



COMMISSIONER'S PRACTICE DA 22.0

SUPERSEDED

DUTIES - EASEMENTS

Commissioner's Practice History

| Commissioner's Practice | Issued | Dates of effect | |
|-------------------------|-------------|-----------------|------------------|
| | | From | To |
| DA 22.0 | 22 May 2009 | 22 May 2009 | 14 November 2013 |

This Commissioner's practice provides clarification on the method of assessment of duty in respect of a transfer, grant or surrender of an easement.

Background

Grant of Easement

Section 11(1)(f) of the *Duties Act 2008* ("Duties Act") defines dutiable transactions as including an acquisition of new dutiable property, on its creation, grant or issue.

Section 17(1)(a) of the Duties Act defines new dutiable property as including land in Western Australia.

Section 3 of the Duties Act defines land as including any estate or interest in land, other than a carbon right or carbon covenant registered under the *Carbon Rights Act 2003*.

An easement is an interest in land. An interest in land in the nature of an easement is not one of the exclusions to new dutiable property listed in section 17(2) of the Duties Act. The grant of an easement is therefore liable to transfer duty.

Surrender of Easement

Section 11(1)(g) of the Duties Act defines dutiable transactions as including a surrender of special dutiable property.

Section 18(d) of the Duties Act defines special dutiable property as including an easement. Therefore, the surrender of an easement is liable to transfer duty.

Commissioner's Practice

1. Where consideration is paid or agreed to be paid for the transfer, grant or surrender of an easement, and the transaction is between arm's length parties, the consideration will generally be accepted as representing the dutiable value and duty will be assessed pursuant to Schedule 2 to the Duties Act.
2. Where no consideration is paid or agreed to be paid for the transfer, grant or surrender of an easement, and one of the parties to the transaction is a government authority or provider of utility services (e.g. water, power or gas), the Commissioner will accept that the easement has no value and therefore no duty is payable.
3. Where a transaction relating to an easement is considered to have no value and is therefore not subject to duty, on request of a party to the easement, the instrument(s) will be date stamped, with the words 'no duty payable' written within the date stamp.
4. Where no consideration is paid or agreed to be paid for the transfer, grant or surrender of an easement, and none of the parties to the transaction is a government authority or provider of utility services (e.g. water, power or gas), a [Duties Valuation - Easements](#) form must be completed, and the easement will be referred to the Valuer General for a value.
 - 4.1 Duty will then be assessed pursuant to Schedule 2 to the Duties Act.
5. When the parties to a transaction relating to the transfer, grant or surrender of an easement are not at arm's length, irrespective of whether consideration is paid or agreed to be paid or not, a [Duties Valuation - Easements](#) form must be completed, and the easement will be referred to the Valuer General for a value.
 - 5.1 Duty will then be assessed pursuant to Schedule 2 to the Duties Act.

Date of Effect

This Commissioner's practice takes effect from 22 May 2009.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

22 May 2009