

# **REVENUE LEGISLATION AMENDMENT BILL 2002**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Policy Objectives**

To amend the *Duties Act 2001*, which commenced on 1 March 2002. The majority of the amendments address technical matters, reduce opportunities for duty avoidance, clarify the operation of the Act, extend concessions or ensure the Act operates properly or aligns with arrangements previously applying under the *Stamp Act 1894*.

To amend the *Fuel Subsidy Act 1997* to ensure the Commissioner can obtain information and documents and to impose notification requirements for bulk end users.

#### **Reasons for the Bill**

Amendments to the *Duties Act 2001* are required to prevent loss of the home duty concession where there is a later exempt gift of an interest in the home to a spouse, restore the previous *Stamp Act 1894* thresholds for lease duty on occupancy rights, provide clear nexus rules for premium funding arrangements, improve arrangements for self assessors, remove the hire duty exemption for interest payments under hire purchase agreements as requested by industry and extend exemptions for securitisations and transactions involving the appointment or removal of custodians of public superannuation entities.

Other technical amendments to the *Duties Act 2001* are required to clarify the apportionment provision for business assets, the operation of a condition for duty exemption for corporate reconstructions, the provisions which reduce the value of a partnership acquisition due to the partner's contribution to partnership property on formation of a partnership, the operation of the home concessions where multiple residences are acquired, the treatment of statutory vestings of dutiable property, the treatment of interests in managed investment schemes, the nexus for marketable

securities for mortgage duty, the definition of salary package for exempt institutions and the definition of de facto relationship instrument.

Amendments are also required to extend the duty exemption for deeds of grant issued under traditional rural leases to include deeds issuing from grazing homestead perpetual leases and from perpetual leases issued for pastoral purposes. In addition, to align with long-standing practice, the duty exemption for an acquisition of a freeholding lease other than a grazing homestead freeholding lease is required to be removed and the exemption for deeds of grant is required to be extended to deeds issuing from freeholding leases.

Other amendments are required to narrow the exemption for grants of leases of land that are also exempt from lease duty, provide further transitional arrangements for leases, provide a duty credit on the exercise of an option to purchase dutiable property, clarify that corporate reconstruction duty relief is not lost upon a company ceasing to exist, ensure that any direct and indirect property holdings are taken into account when determining whether a reassessment is triggered for the non-satisfaction of a condition of the corporate reconstruction exemption, ensure windfall gains cannot arise for refunds under the *Stamp Act 1894* and remove the nominal duty from transfers of mortgages for securitisation purposes.

Amendment is also required to allow the tracing of interests through a qualified holder that holds or acquires an interest in a wholesale unit trust, in certain circumstances, and to refine the related person test used for majority trust acquisition and land rich duty purposes. Further, there are a number of minor technical and consequential amendments required to clarify the operation of the *Duties Act 2001*.

The *Fuel Subsidy Act 1997* requires amendment to ensure that the Commissioner can require the provision of information and documents and to require bulk end users to notify the Commissioner on acquiring a new storage site.

## **Achievement of Objectives**

### *Duties Act 2001*

#### *Statutory vestings of dutiable property*

Under section 9 of the *Duties Act 2001*, the statutory vesting of dutiable property constitutes a dutiable transaction. When a vesting of property is effected by statute, the vesting statute often provides that the person in

whom the property is vested is the successor in law of, and the same legal entity as, the person in whom the property was previously vested. The existence of this type of provision has raised some uncertainty about the application of section 9 of the *Duties Act 2001*.

Section 9 is to be amended to clarify that a dutiable transaction occurs on a statutory vesting of dutiable property, regardless of whether or not the vesting legislation provides that the person in whom the property is vested is the successor in law of, continuation of, or same legal entity as, the person in whom the property was previously vested. However, the *Duties Act 2001*, as amended, will not displace the operation of chapter 5B, part 5B.1 of the *Corporations Act 2001 (Cwlth)*.

*Property contributed on formation of a partnership*

Under the *Duties Act 2001*, duty is imposed on the acquisition of a partnership interest in particular partnerships. A partnership interest is acquired when a partnership is formed or a person's partnership interest increases. Transfer duty is generally imposed on the value of the partnership acquisition which is worked out under section 46 by applying the partner's partnership interest (expressed as a percentage) to the unencumbered value of the partnership's property following the partnership acquisition.

Sections 46(5) and (6) provide rules for determining the value of a partnership acquisition on formation of a partnership and an increase in a partner's interest, respectively. Section 46(5) provides that, in determining the value of a partner's partnership interest on formation of the partnership where the partner has contributed dutiable property to the partnership, the value of any dutiable property the partner contributed to the partnership on its formation must be disregarded. Excluding that property from the calculation ensures the partner is not being taxed on property in which they already have an interest. Subsequent partnership interest acquisitions are assessed in accordance with section 46(6) to the extent of the increase in the partner's interest.

Section 44(2) of the Act provides, without limiting the ways a partnership may be formed, that a partnership may be formed on a change in the membership of the partnership. Consequently, any number of events can occur which will result in a new partnership being formed. For example, a person may join an existing partnership and the admission will result in the formation of a new partnership.

It is not appropriate for section 46(5) to apply in every instance where there is a formation of a partnership as continuing partners who increase

their partnership interests do not newly contribute partnership property purely as a result of a change in the partnership.

Therefore, section 46(5) is to be amended to clarify that a credit for the value of any dutiable property contributed by a partner will only be available in respect of a new partner's partnership acquisition on formation of a partnership. The credit will not apply for any increase in an existing partner's partnership interest in respect of previous contributions of dutiable property to the partnership.

*Transfers of fund property involving custodians of public superannuation entities*

The *Superannuation Industry (Supervision) Act 1993 (Cwlth)* provides for the prudent management of certain superannuation entities and for their supervision by the Australian Prudential Regulation Authority (APRA). In particular, the *Superannuation Industry (Supervision) Act 1993 (Cwlth)* provides that certain superannuation entities are required to have a trustee approved by APRA. These are entities which are of a public nature. The obligations imposed on approved trustees are more extensive than on other superannuation trustees to provide for stronger prudential supervision in a sector of the market where members are usually far-removed from the management of the entity. Under the approval process, APRA may approve the trustee on the condition that all of the assets of the entity must be held by a custodian.

The appointment or removal of a custodian for such entities will be liable to transfer duty if the transactions involve transfers of dutiable property between the trustee and custodian. However, these transactions are effected to ensure a trustee complies with the terms of its approval under the *Superannuation Industry (Supervision) Act 1993 (Cwlth)* although the fund property is held at all times for the benefit of the members.

The *Duties Act 2001* is therefore to be amended to provide exemptions for transactions involving the transfer of fund property from a trustee approved under the *Superannuation Industry (Supervision) Act 1993 (Cwlth)* of a public superannuation entity to a custodian and vice versa. An exemption will also apply to transfers where the trustee contracts to purchase fund property but the transfer is made to the custodian. Duty will apply only to the contract. These new exemption arrangements will provide similar relief from duty to that provided for managed investment schemes. Conditions will apply to ensure the new exemptions are not used to avoid duty.

*Transfer duty exemption for redemptions of mortgage-backed securities*

The *Duties Act 2001* provides exemption from transfer duty on a trust acquisition required to give effect to the acquisition of a mortgage-backed security. However, the *Duties Act 2001* does not provide duty exemption for redemptions of those securities.

The *Duties Act 2001* is to be amended to provide, from 1 March 2002, an exemption from transfer duty on a trust surrender that is required to give effect to the redemption of a mortgage-backed security.

*Concessions for securitisations of financial asset receivables*

Securitisation involves the repackaging of illiquid receivables (such as home mortgages, other secured loans, unsecured loans and debts) into securities which are issued to the market and provides an increasingly common source of funding for the financial sector. The *Duties Act 2001* contains provisions for concessional duty treatment for certain securitisation transactions, namely those relating to the securitisation of mortgages of land.

The *Duties Act 2001* is to be amended to extend the existing scope of duty relief for securitisation transactions to those involving financial asset receivables. The new exemptions will apply to the securitisation of financial asset receivables where the instrument or transaction is made or entered into on or after 1 March 2002.

*Nominal transfer duty on transfers of mortgages of land in securitisation transactions*

Section 24(3) of the *Duties Act 2001* provides for nominal duty of \$5 for a transfer of a mortgage of land in certain circumstances. Following the extension of the duty concessions for securitisations to financial asset receivables, the *Duties Act 2001* is to be amended to provide an exemption from transfer duty for transfers of mortgages in securitisation transactions, thereby removing the \$5 transfer duty. The nominal duty will remain for other transfers of mortgages of land.

This amendment will ensure consistency of treatment between securitisation of mortgages of land and financial asset receivables.

*Leases and deeds of grant under the Land Act 1962 and Land Act 1994*

The *Land Act 1994* provides for the granting of leases, licences and permits for which an exemption from duty is provided under section 136 of the *Duties Act 2001*. A further duty exemption on the subsequent issue of a deed of grant under the *Land Act 1994* may also apply, depending on the

circumstances. The latter exemption applies to deeds issuing from certain leases previously identified as traditional rural leases. Section 136 is to be amended to ensure that the exemption appropriately applies to all leases which are traditional rural leases by extending the exemption to grazing homestead perpetual leases under the *Land Act 1962* and perpetual leases issued for pastoral purposes under the *Land Act 1994*.

The *Duties Act 2001* is also to be amended to give effect to the current practice of collecting duty on the initial grant of a freeholding lease rather than on the subsequent issue of the deed of grant issued to the holder of the lease.

#### *Exemption for grants of leases of land*

The grant of a lease of land in Queensland is dutiable under both the lease duty and transfer duty provisions of the *Duties Act 2001*. For lease duty, section 244 of the *Duties Act 2001* provides an exemption for the grant of a lease of a dwelling house or mobile home where the premises are not used for commercial purposes. For transfer duty, section 146 of the *Duties Act 2001* provides an exemption for leases that are exempt under the lease duty provisions.

Section 146 requires amendment to remove a duty avoidance opportunity. The amendment will limit the transfer duty exemption for the grant of a lease that is also exempt from lease duty under section 244 to instances where no premium, fine or other consideration is paid for the grant of the lease. Where a premium, fine or other consideration is payable, transfer duty will apply.

#### *Duty payable on exercise of option*

Under sections 8 and 9(1)(g) of the *Duties Act 2001*, transfer duty is imposed on a dutiable transaction that is the acquisition of a new right on its creation, grant or issue. A new right includes an option to acquire dutiable property if the acquisition of the property would be a dutiable transaction. Transfer duty is also payable under section 9(1) of the *Duties Act 2001* on the acquisition of the property where the option is subsequently exercised.

The *Duties Act 2001* is to be amended to give effect to current assessing practice so that, where transfer duty is payable on the acquisition of dutiable property on the exercise of an option, a credit will be allowed for the amount of transfer duty paid on the option. However, the credit will only be available where the option agreement provides for a reduction in the consideration payable for property acquired on the exercise of the option equal to the consideration payable for the grant of the option.

*Preventing loss of concessional duty for homes where the acquirer gifts an interest to a spouse*

The *Duties Act 2001* provides concessions from duty for the acquisition of a home or for a mortgage secured by a home provided certain conditions are satisfied. The concession may be lost or reduced if the taxpayer disposes of the home within one year of, or prior to, occupation of the home. In these cases, the duty must be reassessed at the higher rate.

There is an anomaly where an interest in the home is later transferred by way of gift to the taxpayer's spouse in these circumstances and the parties own the home equally and use it as their home. Although the transfer to the spouse is exempt from transfer duty under section 151 of the *Duties Act 2001*, the transfer duty on the initial acquisition of the property is required to be reassessed to higher duty because of the partial disposal to the spouse.

To remove this anomaly, the *Duties Act 2001* is to be amended so that the benefit of the home concession obtained by a taxpayer is not lost where the taxpayer transfers part of the home to the taxpayer's spouse if the transfer is exempt from transfer duty under section 151. However, a reassessment should be made if the taxpayer or the taxpayer's spouse subsequently dispose of the home within one year of the taxpayer's original occupation of the home. This ensures that the taxpayer continues to be subject to the same conditions as apply to other taxpayers who benefit from the home concessions.

The *Duties Act 2001* is therefore to be further amended to continue the application of the reassessment conditions to the taxpayer as if there had been no transfer of the interest in the home to the taxpayer's spouse.

*Home concessions – multiple residences*

The *Duties Act 2001* provides transfer duty concessions for transactions that are the transfer or agreement for the transfer of a home or first home. The amount of the concession depends on various factors, including the number of persons acquiring an interest in the residence, the number of persons who will use the residence as their home or first home and the number of residences acquired.

Provision is made in section 93 for the case of multiple residences acquired in one transaction by multiple acquirers where all of the residences are to be occupied by one or more of the acquirers and all of the acquirers claim either a home or first home concession. However, section 93 operates in a way that confers a greater concession than intended.

Section 93 is to be amended to clarify that, where multiple residences are acquired in the one transaction, the concession applies only to that part of the residential land transferred or agreed to be transferred, in which the applicant or applicants will reside.

#### Tracing of interests in wholesale unit trusts

Under the *Duties Act 2001*, transfer duty is imposed on a dutiable transaction that is a trust acquisition or trust surrender. However, duty is not imposed on a trust acquisition or trust surrender of a trust interest in a public unit trust, unless a majority trust acquisition is made in a land holding trust. A wholesale unit trust is one type of land holding trust.

For determining whether a person (“the acquirer”) has made a majority trust acquisition in a land holding trust (that is, an acquisition of more than 50%), the interest acquired, and interests already held by the acquirer and related persons of the acquirer, are aggregated. The *Duties Act 2001* defines certain persons to be related persons.

Under the *Stamp Act 1894*, an administrative arrangement made special provision for working out certain interests held by a person or related person in determining whether a majority trust acquisition had been made in a wholesale unit trust. Under the arrangement, where units were acquired by another company within the fund manager’s group on behalf of, to the account of, or to the policy of, individual clients, the interests would be traced to those clients.

The *Duties Act 2001* is to be amended to continue, and give legislative support to, the practice that applied under the *Stamp Act 1894*.

#### Related persons

Under the *Duties Act 2001*, the general duty rates are applied to acquisitions of majority interests in land holding trusts and land rich corporations. For working out if a majority interest has been acquired (that is, an interest of more than 50%), certain acquisitions and interests held by a person and related persons are aggregated.

The *Duties Act 2001* defines certain persons to be related persons. The definition adopted is wide and includes for individuals, members of the same family, including a nephew, niece, spouse of a nephew or niece, adopted children and certain step-relatives of a person. For trustees, the definition also includes beneficiaries of the trust and related persons of those beneficiaries. As a wide definition of related person has been adopted, the Commissioner has a discretion not to treat persons as related



persons where satisfied that the interests acquired by the persons were acquired independently and not acquired for a common purpose.

However, the discretion was not intended to apply to related bodies corporate as the relationship between those entities is clear.

Therefore, the *Duties Act 2001* is to be amended to ensure that the discretion cannot be exercised in relation to related bodies corporate. This will maintain the position for related bodies corporate that existed under the *Stamp Act 1894*.

Also, land rich duty and transfer duty on a majority trust acquisition in a land holding trust is assessed at the time that the particular majority acquisition is made. In determining whether a majority acquisition has been made, certain interests of related persons that were previously acquired may be taken into account. In determining whether a person is a related person, the circumstances as to whether there is independence or a common purpose at the time of the acquisitions in relation to those interests are taken into account.

However, parties may become related after one of them has acquired an interest but before the other or others acquire further interests. It is therefore appropriate to have regard also to how the interests acquired will be managed and used in future by the parties.

Consequently, the *Duties Act 2001* is to be amended to impose an additional condition on the exercise of the Commissioner's discretion that the interests must be managed and used independently by the persons and not for a common purpose.

*Duty free threshold of \$10,000 for lease duty on occupancy rights and an anti-avoidance provision relating to the term of the occupancy right*

Under the *Duties Act 2001*, lease duty applies to an agreement granting or offering to grant an occupancy right. Section 232 provides a definition of occupancy right.

Similar provisions were contained in the *Stamp Act 1894*. However, that Act also provided that lease duty did not apply if:

- the right was for less than one month with no arrangement for extension; or
- the total consideration for the term was not more than \$10,000 adjusted for a term of one year, or, where the term was more than one year, not more than \$10,000 annually.

Section 232 is to be amended to include these additional conditions relating to the cost and term of the occupancy right.

*Further transitional provision regarding the payment of lease duty and provision of credits where a potential liability for double duty arises*

Lease duty transitional issues

Chapter 17, part 2, division 6 of the *Duties Act 2001* makes provision for the transition from the repealed *Stamp Act 1894* to the *Duties Act 2001* for lease duty. Two further transitional measures are required. The first relates to instances where liability can arise under both the *Stamp Act 1894* and the *Duties Act 2001* in relation to the one tenancy. That is, there can be cases where there are two or more dutiable instruments in relation to the same tenancy, one or more of which is dutiable under the *Stamp Act 1894* and one or more of which may be dutiable under the *Duties Act 2001*. The second relates to certain circumstances where, after commencement of the *Duties Act 2001*, an option is exercised in a lease that was executed before commencement.

To address these issues, section 530 of the *Duties Act 2001* is to be amended to expand the existing transitional provisions to apply to the following so that the *Stamp Act 1894* continues to apply to the later transactions.

- An agreement for lease chargeable under the *Stamp Act 1894* followed by a lease dutiable under the *Duties Act 2001*. Currently section 530 only applies if, prior to 1 March 2002, duty has been paid on the agreement for lease.
- A written offer chargeable under the *Stamp Act 1894* followed by a lease or agreement for lease dutiable under the *Duties Act 2001*.
- A written offer and an agreement for lease chargeable under the *Stamp Act 1894* followed by a lease dutiable under the *Duties Act 2001*.

Further, section 531 of the *Duties Act 2001* is to be extended to the exercise of an option that is contained in a lease that was chargeable under the *Stamp Act 1894*. In assessing lease duty on the new lease, a credit is allowed equal to the stamp duty paid under the *Stamp Act 1894* on the lease for the option period. Currently, relief only applies if, prior to 1 March 2002, duty has been paid on the lease or agreement for lease.

To ensure their proper operation, these amendments are to commence on 1 March 2002.

### Holding over and subsequent leases

Under section 237(2) of the *Duties Act 2001*, liability for lease duty arises where a lessee or grantee continues in possession of leased premises after the lease or occupancy right ends (that is, a holding over). The liability arises when the continued possession starts and lease duty is imposed in relation to the period of the continued possession.

Two lots of duty can be payable for the holding over period in these cases. This occurs where, after the end of the lease, there is a holding over while a new lease is negotiated and the term of the new lease includes the holding over period. Liability arises for the new lease for its term, including the period of the holding over.

The *Duties Act 2001* is to be amended to ensure that, in the assessment of duty for the new lease, a credit is given for any lease duty paid for the holding over period included in the lease.

### Exercise of option and subsequent lease

Under section 241(7) of the *Duties Act 2001*, a liability for lease duty arises for an option contained in a lease or occupancy right when the option is exercised. Duty is imposed in relation to the option period. Liability also arises for the new lease when it is entered into. This means that additional duty will be imposed for the option period where the new lease that is entered into includes that period.

The *Duties Act 2001* is to be amended to ensure that, in the assessment of duty for the new lease, a credit is given for any lease duty paid for the option.

### Inclusion of a nexus for mortgages of premium funding agreements

Under the *Duties Act 2001*, mortgage duty applies to mortgages if the secured property is located wholly or partly in Queensland.

Under a premium funding agreement, the premium funder lends the premium amount to the insured. As security for the loan, the insured generally assigns their interest in the policy and any amounts payable under it, including any premium refund. Premium funding agreements can relate to several policies with different insurers in more than one jurisdiction giving rise to nexus issues for mortgage duty. In particular, liability to duty can arise in more than one jurisdiction.

The *Duties Act 2001* is to be amended to specify that, for property that is an insurance policy or a right to receive an amount under a policy which is

secured under a premium funding agreement, the nexus for mortgage duty purposes is the place where the insured resides.

*Endorsement of instruments by mortgagees registered as self assessors prior to the lodgement of the mortgagee's return with the Commissioner*

Under the *Duties Act 2001*, registered self assessors account for duty by periodic return and are required to endorse the relevant instruments to which each return relates. However, for a self assessor who is a party to a transaction, it is an offence under section 480 of the *Duties Act 2001* to endorse an instrument as having been stamped prior to the duty and any assessed interest or penalty tax having been paid with the return.

Many self assessors are financial institutions. To enable settlements of conveyances and mortgages, these institutions sometimes need to endorse instruments when they are put in funds by their customer for the duty but before lodgement of their return.

Section 480 is to be amended to enable a self assessor who is a financial institution to endorse a mortgage under which the financial institution is the mortgagee following receipt of the duty and any assessed interest and penalty tax but before paying these amounts to the Commissioner. Section 455 will continue to ensure that the financial institution must pay the duty, assessed interest and penalty tax when lodging the return.

*Delaying the requirement for self assessors to endorse mortgage documents upon a further advance*

Section 455 of the *Duties Act 2001* provides that a self assessor registered under chapter 12, part 2 or 3, must lodge returns, pay duty and any assessed interest and penalty tax to the Commissioner with the return and endorse the instruments to which each return relates. It is an offence if a self assessor fails to comply with these requirements.

Under the *Stamp Act 1894*, a practice developed where particular financial institutions were approved to delay the endorsement of mortgage documents in relation to any further advances made under a mortgage. In these circumstances, the mortgage document was to be endorsed for duty paid on all previous further advances prior to leaving the control of the self assessor, such as when a mortgage was released or transferred. However, the self assessor continued to account for duty on the further advances when lodging their periodic returns. This practice has been continued by administrative arrangement under the *Duties Act 2001*.

The *Duties Act 2001* is to be amended to give legislative effect to the current practice and to clarify when the documents will be taken to be properly stamped in these circumstances.

*Excluding interest payments from exempt payments in relation to hire purchase agreements*

Under section 343 of the *Duties Act 2001*, commercial hirers are required to assess hire duty on the total hiring charges received in a month. Under section 333(2), interest payments are regarded as exempt payments and are therefore not included in hiring charges.

However, there are practical difficulties in dissecting the interest payment from the monthly charges for hire purchase agreements. Over the life of an agreement, the interest component of the monthly charges varies depending on the amount of principal outstanding and the number of days per month. This means that, for each month of an agreement, the interest component will be a unique percentage of the total monthly payment.

For efficiency, section 333(2) of the *Duties Act 2001* is therefore to be amended to include as hiring charges for a hire purchase agreement, the interest payments made under the agreement. However, interest payments will still remain an exempt payment for credit purchase agreements.

These amendments will apply to new agreements entered into from the date of proclamation of the commencement of the amendments with existing agreements continuing to be taxed on the current interest exclusive basis. This will allow a sufficient time for implementation and avoid the existing agreements having to be reviewed to include the duty newly payable on the interest charges.

*Clarifying a condition for duty exemption for corporate reconstructions*

Under the *Duties Act 2001*, exemptions for particular duties are provided in sections 405, 406 and 408 for particular transactions carried out for a corporate reconstruction.

To obtain an exemption under section 406, the condition in section 406(2)(c)(ii)(B) must be satisfied. The *Duties Act 2001* is to be amended to ensure that section 406(2)(c)(ii)(B) operates as intended.

*Corporate reconstruction exemption – reassessment provisions*

Under the *Duties Act 2001*, exemptions for particular duties are provided in sections 405, 406 and 408 for particular transactions carried out for a corporate reconstruction. To qualify for exemption, certain conditions must be satisfied, including that the companies remain members of the

same corporate group for three years following the transaction. However, there are some limited exceptions to the continuing association requirement. Amendments are being made to ensure the proper operation of two of these exceptions.

#### Cessation of membership of corporate group

As many corporate reconstructions rationalise the corporate group structure by eliminating unnecessary companies, deregistration of either the transferor or transferee company under the *Corporations Act 2001 (Cwlth)* following the transaction does not result in loss of the corporate reconstruction exemption. This exception does not recognise other processes whereby a company registered under another law may similarly cease to exist.

The *Duties Act 2001* is to be amended to clarify that the continuation of the group membership condition will not apply where a company ceases to exist, including by deregistration under the *Corporations Act 2001 (Cwlth)*.

#### Property held by a company leaving the corporate group within three years

In recognition of the fact that there will be no significant duty avoidance if one of the companies leaving the corporate group holds minimal dutiable property, a reassessment will not be made where less than 5% of the property of the company is dutiable property. However, this provision currently only relates to property that is directly held by the company leaving the group and does not include property in which the company may have an indirect interest. For example, dutiable property held by a subsidiary of the company leaving the group could not be taken into account when determining whether a reassessment of duty should occur.

The *Duties Act 2001* is to be amended to ensure that, when determining whether a reassessment should occur, all of the property in which the company leaving the corporate group has an interest is considered.

#### Clarifying that a reference to salary package includes employment package

Institutions which are registered as exempt institutions under the *Duties Act 2001* may qualify for an exemption from duty in relation to particular transactions if certain conditions are met. One condition required to be satisfied is that the relevant property must be used for a qualifying exempt purpose as set out in section 415 of the Duties Act. However, under section 415(2) if the property is used as part of a salary package of an officer or employee of the relevant institution, the property is not used for a qualifying exempt purpose.

Section 415(2) is to be amended to clarify that property used as part of an employment package of an officer or employee of an institution is also excluded from the definition of qualifying exempt purpose.

*The definition of de facto relationship instrument*

Under the *Stamp Act 1894*, duty relief applied to a de facto relationship instrument, being an instrument to the extent that it was, or was made under, an order of the Court under the *Property Law Act 1974*.

Under section 424 of the *Duties Act 2001*, similar relief applies to de facto relationship instruments. However, section 422 of the Act defines a de facto relationship instrument in a way that limits the relief to de facto relationship instruments which provide for the transfer of de facto relationship property.

Section 422 is to be amended to remove the limitation and to clarify that the exemption will apply to a de facto relationship instrument to the extent that it deals with de facto relationship property.

*Duty amendments flowing from Financial Services Reform Act 2001 (Cwlth)*

The *Duties Act 2001* is to be amended to displace the operation of section 1070A of the *Corporations Act 2001 (Cwlth)* as amended by the *Financial Services Reform Act 2001 (Cwlth)* in certain circumstances. These are for transfer duty in relation to interests in registered managed investments schemes and for mortgage duty on mortgages over marketable securities.

*Preventing windfall gains for stamp duty*

Section 80A of the *Stamp Act 1894* specifies matters about which the Commissioner must be satisfied before making a refund of stamp duty paid, or purportedly paid, under that Act. This section continues to apply in relation to matters under the *Stamp Act 1894* notwithstanding that Act's repeal. The intention of section 80A is to ensure that the person who ultimately bore the incidence of tax receives the benefit of the refund. Therefore, where a taxpayer has received an amount from another person for the stamp duty being refunded, the taxpayer must reimburse that other person. This prevents windfall gains.

Section 80A currently refers only to amounts being refunded by the Commissioner but there are instances where a refund of stamp duty may be required to be made by the State. The principles regarding preventing windfall gains are the same in both cases. Therefore, the *Duties Act 2001* is being amended to ensure that, where a refund of stamp duty is being made

by the State, the person receiving the refund must reimburse any person from whom an amount was received for the stamp duty. The combined operation of section 80A of the *Stamp Act 1894* and this new provision will ensure that no windfall gains arise in any circumstances where a person is entitled to a refund of stamp duty, whether that entitlement arose under the *Stamp Act 1894* (for example, following an objection or appeal, or a reassessment under section 80) or otherwise (for example, under an action for restitution or in relation to the invalidity of the law).

These requirements apply for any refunds that the State is required to, or may, make on or after the commencement of the new provision, regardless of when the overpayments occurred. For instance, where, on or after the commencement of the provision, a court decides that a person has overpaid duty under the *Stamp Act 1894* and that the overpayment was made to the State, the State can only make the refund where the Commissioner is satisfied as required under the section.

#### *Minor technical and consequential amendments*

There are a number of minor technical amendments required to clarify the operation of the *Duties Act 2001*.

#### ***Fuel Subsidy Act 1997***

##### *Requiring the provision of information and documents*

Although authorised persons appointed by the Commissioner under the *Fuel Subsidy Act 1997* can require the provision of information and documents in conducting investigations and inspections, these powers are also necessary for other purposes in administering the Act. The *Fuel Subsidy Act 1997* is therefore to be amended to ensure that the Commissioner can require the provision of information and documents.

##### *Notification of operation of a storage site by a licensed bulkend user (BEU)*

Under the *Fuel Subsidy Act 1997*, eligible licensed BEUs may claim the fuel subsidy in advance through the provisional subsidy scheme. Under that scheme, BEUs receive a provisional subsidy before 1 October for the BEU fuel expected to be used during that financial year. However, a BEU's commencement or cessation of operation of a storage site may impact on the fuel expected to be used by the BEU.

The *Fuel Subsidy Act 1997* currently requires a BEU to notify the Commissioner upon cessation of operation of a storage site but not upon commencement of operation of a storage site. The *Fuel Subsidy Act 1997* is therefore to be amended to extend the notification requirement.



## **Alternatives to the Bill**

The policy objectives require statutory amendment to give them ongoing effect.

## **Estimated Cost for Government Implementation**

Any additional administrative costs are not expected to be significant.

## **Consistency with Fundamental Legislative Principles**

### *Retrospective operation of amendments*

The following amendments to the *Duties Act 2001* will commence retrospectively on 1 March 2002, being the date of commencement of that Act.

- Broadening the definition of de facto relationship instrument (section 422).
- Providing a credit for duty paid on an option granted pursuant to a lease in some cases (section 243).
- Extending securitisation exemptions to cover a full redemption of a mortgage backed security and the securitisation of financial assets receivables (sections 122, 130A-130I, 289A).
- Providing further transitional provisions regarding the payment of lease duty (sections 530 & 531).

These amendments are beneficial or neutral to taxpayers as they reduce the duty otherwise payable under the *Duties Act 2001*. The first amendment continues the position that previously existed under the *Stamp Act 1894* and broadens the scope of the exemption. The second amendment continues the assessing practice which existed under the *Stamp Act 1894*. The extension of the securitisation exemptions was publicly notified by the Office of State Revenue by publishing a ruling and practice direction on the Office website. A number of minor consequential amendments to give effect to the extension of the securitisation exemptions are also required to be made and will also commence retrospectively on 1 March 2002.

The amendments relating to the lease duty transitional provisions ensure that sufficient provision is made for all relevant lease duty transactions by providing a credit for duty paid under the *Stamp Act 1894* or by clarifying whether the *Stamp Act 1894* or the *Duties Act 2001* applies to a particular

transaction. It is necessary for these amendments to commence retrospectively to ensure that there is no legislative gap in the application of the *Stamp Act 1894* and the *Duties Act 2001*, which would result in duty applying twice to the same lease period.

The retrospective commencement of these provisions is therefore not considered to raise any fundamental legislative principle issues.

#### *Protection against self-incrimination*

Under proposed new section 138A of the *Fuel Subsidy Act 1997*, a person may not fail to comply with an information or lodgement requirement on the basis that complying may incriminate the person. However, as the principle in abrogating the self incrimination privilege is to ensure that the Commissioner can access all relevant information to properly determine a licensee's fuel subsidy entitlement, any information so obtained cannot be used in civil or criminal proceedings except where the falsity or misleading nature of the information is relevant.

This approach recognises that licensees often uniquely possess the information necessary to enable the Commissioner to determine whether or not they have properly satisfied their obligations, so that any refusal to provide that information would preclude the accurate determination of the licensee's fuel subsidy entitlement. It is therefore considered to strike an appropriate balance between revenue protection for the State and licensees' rights.

#### *Other provisions*

The remaining amendments included in the *Revenue Legislation Amendment Bill 2002* are not considered to raise any fundamental legislative principle issues.

### **Consultation**

Consultation was undertaken with the Australian Securitisation Forum regarding the amendments relating to securitisation changes.

In relation to the amendments to the *Duties Act 2001* relating to wholesale unit trusts and related persons, limited consultation was undertaken with industry representatives and persons who either recently raised specific policy issues or commented on related issues in the course of consultation on the *Duties Bill 2001*.

Consultation was also undertaken with the Australian Finance Conference in relation to the removal of the duty exemption for the interest

component of monthly charges under hire purchase agreements and the commencement of the amendments.

Consultation on the other issues included in the Bill was considered either to be necessary or inappropriate.

## NOTES ON PROVISIONS

*Clause 1* cites the short title of this Bill.

*Clause 2* specifies the dates on which various provisions in this Bill have commenced, or will commence.

*Clause 3* provides that part 2 and the amendments contained in the Schedule amend the *Duties Act 2001*.

*Clause 4* inserts new section 7A in the *Duties Act 2001* which clarifies the duty treatment of interests in registered managed investment schemes under that Act by declaring those interests to be excluded matters for section 5F of the *Corporations Act 2001 (Cwlth)*.

*Clause 5* amends section 9 of the *Duties Act 2001* to clarify the transfer duty treatment of dutiable transactions that are the statutory vesting of dutiable property where the vesting legislation contains a provision regarding the continuing status of the entity in which the property was previously vested. The provision applies without limiting the meaning of a vesting under statute law under section 9(1)(e).

*Clause 6* amends section 23 of the *Duties Act 2001* to provide a credit for transfer duty paid on an acquisition of an option to purchase dutiable property where that property is later acquired under the option. However, the credit will only be available where the option agreement provides for the consideration paid for the option to form part of the consideration for the acquisition of the dutiable property on the exercise of the option.

### *Example*

*X obtains from Y an option to purchase vacant land owned by Y for \$100,000. X pays \$5,000 as consideration for the acquisition of the option and pays \$75 in transfer duty on the option. Under the option agreement, should X exercise the option, a credit of \$5,000 (being the consideration paid for the option) will be allowed against the consideration payable for*

*the land, so that X need only pay \$95,000. X subsequently exercises the option on this basis.*

*When calculating the transfer duty payable on the acquisition of the land, duty will be calculated on \$100,000 (ie. \$2,350). A credit of \$75 will then be allowed, so that the balance of the duty payable on the later transaction will be \$2,275.*

*Clause 7 amends section 24(1)(d) of the Duties Act 2001 to ensure its consistency with section 9(1)(e) of the Act, as proposed to be amended by the Treasury Legislation Amendment Bill 2002.*

*Clause 8 substitutes a new section 25 in the Duties Act 2001 to specify the arrangements for the payment of transfer duty on dutiable transactions which are the issue of a deed of grant or the acquisition of a new right that is a post-Wolfe freeholding lease.*

*Clause 9 amends section 46(5) of the Duties Act 2001 to clarify this subsection applies to determine the value of a partner's partnership acquisition in respect of a new partner's partnership acquisition only on formation of the partnership. For any subsequent partnership acquisitions by the person or existing partners, section 46(6) of the Duties Act 2001 will apply to determine the value of the partnership acquisition.*

*A new subsection (5A) is inserted to define when a person is a new partner for the purposes of section 46(5). There are two main circumstances where a person will be a new partner.*

*The first circumstance where a person will be a new partner is covered by subsection (5A)(a) which provides that a person is a new partner if the person was not in partnership with any partners of the partnership immediately before the partnership's formation.*

*Example*

*A and B are in partnership (AB) and agree to admit C into the partnership. On C's admission, a new partnership is formed consisting of A, B and C (ABC). Prior to C's admission, C did not have any partnership interest with either A or B.*

*Section 46(5) applies to determine the value of a new partner's partnership acquisition on formation of the new partnership, ABC. C makes a new partner's partnership acquisition on formation of the partnership as C was not in partnership with either A or B, immediately prior to the formation of the ABC partnership. A and B do not make a new partner's partnership acquisition on formation of the ABC partnership as A and B were in partnership with each other immediately prior to the*

*formation of the ABC partnership. Section 44(2)(b) could apply for A and B if their partnership interest increases, including in the circumstances mentioned in section 44(2)(b)(i)-(iii).*

The second circumstance where a person will be a new partner is covered by subsection (5A)(b) which provides that a person is also a new partner if the person becomes a partner in an additional partnership. This recognises that persons may be in an existing partnership and create a new partnership which is in addition to the existing partnership. In these circumstances, the person is a new partner of the additional partnership provided the conditions in subsection (5A)(b) are satisfied and subsection (5B) has no application.

*Example*

*A and B are in partnership (AB) and decide to form a second partnership (AB2). On formation of the partnership AB2, A and B contribute property to AB2.*

*Section 46(5A)(a) does not apply to either A or B as both were in partnership with each other immediately before formation of the AB2 partnership. However, section 46(5A)(b) will apply to A and B as A and B become partners in an additional partnership ie AB2.*

*Consequently, section 46(5) will apply to both A and B's contributions as both A and B make new partner's partnership acquisitions on formation of partnership AB2.*

New subsection (5B) provides that subsection (5A)(b) will not apply in certain circumstances. A person's interest in an additional partnership will not be a new partner's partnership acquisition on formation of a partnership if the person was a partner in an existing partnership and a new partnership has resulted due to a change in membership, for example where a new member joins the partnership.

*Example*

*A and B carry on two partnerships AB1 and AB2. A and B agree to admit C to the AB1 partnership. On C's admission, the AB1 partnership ceases to exist and a new partnership ABC is formed. There is no change to the AB2 partnership. Prior to C's admission, C had no prior partnership relationship with either A or B.*

*Section 46(5A)(a) applies to C as C was not in partnership with either A or B immediately prior to the formation of the ABC partnership. A and B however do not make a new partner's partnership acquisition on formation of the ABC partnership. While A and B satisfy section 46(5A)(b) as each*

*becomes a partner in an additional partnership ie ABC, section 46(5B) will apply to exclude the operation of section 46(5A)(b) in these circumstances.*

*Therefore, section 46(5) will only apply to C as C makes a new partner's partnership acquisition on formation of the partnership ABC.*

*Clause 10 amends section 61 of the Duties Act 2001 by substituting a new subsection (3). The new subsection provides that, in addition to being satisfied of the other conditions previously specified, the Commissioner must also be satisfied that the trust interests of related persons in a land holding trust will be used independently and not for a common purpose before the discretion in that subsection can be exercised. Also, the discretion to regard persons as not being related will not be available to persons related under section 61(1)(d), that is, related bodies corporate.*

*Clause 11 inserts new section 81A in the Duties Act 2001 to allow trust interests of a qualified holder to be disregarded when determining whether a majority trust acquisition has been made in a wholesale unit trust, subject to the conditions in section 81A(1) being satisfied. However, the new section does not prevent the aggregation of trust interests held through the qualified holder or other indirect trust interests.*

#### *Example*

*A Co Limited acquires a 20% trust interest in XYZ Property Fund. XYZ Property Fund is a wholesale unit trust, as defined in section 72, managed by XYZ Corporation Limited. XYZ Corporation Limited is the funds manager of XYZ Property Fund (see section 73).*

*B Co Limited is trustee of a listed unit trust and holds a 40% trust interest in XYZ Property Fund in its capacity as trustee for that listed unit trust. A Co Limited, B Co Limited and XYZ Bank Limited are group companies as defined by section 400. But for section 81A, A Co Limited would have made a majority trust acquisition in XYZ Property Fund under section 80. However, as B Co Limited is a qualified holder under section 76(1)(a) and there is no arrangement to avoid the imposition of duty, B Co Limited's interest in XYZ Property Fund may be disregarded. If, however, A Co Limited is a beneficiary of the listed unit trust for which B Co Limited is trustee A Co Limited's trust interest in XYZ Property Fund is still to be regarded when determining whether a majority trust acquisition has been made by A Co Limited in XYZ Property Fund. Similarly, the interests of any shareholder of A Co Limited who is also a unitholder in the listed unit trust can be aggregated in determining if a majority trust acquisition has been made.*

*Clause 12* amends section 93 of the *Duties Act 2001* to clarify that the home concession applies only to that part of the residential land transferred, or agreed to be transferred, that relates to the home in which the applicant will reside.

*Clause 13* omits section 122 of the *Duties Act 2001*. This omission is a consequence of the insertion of new division 3C in chapter 2, part 13 of the *Duties Act 2001* which includes the provisions previously contained in section 122.

*Clause 14* inserts new divisions 3B and 3C into chapter 2, part 13 of the *Duties Act 2001*.

Division 3B provides new transfer duty exemptions for transactions for the various securities and interests created in relation to the securitisation of financial assets. The key concepts for the operation of the exemptions are found in the definitions of asset-backed security, financier, financial asset, pool of financial assets and authorised investment.

New section 130C provides a definition of asset-backed security. This definition includes both equity and debt securities created or issued under a securitisation structure. Further, an asset-backed security includes a security that is created or issued with or without a written instrument.

Under new section 130C(1)(b), certain types of securities issued by a corporation (including a corporate trustee), are included if the payments under the security are received by the corporation substantially from a financial asset or pool of financial assets as defined. New section 130C(1)(b)(ii) provides some further flexibility in this requirement by allowing another extent to be prescribed by regulation. Any other extent prescribed under this provision will be of benefit to taxpayers, as it will extend the operation of the exemption.

New section 130D defines who is a financier.

New section 130E defines a financial asset.

New section 130F defines a pool of financial assets. Under this section, a pool of financial assets must consist solely or substantially of certain financial assets. New section 130F(2) facilitates some flexibility in these provisions by allowing another extent to be prescribed by regulation. Like section 130C(1)(b)(ii), anything prescribed by regulation under this provision will be of benefit to taxpayers, as it will extend the operation of the exemption.

New section 130G defines authorised investment for a pool of financial assets.

New section 130H provides exemption from transfer duty for particular transactions relating to asset-backed securities.

Division 3C provides exemption from transfer duty for particular transactions relating to mortgage-backed securities.

New section 130I(1) provides an exemption from transfer duty for a creation of a trust of dutiable property, or a trust acquisition, where these dutiable transactions are required for creating, issuing, marketing, acquiring or securing a mortgage-backed security. This exemption was previously contained in section 122 of the *Duties Act 2001* which is omitted by clause 11 of the Bill. New section 130I(2) provides an exemption from transfer duty for a trust surrender that is required to give effect to the redemption of a mortgage-backed security. Mortgage-backed security is defined in section 286 of the *Duties Act 2001*.

*Clause 15* inserts new division 3A into chapter 2, part 13 of the *Duties Act 2001*.

New section 130A provides exemption from transfer duty for certain transfers of property from a person to a custodian for a trustee of a public superannuation entity. The exemption will apply only where the transfer is made under an agreement entered into between the person as vendor and the trustee as purchaser and the property acquired is fund property. Further, transfer duty must have been paid on the agreement between the person and the trustee. The provision applies only where the custodian directly holds the property for the trustee of the public superannuation entity and will not apply to sub-custodian arrangements. This is made clear in the definition of custodian which is inserted into the Dictionary by clause 42 of the Bill.

New section 130B provides particular exemptions for transfers, or agreements for the transfer, of fund property of public superannuation entities between trustees and custodians of the fund. The new section also prescribes conditions which ensure that the exemption may not be used to avoid duty. Similarly, the provision applies only where the custodian directly holds the property for the trustee of the public superannuation entity and will not apply to sub-custodian arrangements. This is made clear in the definition of custodian which is inserted into the Dictionary by clause 42 of the Bill.

*Clause 16* inserts new section 130I of the *Duties Act 2001* which is inserted with effect on 1 March 2002 by clause 14 of the Bill. New subsection (1AA) provides exemptions from transfer duty for a transfer of a mortgage-backed security or a mortgage or pool of mortgages for the



purpose of creating, issuing or securing a mortgage-backed security. The remaining subsections provide for the renumbering of section 130I and certain minor consequential changes.

*Clause 17* amends section 136 of the *Duties Act 2001* to extend the exemption from duty on certain deeds of grant issued under the *Land Act 1994* to deeds issued from a grazing homestead perpetual lease issued under the *Land Act 1962* or from a perpetual lease issued for pastoral purposes under the *Land Act 1994*. The amendment also gives effect to current assessing practice of collecting duty on post-Wolfe freeholding leases rather than on the subsequent issue of a deed of grant.

*Clause 18* replaces section 146 of the *Duties Act 2001* to ensure that the exemption from transfer duty is only available for the grant of a lease of land where the grant is exempt from lease duty under section 244 of the *Duties Act 2001* and there is no premium, fine or other consideration payable for the grant.

*Clause 19* amends section 153 of the *Duties Act 2001* to provide that a transfer of an interest in land to the transferee's spouse that is exempt under section 151 of the *Duties Act 2001* does not constitute a disposal of the land for the purposes of deciding whether a reassessment of the home concession is required under section 153. However, new section 153(3) provides that a reassessment will be required if there is a later disposal of an interest in the land within 12 months following the transferee's original date of occupation of the residential land. In this case, the section will apply as though the earlier transfer to the spouse had not occurred. Similar arrangements for reassessing duty apply where the transferee disposes of an interest in the land and there was an earlier transfer to the spouse and new subsection 154(2A) applies.

*Clause 20* amends section 154 of the *Duties Act 2001* to provide that a transfer of an interest in land to the transferee's spouse that is exempt under section 151 of the *Duties Act 2001* does not constitute a disposal of the land for the purposes of deciding whether a reassessment of the home concession is required under section 154. However, new section 154(4) provides that a reassessment will be required if there is a later disposal of an interest in the land prior to the transferee's occupation of the residential land. In this case, the section will apply as though the earlier transfer to the spouse had not occurred.

*Clause 21* replaces section 156 of the *Duties Act 2001* to provide for reassessment of transfer duty for a dutiable transaction assessed on the basis of a concession under part 11 or an exemption under new part 13, division 3A inserted by this Bill. Section 156(1)(b) provides that the

section applies if the fund or trust is not a complying superannuation fund or a public superannuation entity at the first anniversary of the transaction. Section 156(2) imposes an obligation on the trustees of the fund or trust to notify the Commissioner, specifies the time period in which the notice must be given and provides that the required instruments are to be lodged for reassessment of the transfer duty. Section 156(3) provides that the Commissioner must make a reassessment as if the concession or exemption had never applied.

*Clause 22* amends section 164 of the *Duties Act 2001* by omitting section 164(3) and inserting a new section 164(3) and (4) to specify when the Commissioner can exercise a discretion to regard persons as not being related. New subsection (3) specifies similar matters to those currently provided in section 164(3)(a). New subsection (4) modifies the discretion currently provided in section 164(3)(b) to ensure that the Commissioner must also be satisfied that the interests of related persons in a land rich corporation will be used independently and not for a common purpose. Also, the discretion in subsections (3) and (4) will not apply in relation to persons related under section 164(1)(d), namely related bodies corporate.

*Clause 23* replaces section 232(1) of the *Duties Act 2001* to include in the definition of occupancy right additional conditions relating to the cost and the term of the right.

*Clause 24* inserts new subsections (3) and (4) into section 243 of the *Duties Act 2001* to provide a credit for lease duty paid for an option where a new lease or occupancy right is entered into that is in substantial conformity with the option and the term of the lease or right includes the option period.

New subsections (5) and (6) are also inserted to provide a credit for lease duty paid for a holding over period where a new lease or occupancy right is entered into in relation to the premises and the term of the lease or right includes the holding over period.

*Clause 25* amends section 251 of the *Duties Act 2001* which clarifies the operation of the section in relation to marketable securities by declaring section 251(1)(a) of the Act to be a displacement provision for section 5G of the *Corporations Act 2001 (Cwlth)*.

In addition, clause 25 amends section 251 to specify the nexus for property that is an insurance policy or a right to receive an amount under an insurance policy which is security for a premium funding agreement.

*Clause 26* amends section 286 of the *Duties Act 2001* to clarify that a mortgage-backed security includes a security that is created or issued with or without a written instrument.

*Clause 27* inserts new section 289A into the *Duties Act 2001* to provide a mortgage duty exemption for certain mortgages relating to asset-backed securities.

Under new section 289A(c), a further class of mortgage to which the exemption applies may be prescribed by regulation. Any use of the regulation making power will be for the benefit of taxpayers as it will extend the operation of the exemption. While it provides some flexibility in administration of this exemption, it also provides sufficient certainty as the provision contains a description of the type of instrument that would fit into this class.

*Clause 28* amends section 291 of the *Duties Act 2001* to provide that a transfer of an interest in land to the home borrower's spouse that is exempt under section 151 of the *Duties Act 2001* does not constitute a disposal of the land for the purposes of deciding whether a reassessment of the home mortgage concession is required under section 291. However, new section 291(5) provides that a reassessment will be required if there is a later disposal of an interest in the land prior to or within 12 months following the home borrower's original date of occupation of the land. In this case, the section will apply as though the earlier transfer to the spouse had not occurred.

*Clause 29* amends section 333 of the *Duties Act 2001* to ensure that interest payments are not exempt payments for hire purchase agreements. The clause also clarifies that interest payments will remain exempt payments for credit purchase agreements and for hire purchase agreements made before the commencement of this subsection .

*Clause 30* replaces section 406(2)(c)(ii) of the *Duties Act 2001* with new section 406(2)(c)(ii) and (iii) to clarify the circumstances in which the corporate reconstruction exemption is not available.

*Clause 31* amends section 412(4)(a) of the *Duties Act 2001* to provide that the requirement in section 412(2) of the Act for the transferor or transferee to remain part of the same corporate group for a specified period will not apply where one of them ceases to exist, provided the other conditions in subsection (4)(a) are satisfied.

In addition, clause 31 amends section 412(4)(c) of the *Duties Act 2001* to ensure that both direct and indirect property holdings of a company are

taken into account when deciding whether or not a reassessment of duty should be made under this section.

*Clause 32* amends section 415(2) of the *Duties Act 2001* to ensure that property used as part of an employment or salary package of an officer or employee of an exempt institution is excluded from the definition of qualifying exempt purpose in section 415(1)(a) to (h).

*Clause 33* amends section 422 of the *Duties Act 2001* to ensure that exemption from duty under section 424 is available for de facto relationship instruments to the extent that they deal with de facto relationship property.

*Clause 34* inserts a new section 446A into the *Duties Act 2001* which allows a self assessor who is a financial institution to apply to the Commissioner for permission to defer the endorsement of mortgages in relation to further advances. If the Commissioner allows the application, the conditions that must be complied with in relation to the deferral of the endorsement may be set out in the self assessor's notice of registration. An application under this section may be made when applying for registration or subsequently.

*Clause 35* amends section 455(1)(c) of the *Duties Act 2001* to clarify the time in which instruments must be endorsed under the section. In addition, new subsection (4) provides for deferral of endorsement by self assessors registered under section 446A.

*Clause 36* replaces section 480 of the *Duties Act 2001* to make special provision for financial institutions which are registered as self assessors under chapter 12, part 2. Where the financial institution is a mortgagee under a mortgage, it may endorse the mortgage following receipt of the duty and any assessed interest and penalty tax by the mortgagee but prior to paying these amounts to the Commissioner. Section 455 continues to impose an obligation on the financial institution to pay the duty, assessed interest and penalty tax when lodging the return.

*Clause 37* amends section 491 of the *Duties Act 2001* to clarify when an instrument will be properly stamped if a self assessor, who is permitted to do so, has deferred the endorsement of that instrument under section 455(4).

*Clause 38* inserts section 506A into the *Duties Act 2001* to specify matters that are relevant in the State making a refund of stamp duty paid, or purportedly paid, under the *Stamp Act 1894*. This section operates together with section 80A of the *Stamp Act 1894*, which specifies the matters that are relevant in the Commissioner making a refund. Before a refund can be

made by the State, even if a court finds that there has been an overpayment of stamp duty to the State, the Commissioner must be satisfied of the matters in subsection (2). Section 506A applies to any refund of stamp duty that the State is required to, or may, make on or after commencement of the section. The time during which the overpayment occurred is not relevant.

*Clause 39* amends section 530 of the *Duties Act 2001* to extend the application of the repealed *Stamp Act 1894* to cover various additional circumstances where liability for lease duty can arise under both the repealed Act and the *Duties Act 2001* in relation to the one tenancy.

*Clause 40* amends section 531 of the *Duties Act 2001* to ensure that a credit for duty paid under the repealed *Stamp Act 1894* is given where there is, after the commencement of the *Duties Act 2001*, an exercise of an option that is contained in a lease that was chargeable with duty under the repealed Act.

*Clause 41* amends Schedule 2 of the *Duties Act 2001* to ensure its consistency with section 9(1)(e) of the Act, as proposed to be amended by the *Treasury Legislation Amendment Bill 2002*.

*Clause 42* amends Schedule 6 of the *Duties Act 2001*.

*Clause 43* provides that Part 3 amends the *Fuel Subsidy Act 1997*.

*Clause 44* substitutes a new heading for chapter 3, part 2, division 1, subdivision 6 of the *Fuel Subsidy Act 1997*, to reflect the insertion of new section 34J.

*Clause 45* inserts a new section 34J in the *Fuel Subsidy Act 1997* to impose an obligation on a licensed bulk end user to notify the Commissioner when starting to use a new storage site. Notification must be provided when the bulk end user next lodges an annual return, or a claim under chapter 3, part 2, division 2 of the Act, whichever is the earlier.

*Clause 46* inserts new sections 138A and 138B in the *Fuel Subsidy Act 1997* to enable the Commissioner to require the provision of information or documents.

It is an offence to fail to provide the information or documents and to make false or misleading statements to the Commissioner. Although a person cannot refuse to provide the information or documents required on the basis that it may incriminate them, the use of the information is limited.

*The Schedule* makes a number of minor or consequential amendments to the *Duties Act 2001*.

