



Australian Government

Commonwealth Grants Commission

(Individually addressed to State and Territory Treasuries)

Dear

I am writing to inform you of how the Commission intends to treat the new issues that have arisen in the 2009 Update. Most were raised in Staff Discussion Paper CGC 2008/19-S and States have provided their comments. In addition, there have been a number of later developments which the Commission has been required to address.

One issue has proved to be particularly complex: Stamp duty on conveyances - Western Australia's land rich provisions and I wanted to inform you of how the Commission is analysing the available information before reaching its decision.

To assist its deliberations the Commission:

- engaged a consultant to provide advice on the comparability of State legislation; and
- sought information from State Treasuries on whether their States had provisions relating to land-rich transactions by listed companies and whether they had raised any revenue under those provisions.

Over successive updates, advice to the Commission has indicated that Western Australia had unique legislative provisions relating to the treatment of land-rich transactions by listed companies. The 2010 Review consultant, like the 2004 Review consultant before him, advised that the Western Australian provisions were unique. However, State responses suggested that all States raised some revenue from land rich transactions but only Western Australia has identified revenue specifically from land rich transactions by listed companies in recent years.

In principle, in the 2008 Update the Commission decided that while Western Australia had unique legislation in part that might reflect their unique tax base rather than above average policy. Therefore if revenue were raised from land-rich transactions by listed companies it would need to apportion it into that due to above average policy and that which would, on average, be raised if those transactions occurred in other States. In all advice from other States how similar transactions used be captured that apportionment would be difficult. The

Commission did not need to make adjustments in past years because there were no material transactions.

This year, data from Western Australia indicates that significant revenue has been raised in 2007-08 from land-rich transactions involving listed companies and the Commission needs to decide if some or all should be treated as coming from above average effort

Based on the advice from its consultants on the uniqueness of Western Australia's legislative provisions, in the absence of information from other States showing how their legislation would capture material parts of that revenue and State advise which suggests that no other States had actually raised significant revenue from similar transactions, the Commission is inclined to treat it all as flowing from above average effort

However, this is a complex issue, centering on any uniqueness of Western Australia's tax base and how that is reflected in its unique legislation. The Commission does not want to conclude Western Australia's provisions are all above average effort if the average policy is to levy duty on such transactions. To assist its deliberations, it would be helpful if you could provide further advice before the completion of the Update.

I am aware that it may difficult to answer questions on this issue in the abstract, but we understand confidentiality precludes Western Australia from providing information on specific transactions.

The Commission's interest is in establishing the average policy in relation to the treatment of land-rich transactions by a listed company (transactions by unlisted companies are not of concern). It wants to understand how a land-rich transaction by a listed company would be treated in your State.

- Is it reasonable to conclude that because other States have not identified revenue from transactions involving land rich listed companies that these transactions are not captured by their revenue provisions.
- If not, how would these transactions be captured under your legislation.?
- We believe that in the past there must have been examples of land rich transactions by listed companies in other States. Can States provide examples of how they were treated by their legislative provisions.
- We are aware from State submissions that States are moving to harmonise their conveyance legislation. The inference is that currently areas of difference exist. Is land-rich transactions by listed companies one of those areas? If so, is this one of the areas of legislation States are intending to harmonise?

At this juncture States will be most persuasive if they can provide the Commission with pertinent evidence based on their experience on which the Commission can form a judgement on how Western Australia's tax policy varies from the average.

States have raised other aspects of this issue, eg if it constitutes a valid methodology change. The Commission is not seeking further advice on these other aspects, which State submissions have addressed comprehensively.

Attachment A provides details of the Commission's intention in relation to other new issues in this Update.

Please let me know by 13 January 2009 if you have any concerns or additional data to better inform Commission decisions. If you have any questions relating to the treatment of Commonwealth payments to the States or expense issues, please contact Catherine Hull (02 6229 8813). For revenue matters, please contact Dermot Doherty (02 6229 8812).

Yours sincerely

John Spasojevic
Secretary

19 December 2008

ATTACHMENT A

Changes arising from the Intergovernmental Agreement (IGA)

- 1 Consistent with the IGA agreed to by the Commonwealth and the States on 29 November 2009, the Commission proposes in this update:
 - to treat the quarantined and unquarantined health care grants by inclusion;
 - to treat the schools national SPP by inclusion, including the payments for non-government schools which will be assessed actual per capita in the non-government schools categories;
 - to treat all other national SPPs by inclusion; and
 - to treat Snowy Hydro Ltd – company tax compensation general revenue assistance by inclusion as State dividend equivalent revenue which is assessed equal per capita.
- 2 The Commission does not propose to make any other changes to the treatment of other Commonwealth payments to the States or to any assessments until there is greater certainty on the nature of national partnership payments and on when payments will be cashed out or ceased. It has asked staff to prepare a discussion paper in early 2009 on how all Commonwealth payments to the States will be treated in the 2010 Review for consultation with the States.
- 3 The Commission does not need to backcast a changed distribution of SPPs into the assessment years in the 2009 Update because the distribution of these payments will not change in the application year (2009-10). Nor does the Commission propose to backcast the increased payments because of uncertainty in how they will be spent.

Treatment of SPPs commenced in 2007-08

- 4 The Commission intends to adopt the proposed treatment of each SPP that commenced in 2007-08 (in Staff Discussion Paper CGC 2008/19-S), apart from the Family Violence Partnership payment. Its treatment will change from exclusion to inclusion.

Payments quarantined by the terms of reference

- 5 The Commission intends to continue the quarantining of all payments quarantined by previous terms of reference, except when this is inconsistent with the IGA. It also intends to ensure that the following payments do not directly influence the per capita relativities, as required by the draft terms of reference for the 2009 Update:
 - the national partnership payment for Caring for our Country;
 - the Northern Territory's share of the Australian Remote Indigenous Accommodation payment;
 - the Commonwealth funding for the Northern territory emergency response; and

- expenditure relating to the Commonwealth's purchase of the Mersey Hospital.

Treatment of community housing and infrastructure payments

- 6 The Commission notes that the latest draft terms of reference ask that the relativities not be directly influenced by the Northern Territory's share of the Australian Remote Indigenous Accommodation (ARIA) national partnership payment. This payment will be made in 2008-09 and the Commission does not consider it necessary to backcast the payment as is a new program. For the Northern Territory only, it is associated with the Australian Government's emergency response program which is also quarantined.
- 7 The Commission intends to continue treating the Community and Housing Infrastructure Program (CHIP) payments to States by inclusion because this treatment is consistent with the 2004 Review method.
- 8 The Commission intends to treat CHIP payments to non-government organisations also by inclusion because they are for the same purpose as CHIP payments made to the States and the majority are paid to States. CHIP payments to non-government organisations will be allocated 80 per cent to the Housing category and 20 per cent to the Services to Indigenous Communities category, as per CHIP payments to States, with the proviso that CHIP payments to non-government organisations for municipal services will be considered to be out of scope and CHIP payments to non-government organisations under the National Aboriginal Health Strategy will be treated by exclusion.

Stamp duty on conveyances – Tasmania's corporate reconstructions

- 9 Tasmania is the only State not to offer stamp duty relief for intra-group transactions that are undertaken to restructure a corporate group. However, it does make ex-gratia relief payments from time to time for such transactions.
- 10 The Commission does not intend to make a data comparability adjustment to Tasmania's revenue base for the 2009 Update. The Commission has no data on which to base such an adjustment. While making an adjustment based on the State with the lowest proportion of corporate restructuring might improve comparability, it might also over-compensate Tasmania especially in years when it has granted ex-gratia rate relief.

Stamp duty on non-real business transactions – ACT

- 11 All States have agreed to abolish the collection of stamp duty on non-residential conveyances other than real property transactions, but will do so at different times. These transactions cover business assets such as goodwill, intellectual property and licenses.
- 12 The ACT announced that it was abolishing the collection of such duty from 1 July 2006 and there should have been no collection of this duty in 2006-07.
- 13 In the 2008 Update, the Commission adjusted the measure of the 2006-07 revenue base to make it comparable to that of other States. It did so by incorporating transactions and revenue

from non-residential conveyances other than real property, which, while relating to 2005-06, were processed in 2006-07 for administrative reasons. Because the amount collected from in 2006-07 was similar to that collected in previous years, no further adjustment was warranted.

- 14 It is still average policy¹ to impose stamp duty on non-residential conveyances other than real property transactions. Therefore, it is again necessary to adjust the ACT's 2007-08 revenue base.
- 15 The Commission intends to make an upward adjustment of 1 per cent to ACT's revenue base for 2007-08. Over the four years covered by the 2009 Update assessment period when the ACT was fully collecting revenue from non-residential conveyances other than real property transactions, revenue raised from these transactions represented 0.8 to 1.0 per cent of ACT conveyance duties.

Abolition of State financial taxes

- 16 The Commission intends to cease the financial transaction tax assessment for the 2009 Update as it will no longer be average policy to impose financial transaction taxes in 2009-10, the application year for this Update.
- 17 However, the Commission is aware that some States have brought down mini-budgets which defer the removal of some financial taxes and others may still do so. If their deferral means the average policy is to impose financial transaction taxes in 2009-10, the Commission will reconsider its decision.

Payroll tax and ABS public sector wages and salaries data

- 18 As part of the payroll tax assessment, the Commission uses ABS data on public sector earnings to estimate the proportion of total wages and salaries that would be liable for payroll tax. Due to changes in data collection methods, ABS data on public sector earnings for 2007-08 were not available in time to calculate State relativities.
- 19 The Commission intends to use the trend increase in public sector earnings over the previous five years to increase the 2006-07 public sector earnings data to provide public sector earnings data for 2007-08.

Updating wage input costs

- 20 The Commission intends to update the Wage Input Costs assessment by indexing the 2005-06 SET estimate for movements in the Labour Price Index for each State in 2006-07 and 2007-08. It does not intend to discount the change in the LPI because, based on ABS advice, LPI can be used to measure growth in State labour costs in an update.
- 21 It noted the concern by some States that Western Australian public sector wages were not increasing at the same rate as its private sector wages. However the Commission regards this

¹ Tasmania abolished its duty from 1 July 2008 and the Northern Territory intends to abolish its duty on 1 July 2009. At that point the average policy will be to not impose the duty.

as reflecting Western Australian policy choice, and notes that Western Australia is under no obligation to spend money in those areas where they are identified as having a disability.

First home owner's grants

- 22 The Commission notes the changes to the first home owner subsidies and grants being introduced by States and the Commonwealth. It proposes to offset the additional first home owner bonuses paid by Victoria and South Australia against States' stamp duty on conveyances revenue, the same way as the existing Victorian First Home Bonus is treated.
- 23 It also proposes to continue treating Australian Government payments by exclusion and to make no change to the FHOS assessment because the capping of eligibility does not affect the assessment years.

New Estimates of Indigenous estimated resident populations

- 24 The ABS has released new (final) estimates of Indigenous estimated resident population (ERP) for all States for the 2006 Census. These differ from the preliminary estimates because the ABS has changed the method it used to adjust the 2006 Census data for under-enumeration.
- 25 Table 1 shows the Indigenous proportions of State populations as reported by preliminary and final ERP. It shows that the Indigenous population has been revised downwards in the States with the highest Indigenous proportions (Queensland, Western Australia and the Northern Territory) and revised upwards in all other States.

Table 1 Proportion^(a) of State population by Indigenous status, preliminary and final ERP

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
	%	%	%	%	%	%	%	%	%
Preliminary ERP	2.17	0.60	3.58	3.78	1.66	3.45	1.21	31.60	2.50
Final ERP	2.24	0.65	3.54	3.45	1.79	3.76	1.28	30.39	2.50
Proportional change	2.97	8.02	-1.05	-9.83	7.19	8.22	5.62	-4.00	-0.01

(a) Expressed as a proportion of the total mean resident population.
Source: ABS unpublished data.

- 26 The Commission has revised the Indigenous and non-Indigenous 2006 Census populations by SARIA to match the final estimates of ERP provided by the ABS.
- 27 The revisions to Indigenous population estimates have resulted in very small changes to total ERP as shown in Table 2.

Table 2 Total preliminary and final ERP

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
	'000	'000	'000	'000	'000	'000	'000	'000	'000
Preliminary	6 817	5 128	4 092	2 059	1 568	490	334	211	20 699
Final	6 816	5 127	4 091	2 059	1 568	490	334	211	20 695

Source: ABS unpublished data.

