

RATES AND CHARGES (REBATES AND DEFERMENTS) BILL 2005

EXPLANATORY MEMORANDUM

The purpose of this Bill is to extend the concessions under the *Rates and Charges (Rebates and Deferrals) Act 1992* ("the Act") to eligible pensioners and seniors and to improve the equity and efficiency of the rebate scheme in line with the benevolent intention of the Act.

On 14 November 2004 the Premier announced the Government's intention to extend concessions to pensioners and seniors living in retirement villages, park home parks and caravan parks.

Rebates on prescribed charges under the Act will be extended to:

- residents of retirement villages operating under the *Retirement Villages Act 1992*;
- owner-occupiers of park homes or caravans with a site lease of not less than seven years' duration;
- provide for court orders for property settlements in Western Australia;
 - issued on appeal from the Family Court of Western Australia;
 - made by the Court of Petty Sessions; and
 - made in another State or Territory;
- provide for financial arrangements made between de facto couples.

The Bill makes no amendment to the concept of ownership of land as defined in the various statutes which come under the ambit of the Act. So that the eligible pensioners and seniors may receive the concessions, they are, in effect, deemed to have a relevant interest in land where they reside in a retirement village, or own a park home, and have a contractual liability to pay the prescribed charges.

The Bill also introduces minor amendments to support the administration of the proposed extension to the scheme and to provide more efficient and more flexible means of verification of an eligible person's cardholder status. Currently, the Act requires an eligible person to produce his or her concession card in order to register his or her entitlement to the concessions under the scheme. The requirement for an eligible person to physically produce a concession card to each and every administrative authority in order to validate their entitlement has largely been made redundant by the advent of electronic means of verification and whole-of-government initiatives that provide for the sharing of information.

These amendments will not only streamline the administration of the scheme as a whole, but also minimise inconvenience to eligible pensioners and seniors.

Extensive consultation has occurred with administrative authorities, park home operators, retirement village owners, and interested parties, to develop an administrative scheme that builds upon existing systems and processes and is simple to apply and manage.

The estimated cost of extending concessions is estimated to be \$3.8 million in 2005/06, \$4.2 million in 2006/07, \$4.5 million in 2007/08, and \$5.0 million in 2008/09.

The current amendments are intended to apply from the rating year commencing on 1 July 2005.

Clause 1: Short title

This clause provides that this Act may be cited as the *Rates and Charges (Rebates and Deferments) Amendment Act 2005*.

Clause 2: Commencement

This clause provides the commencement dates for the Act.

Subclause (1) provides that this Act comes into operation on the day it receives the Royal Assent, subject to subsections (2) and (3).

Subclause (2) provides that if this Act receives the Royal Assent before or on 1 July 2005, sections 4(2), 11, 14(1) and (2) and 15 come into operation on 1 July 2005.

Subclause (3) provides that if this Act receives the Royal Assent after 1 July 2005, sections 4(2), 11, 14(1) and (2) and 15 are to be taken to have come into operation on 1 July 2005.

Clause 3: The Act amended

This clause provides the amendments in this Act are to the *Rates and Charges (Rebates and Deferments) Act 1992*.

Clause 4: Section 3 amended

Subclause (1) amends section 3(1) by inserting a self-explanatory definition of the term "procedural manual".

Subclause (2) amends section 3(1) by inserting a reference to section 29A and 29B in the definition of "relevant interest". This amendment extends the definition of the term "relevant

interest” as it is used in the Act to include interests in land held by residents of retirement villages and owner-occupiers of caravans and park homes as described in sections 29A and 29B.

Clause 5: Section 13 amended

This clause amends section 13(1) by deleting the words “issued under section 9(2)” after “procedural manual”. This reference to section 9(2) of the Act is no longer required as “procedural manual” is now defined in section 3(1) to mean the procedural manual issued under section 9(2).

Clause 6: Section 17 amended

This clause amends section 17(2) by replacing the reference to subsection (1)(c) with a reference to subsection (1a). This amendment corrects a minor error in the reference to the subsection relating to the calculation of interest.

Clause 7: Section 23 amended

The amendments in this clause provide, via section 26 of the Act, for more flexible means of verification of a person’s eligibility to apply to an administrative authority to have their entitlement as regards any land registered, if a prescribed charge is payable on that land. Section 26 of the Act sets out the forms of evidence of eligibility that an administrative authority may accept for the purposes of determining whether or not a person may be eligible. Although an administrative authority may continue to accept the production of a relevant pensioner concession card, State concession card, seniors’ card, or Commonwealth seniors health card, as the case requires, other forms of evidence may be accepted. The obligation for a person to physically produce a card as evidence of eligibility is no longer considered necessary or efficient, when an administrative authority may verify a person’s eligibility by other means.

Subclause (1) amends section 23(1) by deleting “production to the administrative authority of a relevant pensioner concession card” and inserts instead: “sufficient evidence of eligibility being accepted by the administrative authority under section 26”.

Subclause (2) amends section 23(2) by deleting “production to the administrative authority of a State concession card” and inserts instead: “sufficient evidence of eligibility being accepted by the administrative authority under section 26”.

Subclause (3) amends section 23(3) by deleting “production to the administrative authority of a State concession card” and inserts instead: “sufficient evidence of eligibility being accepted by the administrative authority under section 26”.

Subclause (4) amends section 23(4) by:

- inserting “who is the holder of both a seniors’ card and a Commonwealth seniors health card” after “a person”, and
- deleting “production to the administrative authority of both a seniors’ card and a Commonwealth seniors health card” and inserting instead: “sufficient evidence of eligibility being accepted by the administrative authority under section 26”.

Clause 8: Section 24 amended

The amendments in this clause provide, via section 26 of the Act, for more flexible means of verification of a person’s eligibility to apply to an administrative authority to have their entitlement as regards any land registered, if a prescribed charge is payable on that land. This clause provides that a person is eligible to apply for registration of their entitlement on production of proof of the kind prescribed and sufficient evidence of eligibility being accepted by the administrative authority under section 26.

Currently there are no forms of eligibility prescribed in the Regulations, neither are there any forms of proof prescribed.

Clause 9: Section 26 amended

This clause amends section 26(1) by the insertion of paragraph (f), which provides that for the purposes of determining whether or not a person may be eligible, an administrative authority may accept evidence of eligibility in a form specified in the procedural manual, as sufficient evidence of that person’s eligibility.

Paragraph (a) deletes “or” after paragraph (d).

Paragraph (b) deletes “applies.” in paragraph (e) and inserts instead “applies; or” to accommodate the insertion of the new paragraph (f) in section 26(1).

Paragraph (c) provides that an administrative authority may accept any form of eligibility specified in the procedural manual, as being sufficient evidence of that person’s eligibility.

The procedural manual may specify, for example, certified copies of cards, or various forms of electronic data matching, as

sufficient evidence of that person's eligibility.

Clause 10: Section 28 amended

This clause amends section 28(1)(b) by deleting the words "issued under section 9". This reference to section 9 of the Act is no longer required as "procedural manual" is now defined in section 3(1) to mean the procedural manual issued under section 9(2).

Clause 11: Section 29A and 29B inserted

This clause inserts the new sections 29A and 29B.

29A. Relevant interest – resident of retirement village

The effect of this provision is to deem an eligible person to have a relevant interest in land for the purposes of the Act where that person is a resident of a retirement village and has a liability to pay the prescribed charges on the land on which they live. Provision is also made to the effect that the surviving partner of a deceased person may be taken to have a relevant interest in the land where the deceased person was liable to pay the prescribed charges.

Subsection (1) provides, by reference to the *Retirement Villages Act 1992*, for the purposes of section 29A, self-explanatory definitions of the terms:

- "administering body";
- "residence contract";
- "resident"; and
- "retirement village".

Subsection (2) provides that an eligible person has a relevant interest in land for the purposes of the Act where that person occupies the land as a resident of a retirement village and

(a) has entered into a prescribed charge arrangement as set out in subsection (3) in relation to the land, or under subsection (5), is taken to have entered into such an arrangement; and

(b) is and remains liable to pay the prescribed charge as an amount payable under the prescribed charge arrangement.

In order that the eligible person may be taken to have a relevant interest in land, that person must have entered into a written arrangement by which that person agrees to pay the prescribed charges on the land which he or she occupies.

Subsection (3) clarifies the application of the term “prescribed charge arrangement” for the purposes of this section. Such an arrangement is to be a written contract, which is made between the administering body of a retirement village and an eligible person who is a resident of the retirement village. Under the terms of this contract the resident agrees to pay, either directly or indirectly, the prescribed charges on the land which he or she occupies as a resident of that retirement village. The form of the prescribed charge arrangement is immaterial, however it must be in writing. The prescribed charge arrangement is not prescribed in the Regulations (i.e. it is not a charge arrangement as prescribed in the Regulations).

Subsection (4) provides that a prescribed charge arrangement may form part of a residence contract. In practice, the residence contract will, in many cases, cover the prescribed charge arrangement.

Subsection (5) provides that, for the purposes of section 29A, the surviving partner of a deceased eligible person may be taken to have entered into a prescribed charge arrangement if that person is also an eligible person in their own right and was:

- (a) the spouse or de facto partner of a deceased eligible person who had entered into a prescribed charge arrangement; and
- (b) was residing with the deceased eligible person at the time of his or her death.

It is not intended that the expression “residing with the deceased eligible person at the time of his or her death” be read too narrowly, nor too literally. By way of example, where a married couple had been living in a genuine domestic relationship as residents of the same unit in a retirement village, but where the husband had ultimately died in hospital, the wife should, in that case, be covered by this provision. That is to say, the surviving partner is taken to have entered into a prescribed charge arrangement for the purposes of this section. However, where the surviving partner had been estranged, or living apart from the deceased partner at the time of his or her death, then this provision would not apply.

This subsection is intended to preserve the entitlement to a rebate of a prescribed charge of the spouse, or de facto partner, of a deceased eligible person who was deemed to have a relevant interest under section 29A. This provision would apply where only the deceased partner had entered into the prescribed charge arrangement. It is anticipated that this provision will have only rare application as in the retirement village context, it is common practice for all residents of a unit

to be obliged to enter into a residence contract with the administering body, and in most cases the residence contract will include the prescribed charge arrangement. The surviving partner must be, himself or herself, an eligible person and that person must register his or her entitlement with the administrative authority.

29B. Relevant interest – owner-occupier of caravan or park home

The effect of this provision is to deem an eligible person to have a relevant interest in land for the purposes of the Act where that person is an owner-occupier of a caravan or park home and has a liability to pay the prescribed charges on the land on which they live. Provision is also made to the effect that the surviving partner of a deceased person may be taken to have a relevant interest in the land where the deceased person was liable to pay the prescribed charges.

Subsection (1) provides, by reference to the *Caravan Parks and Camping Grounds Act 1995* and the *Residential Tenancies Act 1987*, for the purposes of section 29B, self-explanatory definitions of the terms:

- “caravan”;
- “caravan park”;
- “owner”;
- “park home”;
- “residential tenancy agreement”; and
- “site”.

Subsection (2) provides that an eligible person has a relevant interest in land for the purposes of the Act where that person occupies a site on land in a caravan park and:

- (a) has entered into a prescribed charge arrangement as set out in subsection (3) in relation to the land, or under subsection (4), is taken to have entered into such an arrangement; and
- (b) is and remains liable to pay the prescribed charge as an amount payable under the prescribed charge arrangement.

In order that the eligible person may be taken to have a relevant interest in land, that person must have entered into a written arrangement by which that person agrees to pay the prescribed charges on the land which he or she occupies.

Subsection (3) clarifies the application of the term “prescribed charge arrangement” for the purposes of this section. Such an arrangement is to be a written contract, which is made between the owner of land in a caravan park and an eligible person who occupies land in a caravan park as an owner-occupier. It should be noted that, for the purposes of this section, the “owner” of land is defined to include the “grantor of a right of occupancy under a residential tenancy agreement” and in relation to a caravan park would mean the park operator. Under the terms of this contract the owner-occupier agrees to pay, either directly or indirectly, the prescribed charges on the land which he or she occupies as an owner-occupier of that site in a caravan park. The form of the prescribed charge arrangement is immaterial, however it must be in writing. The prescribed charge arrangement is not prescribed in the Regulations (i.e. it is not a charge arrangement as prescribed in the Regulations).

Subsection (4) provides that, for the purposes of section 29B, the surviving partner of a deceased eligible person may be taken to have entered into a prescribed charge arrangement if that person is also an eligible person in their own right and was:

- (a) the spouse or de facto partner of a deceased eligible person who had entered into a prescribed charge arrangement; and
- (b) was residing with the deceased eligible person at the time of his or her death.

It is not intended that the expression “residing with the deceased eligible person at the time of his or her death” be read too narrowly, nor too literally. By way of example, where a de facto couple had been living in a genuine domestic relationship as owner-occupiers of the same park home in a lifestyle village, but where one partner had ultimately died in hospital, the other partner should, in that case, be covered by this provision. That is to say, the surviving partner is taken to have entered into a prescribed charge arrangement for the purposes of this section. However, where the surviving partner had been estranged, or living apart from the deceased partner at the time of his or her death, then this provision would not apply.

This subsection is intended to preserve the entitlement to a rebate of a prescribed charge of the spouse, or de facto partner, of a deceased eligible person who was deemed to have a relevant interest under section 29B. This provision would apply where only the deceased partner had entered into the prescribed charge arrangement. It is anticipated that this provision will have only rare application as in the park home context, it is common practice for all residents of a home to

enter into a residence contract with the owner, and in most cases the lease agreement will include the prescribed charge arrangement. The surviving partner must be, himself or herself, an eligible person and that person must register his or her entitlement with the administrative authority.

Subsection (5) sets out the criteria which must be met for a person to be considered to be occupying a site as an owner-occupier for the purposes of this section.

Paragraph (a) provides that the eligible person must be the owner of a caravan or a park home on the site in a caravan park, and have, under the terms of a written residential tenancy agreement, and from the date on which the entitlement of that person is registered, an exclusive right to occupy that site for a term of at least seven years, or another term as prescribed in the regulations.

The rebate is provided on the basis that an eligible person owns his or her caravan or park home and has, from the date of registration of their entitlement, a reasonable security of tenure. A minimum period of seven years is specified.

Industry evidence suggests that in the lifestyle village context, a lease of eight years duration with an option to renew each year is the minimum period commonly offered, and lease-for-life arrangements are not uncommon. However, it is recognised that many different lease terms may be in existence, and for this reason a regulation making power is included in this provision to allow for other periods that may be appropriate, where a reasonable security of tenure can be demonstrated.

Paragraph (b) provides that an eligible person is an owner-occupier if that person is the spouse or de facto partner of an eligible person referred to in paragraph (a), or was the spouse or de facto partner of a deceased person who was an eligible person referred to in paragraph (a) at the time of his or her death; and resides with that person, or was residing with that deceased person at the time of his or her death.

This paragraph is intended to preserve the entitlement to a rebate of a prescribed charge of the spouse, or de facto partner, of a deceased eligible person who was deemed to have a relevant interest under section 29B. It provides that the surviving spouse or de facto partner of a deceased person who was occupying a site as an owner-occupier may also be considered to be occupying the site as an owner-occupier provided that the surviving person is themselves an eligible person and was residing with the deceased person at the time

of his or her death.

As with subsection (4) it is not intended that the expression “residing with the deceased eligible person at the time of his or her death” be read too narrowly, nor too literally.

Clause 12: Section 31 amended

Subclause (1) deletes section 31(3)(a) and inserts a new paragraph (a). This subclause provides that a rebate allowable under section 31(2) of the Act in respect of a subsequent charged period shall be apportioned in a manner not inconsistent with orders issued:

- by a court of summary jurisdiction (e.g. the Court of Petty Sessions);
- by the Family Court of Western Australia;
- in another State or Territory; and
- on appeal from the Family Court of Western Australia.

This provision ensures that a person’s entitlements under the Act may be recognised where this occurs as a result of an order made by a court of summary jurisdiction, on appeal from the Family Court (i.e. an order made by the Supreme Court), or made in another State or Territory under the Commonwealth *Family Law Act 1975*.

This provision corrects a minor anomaly whereby the Act only made provision for orders made by the Family Court.

Subclause (2) deletes section 31(3)(aa) and inserts a new paragraph (aa). This subclause provides that a rebate allowable under section 31(2) of the Act in respect of a subsequent charged period shall be apportioned in a manner not inconsistent with an agreement made:

- under the *Family Law Act 1975* (Cwlth) in the case of marriage;
- under the *Family Court Act 1997* (WA) in the case of a de facto relationship; or
- under legislation of another State or Territory in the case of a de facto relationship where that legislation provides for an agreement with respect to financial matters made before, during, or after a de facto relationship.

This provision corrects a minor anomaly whereby the Act only made provision for agreements made under the Commonwealth *Family Law Act 1975* between married couples. This extends the operation of the Act to de facto couples as

recognised in Western Australia or another State or Territory.

Clause 13: Section 32 amended

Subclause (1) deletes the term “the prescribed form” in section 32(1)(a) and inserts instead: “the form specified in the procedural manual”. In order to register an entitlement as regards any land an eligible person must make a written application to the administrative authority substantially in the form set out in the procedural manual. The procedural manual will set out the information which the applicant must provide to the administrative authority. The inclusion of this information in the procedural manual provides greater administrative flexibility than the existing requirement for the form to be prescribed in the Regulations.

Subclause (2) inserts the new sections 32(1b) and 32(1c) to facilitate the process of application for registration of an entitlement by an eligible person. These provisions eliminate the need for an eligible person to register his or her entitlement by making an application to each and every administrative authority in respect of each prescribed charge. These provisions allow the applicant to authorise an administrative authority to provide a copy of the application to another administrative authority, and in turn they allow that administrative authority to accept the copy as a valid application.

Subsection (1b) provides that an applicant under this section may authorise an administrative authority to whom that person has made an application, to give a copy of that application to another administrative authority.

Subsection (1c) provides that a copy of an application that includes an authorisation as mentioned in section 32(1b), that is given to an administrative authority in accordance with the authorisation, is to be taken to be an application under subsection (1) to that administrative authority for registration of an entitlement as regards land.

Subclause (3) amends section 32(6) by deleting the words “issued under section 9”. This reference to section 9 of the Act is no longer required as “procedural manual” is now defined in section 3(1) to mean the procedural manual issued under section 9(2).

Clause 14: Section 33 amended

Subclause (1) amends section 33(1) by inserting “on the basis that a person holds an estate in fee simple in possession in land or a relevant interest in land of a kind referred to in section 29”

after “on that land”. This provides that, subject to this Act, an eligible person to whom land belongs (by virtue of that person holding an estate in fee simple in possession of the land, or a relevant interest in land as set out in section 29), is authorised to pay a rebated amount for, or defer payment of, a prescribed charge on that land.

Subclause (2) inserts a new section 33(1a) which mirrors the application of the amended section 33(1) with respect to eligible persons whose interest in land is of a kind referred to in section 29A or 29B and authorises those persons to pay a rebated amount for a prescribed charge on that land. Eligible persons who have an interest in land as set out in sections 29A or 29B cannot defer payment of a prescribed charge on that land. This means that residents of retirement villages and owner-occupiers of caravans or park homes will not be able to defer payment of prescribed charges. This is further reiterated in the amendments to section 43 of the Act. Deferment is not available to these persons as the relevant interest in land as specified in section 29A and 29B does not constitute ownership of an estate in fee simple of the land, and the prescribed charges, if unpaid by a person with such a relevant interest, would, as a consequence, be payable by the owner of the land, rather than the eligible person who was contractually liable to pay the prescribed charges.

Specifically the new subsection (1a) provides that where as regards any land an entitlement is registered in relation to any kind of prescribed charge on that land on the basis that a person holds a relevant interest in land of a kind referred to in section 29A or 29B, the person whose entitlement it is, subject to this Act, is authorised in relation to a charge of that kind to pay a rebated amount for the charged period for which that charge was made and for all subsequent charged periods until the registration is amended or cancelled.

Subclause (3) amends section 33(5) by deleting the words “issued under that section”. This reference to section 9 of the Act is no longer required as “procedural manual” is now defined in section 3(1) to mean the procedural manual issued under section 9(2).

Clause 15: Section 43 amended

Subclause (1) amends section 43(1) by deleting the reference to “subsection (2)” and inserting: “subsections (1a) and (2)”. This provides that the circumstances in which deferment of payment of a prescribed charge may be allowed is further restricted by

the provisions of subsection (1a).

Subclause (2) inserts a new subsection (1a) after section 43(1) which provides that deferment of the payment of a prescribed charge must not be allowed if the entitlement of the person liable to pay the relevant prescribed charge is as a person who holds a relevant interest of a kind referred to in section 29A or 29B. This means that residents of retirement villages as defined in section 29A and owner-occupiers of caravans or park homes as defined in section 29B, are not permitted to defer payment of prescribed charges.

This is further reiterated in the amendments to section 33 of the Act. Deferment is not available to these persons as the relevant interests in land as specified in section 29A and 29B do not constitute ownership of an estate in fee simple of the land, and the prescribed charges, if unpaid by a person with such a relevant interest, would, as a consequence, be payable by the owner of the land, rather than the eligible person who was contractually liable to pay the prescribed charges.

Clause 16: Transitional

This provision provides a grace period for eligible persons who have a relevant interest under section 29A and 29B at 1 July 2005 to register their entitlement and receive the benefit of the rebate for the entire charged period. In practical terms, eligible persons who are residents of retirement villages and owner-occupiers of caravans or park homes will have until 30 September 2005 to register their entitlement to a rebate of prescribed charges for the 2005/06 rating year.

This provision is required as section 40 of the Act operates to apportion the rebate from the date that the eligible person registers his or her entitlement.

This transitional provision specifies that if an eligible person who holds a relevant interest in land of a kind referred to in section 29A or 29B of the *Rates and Charges (Rebates and Deferments) Act 1992* registers an entitlement in respect of land under section 32 of that Act after 30 June 2005 and before 1 October 2005, section 40 of that Act applies to that person as if the entitlement had been registered at the commencement of the charged period.