



***STAMP DUTY ON CONVEYANCES***  
***Commission Position Paper CGC 2008/07***

***SUBMISSION BY SOUTH AUSTRALIAN  
DEPARTMENT OF TREASURY AND FINANCE***

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## **SOUTH AUSTRALIAN SUBMISSION ON STAMP DUTY ON CONVEYANCES**

Issues raised by the Commission in Commission Position Paper 2008/07 (September 2008) included:

1. *Assessing the value distribution adjustment more broadly than in the 2004 Review by using fewer value ranges.*

The Commission intends to use only three value ranges for the VDA adjustment, being:

- \$0 to \$0.3 million;
- \$0.3 to \$1.0 million; and
- \$1.0 million and above

### *SA Position*

South Australia is of the view that the number of value ranges for the VDA should remain unchanged.

The value distribution adjustment is currently based on eight value ranges. The Commission's proposal to reduce the number of values ranges to three appears to be a case of simplification over equalisation (or simplification for the sake of simplification).

As more detailed data is available from jurisdictions, and has been used for a number of years, it seems odd to reduce the size and veracity of the calculation.

It is also arguable whether reducing the number of value ranges in the VDA is going to provide any great level of simplification to the overall calculation.

Leaving the number of value ranges unchanged will also remove any conjecture about what level the reduced thresholds should be set at.

2. *Whether Adjustments are required for differences in the type of property subject to duty?*

The Commission intends to make adjustments for differences between States in the types of property subject to duty, where those differences are material.

### *SA Position*

South Australia accepts, in principle, the Commission's intention to make adjustments for differences between States in the type of property subject to duty, where those differences are material.

The Commission has provided the States with a draft copy of a report on 'Conveyance duty differences between States and Territories' prepared by

Blake Dawson as part of a consultancy for the Commonwealth Grants Commission. The Commission has invited comments on the draft.

On December 18 2008, the South Australian Treasurer announced that the abolition of stamp duty on non-real property transfers and unlisted marketable securities will be deferred until 1 July 2012. This announcement will have a number of impacts on the content of the draft report that will need to be corrected before it is finalised.

South Australia also provides the following commentary on specific sections of the report:

1. Page 3: Table - under Goodwill and page 17: 4.1(b) - The body of the report refers to SA charging duty on goodwill but the summary information does not include SA with Qld and NSW as States that continue to charge duty on goodwill. States affected should include SA (refer to 2. below);
2. Page 10: 3.4(b) para 1 - The transfer of intellectual property rights except for know-how and confidential information are dutiable in SA (refer to Section 3C(1)(b) of the Stamp Duties act 1923). In particular, transfers of copyrights, industrial designs, patents, registered designs and registered trademarks are dutiable in SA. SA provisions are effectively equivalent in revenue generating power to those of NSW, Qld, WA and NT.
3. Page 12: 3.6(a)(ii) - It is agreed that WA brings listed land rich companies and listed land rich unit trust acquisitions to duty upon 90% of the interests being acquired. These provisions are particularly applicable upon a successful takeover of a listed company or trust. In SA a listed unit trust scheme becomes a private unit trust scheme upon 20 or fewer persons holding 75% of the units by number or value. Thus a successful takeover of a listed land rich unit trust will be subjected to land rich duty in SA, potentially, at the 75% threshold.
4. Page 13: 3.6(a)(iii) - The land value threshold requirements are potentially highly significant in terms of revenue generating capacity. By way of example the land rich revenue generated on a land rich transaction involving \$1.9 million in land in a particular jurisdiction will vary from zero in NSW and WA to approximately \$100,000 per transaction in SA and Vic, assuming 100% of the interest in the land rich entity is acquired. A significant number of transactions will be captured in this \$1 million to \$2 million value range.
5. Page 13, 14 and 15: 3.6(b) unit trusts - The acquisition of units in a unit trust can be dutiable under land rich provisions in South Australia at gross value of any SA land and under general taxing provisions on the basis of net asset values. A duty offset is provided under the land rich provisions for any duty paid under the general provisions. References to SA need to be reframed to better represent the SA position.

In South Australia a person who acquires a significant interest (50% or more) in a land rich entity is liable to duty (and different to other jurisdictions) the significant interests include all interests acquisitions and does not exclude an interest acquired more than three years earlier. In other jurisdictions land rich duty can be avoided by staggering acquisitions resulting in no land rich duty despite the acquisition of 100% of the land rich entity. SA provides a duty rebate for interests acquired more than three years prior but the revenue generating impact of this difference is significant.

6. Corporate Reconstruction - unlike all other jurisdictions that provide credit relief on transactions between members of a corporate group, SA provides ex-gratia relief only where "substantially all" (90% or more) of the assets of the transferor are transferred. This may result in highly significant differences in SA duty.

South Australia would also need to be satisfied as to the reliability and robustness of any proposed adjustments before support will be provided for their potential inclusion.