



## **Things Fixed to Land that are Removed**

This Commissioner's practice provides guidance about when the Commissioner will extend the time allowed for a thing to be permanently removed from land.

### **Background**

For transfer duty purposes, *land* in Western Australia is dutiable property.<sup>1</sup>

### **Things fixed to land**

Common law fixtures are part of the land to which they are affixed and are land for the purposes of the *Duties Act 2008* (Duties Act).<sup>2</sup>

Land includes anything fixed to land<sup>3</sup> (including land the subject of a mining tenement or pastoral lease), whether or not the thing:

- constitutes a fixture at law
- is owned separately from the land or
- is notionally severed or considered to be legally separate from the land as a result of the operation of any law of the State or the Commonwealth.<sup>4</sup>

A thing is taken to be fixed to land if it has a physical connection to the land or is buried or partly buried under the surface of the land.<sup>5</sup>

Land does not include:

- a thing fixed to land on a temporary basis for the purpose of being used in construction works
- a thing fixed to land that is not a common law fixture and is held or used in connection with the business of primary production or
- a relocatable home in a residential park site, or an addition or structure fixed or attached to the home, that is not a common law fixture.<sup>6</sup>

### **Things fixed to land that are to be permanently removed**

In a transaction, a thing fixed to land (including a common law fixture)<sup>7</sup> is taken not to be land if:<sup>8</sup>

- the transaction is the transfer, or an agreement for the transfer, of the thing or an estate or interest in it

<sup>1</sup> Duties Act s 15(a).

<sup>2</sup> Duties Act s 3A.

<sup>3</sup> The term 'land' in Duties Act s 3A(1)(f) means physical land: Duties Act s3A(5).

<sup>4</sup> Duties Act s 3A(1)(f). For more information refer to [Revenue Ruling DA 26 'Things fixed to land'](#).

<sup>5</sup> Duties Act s 3A(3).

<sup>6</sup> Duties Act s 3A(4). 'Relocatable home' and 'residential park site' are defined in Duties Act s 3.

<sup>7</sup> Duties Act s 18A(2).

<sup>8</sup> Duties Act s 18A(1).

- neither the land nor any mining tenement affecting the land to which the thing is fixed (or an estate or interest in either) is acquired<sup>9</sup> and
- there is an agreement, arrangement or understanding that the thing is to be permanently removed from the land.<sup>10</sup>

If a thing is taken not to be land as outlined above it is taken to be a chattel.<sup>11</sup>

To maintain its treatment as a chattel, the thing must be permanently removed from the land within 90 days after the transfer occurs or a longer period approved by the Commissioner. An application for an extension of time to remove the thing must be made within the 90-day period. The Commissioner may apply any conditions the Commissioner considers appropriate when allowing a longer period to remove a thing.<sup>12</sup>

If the transferee does not remove the thing as required, they must notify the Commissioner about this within two months after the period to remove the thing (including any extension allowed).<sup>13</sup> The Commissioner must make any necessary reassessment when a thing is not permanently removed as required.<sup>14</sup>

### **Fixed infrastructure access rights**

A fixed infrastructure access right (access right) is a licence or other right that authorises access to or use of any land for a purpose related to the control, operation, use, construction, inspection, testing, maintenance, repair or other purpose associated with a thing fixed to land.<sup>15</sup> Duty applies to transactions involving access rights if the same or another transaction also involves the thing fixed to land to which the access right relates.<sup>16</sup>

## **Commissioner's Practice**

### **Transactions to permanently remove things fixed to land**

1. To continue to be a chattel for duties purposes, a thing must be permanently removed from the land within 90 days after the transfer occurs or a longer period approved by the Commissioner. Unless otherwise provided in an agreement, the date the transfer occurs will be taken to be the date on which the consideration (excluding any contingent amounts) is given for the transaction.
2. The transferee must notify the Commissioner in writing if they cannot permanently remove a thing from the land within the required timeframe.
3. An application for an extension of time to remove a thing from the land must be made in writing within the initial 90-day period and be supported by evidence of the circumstances outlined in paragraphs 4 and 5 below.

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<sup>9</sup> This includes where the land or mining tenement is acquired as part of the same transaction or under another transaction aggregated under section 37 of the Duties Act: Duties Act s 18A(1)(b).

<sup>10</sup> Duties Act s 18A(1)(c).

<sup>11</sup> Duties Act s 18A(3).

<sup>12</sup> Duties Act s 18A(4).

<sup>13</sup> Duties Act s 18A(5).

<sup>14</sup> Duties Act s 18A(6). The time limits in section 17 of the *Taxation Administration Act* apply to a reassessment in these cases.

<sup>15</sup> Duties Act s 91A(1).

<sup>16</sup> Duties Act s 91C.

4. The Commissioner will generally allow an extension of up to 180 days after the date of the transfer where the transferee is unable to permanently remove the thing within the 90-day period due to circumstances beyond theirs and the vendor's control. Examples of these circumstances include:
  - 4.1 the parties require a third party's assistance to remove or transport the thing and they have not been able to obtain this after reasonable efforts to do so
  - 4.2 the parties delayed removing the thing pending an independent / qualified safety review of the removal process
  - 4.3 the parties require the consent of a third party to remove the thing and they have not been able to obtain this after reasonable efforts to do so
  - 4.4 the thing must be disassembled before it can be removed and the Commissioner is satisfied this cannot be completed in 90 days
  - 4.5 the thing could not be removed because of extreme weather or a natural disaster or
  - 4.6 the thing could not be removed due to the death or serious illness of a person responsible for removing the thing.
5. The Commissioner may allow an extension of more than 180 days if satisfied there are exceptional circumstances delaying removal of the thing from the land. Examples of exceptional circumstances include:
  - 5.1 a natural disaster, such as flooding or fire, that prevents access to the land for an extended period
  - 5.2 significant safety concerns being identified during removal or disassembly of the thing that require specialised assistance or
  - 5.3 the thing has been damaged by fire or other similar incident, and it is considered easier to repair the thing before it is removed and transported.
6. The duty concession for things fixed to land that are to be permanently removed is intended to apply where the transferee has a genuine intention to remove the things and will make all reasonable efforts to arrange removal in a timely manner. The amount of additional time (if any) granted under paragraph 4 or 5 will take into account the nature and duration of the circumstances of the delay in removal and the shortest period reasonably required for removal.

### ***Access rights for removal***

7. While a thing fixed to land is taken to be a chattel and the thing is removed within the timeframes outlined in paragraphs 1, 4 and 5, the grant of a right of access to land solely to facilitate that removal is not a grant of an access right.

### **Date of Effect**

This Commissioner's practice takes effect from 22 March 2021.

Nicki Godecke

COMMISSIONER OF STATE REVENUE

22 March 2021

### Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
DA 46.0	22 March 2021	22 March 2021	Current