



## **COMMISSIONER'S PRACTICE DA 6.0**

### **DUTIES – DETERMINATION OF FIXTURES AND CHATTELS IN WESTERN AUSTRALIA**

#### **Commissioner's Practice History**

<b>Commissioner's Practice</b>	<b>Issued</b>	<b>Dates of effect</b>	
		<b>From</b>	<b>To</b>
DA 6.0	1 July 2008	1 July 2008	27 February 2014

This Commissioner's practice provides guidance on the factors considered when determining if an item of property the subject of a dutiable transaction is a chattel or a fixture.

#### **Background**

Section 15 of the *Duties Act 2008* ("Duties Act") includes as dutiable property "land in Western Australia". The definition of "land" in section 3 of the Duties Act includes "anything that is part of land as a fixture".

Section 15 also includes as dutiable property "a chattel in Western Australia". The definition of "chattel" in section 3 excludes chattels that are: stock-in-trade, held for use in or under manufacture, held or used in connection with the business of primary production, livestock, licensed vehicles and a ship or vessel.

Section 14 of the Duties Act provides that a transaction involving a chattel is not a dutiable transaction unless it is aggregated with another dutiable transaction pursuant to section 37 of the Duties Act.

#### **Commissioner's Practice**

1. In circumstances where plant and equipment that are claimed to be chattels are not being transferred in conjunction with any other dutiable property, the Commissioner may be required to determine whether or not items of the plant and equipment are chattels or fixtures.

2. The question of whether a chattel has become a fixture and, therefore, part of the land to which it is affixed, is a question of fact to be determined having regard to all of the relevant circumstances at the time liability to duty on the transaction arose. These matters include the purpose or object of annexation and the mode or degree of annexation.
3. While the Commissioner will have regard to all relevant circumstances in determining whether an item of plant and equipment is a chattel or fixture, no particular factor will necessarily be determinative and every case will depend on its own facts. However, the Commissioner acknowledges the trend of recent Court decisions to attach particular significance to the intention with which the item of plant and equipment is placed upon the land.
4. The intention is required to be objectively determined by reference to the circumstances applicable at the time of annexation.
5. The period of time for which the item of equipment was to be in position, what was done with it, the significance of the item of equipment and the function to be served by its annexation, are all matters which have been seen by the Courts to be relevant for this purpose.
6. The question is not, however, whether the owner of the chattel or any other person subjectively intended that it should become part of the realty. Therefore, a statement of the intention as to that particular matter will not be considered by the Commissioner as determinative of the question. Subjective intention will, however, be a matter taken into account by the Commissioner.
7. Matters relating to the mode of annexation of the various items of plant and equipment at the time when they were placed on the land would include evidence with respect to each of the items of plant and equipment concerning the degree of annexation to the land, and how each item relates to other items of plant and equipment including, where relevant, how the item of plant and equipment is connected or attached to other items of plant and equipment.
8. Duties Information Requirement 4 "Chattels, Plant, Equipment" details the information to be provided where it is claimed that the only dutiable property the subject of a transaction is chattels.
9. Where it is determined that any of the claimed chattels the subject of a transaction is a fixture, all chattels will become dutiable.

### **Date of Effect**

This Commissioner's Practice takes effect from 1 July 2008.

Bill Sullivan  
COMMISSIONER OF STATE REVENUE

1 July 2008