

## EXPLANATORY MEMORANDUM

### REVENUE LAWS AMENDMENT BILL 2011

The Revenue Laws Amendment Bill 2011 seeks to make amendments to the *Duties Act 2008*, the *Stamp Act 1921*, the *Pay-roll Tax Assessment Act 2002*, the *Land Tax Assessment Act 2002*, the *Taxation Administration Act 2003*, the *First Home Owner Grant Act 2000* and the *Rates and Charges (Rebates and Deferments) Act 1992* to:

- extend the operation of the first home owner rate of duty provisions in the Duties Act to overcome an anomaly in substituted purchaser and agency transactions where the property is transferred to a transferee who is eligible for a first home owner grant;
- extend the length of time taxpayers can apply for a refund of duty on a cancelled transaction under the Duties Act and the Stamp Act;
- enable duty to be assessed on the value of any liabilities assumed or discharged by a related person of a shareholder or unit holder as a consequence of the winding up of a corporation or unit trust scheme under the Duties Act;
- expand the availability of unendorsed transaction records in civil proceedings under the Duties Act and restore the policy position relating to criminal proceedings as contained in the Stamp Act;
- amend the employee share scheme provisions under the Pay-roll Tax Assessment Act to accommodate changes to the *Income Tax Assessment Act 1936* (Cwth);
- broaden the provisions relating to the constitution of business groups together with other minor amendments to the Pay-roll Tax Assessment Act;
- reduce red tape under the Land Tax Assessment Act by removing the requirement to lodge certain forms to claim a residential exemption;
- improve the clarity and operation of the provisions in the Taxation Administration Act relating to the issue of tax certificates and the charge attached to land for unpaid land tax, and make other minor amendments to the Act;
- allow the Commissioner to exercise a discretion under the First Home Owner Grant Act to vary a residence requirement or exempt an applicant from the residence requirements at any time;
- allow the Commissioner to issue garnishee notices in relation to the recovery of first home owner grant repayments under the First Home Owner Grant Act; and

- enable persons in receipt of certain benefits under the *Military Rehabilitation and Compensation Act 2004* (Cwth) to access concessions available under the Rates and Charges (Rebates and Deferments) Act, and make another minor amendment to the Act.

## **Part 1 – Preliminary matters**

### **Clause 1: Short title**

This clause provides that the short title of this Act is the *Revenue Laws Amendment Act 2011*.

### **Clause 2: Commencement**

This clause provides the commencement dates for the Act.

Paragraph (a) provides that Part 1 comes into operation on the day that the Act receives the Royal Assent.

Paragraph (b) provides that the heading to Part 2 and Part 2 Divisions 1 and 2, which relate to amendments to the Duties Act about the winding up of corporations and unit trust schemes, come into operation on the day that the Bill is Second Read in the Parliament in the Legislative Assembly.

These amendments close a shortcoming that exists in the current provisions. They commence operation on the date that the Bill becomes public in order to minimise any potential loss in revenue arising as a result of the matter being identified.

Paragraph (c) provides that the heading to Part 5 and Part 5 Divisions 1 and 2, which relate to amendments to the Pay-roll Tax Assessment Act about shares and options, are deemed to come into operation on 1 July 2011, which coincides with the commencement of the pay-roll tax assessment year.

Paragraph (d) provides that the heading to Part 8 and sections 40 and 42(4), which correct an inadvertent omission from when the land tax capping provisions were introduced, are deemed to come into operation on 1 July 2009. The retrospective commencement date reflects the commencement of the land tax capping provisions.

Paragraph (e) provides that Parts 3, 4, 6 and 7 and the

remainder of Parts 2, 5 and 8 come into operation on the day after the Act receives the Royal Assent.

## **Part 2 – *Duties Act 2008* amended**

### **Division 1 – Preliminary**

#### **Clause 3: Act amended**

This clause provides that the amendments in this Part are to the *Duties Act 2008*.

### **Division 2 – Amendments about winding up of corporations and unit trust schemes**

#### **Clause 4: Section 29 amended**

This clause amends section 29 of the Duties Act, which was based on section 74A of the Stamp Act, to correct an inadvertent omission that occurred in the transition from the Stamp Act to the Duties Act.

Section 74A(5)(c) of the Stamp Act provides for the amount of any liability of a corporation that is being wound up that a shareholder of the corporation has, *or has caused to be*, assumed or discharged on behalf of the corporation in the relevant period to be included in the calculation of the value of the shareholder's entitlement in the undistributed assets of the corporation. The words "or has caused to be" or other words with a similar effect were inadvertently omitted from section 29 of the Duties Act.

This clause broadens the provision to include, for example, liabilities assumed or discharged by a person related to a shareholder or unit holder on behalf of the corporation or unit trust scheme.

As these amendments close a legislative shortcoming, they commence operation on the date that they become public (the day that they are Second Read in the Parliament in the Legislative Assembly). This minimises any potential loss in revenue arising as a result of the shortcoming being identified in the Bill.

Subclause (1) amends section 29(2) so that liabilities assumed or discharged by a person related to a shareholder or unit holder on behalf of the corporation or unit trust scheme is included in the calculation of the dutiable value of the dutiable transaction.

Subclause (2) amends section 29(3) so that a person related to a shareholder or unit holder means a person related within the meaning of section 162(1)(a) to (g). This section contains a list of relationships that is used to determine when people are related.

#### Example

- Mr X is the shareholder of a company.
- Mr Y is not a shareholder of the company but he is related to Mr X because he is the trustee of a family trust under which Mr X is a beneficiary.
- Mr Y assumes a liability of the company of \$200,000 as trustee of the family trust immediately before the company is wound up.
- Upon winding up, Mr X is entitled to and receives \$400,000 worth of dutiable property.

The transfer to Mr X is chargeable with duty on \$200,000 due to the liability that Mr Y assumed.

Subclause (3) introduces a new subsection (4A) that provides a discretion for the Commissioner to disregard the application of the amendments to a transfer of corporation or unit trust scheme property within the meaning of section 29(1).

The discretion is designed to ensure that the assumption or discharge of a liability is not charged with double duty. It gives the Commissioner flexibility to determine whether an assumed or discharged liability should be excluded from the calculation of dutiable value after considering all relevant transfers in relation to the winding up of the corporation or unit trust scheme.

#### Example

- Mr X and Mrs X are husband and wife who have equal shares in a company.
- Mr X assumes a liability of the company of \$200,000 immediately before the company is wound up.
- Upon the winding up of the company, Mr X and Mrs X are each entitled to and receive \$400,000 worth of dutiable property.

The transfer to Mr X is chargeable with duty on \$200,000 due to the liability that he assumed. Under the new amendments, in the absence of a discretion to exclude all or part of the liability that Mr X assumed, the transfer to Mrs X would also be chargeable with duty on \$200,000 due to the liability that Mr X assumed as Mr X is related to

Mrs X within the meaning of proposed section 29(3).

The discretion allows the Commissioner to exclude the liability assumed by Mr X for the purposes of calculating the dutiable value of the transfer to Mrs X, having regard to the fact that the liability will already be taken into account when calculating the dutiable value of the transfer to Mr X.

The discretion allows the Commissioner to exclude all or part of the amount of a liability that is assumed or discharged so that he may effectively apportion the liability between multiple transfers in a situation where related shareholders of the same corporation or related unit holders of the same trust scheme have jointly assumed or discharged a liability on behalf of the corporation or unit trust scheme.

**Clause 5:**

**Section 194 amended**

Section 194 of the Duties Act, which is in the Landholder Duty Chapter (that brings to duty certain indirect acquisitions of land), provides for duty to be charged on relevant acquisitions that arise when a corporation or unit trust scheme is being wound up. This clause amends section 194 to mirror the amendments in clause 4.

Subclause (1) amends section 194(5) so that liabilities assumed or discharged by a person related to a shareholder or unit holder on behalf of the corporation or unit trust scheme are included in calculating the value of a benefit in excess of a person's entitlement for the purpose of calculating duty on a relevant acquisition under section 194(3).

Subclause (2) amends section 194(6) so that a person related to a shareholder or unit holder means a person related within the meaning of section 162(1)(a) to (g).

**Example**

- X and Y are shareholders in V Pty Ltd. They are not related.
- V Pty Ltd owns all the shares in W Pty Ltd (a landholder).
- W Pty Ltd owns land worth \$10 million.
- Z is not a shareholder in V Pty Ltd. He is related to X because he is the trustee of a family trust under which X is a beneficiary. He is not related to Y.
- V Pty Ltd is being wound up resulting in the liquidator

transferring all of the shares in W Pty Ltd to X and Y. These are relevant acquisitions for the purpose of section 194(1).

- During the 12-month period before the winding up begins, Z assumed a liability of \$1 million on behalf of V Pty Ltd in his capacity as trustee of the family trust.

The liability assumed by Z will be taken into consideration when calculating the value of the benefit X receives in excess of X's entitlement upon the winding up of V Pty Ltd. The calculation of the value of the benefit Y receives is not affected by Z as Y and Z are not related persons.

Subclause (3) introduces a new subsection (7A) that provides a discretion for the Commissioner to disregard the application of the amendments to a relevant acquisition within the meaning of section 194(1). The discretion is designed to ensure that the assumption or discharge of a liability is not charged with double duty. It gives the Commissioner flexibility to determine whether an assumed or discharged liability should be excluded from the calculation of a benefit in excess of a person's entitlement after considering all relevant acquisitions in relation to the winding up of the corporation or unit trust scheme.

#### Example

- Mr X and Mrs X are husband and wife who each have equal shares in A Pty Ltd.
- A Pty Ltd owns all the shares in B Pty Ltd (a landholder), and has no other assets or liabilities at the date of winding up.
- B Pty Ltd owns land worth \$4,000,000.
- During the relevant period, Mr X assumed a debt owed by A Pty Ltd of \$1,000,000.
- Upon the winding up of A Pty Ltd, Mr X and Mrs X are distributed shares in B Pty Ltd worth \$2,000,000 by the liquidator of A Pty Ltd.

As Mr X and Mrs X own 50% of the shares in A Pty Ltd, the value of property they are entitled to upon winding up is \$2,000,000.

However, the assumption of the liability by Mr X in the relevant period is taken into consideration in determining the calculation of the benefit Mr X has received upon winding up. Mr X has therefore received an excess entitlement of \$1,000,000. which will be taken into account in determining duty on the relevant acquisition made by Mr X.

The new amendments provide for the amount of any

liability that a related person of a shareholder has assumed in the relevant period to be taken into consideration in calculating a shareholder's excess entitlement. As Mr X and Mrs X are related persons, the assumption of the liability by Mr X would also be taken into account in the calculation of duty on the relevant acquisition by Mrs X if it were not for the discretion contained in section 194(7A), which allows the Commissioner to exclude all or part of the liability that Mr X assumed in determining whether Mrs X has received a benefit in excess of her entitlement.

The discretion also permits the Commissioner to exclude all or part of the amount of a liability that is assumed or discharged so that he may effectively apportion the liability between multiple relevant acquisitions in a situation where shareholders or unit holders in the entity winding up are related persons and have jointly assumed or discharged a liability on behalf of the corporation or unit trust scheme in the relevant period.

### **Division 3 – Other amendments to *Duties Act 2008***

#### **Clause 6:**

#### **Section 107 amended**

Section 107 provides an exemption from duty on dutiable transactions that have not been, and will not be, carried into effect. The Commissioner must make a reassessment if necessary to give effect to an exemption granted under section 107. However, a reassessment can only be made within five years of the original assessment due to the time limits imposed by section 17 of the Taxation Administration Act. This clause amends section 107 to extend the time in which the Commissioner can reassess a cancelled dutiable transaction that is an agreement to transfer dutiable property.

Subclause (1) amends section 107(2) of the Duties Act to make it grammatically correct. It does not change the operation of the provision.

Subclause (2) inserts a new subsection (7), which alters the effect of section 17 of the Taxation Administration Act for the purposes of making a reassessment under section 107 of the Duties Act.

Paragraph (a) alters the effect of section 17(1) of the Taxation Administration Act so that a taxpayer is entitled to apply for a reassessment within five years after the original assessment was made or within 12 months after the day

on which the agreement becomes a cancelled transaction, within the meaning of section 107(2), whichever is later.

Paragraph (b) alters the effect of section 17(4) of the Taxation Administration Act so that the Commissioner may only make a reassessment on an application of the taxpayer if the taxpayer makes the application within the time period mentioned in paragraph (a).

#### Example

- On 15 June 2012, Mr X enters into an agreement to purchase an apartment in a strata development.
- On 15 October 2012, the Commissioner makes an assessment of duty for the agreement and Mr X pays the duty immediately.
- Completion of the strata development is subsequently delayed causing Mr X to pursue lengthy litigation with the vendor.
- On 15 December 2017, more than five years after the original assessment was made, Mr X enters into a settlement agreement with the vendor, causing the agreement to become a cancelled transaction, being a transaction that has not been, and will not be, carried into effect.
- On 14 April 2018, Mr X applies to the Commissioner for duty to be reassessed under section 107.

As the Commissioner received the application for reassessment within 12 months after the day on which the agreement to purchase became a cancelled transaction, he may reassess the transaction to nil and refund the duty paid.

#### **Clause 7:**

#### **Section 142 amended**

This clause amends section 142 of the Duties Act to correct an anomalous outcome that arises in relation to the first home owner rate of duty.

The Duties Act provides a concessional rate of duty for certain first home owners. Generally, to be eligible to have a transaction assessed at the first home owner rate of duty, the value of the property being purchased must be below certain thresholds and the purchaser must be paid a first home owner grant. In most circumstances, these arrangements work effectively to provide duty relief to first home owners.

An increasing number of relatives of first home owners are



facilitating the purchase of a first home for a family member. The Duties Act provides that after a purchaser (the relative) has entered into an agreement to purchase dutiable property, but prior to the transfer of that property, the purchaser may substitute certain related persons (the first home owner) as the purchaser without incurring additional duty. The substituted purchaser, subject to meeting the necessary eligibility criteria, can receive a first home owner grant in respect of the purchase.

Without these amendments, the manner in which the transaction takes place prevents a substituted purchaser who has received a first home owner grant from having the transaction assessed at the first home owner rate of duty. This is not consistent with the policy intent that, subject to value limits being met, the first home owner rate of duty should apply to transactions where a purchaser receives the first home owner grant.

This clause amends provisions in the Duties Act to expand the definitions of transactions to which the first home owner rate of duty applies. The amendments ensure that duty is chargeable at the first home owner rate on an agreement to transfer where the named purchaser is substituted by a related first home owner or is acting as agent for a first home owner.

Subclause (1) extends the definition of a FHOG concessional transaction (a transaction charged with duty at the first home owner rate of duty) to include a transaction that is an agreement to transfer dutiable property, where duty is not chargeable on the transfer because the named purchaser is substituted by a related first home owner or is acting as agent for the first home owner.

#### Example

- Mr X and Miss X are father and daughter.
- Mr X enters into an agreement to purchase a home.
- Miss X is substituted as the purchaser under section 42(2) as she is related to Mr X.
- Miss X is paid a first home owner grant in respect of the purchase of the home.

The agreement to purchase is chargeable with duty at the first home owner rate as the subsequent transfer of the dutiable property the subject of the contract is not chargeable with duty under section 42(2).

Section 142(2) deals with purchases of homes made in

consecutive transactions, generally under a shared equity agreement with Homeswest.

Subclause (2) extends the definition of a further FHOG concessional transaction, in the same manner as subclause (1), to include a transaction where duty is not chargeable on the transfer because the named purchaser is substituted by a related first home owner or is acting as agent for the first home owner.

**Clause 8:**

**Section 279 replaced**

Section 279 of the Duties Act places a restriction on the availability in court of unendorsed transaction records that evidence a dutiable transaction in order to provide a degree of protection to the revenue. It also provides mechanisms to overcome the restriction in certain circumstances where it would unfairly prejudice a party in the proceedings.

This clause replaces section 279 of the Duties Act to align it more closely with section 27 of the Stamp Act, upon which it was based. It reinstates an exception to the exclusion of unendorsed transaction records in criminal proceedings and removes the words “not available in law or equity for any purpose.”

Subsection (1) provides that an unendorsed transaction record is not available, except in criminal proceedings, for use before a court or tribunal. It is intended that this exclusion will prevent an unendorsed transaction record of a dutiable transaction from being used in any aspect of civil proceedings, including being used as the foundation of a writ or pleadings and being admitted into evidence.

Subsection (2) replaces the original section 279(2), which provided relief only from the exclusion of an unendorsed transaction record of a dutiable transaction from evidence. Accordingly, even a transaction record that met the relevant criteria was still “not available in law or equity for any purpose.” The new provision provides full relief from any exclusion imposed under proposed subsection (1) in the same circumstances as the previous section 279(2).

Paragraph (a) applies where the person who produces the transaction record is the liable party, if the transaction record has been transmitted to the Commissioner or the court or tribunal is satisfied that it will be transmitted to the Commissioner after it is used in the court or tribunal.

Paragraph (b) applies where the person who produces the transaction record is not the liable party, if the transaction record and name and address of the liable party have been transmitted to the Commissioner or the court or tribunal is satisfied that they will be transmitted to the Commissioner after the transaction record is used in the court or tribunal.

In relation to paragraphs (a)(i) and (b)(i), the Commissioner will provide the person producing the transaction record to the court or tribunal with a copy of the lodged transaction record which has been appropriately endorsed to verify that the transaction record has been transmitted to the Commissioner.

Subsection (3) replaces the original subsections (3) and (4) of section 279.

The original subsection (3) provided that the court may have admitted a duty endorsed duplicate into evidence. Paragraph (a) of proposed subsection (3) provides a full exception from proposed subsection (1) to a duty endorsed duplicate.

Similarly, the original subsection (4) permitted the court to admit an unexecuted copy of an instrument that effects a dutiable transaction or an instrument that evidences a dutiable transaction into evidence if it was satisfied that the transaction record for the dutiable transaction was duty endorsed. Paragraph (b) of proposed subsection (3) provides a full exception from proposed subsection (1) to an unexecuted copy of an instrument that effects a dutiable transaction or an instrument that evidences a dutiable transaction if the court or tribunal is satisfied that a transaction record for the dutiable transaction has been duty endorsed.

### **Part 3 – *First Home Owner Grant Act 2000* amended**

#### **Clause 9: Act amended**

This clause provides that the amendments in this Part are to the *First Home Owner Grant Act 2000*.

#### **Clause 10: Section 13 amended**

To remain eligible to retain a first home owner grant, an applicant must occupy the home as their principal place of residence for a continuous period of six months (unless a shorter period is approved by the Commissioner) and must

begin that required residence period within 12 months after completion of the transaction for the home (unless a longer period is approved by the Commissioner).

The First Home Owner Grant Act does not clearly indicate a time period within which the discretion may be exercised to reduce the residence period or extend the take-up period.

Decisions in other jurisdictions on similar legislative provisions are inconsistent, but tend to favour a lenient view being taken. In view of the intent of the Act, the Commissioner currently interprets the provisions on the basis that the discretion can be exercised at any point in time.

This clause amends section 13 of the First Home Owner Grant Act to put the matter beyond doubt and specifically provide that the Commissioner has the power to vary the required residence period and take-up period or exempt an applicant from the residence requirements at any time.

Subclause (1) amends section 13(2)(b) so that the definition of required residence period refers to a period approved by the Commissioner under proposed subsection (6A)(a).

Subclause (2) deletes subsection (3). The replacement provision is contained in proposed subsection (6A)(a).

Subclause (3) amends section 13(5)(b) so that the definition of take-up period includes a period approved by the Commissioner under proposed subsection (6A)(b).

Subclause (4) inserts a new subsection (6A).

Paragraph (a) provides for the “good reasons” test that the Commissioner must apply when determining whether to reduce the required residence period.

Paragraph (b) introduces a “good reasons” test that the Commissioner must apply when determining whether to extend the take-up period. It is intended to mirror the test that the Commissioner already applies when determining whether to reduce the required residence period. The Commissioner intends to publish a practice document that sets out how the discretion will be exercised. This will ensure the factors used to determine whether the discretion is used are consistent and transparent.

Subclause (5) inserts new subsections (7), (8) and (9).

Subsection (7) allows the Commissioner to reduce the required residence period, extend the take-up period or exempt an applicant from complying with the residence requirements at any time, including when an applicant has failed to comply with a residence requirement.

Subsection (8) provides that where the Commissioner has exercised the discretion to alter the required residence period and/or take-up period, the period is deemed to have always been the period determined by the Commissioner.

This provision ensures that where the Commissioner has exercised the discretion and approved alternate periods the applicant will not continue to be required to meet obligations that arise as a result of not complying with residence requirements such as notifying the Commissioner or repaying the grant.

Subsection (9) provides that where the Commissioner has exercised the discretion to exempt an applicant from complying with the residence requirements, the applicant is taken to have always been exempt from complying with the residence requirements.

This provision ensures that where the Commissioner has exercised the discretion and approved alternate periods the applicant will not continue to be required to meet obligations that arise as a result of not complying with residence requirements such as notifying the Commissioner or repaying the grant.

Subclause (6) makes grammatical changes to section 13(6)(a).

**Clause 11:**

**Section 54A inserted**

This clause introduces new section 54A to give the Commissioner the power to garnish debts for the repayment of a first home owner grant where the grant recipient is no longer eligible and repayment has not been made. The provision is modelled on section 65 of the Taxation Administration Act, which gives the Commissioner the power to garnish debts for the payment of a liability that arises under a taxation Act.

As the explanatory memorandum to the Taxation Administration Act explains, the power is consistent with the Commonwealth taxation Commissioner's power in

section 218 of the *Income Tax Assessment Act 1936* (Cwth) (which is now contained in section 260-5 of the *Taxation Administration Act 1953* (Cwth)). Accordingly, case law on this provision can be relied on, particularly where it relates to the issue of a notice or the assignment of a debt. Two relevant cases are *Clyne and Anor v DC of T and Anor* 81 ATC 4429 and *Zuks v Jackson McDonald and Anor* 96 ATC 4588.

Subsection (1) defines the term liable person to mean a person who, because of section 53(2), is required to repay or pay a first home owner grant, penalty or interest under section 53(1) or a fee under section 60.

Subsection (2) provides that the Commissioner may serve a garnishee notice on a person, if he believes on reasonable grounds that the garnishee is either holding funds for a liable person or will be paying money to a liable person.

Subsection (3) provides that a garnishee notice is one requiring the garnishee to pay money in his possession or control to which the liable party becomes entitled.

The garnishee is required to pay that money to the Commissioner up to the amount of a liability stated in the notice.

The garnishee notice must also fix a time for payment, but that time cannot be before the liable person would have been entitled to the money payable by the garnishee (i.e. the period dictated by the liable person's terms of credit).

Subsection (4) provides that the Commissioner may serve a garnishee notice on the garnishee even though the liable person's entitlement to the money may be subject to unfulfilled conditions. Once the liable person's entitlement is unconditional, the garnishee is required to pay the money to the Commissioner.

Subsection (5) limits the amount that the Commissioner can garnish from the wages paid by the employer of a liable person in a period to the amount by which the liable person's wages exceeds the average earnings for that period calculated on the basis of statistics published in respect of the period by the government statistician.

Subsection (6) requires the Commissioner to serve a copy of the garnishee notice on the liable party. The methods of service are provided for in section 62 of the First Home

Owner Grant Act.

Subsection (7) provides that where a garnishee notice has been issued to a person and the liable person's liability is subsequently wholly or partially discharged before the due date in the garnishee notice, the Commissioner is required to inform both the garnishee and the liable person of the payment. A notice is required to be given to each person with this information and is also required to state:

- whether their obligation for payment has been partially or wholly discharged; and
- how the garnishee's obligation under the garnishee notice previously issued is affected by the discharge or partial discharge of the liability.

These obligations are placed on the Commissioner to ensure that all relevant parties are aware of the current amount of the debt the subject of the garnishee notice.

Subsection (8) provides for an offence where the garnishee fails to comply with a garnishee notice. The maximum penalty amount is \$20,000.

Subsection (9) provides that a garnishee that makes payment to the Commissioner under a garnishee notice is taken to have satisfied his obligation to make payment to the liable person. This provision ensures that the garnishee's liability to the grant recipient is extinguished to the extent of the amount paid to the Commissioner under the garnishee notice.

#### **Part 4 – *Land Tax Assessment Act 2002* amended**

##### **Clause 12: Act amended**

This clause provides that the amendments in this Part are to the *Land Tax Assessment Act 2002*.

The Land Tax Assessment Act provides for an exemption from land tax for land on which the owner is constructing their private residence (section 24A), refurbishing their private residence (section 25A) or constructing or refurbishing their private residence while claiming a residential exemption on another property they own (section 27A).

##### **Clause 13: Section 24A amended**

This clause amends section 24A so that an individual is not required to notify the Commissioner of the dates for

completion of construction and commencement of occupation unless the Commissioner requires the individual to do so. The Commissioner is able to access the necessary information in most instances without the requirement for a further form to be lodged.

**Clause 14: Section 25A amended**

This clause amends section 25A so that an individual is not required to notify the Commissioner of the dates for completion of refurbishment and commencement of occupation unless the Commissioner requires the individual to do so. The Commissioner is able to access the necessary information in most instances without the requirement for a further form to be lodged.

**Clause 15: Section 27A amended**

This clause amends section 27A so that an individual is not required to notify the Commissioner of the dates for completion of construction or refurbishment, commencement of occupation of the second property and disposal and delivery of possession of the first property unless the Commissioner requires the individual to do so. The Commissioner is able to access the necessary information in most instances without the requirement to lodge a further form.

**Part 5 – *Pay-roll Tax Assessment Act 2002* amended**

**Division 1 - Preliminary**

**Clause 16: Act amended**

This clause provides that the amendments in this Part are to the *Pay-roll Tax Assessment Act 2002*.

**Division 2 – Amendments about shares and options**

The employee share scheme provisions of the *Pay-roll Tax Assessment Act* currently refer to certain provisions of repealed Division 13A of the *Income Tax Assessment Act 1936* (Cwth) for the purposes of determining when a share or option is acquired and also for calculating its value.

Division 13A of the *Income Tax Assessment Act 1936* (Cwth) has been replaced by Division 83A of the *Income Tax Assessment Act 1997* (Cwth) under the reform measures relating to the taxation of employee share schemes undertaken by the Commonwealth in 2009.



Division 83A significantly varies from the former provisions, introducing the concept of an Employee Share Scheme interest (“ESS interest”) into the income tax provisions.

The amendments in this Bill are necessary to accommodate the changes resulting from the new provisions relating to employee share schemes in the *Income Tax Assessment Act 1997* (Cwth).

**Clause 17:**            **Section 9BA amended**

This clause amends section 9BA to replace the words “the value of which is taken to be wages” with “that constitutes wages” to ensure the language is consistent with the meaning of “wages” in proposed section 9DA(1) in relation to shares and options granted under employee share schemes.

**Clause 18:**            **Section 9DA amended**

This clause repeals and replaces subsections (1) and (2) of section 9DA and inserts new subsection (3A).

Subsection (1) provides that wages include the grant of a share or an option to an employee by an employer in respect of services performed by the employee if the share or option is an ESS interest and is granted to the employee under an employee share scheme.

The meanings of the terms “ESS interest” and “employee share scheme” derive from section 83A-10 of the *Income Tax Assessment Act 1997* (Cwth), which provides the following.

- (1) *An ESS interest, in a company, is a beneficial interest in:*
  - (a) *a share in the company; or*
  - (b) *a right to acquire a beneficial interest in a share in the company.*
- (2) *An employee share scheme is a scheme under which ESS interests in a company are provided to employees, or associates of employees, (including past or prospective employees) of:*
  - (a) *the company; or*
  - (b) *subsidiaries of the company;*

*in relation to the employees' employment.*

A note at the foot of section 9DA(1) clarifies that the grant of a share or an option to any employee by an employer that is not an ESS interest will be taxable as a fringe benefit.

Subsection (2) clarifies the circumstances in which a share or option is granted to a person for the purposes of the definition of “relevant day” in section 9DB(1).

Subsection (3A) clarifies in which circumstances a share or option is taken to be granted pursuant to a right granted to an employee.

**Clause 19:**

**Section 9DB amended**

Subclause (1) repeals and replaces subsection (2) of section 9DB.

Subsection (2) contains a new definition of “vesting day” to include a deeming provision which provides that the vesting day is to be 7 years after the grant of the share, unless the share has vested in the employee before that day (that is, when any conditions applying to the grant of the share have been met and the employee’s legal or beneficial interest in the share cannot be rescinded). The 7 year time limit for the vesting day follows the time limit in the Commonwealth income tax provisions for the deferred taxing point and also aligns with industry practice.

Subclause (2) makes two amendments to section 9DB(3).

Paragraph (a) amends the words “vest in him or her” in section 9DB(3)(b) to “vested in the employee”.

Paragraph (b) inserts into section 9DB(3) paragraph (c), which is a deeming provision to provide that the vesting day of an option is to be 7 years after the grant of the option to the employee, unless the vesting day in respect of the option has occurred before that day in the circumstances outlined in paragraphs (a) and (b) of the subsection. The 7 year time limit for the vesting day follows the time limit in the Commonwealth income tax provisions for the deferred taxing point and also aligns with industry practice.

**Clause 20:**

**Section 9DC amended**

This clause repeals and replaces paragraphs (a) of section

9DC(1) and 9DC(2). The new paragraphs remove the words “the value of which is taken to be wages under this Subdivision” to ensure the language is consistent with the meaning of “wages” in proposed section 9DA(1) in relation to shares and options granted under employee share schemes.

**Clause 21:           Section 9DD amended**

Subclause (1) repeals and replaces subsection (1) of section 9DD.

Subsection (1) is replaced to change the outdated reference to the Commonwealth income tax provisions from the *Income Tax Assessment Act 1936* (Cwth) to those contained in the *Income Tax Assessment Act 1997* (Cwth).

Subclause (2) amends subsection (2) to omit the word “market” from the reference to the value of shares and options as the definition of the value of a share or option in subsection (3) now includes “market value”.

Subclause (3) repeals subsections (3) and (4) and inserts new subsections (3) to (7).

Subsection (3) defines the value of a share or an option as the market value or the amount determined as provided by the Commonwealth income tax provisions. The common law meaning of “market value” is relied upon for the purpose of valuing a share or option that is an ESS interest. The Australian Taxation Office publishes guides on calculating market value for income tax purposes.

Subsection (4) enables the employer to choose the method of valuation of a share or option in any return lodged. The alignment with the income tax provisions relating to the value of shares and options enables increased flexibility for taxpayers to choose a valuation methodology that fits their circumstances and has the lowest compliance costs associated with it.

Subsection (5) provides that the Commissioner of State Revenue may determine the method of valuation of a share or option if the grant of the share or option is not included as wages in a return lodged by an employer as required by the Pay-roll Tax Assessment Act.

Subsection (6) is modelled on a valuation provision contained in the Commonwealth income tax provisions

that provides that any conditions and restrictions that prevent a taxpayer from converting a non-cash benefit which includes an ESS interest into money are ignored in calculating market value.

Subsection (7) provides required modifications to the relevant Commonwealth income tax provisions so that the provisions make sense in the context of pay-roll tax.

**Clause 22:**            **Section 9DE amended**

This clause amends subsections (1) and (2) of section 9DE to ensure the language is consistent with the meaning of “wages” in section 9DA(1) in relation to shares and options granted under employee share schemes.

**Clause 23:**            **Section 9DF replaced**

This clause repeals and replaces section 9DF to reflect language changes resulting from the amendments to the provisions for the taxing of shares and options that are ESS interests. The effect of the section is unaltered and ensures that where an employer has paid any applicable pay-roll tax in respect of the grant of an option, the subsequent grant of a share pursuant to the exercise of that option is not subject to pay-roll tax. This prevents the same matter being taxed twice.

**Clause 24:**            **Section 9DG amended**

Subclause (1) repeals and replaces subsection (1) of section 9DG. The new subsection ensures that a grant of shares or options to a director is taxable as wages even if it is not an ESS interest. Section 9DG operates independently of section 9DA, however, other relevant provisions in the Subdivision apply. For example, the provisions relating to the granting and valuing of shares and options.

Wages in this section are defined to include the grant of a share or an option by a company to a director of the company who is not an employee of the company by way of remuneration for the appointment or services of the director.

Subclause (2) makes a minor grammatical amendment to subsection (2).

Subclause (3) inserts proposed subsection (4) which ensures that if wages referred to in this section are fringe

benefits, the value of the wages is to be determined in accordance with Subdivision 2 and not Subdivision 4.

**Clause 25:**

**Schedule 1 amended**

This clause amends Schedule 1 to insert new clauses 4, 5 and 6.

Clause 4 is a transitional provision that provides that anything done or omitted to be done by an employer in connection with the assessment and payment of pay-roll tax, in respect of a month occurring after June 2009 and before July 2011, that would have been validly done or omitted to be done had the amendments made by this Bill been in force, is taken to have been validly done or omitted.

It is noted that this validates a decision by an employer to treat the grant of a share or an option to an employee that is not an ESS interest as a fringe benefit under Part 2 Division 2A Subdivision 2 and to determine the value of those fringe benefits in accordance with those provisions rather than by reference to Part 2 Division 2A Subdivision 4 (the Subdivision for shares and options).

Clause 5 is a transitional provision for the determination of vesting dates and value of employee shares and options.

Subclause (1) inserts self-explanatory definitions for the purposes of this clause.

Subclause (2) provides that a share or option which is not an ESS interest which was granted before 1 July 2011 continues to be treated as wages under Part 2 Division 2A Subdivision 4 if the vesting date for the share or option did not occur before 1 July 2011 and the employer did not elect to treat the date of the grant as the relevant day.

Subclauses (3) and (4) ensure that sections 9DB and 9DD as amended by this Bill apply for the purpose of subclause (2).

Subclause (5) ensures that this clause does not apply to shares or options granted before 1 July 2011 if the liability to pay-roll tax for the grant of the share or option falls within Part 2 Division 2A Subdivision 2 (the Subdivision for fringe benefits and specified taxable benefits).

Clause 6 is a transitional provision that clarifies that despite the fact that the Royal Assent for the *Revenue*

*Laws Amendment Act 2011* may occur after 1 July 2011, the Commissioner must make any reassessment necessary in relation to shares and options granted on or after 1 July 2011 to give effect to the amendments to the Pay-roll Tax Assessment Act made by the *Revenue Laws Amendment Act 2011*.

**Clause 26:**                    **Glossary amended**

This clause deletes and replaces the definition of “share”. The new definition of “share”, which includes a stapled security, no longer has a reference to repealed section 139GCD of the *Income Tax Assessment Act 1936* (Cwth). As a result, the term “stapled security” will now have its ordinary meaning. A stapled security is a financial product comprising two or more securities, such as a share in a corporation and a unit in a unit trust scheme, which are contractually bound together and cannot be traded separately.

**Division 3 – Other amendments to *Pay-roll Tax Assessment Act 2002***

**Clause 27:**                    **Section 25 amended**

This clause introduces new provisions into section 25 that enable the Commissioner to register an employer for pay-roll tax on his own initiative. Up until recently, it was common practice for the Commissioner to register taxpayers for pay-roll tax purposes as part of the assessment process, (particularly where the liability is discovered as part of an investigation) or as a customer service where taxpayers were having difficulty with the registration process. When it became apparent that the Commissioner was not specifically authorised to perform this function, the practice ceased.

It should be noted that failure to register does not prevent an employer from being liable to pay-roll tax, or restrict the Commissioner from assessing and collecting a pay-roll tax liability.

Subsection (2A) gives the Commissioner the power to register an employer for pay-roll tax even though the employer has not applied for registration. The Commissioner can only exercise this power if he considers that the employer is, or is likely to become, liable to pay pay-roll tax.

Subsection (2B) provides that the Commissioner must

notify an employer of registration where he has registered the employer on his own initiative.

Subsection (2C) retrospectively validates all registrations that the Commissioner has made on his own initiative under the *Pay-roll Tax Assessment Act 2002* and the *Pay-roll Tax Assessment Act 1971* prior to these provisions commencing.

**Clause 28:**            **Section 33 amended**

This clause replaces section 33(1) with a provision that is modelled on section 72(2)(c) of the *Payroll Tax Act 2007* (NSW).

The original provision required two criteria to be met in order to establish a controlling interest. This clause changes section 33(1) so that only one of the criteria needs to be met in order for the person or persons to have a controlling interest in the entity. This is consistent with the harmonised legislation in all other Australian jurisdictions.

**Clause 29:**            **Section 36 amended**

This clause replaces section 36(2) with a provision that is modelled on similar provisions in all other jurisdictions. The amendments clarify that it is only some of the members of a group (and not necessarily all) that are required to have together a controlling interest in a business in order for the persons carrying on the business to be grouped with the other members of the group. This is consistent with the original policy intention.

**Example**

- A group of employers consists of members A, B, C and D.
- Members A and B together have a controlling interest in a business being carried on by Y.

A, B, C, D and Y constitute one group by virtue of section 36(2).

It is to be noted that the capacity to exclude a person from a group under section 36(3) applies until 30 June 2012. From 1 July 2012 section 36(4) authorises the Commissioner to exclude a person from a group in accordance with section 38.

**Clause 30: Section 41A amended**

Section 41A provides an exemption from pay-roll tax for wages paid in respect of parental and adoption leave.

This clause amends section 41A to further clarify that the exemption is for 14 weeks worth of wages, irrespective of the actual period of the leave. The amendment has been drafted in consultation with all other jurisdictions to maintain harmonisation.

**Example 1**

- X works in a full time position on an annual salary of \$52,000.
- X's normal weekly wage is \$1,000.
- Instead of 14 weeks of parental leave, X decides to take 28 weeks of leave at half pay of \$500 per week.

The exemption from pay-roll tax is on the amount of \$14,000 which is equal to 14 weeks worth of X's normal wages (14 x \$1,000).

**Example 2**

- Y works part-time working 3 days in a week.
- The full time annual salary is \$50,000.
- X's wages are 3/5 of \$50,000 which is \$30,000 per annum.
- X's normal weekly wage is \$577.
- Instead of taking 14 weeks parental leave, X takes 28 weeks of leave at half of their normal pay, i.e. \$288.50 a week.

A pay-roll tax exemption would apply to the amount of \$8078 which is equal to 14 weeks worth of X's normal wages (14 x \$577).

**Part 6 – *Rates and Charges (Rebates and Deferments) Act 1992* amended**

**Clause 31: Act amended**

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

**Clause 32: Section 3 amended**

Section 3 provides the meaning of terms used in the *Rates and Charges (Rebates and Deferments) Act 1992*.



Subclause (1) inserts a self-explanatory definition of the term “senior’s card department”, which replaces references in the Act to a specific department to avoid the need for future minor amendments resulting from name changes of Government departments.

Subclause (2) amends the definition of the term “senior’s card” by making reference to a card issued by the senior’s card department.

**Clause 33:**            **Section 5 amended**

Section 5 deals with the determination of eligibility of a senior for benefits under the Act.

A generic reference to the chief executive officer of the “senior’s card department” replaces the Director of the Office of Seniors’ Interests as the person who determines eligibility.

**Clause 34:**            **Section 6 amended**

Section 6 deals with issuing State concession cards. Subsection (3) deals with issuing cards to certain persons in receipt of benefits administered by the Commonwealth Department of Veterans’ Affairs.

The section is amended to include recipients of certain benefits under the *Military Rehabilitation and Compensation Act 2004* (Cwth).

Paragraph (a) of subclause (1) amends subsection (3) to include persons entitled to be provided with treatment. This reference is necessary to ensure the provision operates correctly following the insertion of proposed section 23(4A)(c).

Paragraph (b) of subclause (1) replaces subsection (3)(a) and expands it to link to proposed section 23(4A). This paragraph provides the criteria that a person must satisfy to be issued a State concession card for five years regardless of that person’s income or assets.

**Clause 35:**            **Section 23 amended**

Section 23 provides the pensioner eligibility criteria a person must satisfy to register for a concession under the Act.

Section 23(4A) provides the eligibility criteria in order for a

person who is entitled to receive benefits under the Military Rehabilitation and Compensation Act to register for a concession. The person must satisfy at least one of the criteria that are set out in paragraphs (a) – (c) of section 23(4A).

Paragraph (a) provides that a person must meet the criteria listed in section 199(1) of the Military Rehabilitation and Compensation Act. That section effectively allows the person to choose between receiving a Special Rate Disability Pension or continuing in receipt of compensation.

Paragraph (b) provides that a person must be receiving a Special Rate Disability Pension under Chapter 4 Part 6 of the Military Rehabilitation and Compensation Act instead of compensation under Chapter 4 Part 4 Division 2 of that Act.

Paragraph (c) provides that a person must be entitled under section 284 of the Military Rehabilitation and Compensation Act to be provided with treatment under Chapter 6 Part 3 of that Act.

**Clause 36:**                    **Section 26 amended**

Section 26 provides the various types of cards that can be accepted by an administrative authority as evidence of eligibility for concessions under the Rates and Charges (Rebates and Deferments) Act.

Section 26(1)(c) deals with the production of a State concession card as evidence of eligibility. It is amended to include a person receiving a benefit under the Military Rehabilitation and Compensation Act as referred to in proposed section 23(4A).

**Part 7 – *Stamp Act 1921* amended**

**Clause 37:**                    **Act amended**

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

**Clause 38:**                    **Section 8 amended**

This clause amends section 8(2) so that a reference in section 20 to a general conditional contract includes a farming land conditional contract, an off-the-plan conditional contract, a mining tenement conditional

contract and a subdivision conditional contract.

**Clause 39:**

**Section 20 amended**

Section 20 provides for a reduction of stamp duty on an instrument where a matter in that instrument has not been, and will not be, carried into effect. In layman's terms, this provision allows stamp duty to be refunded if a contract to purchase property is cancelled. The Commissioner must make any reassessment necessary to give effect to a decision made under section 20. However, due to the time limits imposed by section 17 of the Taxation Administration Act, a reassessment can only be made within five years of the original assessment. These amendments mirror the proposed amendments to the Duties Act at clause 6 of this Bill.

This clause amends section 20 to extend the time in which the Commissioner can reassess a general conditional contract (within the meaning of section 8 of the Act as amended by clause 38 of this Bill) that contains a matter that has not been, and will not be, carried into effect.

This clause inserts proposed subsection (9A), which alters the effect of section 17 of the Taxation Administration Act for the purposes of making a reassessment under section 20, and subsection (9B), which clarifies the relevant date of cancellation of a matter to which the amendments apply.

Subsection (9A) alters the time period that would otherwise apply to cancelled instruments due to the operation of section 17 of the Taxation Administration Act.

Paragraph (a) alters the effect of section 17(1) of the Taxation Administration Act so that a taxpayer is entitled to apply for a reassessment within five years after the original assessment was made, or within 12 months after the cancellation day, whichever is later. The term cancellation day is not defined, but it is intended to be the day on which a matter contained in a general conditional contract (within the meaning in section 8(2)) will not be, and has not been, carried into effect. Proposed subsection (9B) contains some guidance as to when the cancellation day occurs, but this is not intended to be an exhaustive definition of that day.

Paragraph (b) alters the effect of section 17(4) of the Taxation Administration Act so that the Commissioner may only make a reassessment on an application of the

taxpayer if the taxpayer makes the application within the time period mentioned in paragraph (a), that is, within the later of five years after the original assessment or 12 months after cancellation day.

Subsection (9B) provides that subsection (9A) applies only to instruments in respect of those matters contained in the instrument that have not been, or will not be, carried into effect after the commencement of subsection (9A).

### **Part 8 – Taxation Administration Act 2003 amended**

#### **Clause 40: Act amended**

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

#### **Clause 41: Section 43 amended**

This clause amends section 43(2ab) of the Taxation Administration Act so that the word “Treasurer” is replaced with the word “Minister”. This is due to assigning the Taxation Administration Act to the Minister for Finance’s portfolio. It is envisaged that the word “Minister” will cover any Minister assigned with the administration of the Taxation Administration Act should the responsibility change in the future.

#### **Clause 42: Section 76 amended**

Section 76 of the Taxation Administration Act sets out when land tax is a charge on land. This clause amends section 76, to ensure the policy intent is aligned with section 45 of the repealed *Land Tax Assessment Act 1976*.

Subclause (1) expands and clarifies existing subsection (1). It adds two additional clarifications that it does not matter whether or not an assessment notice has been issued or whether the land is disposed of. It further provides that land tax payable on land ceases to be a charge on land when it is paid. This clearly articulates the manner in which the provisions have been interpreted and applied under the existing Taxation Administration Act section, and the repealed provisions of the *Land Tax Assessment Act 1976*.

Subclause (2) deletes section 76(4) as its effect is provided for in section 79(1) of the Taxation Administration Act.

Subclause (3) amends section 76(6) so that a new owner becomes jointly liable with the previous owner for any outstanding land tax, but not for more than what is stated in a certificate, except for where the certificate provides an estimate of the land tax that will be assessed. A further explanation of this matter is contained in clause 43 of this Bill.

Subclause (4) amends section 76(7)(b) by replacing each occurrence of the word “unimproved” with “taxable.” This corrects an inadvertent omission that was made when the *Revenue Laws Amendment (Taxation) Act 2009* introduced a system of capping values on which land tax is assessed and adopted the term “taxable value”.

**Clause 43:**

**Section 80 replaced**

This clause replaces section 80 of the Taxation Administration Act, which deals with the issue of a certificate of land tax liability upon the sale of land. It is necessary in order to give prospective purchasers details about land tax amounts for which they may become liable, as land tax is a first charge on land.

Subsection (1) provides that the owner of land or a person intending to purchase land may apply to the Commissioner for a certificate. This includes an agent who makes an application on behalf of the owner or purchaser.

Subsection (2) provides that the Commissioner must, on receiving an application under subsection (1), issue a certificate that states whether, at the date of the certificate, there is a charge on the land under section 76. The certificate shows the amount secured by the charge where an assessment notice has been issued or the amount that the Commissioner estimates will be secured by the charge where the assessment notice has not yet issued.

Subsection (3) provides that a new owner is not liable for more than the amount of unpaid land tax stated in a certificate. This provision only applies where the amount stated relates to land tax for which an assessment notice has been issued and not to an estimate of the amount of land tax that will be assessed for the assessment year.

Subsection (4) provides that a certificate issued under subsection (2) does not prevent the Commissioner from assessing an amount of land tax that is different to an estimate provided in the certificate in respect of an assessment year. Any amount of land tax assessed which

is different to an estimate provided in a certificate constitutes a charge on land in accordance with section 76(1) for which a new owner is jointly liable with the previous owner under section 76(6).

Subsection (5) provides that a prescribed fee is payable under subsection (2), which replaces the original section 80(4). The fee is currently prescribed to be \$35.

**Clause 44:**

**Section 114 amended**

This clause replaces section 114(3)(c), which provides exceptions to the duty of confidentiality that is imposed under section 114(1).

Under the old section 114(3)(c), a person with a duty of confidentiality was relieved from that duty for the purposes of disclosing information or material to the Western Australian Department of Treasury and Finance. The Department of Treasury and Finance was split into the Department of Treasury and the Department of Finance on 1 July 2011.

This clause amends section 114(3)(c) using language that accommodates any future changes to the administration of the Taxation Administration Act.

The new section 114(3)(c) permits the disclosure of confidential information to Department of Treasury officers and those officers of the Department of Finance who do not have delegated powers under the Taxation Administration Act, such as the Director General of the Department of Finance and staff of that office.