REVENUE LAWS AMENDMENT (ASSESSMENT) BILL 2001

EXPLANATORY MEMORANDUM

PART 1 – PRELIMINARY

This part contains the title of the Act and the relevant commencement provisions.

Clause 1: **Short title**

This clause contains the short title and citation.

Clause 2: **Commencement**

This clause sets out the commencement provisions.

Subclause (1) provides that the Act commences on the day that it receives the Royal Assent, subject to the remainder of the clause.

Subclause (2) provides that Parts 2 and 3 containing amendments to the Pay-roll Tax Assessment Act and Rates and Charges (Rebates and Deferments) Act commence on 1 July 2001, if the Act receives the Royal Assent on or before 1 July 2001.

Subclause (3) provides that Parts 2 and 3 are deemed to commence on 1 July 2001, if the Act receives the Royal Assent after 1 July 2001.

Subclause (4) provides that the Stamp Act amendments and consequential amendments to the Pay-roll Tax Assessment Act contained in Part 4 Division 3 relating to workers' compensation insurance commence on 30 June 2001, if the Act receives the Royal Assent on or before 30 June 2001.

Subclause (5) provides that the Stamp Act amendments and consequential amendments to the Pay-roll Tax Assessment Act contained in Part 4 Division 3 relating to workers' compensation insurance are deemed to have commenced on 30 June 2001, if the Act receives the Royal Assent after 30 June 2001.

Subclause (6) provides that the Stamp Act amendments contained in Part 4 Division 4 in relation to the land-rich anti-avoidance provisions commence immediately after Part 5 Division 2 of the Financial Relations Agreement (Consequential Provisions) Act 1999 comes into operation.

Part 5 Division 2 of the Financial Relations Agreement (Consequential Provisions) Act 1999 relates to amendments made to the Stamp Act to remove the stamp duty liability in respect of company shares quoted on recognised stock exchanges from 1 July 2001.

The land-rich anti-avoidance provisions proposed in this Bill commence immediately after the relevant amendments contained in the Financial Relations Agreement (Consequential Provisions) Act so as to negate

avoidance opportunities exacerbated by the amendments made by that Act.

Subclause (7) provides that the Stamp Act amendments contained in Part 4 Division 4 in relation to the land-rich anti-avoidance provisions are deemed to have commenced immediately after Part 5 Division 2 of the Financial Relations Agreement (Consequential Provisions) Act 1999 comes into operation.

Refer to subclause (6) for further explanation as to why these amendments are deemed to commence immediately after Part 5 Division 2 of the Financial Relations Agreement (Consequential Provisions) Act 1999.

PART 2 – PAY-ROLL TAX ASSESSMENT ACT 1971 AMENDED

Clause 3: Section 11 inserted

This clause inserts a new section 11 into the Pay-roll Tax Assessment Act as a consequence of amendments to the Pay-roll Tax Act contained in the Revenue Laws Amendment (Taxation) Bill 2001. The amendments in that Bill affect the way that the rate of pay-roll tax is calculated where an employer changes status during a financial year (commences or ceases paying wages or changes from non-group to group or vice versa) and also in circumstances where a group has one or more members that do not pay taxable wages.

The amendments in this Part will provide the Commissioner of State Revenue with a discretion, as currently exists with the pay-roll tax liability threshold, in regard to those employers, particularly seasonal employers, whose wages fluctuate with different periods of the financial year.

Subsection (1) provides a definition of **"financial year"** such that the section only has application in the financial year commencing on 1 July 2001 and subsequent financial years. This is consistent with the amendments contained in the Revenue Laws Amendment (Taxation) Bill 2001.

Subsection (2) sets out the types of employer to whom this section applies.

Paragraph (a) specifies that the section applies to an employer who pays or is liable to pay taxable wages or interstate wages for part only of a financial year.

Paragraph (b) specifies that the Commissioner must be satisfied that because of the employer's trade or business, the employer's liability to pay taxable wages or interstate wages fluctuates with different periods of the financial year.

Subsection (3) sets out how the pay-roll tax rate is to be calculated for employers to whom subsection (2) applies.

Paragraph (a) deals with an employer who has conducted the trade or business in Australia during the whole of the financial year. In such circumstances, the rate of pay-roll tax will be determined as if the employer had paid or was liable to pay taxable or interstate wages during the whole of the year.

Paragraph (b) deals with an employer who has conducted the trade or business in Australia during part only of the financial year. In such circumstances, the rate of pay-roll tax shall be determined as if the employer had paid or was liable to pay taxable wages or interstate wages during that part of the financial year.

PART 3 – RATES AND CHARGES (REBATES AND DEFERMENTS) ACT 1992 AMENDED

This Part of the Bill seeks to amend the Rates and Charges (Rebates and Deferments) Act 1992 to implement the Government's election commitment to assist Western Australian seniors by improving the equity and accessibility of rates concessions.

The amendments proposed involve:

- extending concessions to holders of a State Seniors Card;
- allowing pro-rata rebates and deferments where a person becomes an eligible pensioner or senior during the year; and
- providing a rebate or deferment where an otherwise eligible pensioner has rates arrears.

Extension of concessions to holders of a State Seniors Card

The Bill seeks to make the existing concessions more widely available to pensioners and seniors by:

- extending the 50 percent rebate or deferment of local government and water rates currently available to Pensioner Concession Card holders, to those seniors who hold both a State Seniors Card and a Commonwealth Seniors Health Card; and
- providing a 25 percent rebate of local government rates (up to a prescribed amount) for those seniors who hold only a State Seniors Card. This group of seniors will also continue to receive a 25 percent water rates rebate (up to a prescribed amount).

These measures provide the greatest assistance to those seniors who meet the income limits imposed in order to qualify for the means tested Commonwealth Seniors Health Card.

Pro-rata rebates and deferments

Under current legislation, a pensioner or senior is required to hold the relevant concession card, and own and occupy the land as their ordinary place of residence at the commencement of the rating year. The rating year commences on 1 July in the year in which the concession is being sought.

The existing provisions preclude a person who becomes a pensioner or senior after 1 July from receiving a rates concession in that financial year.

These amendments will allow a person who becomes a pensioner or senior after 1 July to qualify for a pro-rata concession in that current year. The person would, however, still need to meet the ownership and occupancy requirements at 1 July.

The concession would apply from the date that the pensioner or senior registers their entitlement with their local government authority or the Water Corporation of Western Australia.

This measure provides a significant benefit, particularly for people who become an eligible person early in a financial year and would otherwise have to wait until the next financial year to obtain any concession on their rates.

Rates arrears

The Act currently precludes any registered person with outstanding arrears of water or local government rates from receiving a rebate or deferment on their current year's rates.

It is proposed to allow eligible pensioners and those eligible seniors who have both a State Seniors Card and a Commonwealth Seniors Health Card to obtain a rebate or deferment of current year's rates where they have rates arrears. However, this would be conditional upon them entering into a repayment arrangement with the rating authority to clear those arrears, and complying with that arrangement. In the event that the person failed to comply with the debt repayment plan, the concession would be withdrawn.

A rates rebate will not be available to those seniors in arrears who do not hold a Commonwealth Seniors Health Card.

These three measures will improve the equity and accessibility of assistance provided to senior members of the community.

Clause 4: **The Act amended in this Part**

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

Clause 5: **Section 3 amended**

Subclause (1) inserts a definition of **"Commonwealth seniors health card"** into section 3(1) of the Act.

A **"Commonwealth seniors health card"** means a currently valid card, known by that name, issued on behalf of the Commonwealth to the holder or, where a card of another kind is prescribed specifically for the purpose of this definition, that other card.

Subclause (2) amends the definition of **"eligibility"** in section 3(1) of the Act to include a reference to a Commonwealth seniors health card.

Subclause (3) amends the definition of **"rating year"** in section 3(1). All administrative authorities, including the Bunbury Water Board, now have a 1 July to 30 June rating year.

Subclause (4) deletes the definition of **"registration date"** in section 3(1). This definition is no longer required as a registration will take effect from the actual date that a person registers with the administrative authority.

Clause 6: **Section 23 amended**

This clause inserts a new subsection (4) into section 23 of the Act.

Subsection (4) provides that a person who holds both a seniors' card and a Commonwealth seniors health card may apply to an administrative authority to have their entitlement to land registered if a prescribed charge is payable in relation to that land and the person produces both cards to the administrative authority.

Clause 7: **Section 26 amended**

This clause inserts a new paragraph (e) into subsection (1).

This new paragraph provides that the production of both a seniors' card and a Commonwealth seniors health card by a person will be sufficient evidence that the person is qualified to hold such cards and therefore eligible to have their entitlement to land registered by an administrative authority.

Clause 8: **Section 28 amended**

This clause updates the reference to section 31(3)(a) in section 28(1)(b) to also contain a reference to new section 31(3)(aa). This allows recognition to be given to provisions contained in financial agreements made under the Family Law Act 1975 (C'wth) when determining proportionate interests in property.

Clause 9: **Section 31 amended**

This clause inserts a new paragraph (aa) into subsection (3).

This new paragraph recognises provisions relating to the payment of a prescribed charge contained in financial agreements entered into under sections 90B, 90C or 90D of the Family Law Act 1975 (C'wlth). These

agreements evidence property settlements and maintenance arrangements between parties, but are not required to be registered by the Family Law Court, nor will it be the practise of the Court to issue Orders approving the contents of the agreements.

Clause 10: **Section 32 amended**

Subclause (1) amends subsection (1)(a) by removing the requirement for an applicant's registration application to be received by an administrative authority prior to the registration date for the relevant charge. The removal of the reference to the registration date will allow for the concession to be made on a pro-rata basis from the actual date that the person registers.

Subclause (2) repeals subsection (5) and replaces it with a new subsection (5).

Subsection (5) provides that the entitlement of an applicant is determined on the basis of the facts relevant to the applicant at the commencement of the rating year. This means that the requirement for a person to own and occupy the land must be met as at 1 July of the relevant rating year. However, the eligibility of an applicant, which refers to their status as a pensioner or senior, will be determined on the basis of the facts as at the time they actually register.

This means that a person who becomes an eligible pensioner or senior at some time during a rating year will be entitled to a pro-rata concession from the date they register with the administrative authority, but only if the person owned and occupied the land to which the application relates at the commencement of the rating year.

Clause 11: **Section 33 amended**

Subclause (1) amends subsection (3) to include a reference to a new subsection (6).

Subclause (2) inserts new subsections (6), (7) and (8).

Subsection (6) provides that where an eligible pensioner has rates arrears, they will not be precluded from obtaining a rebate or deferment if they enter into a repayment arrangement with the administrative authority to clear their arrears and they satisfy the conditions of that arrangement.

Subsection (7) provides that the pensioner must also comply with the repayment arrangement. Where the pensioner has not complied, they cease to be eligible to pay a rebated amount or to defer their rates.

Subsection (8) ensures that where a repayment arrangement with the administrative authority as described in subsection (6) is entered into, an amount that is paid in respect of the rebated amount is to be applied towards the payment of the rebated amount. It is not to be applied to any

arrears that may be owing. Accordingly, in these circumstances, this subsection will override the provisions of section 6.62 of the Local Government Act 1995 requiring monies received to be applied towards the oldest debt.

Clause 12: **Section 34 repealed**

This clause repeals section 34 as the concept of registration date is no longer required. A registration will take effect from the actual date that a person registers with the administrative authority.

Section 34 currently allows a registration to be effective from 1 July, where a person meets all of the eligibility and entitlement criteria at 1 July, and registers with the Water Corporation by 31 July and local government within 35 days of the issue of the rates notice.

This will no longer apply, as a registration will take effect from the actual date that a person registers with the administrative authority.

Clause 13: **Section 40 replaced and transitional**

Subclause (1) repeals section 40 and replaces it with a new section 40.

Subsection (1) sets out the criteria to be used to determine to whom the section applies.

Paragraph (a) provides that the section operates where a person is liable for the payment of a prescribed charge or a proportionate amount of a prescribed charge at the commencement of the charged period and the land is used by the person as their ordinary place of residence at the commencement of the charged period.

Paragraph (b) provides that the person must have their entitlement to the land registered with the administrative authority. The entitlement may have been registered at the commencement of the charged period or at some time during the charged period. It also applies to a person who has a right of occupancy in accordance with section 31(1) of the Act.

Subsection (2) provides that a person may satisfy their liability for the payment of a prescribed charge or a proportionate amount of a prescribed charge, by paying the rebated amount before the end of the period to which the prescribed charge relates.

Subsection (3) provides that where a ratepayer benefits from a discount offered by the administrative authority, the rebate is based on the discounted amount.

Subsection (4) provides for the administrative authority to allow a rebate on a prescribed charge to a person to whom this section applies. The rebate is required to be apportioned in accordance with section 28 to reflect the extent of the person's entitlement in the land.

Subsection (5) sets out the formula to be used to calculate the rebate allowed in respect of a person who is an eligible senior for the whole or part of the period to which the prescribed charge relates. The formula in this subsection is not to be used where a person is an eligible pensioner at any time during the charged period. The formula provides a rebate of 25% of the prescribed charge, apportioned over the period during which the person was an eligible senior.

Example 1

A person who is sole owner of their owner occupied property has local government rates of $1,000 for the 2001/2002 rating year and registers as an eligible senior on 1 October 2001. The local government rates rebate will be calculated as follows:

$$R = PC \times \left(\frac{DS}{CY} \right)$$

Where:

PC = $188.10 (calculated as 25% of the rates up to a prescribed amount. As the amount of $188.10 to be prescribed in the regulations for the 2001/2002 rating year is less than 25% of the rates, the lesser amount will apply).

DS = 273 (number of days from 1 October 2001 to 30 June 2002).

CY = 365 (number of days in the charged period).

Substituting into the formula:

$$R = 188.10 \times \left(\frac{273}{365} \right)$$

Rebate to be allowed is $140.69

Subsection (6) sets out the formula to be used to calculate the rebate allowed in respect of a person who is an eligible pensioner for the whole or part of the period to which the prescribed charge relates. The formula in this subsection is not to be used where a person is an eligible senior at any time during the charged period. The formula provides a rebate of 50% of the prescribed charge, apportioned over the period during which the person was an eligible pensioner.

Example 2

The circumstances in the above example are the same except that the person registers as an eligible pensioner rather than an eligible senior.

$$R = PC \times \left(\frac{DP}{CY} \right)$$

Where:

PC = $500 (calculated as 50% of the rates).

DP = 273 (number of days from 1 October 2001 to 30 June 2002).

CY = 365 (number of days in the charged period).

Substituting into the formula:

$$R = 500 \times \left(\frac{273}{365} \right)$$

Rebate to be allowed is $373.97

Subsection (7) sets out the formula to be used to calculate the rebate allowed in respect of a person who is both an eligible pensioner for part of the period to which the prescribed charge relates and an eligible senior for part of the period to which the prescribed charge relates. The rebated amount is calculated based on the proportionate time that the person was an eligible senior and the proportionate time that the person was an eligible pensioner.

Example 3

The circumstances in the above example are the same except that the person registers as an eligible senior on 1 July 2001 and an eligible pensioner on 1 October 2001.

$$R = (PCS \times \left(\frac{DS}{CY} \right)) + (PCP \times \left(\frac{DP}{CY} \right))$$

Where:

PCS = $188.10 (calculated as 25% of the rates up to a prescribed amount. As the amount of $188.10 to be prescribed in the regulations for the 2001/2002 rating year is less than 25% of the rates, the lesser amount will apply).

PCP = $500 (calculated as 50% of the rates).

DS = 92 (number of days from 1 July 2001 to 30 September 2001).

DP = 273 (number of days from 1 October 2001 to 30 June 2002).

CY = 365 (number of days in the charged period).

Substituting into the formula

$$R = (188.10 \times \left(\frac{92}{365} \right)) + (500 \times \left(\frac{273}{365} \right))$$

Rebate to be allowed is $421.38

Subsection (8) is a crediting provision that applies where a person has paid to an administrative authority an amount greater than the rebated amount they are required to pay. In such a case, the administrative authority shall refund or credit the excess amount.

Subsection (9) sets out the proportion of the prescribed charge that is to be used to calculate the rebated amount in subsections (5), (6) and (7).

Paragraph (a) provides that the proportion of the prescribed charge in relation to eligible seniors is 25%, up to a prescribed limit. It is proposed that a limit of $188.10 will be prescribed in the regulations for local government rates for the rating year commencing on 1 July 2001. The following are currently prescribed for water charges, however they may be subject to change for the rating year commencing 1 July 2001.

- for water supply $62.15
- for sewerage $100.55
- for drainage $11.90

Paragraph (b) provides that the proportion of the prescribed charge in relation to eligible pensioners is 50%.

Paragraph (c) provides that the proportion of any other prescribed charge will be a prescribed percentage.

Subclause (2) ensures that regulations made to prescribe a limit on a prescribed charge for the purposes of the new section 40(9) made within 6 months after Royal Assent, may operate retrospectively from 1 July 2001. This is necessary as, although the amendments are deemed to come into operation on 1 July 2001, this Act may not receive Royal Assent until after that date.

Clause 14: **Section 42 amended**

Subclause (1) inserts a new subsection (2a).

Subsection (2a) is a crediting provision. It applies where a person has paid an amount greater than the rebated amount in respect of rates levied for a period other than a full rating year. In such a case, the administrative authority shall refund or credit the excess amount. This provision was previously contained in section 40(3)(b), however section 40 is being repealed and replaced by clause 13.

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

Subsection (4) operates where rates are levied for a period other than a full rating year, such as in the case of interim rates. The section provides that on or after 1 July 2001, where an eligible person registers their entitlement to land with an administrative authority during the rating

year, a rebate will be allowed for that part of the prescribed charge during which the person is registered.

Example 4

An interim rates notice covering the period 1 October 2001 to 30 June 2002 is issued for an amount of $500 to a person who registers as an eligible pensioner on 1 January 2002.

Accordingly, the pensioner will be entitled to a rebate of 50% of the prescribed charge that relates to the period that the person was registered, being 50% of $500 x 181/273 or $165.75.

The existing provisions that require a person to be registered with an administrative authority at the commencement of the rating year will continue to apply to rating years prior to 1 July 2001.

Clause 15: Section 43 amended

This clause amends section 43(1)(a) to include a reference to a person who becomes an eligible pensioner after the commencement of a rating year, which will allow such persons to defer the payment of a prescribed charge.

Where a person who is an eligible pensioner for the whole or part of a rating year does not pay the rebated amount (sufficient to be eligible for a rebate), the difference between the prescribed charge and the amount actually paid will be deferred.

Example 5

If, in the circumstances set out in example 3, the eligible person pays an amount less than $578.62 (rates of $1,000 less rebate of $421.38), before the end of the charged period, the person will cease to be eligible to pay the rebated amount for that period. Therefore, the difference between $1,000 and any amount actually paid will be deferred.

Clause 16: Transitional

This clause is a transitional provision to ensure that persons who become eligible to register soon after these amendments come into operation are not disadvantaged. This will allow sufficient time for the changes to be brought to the public's attention.

Subclause (1) sets out the transitional arrangements that apply where a person is eligible to register before 1 July 2001, but registers on or after 1 July 2001 and on or before 30 September 2001. The provisions of section 40 relating to the calculation of the rebated amount apply as if the person was registered at the commencement of the period to which the charge relates.

Subclause (2) sets out the transitional arrangements that apply where a person becomes eligible to register on or after 1 July 2001 and does actually register on or after 1 July 2001 and on or before 30 September 2001. The provisions of section 40 relating to the calculation of the rebated amount apply as if the person was registered on the day that the person became eligible to register.

Example 6

A person becomes eligible to register as an eligible pensioner on 1 August 2001, however does not actually register until sometime during September. In these circumstances, the rebate under section 40 will be calculated as if the eligible pensioner registered on 1 August 2001.

PART 4 – STAMP ACT 1921

Part 4 of the Bill seeks to amend the Stamp Act to:

- clarify the duty treatment of pooled superannuation trusts;
- make minor technical changes to the land-rich provisions;
- provide administrative support for the reduction of the rate of stamp duty applicable to small businesses' workers' compensation insurance policies; and
- close a potential avoidance loophole in the land-rich provisions.

Division 1 – Preliminary

Clause 17: The Act amended by this Part

This clause provides that the amendments in Part 4 of the Bill are to the Stamp Act 1921.

Division 2 - Provisions that commence on Royal Assent

The amendments in this Division clarify the stamp duty treatment of pooled superannuation trusts and make minor technical changes to the land-rich provisions.

The first set of amendments relates to pooled superannuation trusts and the private unit trust provisions.

The Stamp Act deals with the imposition of duty on transfers of units in unit trust schemes under two regimes, depending upon whether the unit trust is considered to be a private or a public unit trust.

If it is a private unit trust, a disposition of a unit would attract stamp duty at conveyance rates of up to 4.85%.

However, units in a public unit trust are treated as marketable securities and transfers are subject to duty at the significantly lower marketable security duty rate of 0.6%. From 1 July 2001, no duty will be payable on these transfers.

One of the requirements a trust must meet to be classified as a public unit trust scheme is that the trust units must be issued to the public, or be issued so as to comply with spread of ownership requirements specified in the Act.

The Act contains an exception to this provision that recognises pooled superannuation trusts and approved deposit funds as public unit trusts, despite the fact that they do not issue units to the public.

These entities are both still subject to the ownership spread requirements.

However, the nature of a pooled superannuation trust is such that the members who invest in it would often not meet the spread of ownership requirements.

Pooled superannuation trusts are therefore treated as private unit trusts and are subject to duty at the higher conveyance duty rate.

This was an unintended consequence of previous amendments and these amendments seek to ensure that pooled superannuation trusts are treated as public unit trusts as intended.

The amendments also seek to rectify a small number of technicalities that have been identified in the land-rich provisions.

While these are only minor wording changes, they will ensure the efficient operation of the provisions.

Clause 18: Section 63 amended

This clause amends section 63(2)(b)(ii) by deleting a reference to a pooled superannuation trust.

Section 63(2) defines private unit trusts for the purposes of the Stamp Act. Dispositions of units in such trusts are subject to conveyance duty at rates of up to 4.85%.

Not treating pooled superannuation trusts as private unit trusts will ensure that any transfers of units in such trusts will be subject to duty at the marketable securities duty rate of 0.6%, rather than the higher conveyance duty rates. This was always the intended duty treatment for pooled superannuation trusts and this amendment restores that position.

Clause 19: Section 75JB amended

This clause amends section 75JB(2)(c) by removing the word “for”, which is superfluous.

Clause 20: Section 76AG amended

This clause amends section 76AG(4)(e) by replacing a reference to the word “asset” with the word “property”.

This change has been made to maintain consistency with the remainder of the section and recognises that stamp duty is charged on property, not on assets.

Clause 21: **Section 76AN amended**

This clause amends section 76AN(3)(e) by replacing a reference to the word "asset" with the word "property".

This change has been made to maintain consistency with the remainder of the section and recognises that stamp duty is charged on property, not on assets.

Division 3 – Provisions that commence on 30 June 2001

The amendments in this Division of the Bill seek to provide administrative support for the reduction of the stamp duty rate on workers' compensation insurance for small business.

The reduction in the rate of duty is included in the Revenue Laws Amendment (Taxation) Bill 2001.

These administrative measures provide certainty as to how the Stamp Act will be administered in relation to workers' compensation insurance.

As the reduced rate of duty is proposed to apply on and after 30 June 2001, it is proposed that these measures also apply on and after that date.

To assist insurers to determine the correct rate of stamp duty applicable to an employer's workers' compensation insurance policy, a consequential amendment is also proposed to the Pay-roll Tax Assessment Act to allow the Commissioner of State Revenue to communicate to an insurer whether or not the employer was liable for pay-roll tax in the 12 months immediately preceding the policy cover period.

Clause 22: **Section 95A amended**

This clause amends section 95A by inserting new subsections (12) to (14), which deal with workers' compensation insurance.

Subsection (12) inserts a definition of **"workers' compensation policy"** for the purposes of subsection (13) and (14).

Subsection (13) provides that where an insurer lodges a false return with the Commissioner in relation to a workers' compensation policy on which duty has been paid at 3% because the insurer was provided with false information about the insured person's liability for pay-roll tax, the insurer may claim that fact as a defence against any action that could flow from lodging a false return.

The current section 95A(10)(b) makes it an offence against the Act for a person to lodge a return with the Commissioner that is false in a material particular. Such a person is potentially liable for a penalty of up to

$10,000, plus double the amount of duty that would have been payable if the return was correct.

With the proposed changes for workers' compensation insurance, it is possible that an insurer may lodge a false return with the Commissioner because the insurer has been provided with incorrect information in relation to an insured person's pay-roll tax liability. This may result in the insurer unknowingly paying incorrect duty to the Commissioner at the rate of 3%, rather than 5%.

In these instances, it would be unfair to penalise an insurer that has taken reasonable steps to determine the correct rate of duty applicable to a workers' compensation policy.

Accordingly, the proposed subsection (13) provides a defence against any action that may be taken against an insurer if the insurer can demonstrate that the return was incorrect because they relied upon false information provided to them in relation to an insured person's liability for pay-roll tax.

Subsection (14) provides for an insurer that is supplied false information in relation to a workers' compensation policy, which results in them remitting less duty to the Commissioner than is payable, to:

- include the details of any additional duty in respect of the policy in the next return that they are required to lodge with the Commissioner;

- pay the additional duty to the Commissioner at the time that they lodge the relevant return with him; and

- recover the additional duty that is payable from the person insured under the policy.

This provision recognises that an insurer is the party that is liable for stamp duty in relation to a workers' compensation policy under the Act, even if the insurer was not directly responsible for the underpayment of duty in the first instance.

Furthermore, it is only reasonable that an insurer is able to recover an amount from a person insured under a workers' compensation insurance policy for which the insurer has incurred an additional liability for duty because they have been provided with incorrect information that directly resulted in the underpayment of duty.

Clause 23: Section 97 inserted

This clause inserts a new section 97 into the Act, which provides for a refund of duty to be paid to an insurer where duty has been paid in relation to a workers' compensation insurance policy at 5%, but should have been paid at 3%.

Subsection (1) provides that the Commissioner may refund to an insurer any excess duty that has been paid by them, where the Commissioner is satisfied that duty has been paid at the rate of 5%, but which should have been paid at the rate of 3%.

Subsection (2) provides that an application for a refund of duty must be:

(a) made within 2 years of the commencement of the cover period of the workers' compensation policy to which the application relates;

(b) made in writing by an insurer, in an approved form; and

(c) accompanied by any information required by the Commissioner to enable him to determine whether a refund of duty is due.

Subsection (3) provides that where an insurer has been paid a refund of duty by the Commissioner and the duty originally paid by the insurer was recouped from the person insured under the relevant workers' compensation policy, the insurer is required to:

(a) pay the insured person an amount equal to the refund within 90 days of receiving the refund (or any longer period allowed by the Commissioner); and

(b) repay the refund to the Commissioner within 7 days from the expiry of the 90 days (or longer period), if the amount is not refunded to the insured person within the required time.

Subsection (4) provides that the Commissioner may recover any amount that should have been paid to him by an insurer because the amount was not refunded to the insured person within the required time.

This provision recognises that an insurer is the party that is liable for stamp duty in relation to a workers' compensation policy under the Act, and, accordingly, it is also the insurer that is entitled to any refund of excess duty paid.

However, it also recognises that an insurer may have recovered an amount from the person insured by a workers' compensation policy to cover the insurer's stamp duty liability in relation to that policy.

It is only reasonable, therefore, that the insurer is required to pay an amount equal to any refund of excess duty that they have received from the Commissioner to the insured person that paid an amount to cover the insurer's stamp duty liability.

Clause 24: **Pay-roll Tax Assessment Act 1971, consequential amendment to**

This clause amends section 5(2) of the Pay-roll Tax Assessment Act to enable the Commissioner of State Revenue to disclose to an insurer whether or not an employer was liable for pay-roll tax in the 12 months

immediately preceding the commencement of a workers' compensation insurance cover period, to enable the insurer to determine the correct rate of duty payable in relation to that policy.

This amendment will assist insurers to determine the correct rate of stamp duty applicable to workers' compensation insurance, as it provides them with the ability to make enquiries with the Commissioner, where it is not immediately obvious if an employer had a pay-roll tax liability.

It should be noted that the Commissioner would only be required to confirm with an insurer whether on not an employer had a pay-roll tax liability. The Commissioner will disclose no other information about an employer.

Furthermore, any response provided by the Commissioner will be based on taxpayer information available to him at the time of an enquiry. This will not guarantee that no pay-roll tax liability exists for a taxpayer, as the person may be in breach of their pay-roll tax obligations and the Commissioner may not be aware of that fact until it is discovered, perhaps by an investigation.

Division 4 – Provisions that commence on 1 July 2001

The amendments in this Division relate to the land-rich provisions of the Stamp Act.

The land-rich provisions charge duty in certain circumstances on the acquisition of shares in a company, as if it were an acquisition of land owned by the company.

This results in duty being payable at the conveyance duty rate of up to 4.85%, rather than at the much lower marketable security duty rate of 0.6%.

Amendments were made to the Stamp Act effective from 1 July 2001, to remove the stamp duty liability applicable to the transfer of shares that are quoted on a "recognised stock exchange".

As a result of these amendments, a potential avoidance opportunity has arisen in the land-rich provisions, because companies whose shares are quoted on a recognised stock exchange would be excluded from the operation of those provisions.

This is particularly significant given the increased activity of regional stock exchanges, whose listing requirements and charges are significantly less than those of major exchanges.

These amendments seek to close that avoidance opportunity by including an anti-avoidance provision in the land-rich provisions.

The provision will operate where the Commissioner of State Revenue considers a company has listed on a recognised stock exchange to reduce its stamp duty liability.

Clause 25: **Section 76AI amended**

This clause amends section 76AI(1) by repealing that section and inserting a new subsection (1) and (1a) in its place.

The new subsection (1) provides that Division 2 of the land-rich provisions apply to a WA company if it is a landholder as described in subsection (2) unless:

(a) it is listed on a recognised stock exchange; and

(b) the Commissioner believes that the listing on such an exchange was not part of an arrangement or scheme undertaken to defeat the operation of the land-rich provisions.

This is an anti-avoidance provision that has been inserted to prevent companies from listing on recognised stock exchanges to circumvent the operation of the land-rich provisions, as the provisions would not otherwise apply to such a company.

It is unlikely that companies would seek a listing on the Australian Stock Exchange, for example, to avoid the operation of the land-rich provisions because of the onerous listing requirements and fees payable.

However, the increasing activity of regional stock exchanges has made such a provision necessary because of the less stringent listing requirements and greatly reduced fees associated with these exchanges.

The new subsection (1a) provides that the Commissioner may take any matter into account to satisfy himself that a listing on a recognised stock exchange was not to defeat the operation of the land-rich provisions, but must consider:

(a) the length of time the WA company has been listed on a recognised exchange:

(b) any conditions or exemptions that the exchange has imposed upon the listing of the company on the exchange;

(c) the ownership of the WA company's shares;

(d) the proportion of the company's shares that are available to be traded on the exchange; and

(e) the turnover of the company's shares on the exchange.

This provides some guidance as to what the Commissioner must consider in order to satisfy himself that a company did not list on a recognised exchange to defeat the operation of the land-rich provisions.

Clause 26: **Section 76AP amended**

Subclause (1) amends section 76AP(1) by:

(a) making a minor amendment to paragraph (a);

(b) deleting paragraph (b);

(c) making punctuation amendments to paragraph (c); and

(d) inserting new paragraphs (d) and (e).

The new paragraphs (d) and (e) operate such that Division 3 of the land-rich provisions apply to a corporation if it meets the conditions outlined in paragraphs (a) and (c) unless:

- it is listed on a recognised stock exchange; and
- the Commissioner is satisfied that the listing on such an exchange was not part of an arrangement or scheme undertaken to defeat the operation of the land-rich provisions.

The reasons for the insertion of this amendment are outlined in clause 25.

Subclause (2) inserts a new subsection (1a), which provides that the Commissioner may take any matter into account to satisfy himself that a listing on a recognised stock exchange was not to defeat the operation of the land-rich provisions, but must consider:

(a) the length of time the corporation has been listed on a recognised exchange;

(b) any conditions or exemptions that the exchange has imposed upon the listing of the corporation on the exchange;

(c) the ownership of the corporation's shares;

(d) the proportion of the corporation's shares that are available to be traded on the exchange; and

(e) the turnover of the corporation's shares on the exchange.

As for the new section 76AI(1a) inserted by clause 25, this provision lists some guidelines that the Commissioner must consider in order to satisfy himself that a corporation did not list on a recognised exchange to defeat the operation of the land-rich provisions.