

EXPLANATORY MEMORANDUM

REVENUE LAWS AMENDMENT BILL 2005

This Bill amends the *Pay-roll Tax Assessment Act 2002* and the *Stamp Act 1921* to:

- address a number of avoidance opportunities that have been identified;
- improve the efficiency of a number of concessions, exemptions and rebates for taxpayers; and
- improve the administration of the revenue legislation and correct a number of minor anomalies.

Pay-roll Tax Assessment Act Amendments

Grouping of businesses

As a result of the decisions made in the Supreme Court of Victoria – Court of Appeal in *Commissioner of State Revenue v Muir Electrical & Ors*, amendments were made to the *Pay-roll Tax Act 1971* (Vic). In this case, the Court found that the grouping provisions would not apply where there was an agreement for the provision of services which did not specify that the duties were to be carried on by the employer's employees.

The Court also advised that the Victorian provision would only apply to “a business” in the singular.

As the former grouping provisions of the *Pay-roll Tax Act* (Vic) are similar to those of Western Australia, similar amendments are provided in this Bill to ensure that the provisions operate as intended.

Section 31 of the *Pay-roll Tax Assessment Act* is amended to make clear that the grouping provisions should apply to businesses in the plural and to arrangements and agreements whether or not the duties, or the persons to carry out the duties, are specified.

The proposed amendments will commence from the date of introduction of this Bill into the Parliament.

Stamp Act Amendments

Land-rich Provisions

The land-rich provisions of the *Stamp Act* apply where a person acquires a majority interest in a company that has an entitlement to land in Western Australia. For the provisions to apply, the company must own land in Western Australia of not less than \$1 million, and that land must comprise 60% or more of the value of all the property of the company. The following

amendments provided in this Bill ensure that the provisions operate fairly, and artificial corporate structures and transactions cannot be used to circumvent the provisions.

Amend the definition of "subsidiary" to include 50% interests

To ensure the land-rich test applies fairly with respect to taxpayers operating under differing property ownership structures, the property entitlements of subsidiary companies are taken into account for the purposes of the land-rich test.

Currently, a company is considered a subsidiary either according to the *Corporations Act 2001* definition, or where an entitlement to participate in a distribution of the property of the subsidiary to an extent greater than 50% of the value of the distributable property would arise, if the subsidiary company was to wind up.

A number of examples have been identified where company structuring arrangements have been used in attempts to defeat the object of the land-rich test. These include increased use of a specific scheme, where an entity acquires a 100% interest in a land-rich company without paying duty under the land-rich provisions.

While existing anti-avoidance provisions have been used to combat these types of blatant transaction structuring, it is proposed to amend the definition of subsidiary to include situations where an entity has control of 50% or more of the votes of a company's board, or holds 50% or more of the issued share capital of a company, or would be entitled to participate in the distribution of property of a subsidiary to an extent equal to, or greater than, 50% of the value of the distributable property.

The proposed amendments will commence from the date of introduction of this Bill into the Parliament.

Transactions disregarded for the land-rich test to be disregarded when determining dutiable value

When determining whether the value of all the land of a company is 60% or more of the value of the company's property, the Commissioner may disregard a transaction, or series of transactions, where in the Commissioner's opinion, the purpose or one of the purposes of the transaction was to defeat the object of the land-rich provisions.

When the land-rich provisions were first enacted, it was intended that if the Commissioner disregards such transactions in ascertaining that the land-rich provisions apply to an acquisition, then the transactions should also be disregarded for the purposes of calculating the duty payable. This ensures that once the anti-avoidance provision is utilised, the acquisition is liable to duty as if the transaction did not occur.

The proposed amendments ensure that where a transaction, or series of transactions, is disregarded by the Commissioner for the purposes of the

land-rich test, the transaction or transactions are also disregarded for the purposes of other provisions in the Part, such as determining the dutiable value of the land and chattels. This ensures that the existing anti-avoidance provision is effective when it is exercised.

The proposed amendments will commence from the date of introduction of this Bill into the Parliament.

Debt for an uncompleted contract to sell land not to be included in calculation of value of property

When determining an entity's entitlement to land for the possible application of the land-rich provisions, uncompleted contracts or agreements to dispose of an interest in land are disregarded. This is to ensure that all land to which the entity is legally entitled is properly included in the determination.

Therefore, where a company has entered into a contract to dispose of land and the contract is not yet completed, the contract is disregarded and the land is deemed to be nonetheless owned by the company under the land-rich provisions. However, under the contract, a debt is owed to the company for the balance of the purchase price and the debt is included as non-land property of the company. This distorts the calculation of the 60% land-rich test (ie. land as a proportion of total property) because the value of the land is equal to the value of the debt.

The proposed amendments ensure that a debt associated with an uncompleted contract or agreement to dispose of an interest in land is not included in the calculation of the value of an entity's property.

The proposed amendments will commence from the date of introduction of this Bill into the Parliament.

Corporate Reconstruction Provisions

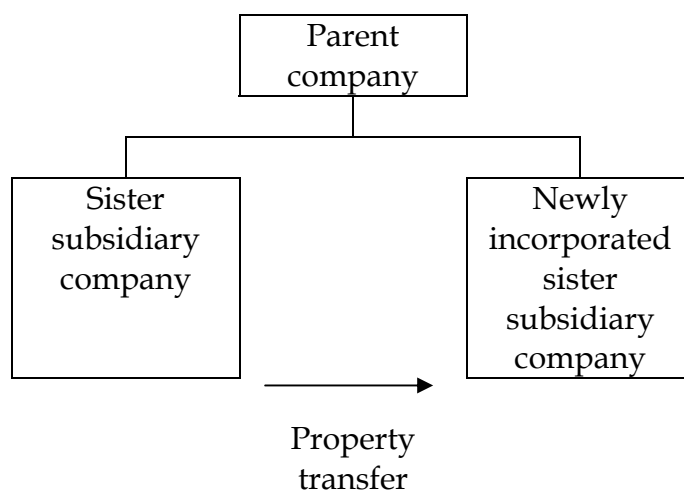
The corporate reconstruction provisions of the Stamp Act provide a stamp duty exemption when assets are transferred between commonly owned companies. These provisions include strict rules to distinguish genuine reconstructions that occur to improve the efficiencies of a corporate group, from those which assist companies to minimise duty when buying and selling assets.

The amendments in this Bill address a number of avoidance opportunities that have been identified and improve the effectiveness of the provisions.

Sister-to-sister subsidiary transfers

To ensure companies can only access the exemption where there is a significant ongoing relationship, the transferor and transferee companies must meet a pre-association test of three years (or a lesser period in limited circumstances).

As part of the Business Tax Review, amendments were made to the corporate reconstruction provisions to allow relief in circumstances where property was transferred directly from a sister subsidiary company to a newly incorporated sister subsidiary company, as illustrated below.



Prior to this amendment, relief was only available if the property of the sister subsidiary company was first transferred to the parent company, and then transferred to the newly incorporated sister subsidiary company. The amendment eliminated the need for a two step process to access the relief for sister-to-sister subsidiary transfers, but ensured that the companies were required to remain associated with the parent company.

It has been identified that the Business Tax Review amendment may operate more widely than intended by allowing relief in circumstances where the exemption would not have been possible had a two step transfer process been used. In particular, the amendment allows property to be directly transferred between sister subsidiaries where the newly incorporated sister subsidiary company is owned by the parent company indirectly, even though the indirect transfers that would be necessary to achieve the same corporate restructure would not qualify for relief if the parent company has not been associated with the newly incorporated sister subsidiary company for the qualifying period.

The proposed amendment ensures that a direct transfer between sister subsidiaries does not qualify for relief if the indirect transfers that would have been necessary to achieve the corporate restructure under the previous arrangements would not have qualified for relief.

The proposed amendments will commence from the date of introduction of this Bill into the Parliament.

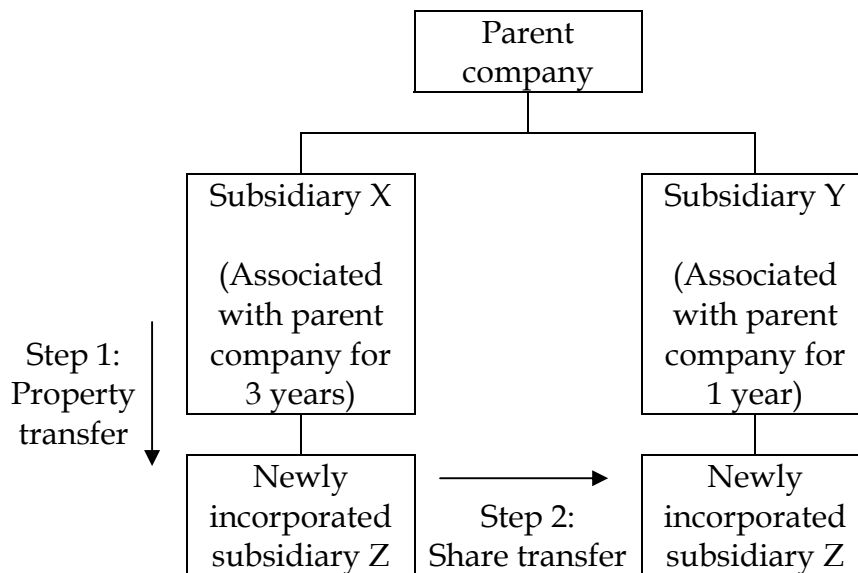
Claw-back if shares in transferor are subsequently transferred

To obtain corporate reconstruction relief, companies are required to have been associated for the qualifying period, which is generally three years. Once stamp duty relief for a transfer has been granted, the provisions require the transferor and the transferee to remain associated for five years from the date

of the instrument that effected the transfer. Failure to meet this test voids the exemption and triggers a claw-back of the duty, plus a penalty component.

However, a particular situation has been identified that circumvents the pre-association test to gain corporate reconstruction relief for the transfer of property from a subsidiary to another arm of the corporate group headed by a subsidiary with which it has not been associated for the qualifying period. A direct transfer of the property to the other subsidiary would not qualify for corporate reconstruction relief if the pre-association test between the parent company and the subsidiaries has not been met. However, a series of indirect transfers may be used to circumvent the pre-association test to enable the property to be transferred to the other arm of the corporate group.

This may be achieved by transferring the property from subsidiary X to a newly incorporated subsidiary Z, and transferring the property to the new subsidiary. Subsidiary X could subsequently transfer its shares in new subsidiary Z to subsidiary Y without breaking any post-association requirement.



There is no stamp duty in Western Australia and some other jurisdictions on the share transfer if subsidiary Z is not land-rich. The result of the share transfer is that subsidiary Z becomes a wholly owned subsidiary of subsidiary Y. The transfer of the shares has not resulted in a break of the post-association requirement between subsidiary X and subsidiary Z as they are associated through a third body corporate, the parent body.

The result of the two step process is that the property of subsidiary X has been transferred to the other arm of the corporate group by indirect means, even though a direct transfer of the property from subsidiary X to subsidiary Y would not have qualified for corporate reconstruction relief.

To prevent the pre-association test being circumvented, the proposed amendment voids the exemption and triggers the claw-back where shares in a transferee, that has received a corporate reconstruction exemption, are transferred within the corporate group in circumstances where a transfer of the property of the transferor to the transferee following the share transfer would not have qualified for relief.

The proposed amendments will commence from the date of introduction of this Bill into the Parliament.

Draft instruments and statements used in pre-determinations and offences

The corporate reconstruction provisions allow requests to be submitted to the Commissioner for a pre-determination of an exemption request on a proposed transaction. The provisions are drafted on the basis of the Commissioner determining whether a draft instrument or statement, if executed or finalised, would be exempt from duty.

When the provisions were initially drafted, it was envisaged that the Commissioner would have access to a draft instrument or statement of the transaction when making these determinations. However, due to the legal costs and time involved, many corporate reconstruction pre-determination requests are made without a draft instrument or statement being submitted. The full facts and circumstances surrounding a transaction are usually disclosed in either the application form or other written material.

If the Commissioner determines that the transaction would be eligible for corporate reconstruction relief, once the transaction is carried into effect, the instrument or statement evidencing the transaction is eligible for stamp duty relief providing there are no material variations from the pre-determination request.

The ability to disallow an exemption due to material variations, and to prosecute a taxpayer for an offence in cases of deliberate variations, in part relies on there being a draft instrument or statement. While these provisions have been widely interpreted by the Commissioner to include circumstances where information is provided as part of the application to make his determination, the structure of the relevant sections is ambiguous.

It is proposed to amend these provisions to ensure that the executed instrument or statement will not be eligible for corporate reconstruction relief where the circumstances surrounding the executed instrument or statement differ materially from those used to make the pre-determination request, regardless of whether a draft statement or instrument was provided. A similar amendment is also proposed to the offence provision.

Repeal of sections 75JA(4), 75JA(6) and 75JE(1)(da)

Sections 75JA(4) and 75JA(6) are redundant following the abolition of marketable securities duty. It is therefore proposed that sections 75JA(4) and

75JA(6) be repealed. Further, it is proposed that section 75JE(1)(da) also be repealed as it refers to section 75JA(4).

Transfer relief to bodies exempted as interposed companies

Corporate reconstruction relief is provided in relation to the share transfer that arises where a company is interposed between another company and its shareholders. However, as marketable securities duty has been abolished, stamp duty relief is only required where the shares being transferred are in a land-rich company and the land-rich provisions of the Act would be applicable.

Corporate reconstruction relief is also available where a company conveys, transfers or assigns dutiable property to another company within the corporate group. For this exemption to apply, the transferor and transferee must have been associated for three years, except in limited circumstances.

Before the abolition of marketable securities duty, a transferor and a transferee seeking exemption for the transfer of property could be associated for less than three years, if they had become associated where the transferee was interposed in circumstances described by the corporate reconstruction provisions and had acquired the shares in the transferor. Therefore, once a newly incorporated company had been interposed into a corporate structure, the transferor could transfer its assets to the newly incorporated company, even though the three year pre-association test had not been met. The ability to access relief in these circumstances was removed when marketable securities duty was abolished.

It is considered that removal of this provision may be preventing genuine corporate reconstructions of land-rich companies that would otherwise result in more efficient on-going structures for corporate groups.

The proposed amendment introduces a more limited, but similar provision, that allows property to be transferred from the transferor to the interposed company if that company received an exemption in respect of the interposition.

Amend the definition of "issued share capital"

The corporate reconstruction exemption is not available where a company's issued share capital gives restricted rights to its income and assets. This test ensures that exempt reconstructions involve the transfer of assets between associated bodies corporate and do not result in a change in beneficial ownership (through more restrictive rights for share owners) of the transferred assets.

It has been identified that non-profit organisations are routinely restricted by their constitutions from participating in the distribution of the income and capital of a body corporate in the case of its winding up and, therefore, are not able to access corporate reconstruction relief.

It is proposed to amend the definition of “issued share capital” so that non-profit organisations that are prevented by their constitution from participating in the distribution of the income and capital of a body corporate, are able to access corporate reconstruction relief where all other conditions associated with the exemption are met. It is also proposed that the Commissioner must be satisfied that the restriction on the rights to capital and income are not part of a scheme or arrangement that has as one of its purposes the avoidance of duty that would otherwise be payable.

To ensure that this provision is not circumvented by altering a constitution after gaining the exemption, it is proposed to introduce a claw-back provision that operates if the body corporate is carried on for the purposes of profit or gain to its members within the five year post-association period.

Date of execution of an instrument or dutiable statement

The corporate reconstruction provisions rely on imposing certain requirements, such as the pre-association and post-association tests, at the time the transfer which is the subject of the corporate reconstruction application takes place. However, the date of the transfer and the date that the instrument evidencing the transfer is executed may not be the same where the instrument is a section 31B or 31C statement, or a Part IIIBA statement.

The amendments therefore propose to deem a section 31B or 31C statement to be executed at the time the acquisition or transfer that is the subject of the statement actually occurs. Further, amendments are proposed to ensure that the pre-association test is imposed at the time a relevant acquisition occurs.

The proposed amendments will commence from the date of introduction of this Bill into the Parliament.

Other Stamp Act amendments

Listed public unit trusts

As part of the Business Tax Review, provisions were inserted in the Stamp Act to charge duty on the conversion of a public unit trust to a private unit trust. Such transactions usually arise when a public unit trust is taken over and 100% owned by another entity. To effect this, the Stamp Act provides that where a disposition results in a unit trust scheme becoming a private unit trust scheme, the unit trust scheme will be taken to have become a private unit trust scheme immediately before the occurrence of that disposition.

However, the interaction of this provision with other Business Tax Review amendments to abolish stamp duty on marketable securities, has created the potential for certain public unit trusts to be excluded from the operation of the provisions.

In particular, *listed* public unit trusts that are taken over and converted to private unit trusts may not be caught under the provisions because of the exemption contained in the Stamp Act for the transfer of a marketable

security. A marketable security is defined in section 4 to include a unit in a listed public unit trust. This difference in duty outcomes between a listed and unlisted public unit trust was not intended when the provisions were inserted.

To correct this potential anomaly and ensure the provisions operate as intended, the private unit trust provisions are being amended so that the exemption for the transfer of a marketable security is not applicable when assessing the duty payable under the provisions.

Ensure disabled beneficiaries are eligible for concessional rate of stamp duty

The Stamp Act provides for concessional rates of stamp duty to apply to certain residential or business property purchased by an eligible purchaser. An eligible purchaser is defined for the purposes of the concession to exclude an individual who intends to hold the property as “trustee”.

There is no specific provision that allows persons who will hold the property on trust for a disabled person, or trustees (whether individuals or corporates) of discretionary trusts which have disabled beneficiaries, to access the concession.

An amendment is required to ensure the concessional rate of stamp duty applies in circumstances where a trustee purchases residential property on behalf of a disabled person, or where a trustee of a discretionary trust purchases property and the beneficiaries of the trust include a disabled beneficiary. The amendment will be generally consistent with the treatment of persons with legal disabilities under the *Land Tax Assessment Act 2002*.

Exemption from conveyance duty for property as security under a mortgage

The mortgage duty provisions of the Stamp Act were substantially rewritten as part of the Business Tax Review. Prior to these amendments, an exemption from conveyance duty existed for property transferred as security under a mortgage, where the Commissioner was satisfied that it was a bona fide mortgage. The reconveyance of the property to the original owner following satisfaction of the debt was chargeable with nominal duty of \$20. However, the exemption provision was unintentionally omitted in the new mortgage duty provisions.

An amendment is required to reinstate the exemption to ensure the transfer of property as security does not attract conveyance duty.

A retrospective commencement date of 1 January 2004 is proposed (the date the new mortgage duty provisions commenced) to avoid the requirement to pay conveyance duty on transfers that have historically been exempt or subject to only nominal duty.

Hire of goods "in conjunction with land"

Under the hire of goods regime, duty is imposed on the hiring charges received by a commercial hire business in respect of a hire of goods, where the goods are used solely or predominately in Western Australia.

A "hire of goods" is defined to mean an arrangement under which goods are or may be used by a person, being a person other than the person hiring out the goods. The Stamp Act then specifies certain arrangements that are excluded from the definition of "hire of goods", including an arrangement giving a person a right to use goods that is incidental to a lease or a licence to occupy or use land, if the consideration is not apportioned between the use of the goods and the use of the land.

Certain arrangements have not been excluded from the new regime as intended. In particular, the new arrangements charge duty where the right to use land and the right to use goods are granted by different parties, or where there is an apportionment between the right to use the land and the right to use the goods. This has unintentionally widened the base to include matters such as the hire of golf clubs and buggies on golf courses. These types of arrangements were not dutiable under the old rental business duty regime.

To rectify this problem and restore the position that existed prior to the commencement of the hire of goods regime, an amendment is required to provide an exemption for goods hired in conjunction with a lease of, or right to occupy or use, land, regardless of whether the consideration is apportioned between the right to use the goods and the right to use the land.

A retrospective commencement date of 1 July 2004 is proposed, in line with the commencement of the new hire of goods regime. The retrospective commencement date mitigates the unintended impact of the new provisions, ensuring that duty is not required to be paid as a result of an anomaly.

Exemption for a gift of property where a conveyance of the property would have been exempt

An amendment is required to the Third Schedule of the Stamp Act to provide an exemption for a settlement or gift of property where a transfer or conveyance on sale of the property would be exempt from stamp duty.

In order to facilitate the abolition of marketable securities duty from 1 January 2004, an exemption was inserted into the Third Schedule of the Stamp Act for the conveyance or transfer on sale of a marketable security or right in respect of shares.

However, it has recently been identified that while the exemption applies to a conveyance or transfer on sale, it may not apply in respect of a settlement or gift of marketable securities. As it was intended that the abolition should also apply in these circumstances, it is proposed to insert a specific exemption into the Stamp Act to ensure that where the conveyance or transfer on sale of

property would be exempt from stamp duty, a settlement or gift of such property would also be exempt.

The exemption is to apply retrospectively from 1 January 2004, being the date that stamp duty on unlisted marketable securities was abolished.

Amendments to first home owner rate provisions – value of property

The first home owner stamp duty exemption and concession has applied from 1 July 2004. The availability of the exemption or concession is restricted by reference to the value of the property being acquired. Currently, the exemption applies to homes valued up to \$250,000, with the concession phasing out at \$350,000. In the case of vacant land, the exemption value is \$150,000, with the concession phasing out at \$200,000. These limits are specified in the Second Schedule to the Stamp Act. While it is clear that the limits are intended to apply to the value of the home or vacant land in its entirety, it is also possible to interpret the provision to apply to the value of a less than 100% interest in the home being acquired.

For example, say two people buy a \$500,000 property for investment purposes. Shortly thereafter, one person purchases the other person's half share and moves into the property as his or her first home. If the person was eligible for a first home owner grant (which is the case in very limited circumstances), he or she would pay \$250,000 for a half interest in the property, but would own 100% of a home valued at \$500,000. Using the above interpretation, no stamp duty would be payable on the transaction to purchase the second half interest in the property for \$250,000.

This transaction can be compared to a situation where two eligible first home owners jointly buy their first home for \$500,000. In this case, each person has a half interest in the property worth \$250,000, but they would be ineligible for the stamp duty exemption as the purchase was made jointly and the value exceeds the threshold.

The circumstances as described above are not common, however, to ensure the provisions operate as intended, an amendment is required to specify that the threshold limits apply to the value of the home or vacant land which is being acquired, and not to the value of the person's interest in the property that is being acquired.

Substituted purchaser provisions – “de facto partner” definition

The Stamp Act was amended as a result of the Business Tax Review to extend stamp duty relief when the initial purchaser on a contract or agreement is substituted for a “related” purchaser on the subsequent conveyance or transfer.

A “de facto partner” is included in the definition of related persons, but unlike other revenue, grant and family law legislation, the period that the de facto relationship must have existed is not specified.

An amendment is proposed to the term “de facto partner” in these provisions to specify the de facto relationship must have existed for at least two years, consistent with the other legislation.

Definition of “related party” for conditional contracts provisions

The Stamp Act was amended from 1 July 2004 to allow for alternative lodgement or payment periods for certain conditional contracts. At the time of implementing the provisions, it was intended that the extended period of lodgement for general conditional contracts should not be available for conditional contracts where a vendor and a purchaser were related on the basis that related party transactions are not generally conditional agreements. Inadvertently, those parties to the contracts who are related by blood, for example, brothers, sisters, uncles, aunts, were omitted and are not included in the definition of related parties.

An amendment is required to the definition of persons who are related for the purposes of the conditional contracts provisions, to include the person’s family members.

Mortgage duty premium funding agreements

Under a premium funding agreement, a premium funder agrees to lend the insured person an amount of money equal to the premium that is payable to the insurer and charges the insured interest on the amount loaned. As security for the loan, the insured person assigns to the premium funder their interest in the insurance policy and all sums payable under the insurance policy, including a premium refund.

A mortgage is an instrument that is a security by way of mortgage or charge over property wholly or partly in Western Australia. Mortgages granted to secure loans made under a premium funding agreement are liable for mortgage duty if the secured property is located within Western Australia.

The Stamp Act does not provide a specific rule for determining nexus for mortgages relating to premium funding agreements. As these arrangements are relatively common, an amendment is required to insert a nexus provision to ensure duty is paid in Western Australia where an appropriate link to the State is apparent. An amendment is required to provide that the nexus, for the purpose of the mortgage duty provisions, is the place of residence of the insured person, or in the case of a company, where the company is taken to be registered for the purposes of the Corporations Act.

Part 1 - Preliminary

Clause 1: Short title

This clause provides that this Act may be cited as the *Revenue Laws Amendment Act 2005*.

Clause 2: Commencement

This clause provides the commencement dates for Parts of the Act.

Subclause (1) provides that the Act comes into operation on the day it receives Royal Assent, subject to the remainder of the section.

Subclause (2) provides that sections 4, 8, 12(2), 14(2) and (3), and sections 19 to 26 operate from the date that the Bill is introduced into the Parliament.

These sections contain the anti-avoidance measures and the immediate commencement is required to minimise the risk of the avoidance schemes being used during the time that it takes for the Bill to be passed.

Subclause (3) deems sections 28 and 30 to have come into operation on 1 January 2004.

Section 28 reinstates an exemption from conveyance duty for the transfer of certain property as security under a mortgage. This provision was overlooked when the mortgage duty provisions were rewritten with effect from 1 January 2004.

Section 30 provides a stamp duty exemption for an instrument evidencing a gift of property where, if it was an instrument of conveyance of the property, it would be exempt under item 2 of the Third Schedule. The 1 January 2004 commencement coincides with the abolition of marketable security duty from that date.

Subclause (4) deems section 29 to have come into operation on 1 July 2004.

Section 29 reinstates an exclusion from the definition of "hire of goods" for an arrangement that gives any person the right to use goods in conjunction with a lease of, or licence to occupy or use, any real property. The 1 July 2004 commencement coincides with the date that the "hire of goods" provisions commenced.

Part 2 - The *Pay-roll Tax Assessment Act 2002* amended

Clause 3: The Act amended

This clause provides that the amendments contained in this Part

are to the *Pay-roll Tax Assessment Act 2002*.

Clause 4: Section 31 amended

Section 31 provides that businesses can be grouped for the purpose of calculating pay-roll tax where employees of one business provide services for another business.

Subclause (1) amends section 31(1) by deleting “a business” and inserting instead “one or more businesses”. This is to clarify that the reference to “a business” is intended to include “one or more businesses” in this section.

The subclause also amends section 31(1) by clarifying that where an employer’s employees perform duties for one or more businesses, those businesses can be carried on by the employer and the other persons, or the other persons, either separately, together or in any other combination. The businesses will be considered together to determine if an employee or employees perform duties solely or mainly for those businesses.

Subclause (2) amends section 31(2)(a) by deleting “a business” and inserting instead “one or more businesses”. This is to clarify that the reference to “a business” is intended to include “one or more businesses” in this section.

The subclause also amends section 31(2)(a) by clarifying that where an employer’s employees perform duties for one or more businesses, those businesses can be carried on by the employer and the other persons, or the other persons, either separately, together or in any other combination.

Subclause (3) amends section 31(3) to specifically clarify that section 31(2) is to apply irrespective of whether the duties to be performed for or in connection with the business or businesses of the employer and another person or the other persons, are specified in the relevant agreement, arrangement or undertaking.

This amendment is in response to recent findings by the Court of Appeal, Victoria that the Victorian pay-roll tax provision, which was previously similar to section 31, would not apply where there was an agreement for the provision of services which did not specify that the duties were to be carried on by the employer’s employees.

The amendment to this section will make certain that where the

result of an agreement is that an employee of an employer performs duties under the agreement or arrangement for another business, it is possible to group the two or more businesses. The group would be constituted where there was a degree of dependence and connection between the businesses.

Part 3 – The *Stamp Act 1921* amended and transitional provisions

Clause 5: The Act amended

This clause provides that the amendments contained in this Part are to the *Stamp Act 1921*.

Clause 6: Section 7 amended

Section 7 provides a definition of “related” persons for the purposes of sections 6(1)(c), 14(a) and 17BA(3). Section 6(1) provides a definition of an “eligible conditional contract” for the purposes of the conditional contracts legislation. Section 14 describes the requirements for a general conditional contract to be “terminated on relevant grounds”. Section 17BA provides the time frames for lodgement of certain conditional contracts.

Subclause (1) deletes section 7(1)(d) and inserts new paragraph (d) to include family members.

Subclause (2) inserts new section 7(3) which contains a definition of “family members” for the purposes of section 7(1)(d). The definition is self-explanatory.

Clause 7: Section 27 amended

Section 27 provides that a document that is chargeable with duty and is evidence of an acquisition, a transfer, a disposition or a transaction and is not stamped, is inadmissible in court proceedings except criminal proceedings. A person cannot rely on an instrument in any court proceedings, except criminal proceedings, if the document has not been stamped.

This clause amends a minor anomaly in this section by inserting “or transfer” after “disposition” in section 27(2)(b)(i).

Clause 8: Section 73D amended

Section 73D applies stamp duty to the disposition of units in unit trust schemes. This clause inserts new subsection (3) into section

73D.

Subsection (3) provides that the exemption from stamp duty for conveyances or transfers of marketable securities or rights in respect of shares, in item 2(1) of the Third Schedule, does not apply to these dispositions.

Clause 9: Section 74 amended

Section 74(3d) provides a definition of persons related to a purchaser who is an individual for the purposes of the “substituted purchaser” provisions. This section provides that where ad valorem duty has been paid on a contract or agreement and, at the time the vendor transfers the property to the purchaser, the whole or part of the purchaser’s interest in the property is transferred to a person who is related to the purchaser, nominal duty only will apply to the transfer of the substituted purchaser’s interest.

This clause amends section 74(3d) to provide that a “de facto partner” is required to be a “de facto partner of 2 years” for these provisions.

The *Acts Amendment (Equality of Status) Act 2003* made amendments to a number of Acts to include the terms “de facto partner” and “de facto relationship”. “De facto partner” was inserted in the Stamp Act as a result of this Act. The term “de facto partner of 2 years” is to ensure the concessions provided in section 74 are available to partners in a genuine de facto relationship.

Clause 10: Section 75AE amended

Under section 75AE a concessional rate of stamp duty applies to a conveyance or transfer of residential property or business property when certain conditions are met.

Subclause (1) amends section 75AE(3) by deleting the definition of “eligible purchaser” and replacing it with a new definition.

The definition of “eligible purchaser” in relation to a business property has not changed.

The definition of “eligible purchaser” in relation to a residential property has been amended to include a trustee who is acquiring the property for a disabled beneficiary who will occupy the

property as their principal place of residence.

Paragraph (a) operates to allow the concessional rate of stamp duty to an individual who intends to occupy the dwellinghouse as a principal place of residence for an indefinite period and is not acquiring it as an agent, trustee or otherwise on behalf of another person.

Although the definition of “trustee” in section 63 does not include a unit or discretionary trustee, the words “or otherwise on behalf of another person”, included at the end of the paragraph, would operate to prevent such trustees from being eligible persons for the purpose of paragraph (a).

Paragraph (b) allows the concessional rate of duty where a trustee is acquiring the property to hold in trust for one or more disabled beneficiaries and at least one of the disabled beneficiaries will use the property as their principal place of residence.

Subclause (2) inserts a new subsection (4) and (5).

Subsection (4) provides that for the purposes of paragraph (b) the terms “disabled beneficiary” and “trustee” have the same meaning given to those terms by clause 1 of the Glossary at the end of the *Land Tax Assessment Act 2002*. In regard to disabled beneficiaries, the beneficiary must have a beneficial interest in the trust (contingent or otherwise) and must be a person who:

- has a disability as defined in section 3 of the *Disability Services Act 1993* and has been independently assessed by an appropriate person as requiring full time care;
- is mentally incapacitated; or
- is a minor who is an orphan.

Section 3 of the *Disability Services Act 1993* defines a disability in the following terms:

“**disability**” means a disability -

- (a) which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of those impairments;
 - (b) which is permanent or likely to be permanent;
 - (c) which may or may not be of a chronic or episodic nature;
- and
- (d) which results in -
 - (i) a substantially reduced capacity of the person for communication, social interaction, learning

- or mobility; and
- (ii) a need for continuing services.

A “trustee”, in relation to land, means –

- (a) a person in whom the legal estate of the land is vested (whether solely or jointly with other trustees), and whether appointed or constituted trustee by act of parties, or by order or declaration of a court or by operation of law;
- (b) an executor or administrator, guardian, committee of management, receiver or liquidator having the administration or control of the land; and
- (c) a person having or taking upon himself or herself the administration or control of land effected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control, or management of the land of a person who is under a legal disability.

It is not necessary for all the beneficiaries of the trust to be disabled beneficiaries, the requirement is that at least one of the beneficiaries of the trust is a disabled beneficiary who will be occupying the residential property as his or her principal place of residence.

Trustees of discretionary trusts who acquire residential property for a disabled beneficiary’s principal place of residence are within the definition of “eligible purchaser” for the purposes of the concessional rate of stamp duty if all other conditions are satisfied. While the beneficiaries of a discretionary trust do not have an assignable interest in any of the property of the trust, they do have a beneficial interest in the trust.

The concessional rate of stamp duty will apply whether the trustee is a natural person or a corporate trustee, providing the trust is established for beneficiaries of whom one or more is disabled and at least one of the disabled beneficiaries resides in the property.

Subsection (5) clarifies that the definition of “trustee” as set out above applies to paragraph (b) of the definition of “eligible purchaser”, as defined in relation to residential property, without reference to the section 63 definition of “trustee”.

Clause 11: Section 75AG amended

Section 75AG provides for a reduction or refund of stamp duty for first home owners. The extent of the reduction or refund of stamp duty depends on the value of the land and home, where

the land includes a home, or the value of the land in the case of vacant land. This clause inserts new subsection (1a) into section 75AG.

Subsection (1a) makes it clear that it is the unencumbered value of the land and home, where the land includes a home, or the value of the land in the case of vacant land, that is the value used when determining whether the first home owner rate of stamp duty applies and not the value of the interest being acquired by the first home owner.

Clause 12: Section 75J amended

This clause amends section 75J, which contains the interpretation provisions that are applicable to the corporate reconstruction provisions.

Subclause (1) amends the definition of “issued share capital” to include issued share capital to which subsection (4) applies.

Subclause (2) inserts new subsection (1a), which clarifies that for the purposes of the Part, a section 31B or 31C statement will be taken to be executed on the day on which the conveyance, transfer or assignment to which it relates occurs. This provision is necessary as the date that the conveyance, transfer or assignment occurs, and the date that the section 31B or 31C statement is executed may differ. This amendment ensures that the date the conveyance, transfer or assignment occurs is the relevant point in time for the purposes of determining such matters as whether the pre-association and post-association periods have been satisfied. It should be noted that this provision commences from the date this Bill is introduced into the Legislative Assembly.

Subclause (3) inserts new subsection (4), which provides that the subsection applies to issued share capital of a body corporate if the Commissioner is satisfied as to the matters specified in paragraphs (a), (b) and (c). Paragraph (a) specifies that that company is a not for profit organisation. Paragraph (b) specifies that the body corporate’s issued share capital carries no rights, or limited rights, to the income and capital of the body corporate. Paragraph (c) provides that the non-existence or limitation of those rights is not part of an arrangement having as its purpose, or one of its purposes, the reduction of duty that would otherwise be payable.

Clause 13: Section 75JA amended

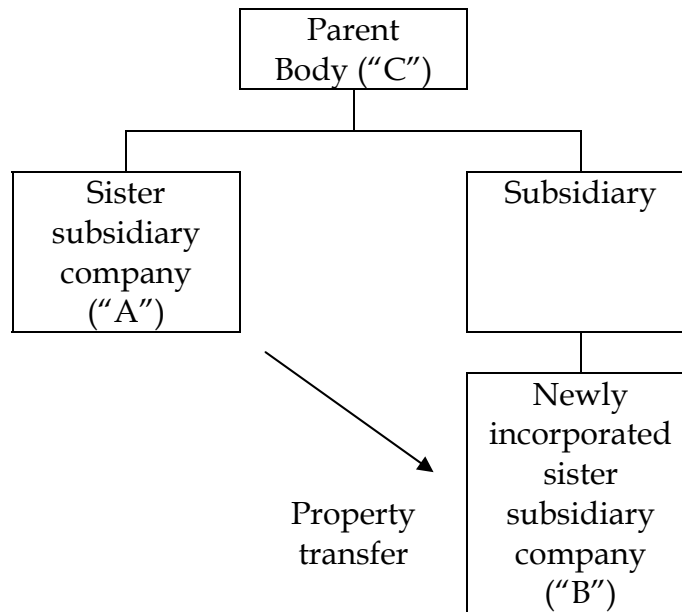
This clause repeals sections 75JA(4) and (6) as they are redundant.

Clause 14: Section 75JB amended and transitional provision

This clause amends section 75JB, which provides an exemption from duty for certain transfers between associated bodies corporate.

Subclause (1) amends section 75JB(1)(d), which sets out the pre-association period which must be met by bodies corporate for a transfer to be eligible for corporate reconstruction relief. Subsection (1)(d) provides that the bodies corporate must have been associated for the qualifying period set out in subsection (2), unless one of the subparagraphs of subsection (1)(d) is applicable. This subclause inserts a further subparagraph which refers to A and B having been associated because B has received a corporate reconstruction exemption under section 75JA in respect of its acquisition of the shares in A, and a claw-back has not been applied. The effect of this subclause is that where a body corporate ("B") has been interposed into a corporate structure and has acquired shares in another body corporate ("A") which resulted in a liability to lodge a Part IIIBA statement, but that statement has been exempted under section 75JA, then corporate reconstruction relief is available for a transfer of property from A to B if A and B have been associated since B was interposed.

Subclause (2) inserts a new section 75JB(1a), which is a qualification to the sister to sister subsidiary transfer allowed by subsection (1)(d)(iv). Subsection (1)(d)(iv) allows property to be transferred directly between A and B where A and B are associated through a third body corporate ("C"), C has been associated with A for the qualifying period, C has owned the issued share capital of B since B was incorporated in Australia, and B has been dormant until it acquired the property from A. This subsection eliminates the need for the transfer to be conducted through a two-step process. However, the new subsection limits the application of subsection (1)(d)(iv) where C owns B indirectly, as represented in the below diagram.



The new subsection (1a) provides that in the above circumstance, subsection (1)(d)(iv) will only apply if the transfer would have been eligible for corporate reconstruction relief if it had been achieved through a two-step process by transferring the property from A to C, and then from C to B. Therefore, there needs to be an association between A and C, and C and B for the qualifying period. It should be noted that subsection (1)(d) will not operate to shorten the qualifying period in relation to the transfer from C to B because the subparagraphs of paragraph (d) are not applicable. In particular, subparagraph (ii) is not applicable because there has not been an acquisition of B's share capital by C. The reference in subparagraph (ii) to A acquiring 90% of the issued share capital of B must be a direct acquisition. Therefore, C and B must be associated for the three year qualifying period, or shorter period under section 75JB(2).

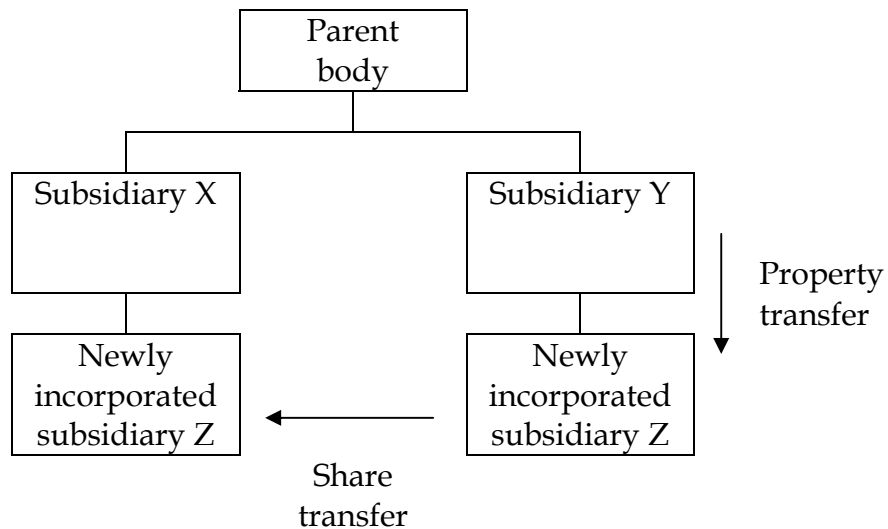
It should be noted that the new subsection (1a) applies to instruments executed on or after the date that this Bill is introduced into the Legislative Assembly, but does not apply to such instruments that have been executed in reliance on a pre-determination made by the Commissioner under section 75JC(4) before that date.

Subclause (3) inserts a new subsection (3aa). This subsection provides that for the purposes of determining whether a relevant acquisition under Part IIIBA is eligible for corporate reconstruction relief, the pre-association test in section 75JB(1)(d) must be satisfied at the time the relevant acquisition occurs. It should be noted that this provision commences from the date

this Bill is introduced into the Legislative Assembly.

Subclause (4) amends section 75JB(4) to insert a further event in respect of which the Commissioner must be notified. The new paragraph (ba) applies where one or both of the bodies corporate involved in the transfer to which the instrument or exemption certificate relates is a body corporate which has share capital described in section 75J(4). Section 75J(4) refers to share capital that has limitations on the rights to income and capital of the body corporate and is a non-profit organisation. Paragraph (ba) provides that if the body corporate changes the purpose for which it is carried on, then that body corporate is required to notify the Commissioner within one month after the event.

Subclause (5)(a) amends section 75JB(4) to insert a further event in respect of which the Commissioner must be notified. The new paragraph (ca) applies where, following a transfer of property from A to B under subsection (1), A transfers its shares in B in circumstances where section 75JB would not have applied to the transfer of property had it occurred after the share transfer. This is represented in the diagram below.



In the above example, if corporate reconstruction relief was provided in relation to the transfer of property from Y to Z, and the shares in Z were subsequently transferred from Y to X, the Commissioner is required to be notified of the share transfer where corporate reconstruction relief would not have been available under this section if the property had been transferred following the share transfer. Therefore, if the pre-association period between Y and the parent body, and the parent body and Z (as a wholly owned subsidiary of X) has not been met, corporate reconstruction relief would not have been available in

respect of the property transfer and the share transfer will trigger a requirement to notify the Commissioner of the event.

It should be noted that this paragraph applies to a transfer of shares that occurs on or after the date this Bill is introduced into the Legislative Assembly.

Subclause (5)(b) amends section 75JB(4) to impose a requirement on A to notify the Commissioner if a relevant event occurs.

Subclause (6) provides that notification of an event that is required because of the amendments to section 75JB(4) does not need to be made until one month after this Act receives Royal Assent. This provision recognises that it may not be possible for the Commissioner to be notified within the required time in circumstances where the new provisions apply.

Subclause (7) amends the structure of section 75JB(5f) to correct a paragraphing error. The amendment does not affect the operation of the provision.

Subclause (8) amends section 75JB to insert new subsections (9), (10) and (11), which outline the circumstances in which the claw-back applies to an instrument that has been exempted or an exemption certificate that has been issued in relation to an instrument.

Subsection (9) provides that the claw-back applies if the body corporate is one with share capital to which section 75J(4) applies (being share capital of a body corporate that is not carried on for profit, and which has limited rights to participate in the income and capital of the body corporate) and within 5 years of the execution of the instrument or the relevant acquisition, the body corporate is carried on for the purposes of profit or gain to its members. However, the application of the claw-back is subject to subsection (10).

Subsection (10) provides that the claw-back under subsection (9) does not apply where the rights to the share capital of the body corporate have changed such that the shares carry unlimited rights to participate in the income and capital of the body corporate.

Subsection (11) provides that the claw-back applies if a transfer of shares occurs as set out in subsection (4)(ca) after the date this Bill is introduced into the Legislative Assembly, but within 5 years of the execution of the instrument or the relevant

acquisition. Subsection (4)(ca) applies where, following a transfer of property from A to B under subsection (1), A transfers its shares in B in circumstances where section 75JB would not have applied to the transfer of property had it occurred after the share transfer.

Clause 15: Section 75JC amended

This clause amends section 75JC, which sets out the process for a party to an instrument to apply to the Commissioner for a pre-determination as to whether corporate reconstruction relief would be provided if the instrument was executed.

Subclause (1) makes a minor technical amendment to section 75JC(5)(a).

Subclause (2) makes a minor amendment to section 75JC(5)(b) to clarify its operation. The amendment ensures that a subsequent instrument or statement will not be eligible for corporate reconstruction relief where the circumstances relating to the executed instrument or statement differ materially from those that related to the information provided as part of the pre-determination request.

Clause 16: Section 75JD amended

This clause amends section 75JD, which sets out the process for lodging an application for a corporate reconstruction exemption. The clause inserts new subsection (6), which clarifies that despite a corporate reconstruction exemption being granted in relation to an instrument or Part III BA statement, the Commissioner must assess any penalty tax for contravention of a taxation Act that is payable on the instrument or statement as if the exemption had not been granted. This ensures that penalty tax is still payable in relation to an instrument or statement even though a corporate reconstruction exemption may apply to the ad valorem duty payable on the instrument or statement.

Clause 17: Section 75JE amended

This clause repeals section 75JE(1)(da), which has become redundant as a result of the repeal of section 75JA(4).

Clause 18: Section 75JG amended

This clause makes a minor amendment to section 75JG(3) to clarify the operation of the offence penalty provision. This

subsection specifies the penalty applicable to the offence of knowingly providing false information to, or withholding information from, the Commissioner in relation to a request for a pre-determination as to the availability of corporate reconstruction relief. The penalty for this offence is a fixed amount of \$20,000 plus an amount equal to the duty that would have been chargeable on a draft instrument or statement provided to the Commissioner as part of the pre-determination process if the instrument or statement were to be executed. This amendment ensures that the penalty includes an amount equal to the amount of duty that would have been chargeable on an instrument or statement that would have been executed based on the information that was provided as part of the pre-determination process.

Clause 19: Sections 76AI, 76AP, 76AR, 76ATB, 76ATI and 76ATK amended

This clause amends various sections in Part IIIBA to replace a reference to “greater” with a reference to “not less”. The effect of this clause is that a WA company or corporation will be taken to be a subsidiary of another corporation if, on the winding up of the first-mentioned company or corporation, the other corporation would be entitled to participate in a distribution of property to an extent of 50% or more, not more than 50% as was previously the case.

Clause 20: Sections 76AI and 76ATB amended

This clause amends sections 76AI and 76ATB, which set out the companies to which Divisions 2 and 3a apply respectively.

Subclause (1) amends sections 76AI(3) and 76ATB(4), which provide that certain property of the WA company or any subsidiary is excluded for the purposes of determining whether the company’s land constitutes 60% or more of the value of all its property. This clause amends sections 76AI(3)(d) and 76ATB(4)(e) so that a shareholding in a company that would be a subsidiary if the Corporations Act definition of subsidiary was amended as proposed by subsection (4)(a), will be excluded from the value of the WA company’s property. This ensures that the property of such a subsidiary is not double-counted for the purposes of the land-holder tests in subsection (2).

Subclause (2) amends sections 76AI(4) and 76ATB(6), which provide that a WA company is entitled to land or property to the

extent that a subsidiary is entitled to that land and property. These subsections also set out the meaning of a subsidiary in subsequent paragraphs. This clause amends paragraph (a) to include a corporation that would be a subsidiary under the Corporations Act definition of subsidiary, if that definition referred to “not less” in certain paragraphs. The effect of this amendment is that a corporation will also be taken to be a subsidiary of another corporation if that other corporation:

- (a) is in a position to cast, or control the casting of, not less than one-half of the maximum number of votes that might be cast at a general meeting of the first corporation; or
- (b) holds not less than one-half of the issued share capital of the first corporation.

Clause 21: Sections 76AP and 76ATI amended

This clause amends sections 76AP(4) and 76ATI(6), which provide that a corporation is entitled to land or property to the extent that a trustee or corporation referred to in paragraph (a), (b) or (c) is entitled to that land or property.

Subclause (1) amends paragraph (b) to include a corporation that would be a subsidiary under the Corporations Act definition of subsidiary, if that definition referred to “not less” in certain paragraphs. The effect of this amendment is that a corporation will also be taken to be a subsidiary of another corporation if that other corporation:

- (a) is in a position to cast, or control the casting of, not less than one-half of the maximum number of votes that might be cast at a general meeting of the first corporation; or
- (b) holds not less than one-half of the issued share capital of the first corporation.

Subclause (2) amends paragraph (c) to include a corporation that would be a subsidiary under the Corporations Act definition of subsidiary, if that definition referred to “not less” in certain paragraphs. The effect of this amendment is that a corporation will also be taken to be a subsidiary of a holding corporation if the holding corporation:

- (a) is in a position to cast, or control the casting of, not less than one-half of the maximum number of votes that might be cast at a general meeting of the first corporation; or
- (b) holds not less than one-half of the issued share capital of the first corporation.

Clause 22: Sections 76AR and 76ATK amended

This clause amends sections 76AR(4) and 76ATK(4), which set out the definition of a holding corporation. This clause replaces subparagraph (ii) of paragraph (a) with new subparagraphs (ii) and (iii). Subparagraph (ii) extends the definition of holding corporation to include a corporation of which a corporation would be a subsidiary under the Corporations Act definition of subsidiary, if that definition referred to “not less” in certain paragraphs. The effect of this amendment is that a corporation will also be taken to be a subsidiary of another corporation if that other corporation:

- (a) is in a position to cast, or control the casting of, not less than one-half of the maximum number of votes that might be cast at a general meeting of the first corporation; or
- (b) holds not less than one-half of the issued share capital of the first corporation.

Subparagraph (iii) provides that a holding corporation is a corporation that would be entitled, if another corporation were to be wound up, to participate in a distribution of that other corporation’s property to an extent of 50% or more.

Clause 23: Section 76AI amended

This clause amends section 76AI, which sets out the companies to which Division 2 applies.

Subclause (1) amends section 76AI(2a), which relates to the Commissioner’s determination that a WA company is one to which the Division applies because the land-holder tests set out in subsection (2) would have been met but for a transaction, or series of transactions, structured in such a way so as to defeat the object of the Division. This clause amends subsection (2a) such that once the Commissioner has made a determination, the WA company will be taken to be entitled to land and chattels situated in Western Australia to which it would have been entitled but for the transaction, or series of transactions, for the purposes of other provisions in the Division (such as the calculation of the dutiable value).

Subclause (2) amends section 76AI(3), which provides that certain property of the WA company or any subsidiary is excluded for the purposes of determining whether the company’s land constitutes 60% or more of the value of all its property. This clause inserts new paragraph (bb), which

provides that the amount paid or payable to the WA company or subsidiary in relation to an uncompleted contract or agreement to dispose of an interest in land will be excluded from the value of the WA company's property.

Clause 24: Section 76AP amended

This clause amends section 76AP, which sets out the companies to which Division 3 applies.

Subclause (1) amends section 76AP(2a), which relates to the Commissioner's determination that a corporation is one to which the Division applies because the land-holder tests set out in subsection (2) would have been met but for a transaction, or series of transactions, structured in such a way so as to defeat the object of the Division. This clause amends subsection (2a) such that once the Commissioner has made a determination, the corporation will be taken to be entitled to land and chattels situated in Western Australia to which it would have been entitled but for the transaction, or series of transactions, for the purposes of other provisions in the Division (such as the calculation of the dutiable value).

Subclause (2) amends section 76AP(3), which provides that certain property of the corporation or any trustee or corporation referred to in subsection (4), is excluded for the purposes of determining whether the corporation's land constitutes 60% or more of the value of all its property. This clause inserts new paragraph (bb), which provides that the amount paid or payable to the corporation or a trustee or corporation referred to in subsection (4) in relation to an uncompleted contract or agreement to dispose of an interest in land, will be excluded from the value of the corporation's property.

Clause 25: Section 76ATB amended

This clause amends section 76ATB, which sets out the companies to which Division 3a applies.

Subclause (1) amends section 76ATB(3), which relates to the Commissioner's determination that a WA company is one to which the Division applies because the land-holder tests set out in subsection (2) would have been met but for a transaction, or series of transactions, structured in such a way so as to defeat the object of the Division. This clause amends subsection (3) such that once the Commissioner has made a determination, the WA

company will be taken to be entitled to land and chattels situated in Western Australia to which it would have been entitled but for the transaction, or series of transactions, for the purposes of other provisions in the Division (such as the calculation of the dutiable value).

Subclause (2) amends section 76ATB(4), which provides that certain property of the WA company or any subsidiary is excluded for the purposes of determining whether the company's land constitutes 60% or more of the value of all its property. This clause inserts new paragraph (ca), which provides that the amount paid or payable to the WA company or subsidiary in relation to an uncompleted contract or agreement to dispose of an interest in land, will be excluded from the value of the WA company's property.

Clause 26: Section 76ATI amended

This clause amends section 76ATI, which sets out the companies to which Division 3b applies.

Subclause (1) amends section 76ATI(3), which relates to the Commissioner's determination that a corporation is one to which the Division applies because the land-holder tests set out in subsection (2) would have been met but for a transaction, or series of transactions, structured in such a way so as to defeat the object of the Division. This clause amends subsection (3) such that once the Commissioner has made a determination, the corporation will be taken to be entitled to land and chattels situated in Western Australia to which it would have been entitled but for the transaction, or series of transactions, for the purposes of other provisions in the Division (such as the calculation of the dutiable value).

Subclause (2) amends section 76ATI(4), which provides that certain property of the corporation or any trustee or corporation referred to in subsection (4), is excluded for the purposes of determining whether the corporation's land constitutes 60% or more of the value of all its property. This clause inserts new paragraph (ca), which provides that the amount paid or payable to the corporation or a trustee or corporation referred to in subsection (6) in relation to an uncompleted contract or agreement to dispose of an interest in land, will be excluded from the value of the corporation's property.

Clause 27: Section 82 amended

Section 82 defines a mortgage for the purposes of Part IIIE. Each paragraph of section 82(1) sets out the nexus or connection which the mortgage must have with Western Australia before duty can apply. The mortgage must secure property wholly or partly in Western Australia.

This clause inserts new subsections (3) and (4) to clarify the location of an insured person's interest in an insurance policy for the purposes of section 82(1). This is relevant for insurance premium funding arrangements.

Subsection (3) provides that an insured person's interest, rights or title under an insurance policy are property located in Western Australia if the insured person is in Western Australia.

Subsection (4) further clarifies when an insured person is taken to be in Western Australia.

Paragraph (a) provides that where the insured person is an individual, the person is in Western Australia if they reside in Western Australia.

Paragraph (b) provides that where the insured person is a body corporate other than a WA company, the body corporate is in Western Australia if it is incorporated by or under a written law of Western Australia. This is not intended to apply to companies taken to be registered in other jurisdictions. Rather it applies to incorporated bodies other than companies, such as co-operatives that are incorporated under a written law of Western Australia.

Paragraph (c) provides that where the insured person is a WA company, the person is in Western Australia. A "WA company" is defined in section 4 to be a company within the meaning of the Corporations Act that is taken, for the purposes of the Corporations Act, to be registered in Western Australia.

Clause 28: Section 86 amended

Section 86 provides for duty to be charged on mortgages. Section 16 provides for duty to be charged on instruments as enumerated in the Second Schedule to the Act. Item 13 of the Second Schedule contains the "mortgage" head of duty.

Subclause (1) amends section 86 by inserting designation (1) before “For” to allow for new subsections to be inserted.

Subclause (2) inserts subsections (2), (3), (4) and (5) into section 86 to reinstate the exemption from conveyance duty that previously applied in respect of the transfer of property intended as security under a mortgage.

Subsection (2) provides that a mortgage is not chargeable with any other duty. That is, duty chargeable under item 13 of the Second Schedule is the only duty chargeable on an instrument of mortgage.

Subsection (3) provides that any instrument that transfers an interest in property as security under, or in accordance with, a mortgage is not chargeable with any duty. Mortgage duty is payable on the instrument of mortgage. Examples of documents evidencing a transfer of an interest in property as security include deeds of defeasance and premium funding arrangements.

Subsection (4) provides that a person cannot give effect to, recognise, register or record an instrument that transfers an interest in property as security under, or in accordance with, a mortgage unless mortgage duty has been paid on the instrument of mortgage.

Subsection (5) provides that subsections (2) and (3) do not apply to or in relation to a mortgage or other instrument if the Commissioner is satisfied that the transfer of the interest in property was not intended principally or solely as security under, or in accordance with, a mortgage.

These amendments commence from 1 January 2004 being the date that the new mortgage duty provisions commenced.

Clause 29: Section 112IB amended

Section 112IB(3) provides an exhaustive list of hiring arrangements that are excluded from the hire of goods regime.

This clause amends paragraph (a) of section 112IB(3) to make clear that an arrangement that gives a person the right to use goods in conjunction with a lease of, or a licence to occupy or use, land is an arrangement that is excluded from the hire of goods regime.

Previously, the paragraph applied to a right to use goods that is incidental to the lease or right to occupy land where there was no apportionment of consideration between the right to use the goods and the right to use the land.

This amendment is to commence from 1 July 2004 being the date that the new hire of goods provisions commenced.

Clause 30: Third Schedule amended

This clause amends the Third Schedule to the Act to provide an exemption from duty for an instrument evidencing a gift of property where a conveyance or transfer of the property would be exempt under item (2) of the Third Schedule.

This clause is to commence from 1 January 2004 being the date that stamp duty on conveyances or transfers of marketable securities was abolished.

Clause 31: Saving and transitional provision

Subclause (1) inserts definitions of “**amended provisions**”, “**existing provisions**” and “**relevant acquisition**”.

Subclause (2) provides that the sections of Part IIIBA amended by this Act will apply to relevant acquisitions made on or after the date this Bill is introduced into the Legislative Assembly. The sections as enacted prior to the commencement of this Act will continue to apply to relevant acquisitions made before that date.

Subclause (3) provides that a statement may be lodged within 2 months after the Bill receives Royal Assent, where:

- (a) an acquisition of an interest occurred on or after the date this Bill is introduced into the Legislative Assembly but before Royal Assent is received;
- (b) the amended provisions require the lodgement of a statement under section 76AG, 76AN, 76AT or 76ATG; and
- (c) the existing provisions would not have required the lodgement of a statement in respect of the acquisition.

This provision recognises that it may not be possible for a statement to be lodged within the time required by the relevant section in circumstances where the new provisions apply to an acquisition.

