

EXPLANATORY MEMORANDUM

REVENUE LAWS AMENDMENT (ASSESSMENT) BILL 2007

This Bill seeks to amend the *Rates and Charges (Rebates and Deferrals) Act 1992* to:

- ensure that pensioner concession card holders do not lose their concession where their payment type changes under the Commonwealth *Welfare to Work* initiative;
- allow an eligible person to retrospectively register their entitlement after the death of their registered spouse or de facto partner;
- remove the requirement for a registration application and certain other matters to be in writing; and
- extend the time in which a rebated amount will satisfy a liability to pay a prescribed charge in exceptional circumstances.

This Bill also seeks to amend the *Taxation Administration Act 2003* to complement changes to metropolitan region improvement tax arrangements contained in the Revenue Laws Amendment (Taxation) Bill 2007. The amendment ensures that an assessment notice does not need to be issued where an amount of metropolitan region improvement tax is waived because it is less than a prescribed limit, currently \$20.

Pensioner concession card holders

The first of the rates and charges measures ensures that all Pensioner Concession Card holders are eligible for rates and charges concessions and do not lose their eligibility when their payment type changes due to the Commonwealth *Welfare to Work* initiative.

Under the Commonwealth *Welfare to Work* initiative, which is aimed at assisting certain pensioners into the workforce, some people may be moved from pensions to alternative income support allowances such as Newstart, however, they would retain their Pensioner Concession Card.

Under the terms of the *Compensation for the Extension of Fringe Benefits Specific Purpose Payment*, Western Australia has agreed to provide “core” concessions to all pensioner concession card holders, without discrimination between cardholders. The “core” concessions covered by this agreement include rebates for local government and water charges under the *Rates and Charges (Rebates and Deferrals) Act 1992* (“the Act”).

Under the current provisions of the Act, if a person is under the age of 60 and receiving an allowance rather than a pension, they are not eligible to receive a concession on local government and water charges. Therefore, when eligible pensioners under the age of 60 are moved to alternative income support

allowances under the Commonwealth initiative, they would lose their eligibility for concessions under the Act, even though they would retain their Pensioner Concession Card.

At present, only a small number of people have been affected, however, from 1 July 2007, that number is expected to increase as the Commonwealth introduces stringent new tests. The amendments in this Bill ensure that those affected people who retain their Pensioner Concession Card continue to be eligible pensioners for the purposes of the Act.

If the proposed changes are not implemented, there could be a small reduction in the cost of providing concessions, but Western Australia would risk losing its \$18 million per annum *Compensation for the Extension of Fringe Benefits* Specific Purpose Payment from the Commonwealth.

Surviving spouse or de facto partner

The second measure is to allow an eligible person to retrospectively register their entitlement after the death of their registered spouse or de facto partner.

Generally, where more than one person owns land, each eligible person is required to register their entitlement and the rebate is apportioned where not all of the owners are eligible persons. However, section 27(5) of the Act makes an exception so that where a married or de facto couple jointly own and live together in a property, only one of the partners needs to register in order to qualify for a rebate based on the extent of their combined interests. This can lead to problems where the registered partner dies and the unregistered surviving partner fails to register by the commencement of the next rating year. In these situations the Act only provides for a pro rata rebate based on the date they registered.

Under current arrangements, when an administrative authority becomes aware of the change in circumstances, it cannot retrospectively recognise the surviving partner's eligibility and can only allow a pro rata rebate based on the date of registration. This is clearly inequitable where the person had always been eligible to register their entitlement in respect of the property but had not been required to do so because of the exception provided in section 27(5) of the Act.

A similar situation may arise where the deceased was the sole owner of the family home and the surviving spouse or de facto partner inherits it under the terms of the deceased partner's will. It is considered that in these circumstances, the surviving spouse or de facto partner should also have the ability to have their registration recognised retrospectively.

Accordingly, the amendments in this Bill aim to allow a surviving spouse or de facto partner to retrospectively register their entitlement for two charged

periods after the charged period in which their registered partner died. It is expected this period of time would be sufficient for the surviving partner to register entitlement under his or her own name.

Amendments are also to be made to provide a discretion to the Minister or his or her delegate, to allow a longer period for a surviving partner to register their entitlement where exceptional circumstances exist. The costs associated with changes in relation to retrospective registration for surviving partners are expected to be negligible.

Written application

The Act currently requires a person to make written application to an administrative authority to register their entitlement as regards the land. The requirement for the application to be in writing is restricting the ability of administrative authorities to provide more flexible means by which an eligible person can apply.

For example, it may be more convenient for eligible persons, many of whom are elderly, to be able to make an application over the telephone by responding to a number of questions.

The amendments in this Bill remove the restriction that an application is to be in writing. However, it will remain incumbent on the administrative authority to ensure the bona fides of the applicant and normal processes would apply to ensure eligibility.

Extended time for payment of a rebated amount

The Act allows liability to pay a prescribed charge to be satisfied by paying a rebated amount, or the balance of a prescribed charge after the rebate is allowed, so long as the rebated amount is paid within the charged period. The charged period, in relation to any prescribed charge, means the year or part year for which that charge is to be or was made.

In most cases, the rebated amount must be paid by 30 June of the rating year. If it is not paid by 30 June, the full amount is payable, or in the case of certain pensioners, the full amount is deferred. No discretion is available to allow the rebate where payment is made after the end of the charged period.

The amendments contained in this Bill will provide a discretion to allow eligible pensioners and seniors to access the rebate where they have not paid their rates by the cut-off date due to exceptional circumstances. As these amendments will apply in exceptional circumstances only, the estimated cost is expected to be minimal.

Part 1 – Preliminary

Clause 1: Short title

This clause provides that this Act may be cited as the *Revenue Laws Amendment (Assessment) Act 2007*.

Clause 2: Commencement

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

Paragraph (a) provides that Part 1 of the Act comes into operation on the day on which it receives the Royal Assent. Part 1 contains the short title and commencement provisions.

Paragraph (b) provides that Part 2, Divisions 1 and 2, and Part 3 come into operation on the day after the day on which the Act receives the Royal Assent.

Part 2, Divisions 1 and 2 contain amendments to remove the requirement for an application to be in writing and allow a surviving spouse or de facto partner to retrospectively register with an administrative authority following the death of their partner.

Paragraph (c) provides that Part 2, Division 3 comes into operation, or is deemed to have come into operation, on 1 July 2007.

Part 2, Division 3 ensures that all Pensioner Concession Card holders are eligible pensioners for the purposes of the Act and also allows a rebate where payment is not made by the end of the charged period in exceptional circumstances.

Part 2 – Rates and Charges (Rebates and Deferments) Act 1992 amended

Division 1 – The Act amended

Clause 3. The Act amended

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

Division 2 - Amendments that come into operation on day after assent day

Clause 4. Section 32 amended

Section 32 of the Act outlines the registration process for an eligible person to register an entitlement with an administrative authority, as regards the land on which a prescribed charge is payable.

Subclause (1) deletes section 32(1)(a), which currently requires the application to the administrative authority to be in writing and in the form specified in the procedural manual. This paragraph is replaced by new paragraph (a), which requires an application to the administrative authority to be in a manner specified in the procedural manual.

This will allow for the procedural manual to specify other methods of application such as by electronic means, over the telephone or some other method and prepares the Act for future communication methods.

It should be noted that it is still incumbent on the administrative authority to ensure the bona fides of applicants and normal processes will apply to ensure eligibility.

Subclause (2) amends section 32(1)(b) by deleting the reference to information being provided to the administrative authority in writing, so that information can be provided as required by the administrative authority, eg. by telephone.

Subclause (3) repeals subsections (1b) and (1c) of section 32 and inserts new subsections (1b) and (1c) so that where a person registers with an administrative authority, the authority can forward the applicant's details to any other administrative authority to which the applicant is required to pay a prescribed charge. For example, where a person registers with the Water Corporation, the details of the application can also be provided to the person's relevant local government authority. This is more convenient for the applicant as they only need to make one application. It will also ensure that the person receives all concessions to which they are entitled.

As the details may not be collected in a form that can be copied and provided to the other administrative authority, new section 32(1b) allows for the applicant's information to be given to the

other administrative authority without prescribing the manner in which it is to be provided. Where an applicant's details are provided under new section 32(1b), new section 32(1c) requires the other administrative authority to treat the provision of the applicant's details as an application for registration of an entitlement.

Clause 5. Section 32A inserted

Section 32A is inserted after section 32.

32A. Entitlement of surviving spouse or de facto partner

Subsection (1) inserts new definitions of "deceased partner", "surviving partner" and "surviving partner's land".

The definitions are self explanatory.

Subsection (2) sets out the circumstances required for a surviving partner to be able to retrospectively register with the administrative authority.

Each of the requirements in this section are included to ensure that at all times since the death of the deceased partner, the surviving partner has been eligible to register their entitlement as regards the land.

Paragraph (a) requires that the deceased partner had a registered entitlement in respect of the land immediately before they died.

Paragraph (b) requires that following the death, the land belongs to the surviving partner in one of the circumstances set out in subparagraphs (i), (ii) or (iii).

Subparagraph (i) provides that the land belongs to the surviving partner as a former joint tenant or tenant in common with the deceased partner.

Subparagraph (ii) provides that the land belongs to the surviving partner as a beneficiary under the will or intestacy of the deceased partner.

Subparagraph (iii) provides that the land is occupied by the surviving partner who has, as a beneficiary, a prospective entitlement to the fee simple in the land; or is a life tenant who has a right to occupy the land; or is entitled under the deceased

partner's will to occupy the land.

Paragraph (c) requires that the surviving partner had a liability to pay the prescribed charge in respect of the land in one of two circumstances.

Subparagraph (i) specifies that the surviving partner had a liability to pay the prescribed charge in respect of the land at the commencement of the charged period (period 1) immediately following the charged period in which the prescribed charge was last payable by the deceased partner.

For example, the deceased was liable to pay a prescribed charge for the rating year commencing on 1 July 2005 and died on 30 April 2006. In these circumstances, there is a requirement for the surviving partner to have a liability to pay the prescribed charge in respect of the rating year commencing on 1 July 2006.

Subparagraph (ii) specifies that the surviving partner had a liability to pay the prescribed charge in respect of the land at the commencement of period 1 and at the commencement of the following charged period (period 2).

Paragraph (d) requires that the surviving partner is to be an eligible person for the purposes of the Act at the commencement of either period 1 or both periods 1 and 2.

Paragraph (e), subparagraph (i) provides that if the surviving partner only has a liability in respect of period 1 and registers with the administrative authority before the end of that period, they are taken to have been registered at the commencement of period 1. The surviving partner would therefore be eligible for the rebate in respect of the whole charged period without any pro rata from the date of actual registration. The surviving partner would only have a liability in respect of period 1 if they no longer owned the property at the end of that period.

Subparagraph (ii) provides that if the surviving partner registers with the administrative authority before the end of period 2, in circumstances where they have a liability in respect of the land at the commencement of both periods 1 and 2, they are taken to have been registered at the commencement of periods 1 and 2. The surviving partner would therefore be eligible for the rebate in respect of periods 1 and 2 without any pro rata from the date of actual registration.

An example of how the new provision will apply is the case of Fred and Jean, a married couple, who have owned their home as joint tenants for thirty years. Both Fred and Jean are eligible to apply for registration with regard to their land as they are both age pensioners and each holds a Pensioner Concession Card. However, only Fred has registered an entitlement in respect of the land, as the Act does not require Jean to be registered as well, even though she is also an eligible person.

Unfortunately, Fred dies on 24 May 2006 and Jean is now the sole owner of the land and, as discussed, has not registered an entitlement as regards the land. Fred's entitlement will apply until the end of the charged period in which he died, that is, 30 June 2006. Jean will need to register before 1 July 2006 for a full rebate to apply for the next charged period (the next financial year).

As Fred died very close to the end of the charged period, the administrative authorities may not be aware of his death and would issue rates notices for the 2006-07 charged period in his name, with a rebate included. It would not be until the following charged period, 2007-08, that the rates notices would be issued in Jean's name, without a rebate, as she is not a registered person.

It is not until she receives a rates notice that does not include a rebated amount that she realises she has forgotten to register her eligibility with an administrative authority. She is required to register so that she can receive her entitlement to the rebates and concessions, although she has been eligible to do so for the whole period from 1 July 2006 (the commencement of the charged period following the charged period in which Fred died).

The date is now August 2007 and under the current provisions of the Act, Jean's eligibility to pay a rebated amount will only apply from the date of registration. She will be liable for the whole of the rates and charges for 2006-07 and will only get a proportionate rebate for 2007-08 from the time she registers in August 2007.

This is inequitable as she has been an eligible person for the whole period but has not applied to register her entitlement previously as her spouse was registered.

The amendments to the legislation will allow Jean to retrospectively register her entitlement for the two charged periods from the end of the charged period in which Fred died.

Her entitlement to pay a rebated amount will be recognised by the administrative authorities for the years 2006-07 and 2007-08.

Subsection (3) provides for circumstances where a surviving partner fails to register with the administrative authority before the end of period 2 (the second charged period following the charged period in which their partner died).

Paragraph (a) requires that new subsection (2)(a) and (b) apply in relation to the deceased partner and the surviving partner.

Paragraph (b), subparagraph (i) requires that the surviving partner was liable for payment of a prescribed charge in respect of the land for more than 2 charged periods after the charged period in which their partner died.

Subparagraph (ii) requires that the surviving partner was an eligible person for the purposes of the Act at the commencement of each of the charged periods referred to in subparagraph (i).

Paragraph (c) provides for the Minister to allow the surviving partner to register retrospectively for more than 2 charged periods following the charged period in which their partner dies where exceptional circumstances exist. It is expected that the Minister will delegate this function to the Commissioner of State Revenue under section 10 of the Act.

Although it is considered that two charged periods should be sufficient for a surviving partner to register his or her entitlement as regards the land, additional charged periods in which to register can be allowed at the discretion of the Minister in exceptional circumstances.

Examples of exceptional circumstances could be where problems have arisen with probate of the will and clarifying this has taken longer than two charged periods; or the surviving partner has been unable to register their entitlement due to a long illness.

Subsection (4) provides that if the Minister makes a declaration that the surviving partner can retrospectively register their entitlement at the commencement of each of more than 2 charged periods, then the declaration takes effect according to its terms and the surviving partner is to be taken as having a registered entitlement from the commencement of each of the charged periods for the purposes of the Act.

For example, if the Minister determines that the surviving partner, because of exceptional circumstances, was unable to register their entitlement for four charged periods following the end of the charged period in which their partner died, then they are taken to have had a registered entitlement for those four charged periods.

Subsection (5) provides that a surviving partner who has been taken to have a registered entitlement in respect of their land may pay the rebated amount in relation to the prescribed charge either by the date specified in the notice requiring payment or the end of the charged period to which the notice relates, whichever is the later.

Clause 6. Section 35 amended

Section 35 applies to a change in circumstances of a registered person and provides the process to be used to inform the administrative authorities of the change.

Subclause (1) amends section 35(1) by deleting “in writing” and inserting instead “in a manner approved by the administrative authority” so that information can be provided in a manner other than in writing if approved by the administrative authorities.

Subclause (2) amends section 35(3) by deleting “in writing” and inserting instead “in a manner approved by the administrative authority” so that information can be provided in a manner other than in writing if approved by the administrative authorities.

Clause 7. Section 37 amended

Section 37 applies to an administrative authority that has received advice from a registered person that the registration is to be amended or cancelled.

Section 37(2) is amended by deleting “in writing” and inserting instead “made in a manner approved by the administrative authority” so that amendment or cancellation information can be provided in a manner other than in writing if approved by the administrative authorities.

**Division 3 – Amendments that come into operation on
1 July 2007**

Clause 8. Section 3 amended

Section 3 contains the definitions of terms used in the Act.

Section 3(1)(a) is amended by deleting the definition of “pensioner concession card” and inserting instead a new definition of “pensioner concession card” which means:

- (a) a currently valid pensioner concession card issued by or on behalf of the Commonwealth Government; and
- (b) a card prescribed by the regulations to be a pensioner concession card for the purposes of this Act,

but does not include a pensioner concession card issued by or on behalf of the Commonwealth Government that is, or is of a class that is, excluded from this definition under the regulations.

No pensioner concession cards are currently being considered for inclusion or exclusion by regulation, however, it is considered that a more flexible method of reflecting changes to Commonwealth arrangements is necessary for the future.

Notably, the *Local Government Act 1993* (NSW) provides that an eligible pensioner for the purposes of receiving concessions means a member of a class of persons prescribed by the regulations.

Clause 9. Section 23 amended

Section 23 sets out who is eligible to apply to an administrative authority to have their entitlement as regards their land registered if a prescribed charge is payable on that land.

This section is amended to include all pensioner concession card holders as persons eligible to apply to an administrative authority to have their entitlement as regards their land registered if a prescribed charge is payable on the land.

Subclause (1) amends section 23(1) by deleting paragraphs (a), (aa) and (b) and inserting instead new paragraph (a).

New paragraph (a) provides that a person is eligible to apply to have their entitlement as regards their land registered if they are

the holder of a pensioner concession card.

Subclause (2) inserts new subsection (1a). This paragraph provides that persons of a prescribed class are not eligible to make an application even though they are the holder of a pensioner concession card. No regulations are currently proposed in respect of this provision.

This regulation making power has been included to provide a more flexible way to exclude certain types of pensioner concession card holders should a different type of card be issued that is more widely available.

Clause 10. Section 40 amended

Section 40 provides the calculation mechanism for the rebate to be allowed to a registered person.

Subclause (1) amends section 40(2) to allow payment of a rebated amount to be made after the end of the charged period where the new section 40(2a) applies.

Subclause (2) inserts a new subsection (2a) into section 40.

Section 40(2a) provides the Minister with discretion to allow a person an extended period within which a rebated amount may be made where exceptional circumstances exist.

Currently liability to pay a prescribed charge may be satisfied by paying a rebated amount, or the balance of a prescribed charge, after the rebate is allowed, if the rebated amount is paid within the charged period. The charged period, in relation to any prescribed charge, means the year or part of a year for which that charge is to be or was made.

Therefore, in most cases, the rebated amount must be paid by 30 June of the rating year. If the charge is not paid by 30 June, the full amount is payable, or in the case of certain pensioners, the full amount is deferred.

There is no discretion to allow the payment of a rebated amount to satisfy the liability to pay a prescribed charge where the rebated amount is paid after the due date (i.e. after 30 June of the rating year concerned).

New section 40(2a) provides discretion for the Minister to allow

eligible pensioners and seniors to access the rebate where they have not paid their rates by the cut-off date due to exceptional circumstances. It is expected that the Minister will delegate this function to the Commissioner of State Revenue under section 10 of the Act.

An example of exceptional circumstances could be where the eligible person was unable to pay their rates by the due date as they were hospitalised for an extended period which included the end of the charged period.

Clause 11: Section 41 amended

This clause amends section 41 to give effect to the extended period for payment that may be allowed under the new section 40(2a).

Clause 12: Section 44 amended

This clause amends section 44 to give effect to the extended period for payment that may be allowed under the new section 40(2a).

Part 3 – Taxation Administration Act 2003 amended

Clause 13: The Act amended

This clause provides that the amendments in this Part are to the *Taxation Administration Act 2003*.

Clause 14: Section 23 amended

Section 23(1) applies to the Commissioner and requires the Commissioner to issue an assessment notice when the Commissioner makes an assessment.

Section 23(2) provides a list of circumstances when the Commissioner does not have to issue an assessment notice.

Section 23(2)(c) provides that the Commissioner does not have to issue an assessment notice if no tax is payable under an exemption provided under the *Land Tax Assessment Act 2002* or if land tax imposed under the *Land Tax Act 2002* is waived.

Section 23(2) is amended so that the Commissioner does not have to issue an assessment notice where metropolitan region

improvement tax is waived because it is less than a prescribed limit, which is currently \$20. Changes to the method of imposing metropolitan region improvement tax proposed by the Revenue Laws Amendment (Taxation) Bill 2007 may result in small liabilities for the tax that are less than the prescribed amount.

Currently, metropolitan region improvement tax is imposed on the total unimproved value of the land once the exemption threshold is reached, resulting in a minimum liability of \$225.

Following amendments proposed in the Bill, the tax will only be imposed on the unimproved value in excess of the exemption threshold. Accordingly, liabilities under \$20 are likely to arise.