, which appears no more than an acceptance of submissions put forward by OSR opposing the measure. The Committee understands that the Commissioner of State Revenue has previously provided a report to the Treasurer on this measure but this has not been publicly released nor made available to the Committee. There has been little opportunity given to the Committee to debate the issue and no supporting evidence provided as to, why Western Australia cannot afford the expense of providing certainty to its taxpayers, when all but SA and NT have concluded that it is an expense that is not an 'optional bolt on' but an integral part of a fair and efficient tax system.

5.6. Emergency Services Levy

The Committee endorses DTF's recommendation the Emergency Services Levy should be retained.

5.7. Other Issues

5.7.1. Greater Transparency in Budget Decision Making

The Committee notes, with disappointment, DTF's assessment that, while the objectives of this proposal are supported, the formation of an external Budget Reference Group to be involved in the budget process is not considered necessary.

5.7.2. Impact of Insurance Duty on Take-Up of Insurance

As indicated earlier in this Report the Committee endorses DTF's recommendation for a reduction in Stamp Duty on insurance premiums by assessment by reference to the GST exclusive price. This is seen as a presently adequate response to reduction of Stamp Duty to encourage the taking out of insurance protection while retaining this important component of the State's revenue base.

In a number of areas the DTF's recommendations require quite specific legislative amendments to effect the proposed tax relief. The Office of State Revenue provided the Technical Committee with papers or oral presentations identifying the intended scope of the proposed legislative amendments. The main Committee has not specifically considered the background material, where specifically or tacitly supported by the main Committee based upon the Technical Committee's recommendations. Support for recommendations is subject

of further consultation and the Commissioner of State Revenue has indicated the OSR's intent to consult with a limited group of revenue law practitioners (within constraints imposed by legislative and drafting timetables).

In conclusion the members of the Reference Group Committee and Technical Committee requested that I express their thanks to the Treasurer and the Western Australian Government for the opportunity to be involved in the "*State Tax Review*" consultative process. The Committee encourages the Western Australian Government to implement the DTF's package of recommendations save for those specifically not supported or in respect to which modifications have been recommended in this Report). The emphasise its encouragement for the Government to establish a continued and expanded State taxes consultative forum, independent of DTF, for the purpose of and as a preferred model for consultation as to future tax reform



Jonathan Ilbery
Chairman
State Tax Review Reference Group Committee

11 April 2007

APPENDIX 1

Reference Group Committee ^(a)

Member	Title	Organisation
Mr Jonathan Ilbery	Chairman	Jackson McDonald
Mr Philip Achurch (not able to participate after July 2006)	Chairman	Western Australian Small Business and Enterprise Association
Ms Anne Arnold	Chief Executive Officer	Real Estate Institute of Western Australia
Mr Nigel Barker (represented on occasions by Mr Ken Marston)	Executive Director	Council on the Ageing Western Australia
Ms Shaheen Hughes (replaced Ms Julie Bremner)	Executive Officer Economic and Industry Policy	Chamber of Minerals and Energy
Mr Alex Sanchez (replaced Mr Daryl Cameron)	General Manager Policy - Economics & Taxation Directorate	Insurance Council of Australia
Mr Mark Cole	Representative	Australian Bankers' Association
Professor Gregory Craven (represented by Professor Peter Kenyon)	Professor of Government and Constitutional Law	Curtin University
Mr John Dastlik	Executive Director Western Australia	Housing Industry Association
Mr Trevor De Landgraff (represented on occasions by Mr Ross Hardwick and Mr Gerry Crowden)	President	Western Australian Farmers Federation
Mr Peter Fitzpatrick (represented on occasions by Mr Craig Marsland)	Executive Director	Motor Trade Association of Western Australia
Mr Gavan Forster	Director Housing and Economics	Master Builders Association of Western Australia

(a) In a number of
'alternates' at all or some

cases, members were some
meetings.

represented by

Reference Committee continued ^(a)		
Member	Title	Group Organisation
Mr Ron Hardaker (represented on occasions by Ms Helen Gordon)	Executive Director	Australian Finance Conference
Mr Scott Grimley	Representative	Institute of Chartered Accountants in Australia and CPA Australia
Ms Fiona Harris	President	Western Australian Division Australian Institute of Company Directors
Mr Garry Hyde (represented on occasions by Ms Bindi Thomson)	Chairman, Economics and Business Management	Pastoralists and Graziers Association of Western Australia
Mr John Langoulant (represented by Mr John Nicolaou)	Chief Executive Officer	Chamber of Commerce and Industry
Mr Joe Lenzo	Executive Director Western Australia	Property Council of Australia
Professor Dale Pinto (replaced Mr Brian Lovitt)	Representative	Taxation Institute of Australia
Mr Barry MacKinnon	Chairperson	Disability Services Commission Board
Mr Brian Reynolds	Director	Retail Traders Association of Western Australia
Mr Graham Short	Chief Executive Officer	Western Australian Fishing Industry Council
Mr Rod Slater	President (up to 31 December 2005)	Royal Automobile Club

(a) In a number of
'alternates' at all or some

cases, members were some
meetings.

represented by

Reference Committee continued ^(a)		Group
Member	Title	Organisation
Mr Justin Walawski	Chief Executive	Association of Mining and Exploration Companies
Mr John Walker (represented on occasions by Ms Janine Freeman)	President	Unions Western Australia
Ms Rae Walter (represented on occasions by Ms Lisa Baker)	President	Western Australian Council of Social Services
Mr John Wood	Vice President	Caravan Industry Australia - Western Australia

(a) *In a number of cases, members were represented by 'alternates' at all or some meetings.*

APPENDIX 2

Technical Committee (First Stage Only)

Member	Title	Organisation
Mr Jonathan Ilbery	Chairman	Jackson McDonald
Mr Rami Brass	Representative	Taxpayers Australia
Mr Graeme Cotterill	Representative	Taxation Institute of Australia
Mr Guy Lehmann	Representative	National Institute of Accountants
Ms Koo Lloyd-Kane	Representative	Australian Institute of Conveyancers
Mr Rob Maurich	Chapter Member (Western Australia)	Finance and Treasury Association
Mr Peter Moltoni	Representative	Institute of Chartered Accountants in Australia
Associate Professor Jeff Pope	Representative	Curtin University
Evelyn Tucker	Representative	Independent Settlement Agents Association
Mr Grahame Young	Representative	Law Society of Western Australia

APPENDIX 3

**List of Stage 2 Submissions
received
from**

- 1 Aged Care Association Australia (WA)
- 2 Australian Petroleum Production & Exploration Association Limited
- 3 Clayton UTZ
- 4 Burella Pty Ltd
- 5 Caravan Industry Association of Western Australia
- 6 Chamber of Commerce and Industry Western Australia
- 7 Chamber of Minerals and Energy Western Australia
- 8 Como House
- 9 CPA Australia
- 10 Daniel Slattery
- 11 David Cox
- 12 Department of Consumer and Employment Protection
- 13 Fehily Loaring Pty Ltd
- 14 Graham Laurance
- 15 Hall and Prior Residential Health and Aged Care Organisation
- 16 Housing Industry Association
- 17 Institute of Chartered Accountants in Australia
- 18 Insurance Australia Group
- 19 Insurance Council of Australia
- 20 James and Nishka
- 21 Law Society of Western Australia
- 22 Mr Brian O'Hart
- 23 Mr T Dobson
- 24 Real Estate Institute of Western Australia
- 25 Rural Business Development Corporation
- 26 Small Business Development Corporation
- 27 State Training Board
- 28 Tourism WA
- 29 Urban Development Institute of Australia (WA Division) Inc.

APPENDIX 4

Revenue Raising Constraints Applying to Western Australia

The three major tax bases generally available to governments around the world are income, consumption and wealth. Western Australia is constrained in its ability to tax these bases by a number of constitutional, interjurisdictional, mobility and competitiveness, legislative and political factors.

CONSTITUTIONAL

Section 90 of the Australian Constitution gives the Commonwealth the sole power to levy excise duty. The High Court has interpreted excise duty to be "a tax on the taking of a step in the process of production or distribution of goods before they reach consumers".

Effectively, this interpretation prevents the States from levying a tax on the sale of goods, and resulted in all States abandoning their business franchise fees on tobacco, liquor and fuel in August 1997. In Western Australia, these franchise fees raised around \$600 million per year, or around one quarter of total taxation revenue.

This interpretation also rules out a State GST on goods, a retail tax on goods (as applies in some USA States) and any taxes on specific goods.

INTERJURISDICTIONAL

Section 90 of the Constitution does not prohibit States from taxing services. However, the States' ability to do so has now effectively been "crowded out" by the goods and services tax (GST) introduced on 1 July 2000 – i.e. if a State were to start taxing a particular service, that service would now be taxed twice^(b). States have also agreed (in the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations) not to reintroduce accommodation or "bed" taxes (which were imposed by New South Wales and the Northern Territory prior to the introduction of the GST).

Similarly, at present only the Commonwealth Government taxes the income base in Australia. There are no Constitutional or other legal constraints to the States taxing income (indeed, prior to 1942 the States levied their own income tax). However, in practice it would be very difficult for any State to tax the income of its residents unless the Commonwealth agreed to "make room" by reducing its income tax rates. Previous proposals to this effect (including by the Western Australian Government as recently as 1998) have not had any success.

The local level of government also imposes interjurisdictional constraints on the tax base available to States. In this regard, the existence of municipal rates effectively crowds out the introduction of a similar tax by a State.

^(b) In some cases, States currently tax services that are also subject to the GST – eg. general insurance is subject to both State stamp duty and the GST. However, the difference is that States starting taxing these services well before the introduction of the GST. It would be much more difficult to introduce a *new* State tax on a service that is now subject to the GST.

MOBILITY and COMPETITION

Interstate mobility and competition between States limits the scope for individual States to deviate significantly from the "average" in many taxation areas. For this and other reasons, there tends to be somewhat of a convergence in State taxation policies. For example, Western Australia is limited in the extent it can increase tax rates such as payroll tax because of interstate competitiveness considerations. Mobility concerns are a significant limitation for financial taxes (given the ease with which some financial arrangements can be adjusted), but apply to some extent to most tax bases.

Any tax on a mobile base is ineffective unless levied by all States. For example, in the early 1970s, all States levied estate and gift duties. Queensland abolished these taxes in 1977. This created an incentive for elderly people to relocate their assets to Queensland to avoid duty. Consequently, all other States abolished their estate and gift duties by the early 1980s. As another example, the abolition of Debits Tax in New South Wales has created an incentive for cheque accounts to be moved to New South Wales, this could result in some erosion of the Debits Tax base.

LEGISLATIVE

State revenue raising ability is also constrained somewhat by Commonwealth and State legislation.

For example, while the States receive all of the revenue from the GST, the GST is imposed under Commonwealth legislation and is collected by the Commonwealth (Australian Taxation Office) on the States' behalf. The States do not have the ultimate power to increase the rate of the GST. Any increase would need to be agreed to by all States and Territories and passed by the Commonwealth Parliament.

This constraint also relates to mining royalties (albeit not a tax). Most mining royalty rates cannot be changed in the short to medium term as they are legislated in State Agreement Acts. Changes to legislation would remove any confidence of project proponents in negotiating future State agreements.

POLITICAL

Some taxes are considered "undesirable" by the community and are therefore not politically feasible. This was most recently demonstrated in Western Australia with the proposed Premium Property Tax announced in the 2001-02 Budget. Lifting the ban on poker machines in order to raise significantly more gambling tax revenue also falls into this category.

COMPLIANCE COSTS

As noted in the 2002-03 Budget, consultation on the development of tests to extend the payroll tax base to payment for the labour of "employee-like" contractors highlighted the difficulty of introducing these tests without imposing substantial additional compliance costs on employers. In view of a major focus of the review being on reducing compliance costs for business, the government decided not to progress with the new contractor provisions, but this has left on-going interpretative issues between OSR and the business community as to arrangements that the business community regard as contractor arrangement.

APPENDIX 5
Tax on Labour Services
Extracts from BTR Reference Group Chairman's Report of 29 October 2002

"The Committee looked at the four reform proposals, raised by members of the Committee or in submissions, as possibilities to broaden the tax base beyond the "Streamlining Western Australia's Tax System" package (namely a tax on labour,

"TAX ON LABOUR

Description

Replace the current payroll tax regime with a tax on all labour payments. The tax would be levied on the entire labour bill (i.e. payments to employees and the labour component of payments to all other service providers) of businesses that make labour payments above an exemption threshold.

This system would incorporate an input credit arrangement to avoid double duty on certain payments. Input credits would be necessary where an entity liable for the tax on labour provides labour services to another entity liable for tax on labour.

For example, a firm (Firm A) that sells accounting services, which include the labour of its employees, to another firm (Firm B) would pay labour tax on the remuneration of those employees. The firm receiving the accounting services (Firm B) would pay labour tax on the labour component of its payment to Firm A. However, the labour tax liability of Firm B would be partially or fully offset by input tax credits passed from Firm A to Firm B that equate to the amount of labour tax Firm A paid for the remuneration of the employees that relates to the accounting services provided to Firm B.

Rate of Tax

A tax rate of around 4% with an exemption threshold of \$250,000 is estimated to be necessary for a tax on labour to replace payroll tax on a revenue neutral basis.

If the current \$675,000 payroll tax threshold was retained, it is estimated that a tax rate of around 4.25% would be necessary for the proposal to be revenue neutral.

These estimates are rudimentary and based on a broad description of the proposal and the limited data available. For the proposal to be further considered extensive research would be required to set an appropriate rate, base and threshold, among other parameters.

Revenue Impact

This proposal has been prepared on that basis that it is revenue neutral.

Issues

- *This proposal would broaden the payroll tax base to include all labour payments, including independent and dependent contractors, thereby allowing a decrease in the tax rate for existing payroll tax payers.*
 - *The proposal would therefore likely meet resistance from "genuine" contractors.*
- *The proposed system may be more efficient and equitable than the current payroll tax regime as all labour payments (above the exemption threshold) would be taxed, rather than payments to employees only. It would largely remove incentives for distortions in the allocation of labour resources between employee and other forms of labour. It would*

also circumvent the compliance costs involved in identifying employee-like contractors for the purpose of bringing such contractors into the existing payroll tax base.

- *The proposal is consistent with the overall tax principle of having a broad base and low rate.*
- *Compliance and administrative costs would be significantly increased, for example:*
 - *a tax on labour would be considerably different to the current payroll tax system and the payroll tax systems of other jurisdictions. The implementation of a such a system, and applying it concurrently with the payroll tax systems of other jurisdictions would entail significant compliance costs for business and taxpayer education costs for the Office of State Revenue;*
 - *service providers would be required to estimate and quote the labour component of all services provided;*
 - *the proposal would entail increased information collection and reporting requirements for business; and*
 - *an input tax credit system would be necessary to avoid double taxation, however the management, transfer and verification of input tax credits could be potentially complex and costly.*
- *If implemented with an exemption threshold lower than the current \$675,000, businesses that are not currently subject to payroll tax would be required to pay the tax on labour.*
- *Definitional issues would arise over the tax treatment of the labour component of goods and mixed goods and services, potentially resulting in complex legislation.*
- *Depending on the tax treatment of interstate and overseas transactions, Western Australian service providers may become less competitive.*
- *The system would require an extensive development process over a number of years, including a comprehensive consultation process”.*