

Department of Treasury and Finance  
STATE REVENUE OFFICE

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Mr Wayne Vergano  
Finance Director  
Marsh Pty Ltd  
PO Box H176  
AUSTRALIA SQUARE NSW 1215

Dear Mr Vergano

**DUTIES ACT 2001 CHAPTER 7 INSURANCE**

Thank you for your letter dated 30 January 2009 requesting a refund/reassessment on duty paid to this Office for the period of January 2006 to December 2008 inclusive.

The Tasmanian *Duties Act 2001* has since enactment, differed substantially with the New South Wales legislation in the treatment of insurance intermediaries in regards general insurance. The Tasmanian legislation has always been clear that premium payable to an insurance intermediary is captured for duty. This is explained as follows.

Section 3 of the Duties Act defines an insurance intermediary as:

*insurance intermediary" means –*

*(a) a person who arranges contracts of insurance in Tasmania –*

*(i) for reward; or*

*(ii) as an agent for a person carrying on a business of insurance; or*

*(b) a financial services licensee (as defined in section 761A of the Corporations Act 2001 of the Commonwealth) whose licence covers the arrangement of contracts of insurance as an agent for a person carrying on a business of insurance; or*

*(c) a regulated principal (as defined in section 1430 of the Corporations Act 2001 of the Commonwealth) when carrying on business as an insurance broker as regulated by Subdivision D of Division 1 of Part 10.2 of that Act;*

Section 164 of the *Duties Act 2001* states:

*What is a premium in relation to general insurance?*

*(1) Premium, in relation to general insurance, means the total consideration given to an insurer or an insurance intermediary by or on behalf of the insured person to effect insurance without deductions for any amounts paid or payable, or allowed or allowable, by way of commission or discount to an insurance intermediary.*

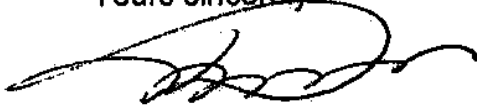
As you will note from the legislation above, Tasmania differs from that of the New South Wales legislation that existed prior to December 2006. The inclusion in section 164(1) of an "insurance intermediary" clearly imposes a duty liability on insurance premiums paid to persons who arrange contracts of insurance in Tasmania whether they are offshore and non registered insurers or by other organisations. This legislation has not changed since the introduction of the *Duties Act 2001*.

It is noted in the Marsh Client Alert titled '*Stamp Duty refund opportunity on certain insurance policies*' that "organisations may be entitled to a refund of stamp duty paid on insurance policies placed with offshore insurers during the stated period starting five years ago and ending on 20 June 2006 (the date on which the NSW provisions that were subject of the Qantas case were amended)". It is the opinion of this Office that in Tasmania's case there is no entitlement to a refund of the duty paid by Marsh Pty Ltd on behalf of offshore insurers as they clearly were an insurance intermediary as defined in the Tasmanian legislation.

Should you disagree with this response to your letter, please advise further ensuring that you refer specifically to the appropriate sections in the *Duties Act 2001* that you believe are deficient.

Should you wish to discuss this matter, please call Stuart Harris on 03 6233 5437.

Yours sincerely



J. W. K. Sawford  
**COMMISSIONER OF STATE REVENUE**

18 February 2009

Contact: Stuart HARRIS  
Phone: 03 6233 5437  
Our Ref: INS 5263726 SJH/CD