

REVENUE LEGISLATION AMENDMENT BILL 2004

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

To amend the *Duties Act 2001* to provide a duty concession, cease succession duty, modify the mortgage duty provisions following the abolition of mortgage duty in Victoria, reduce opportunities for duty avoidance, clarify the operation of the Act, ensure that the Act operates properly or aligns with arrangements under the repealed *Stamp Act 1894* and address technical matters.

To amend the *Fuel Subsidy Act 1997* to update the definition of “off-road diesel” to reflect recent Commonwealth legislation replacing the Commonwealth Diesel Fuel Rebate Scheme with the Energy Grants Credits Scheme.

To amend the *Land Tax Act 1915* to ensure that the definition of “retirement village” is consistent with that in the *Retirement Village Act 1999*.

Reasons for the Bill

Amendments to the *Duties Act 2001* will ensure that transfer duty applies to transfers of securities secured wholly or partly by property in Queensland consistently with the duty treatment of similar transfers under the repealed *Stamp Act 1894*. Amendments will also provide an exemption for the grant of certain rights under the *Mineral Resources Act 1989*, modify the mortgage duty provisions following the abolition of mortgage duty in Victoria, and provide a concessional duty rate for applications for registration, or transfer of registration, of vehicles under the conditional registration scheme administered by Queensland Transport. The corporate reconstruction exemption provisions will be amended to extend the application of the exemption where a corporate reconstruction involves the interposition of a new parent company between a number of existing

companies and their shareholders and clarify the corporate reconstruction exemption's application to certain transactions involving trusts. Finally, amendments will ensure that the repealed *Stamp Act 1894* continues to apply to an instrument made after the commencement day of the *Duties Act 2001* that increases the rent payable for a lease or licence made before that day and cease debts to the Crown for succession duty.

Other technical amendments to the *Duties Act 2001* clarify the effect of the mortgage duty anti-avoidance provisions, the manner in which the value of beneficiaries' interests is calculated for transfer duty, the interaction between the Commissioner assessment and self assessment provisions and the binding nature of private rulings regarding the corporate reconstruction exemption. The Bill will also amend the credit business duty provisions to continue the exemption from registration provided for pawnbrokers and amend the exemption for certain transactions under the *Housing Act 2003* to clarify its operation and ensure consistency with terminology used in other parts of the *Duties Act 2001*.

The *Fuel Subsidy Act 1997* will be amended to update the definition of "off-road diesel" to reflect recent Commonwealth legislation replacing the Commonwealth Diesel Fuel Rebate Scheme with the Energy Grants Credits Scheme.

The *Land Tax Act 1915* will be amended to ensure that the definition of "retirement village" is consistent with that in the *Retirement Village Act 1999*.

Achievement of Objectives

Duties Act 2001

Duty treatment of existing rights that are mortgages or other securities

Under the repealed *Stamp Act 1894*, transfers of mortgages and other securities were liable to stamp duty provided the security being transferred secured any property in Queensland or property with a sufficient connection to Queensland. Under the *Duties Act 2001*, the transfer, agreement to transfer, or vesting, of an existing right is a dutiable transaction. The term "existing right" is defined in the dictionary to the Act to include the right of a holder of a mortgage, charge, bill of sale or other security, over dutiable property. The term "dutiable property" is defined in the *Duties Act 2001* and covers specific types of property. This is more limited than the position under the *Stamp Act 1894*. The *Duties Act 2001* is

therefore to be amended to provide that the security may be over any Queensland property.

To reflect this change, a consequential amendment to the *Duties Act 2001* is also required to ensure the appropriate application of the nominal rate of transfer duty to transfers, or agreements for the transfer, of an existing right of a holder of certain mortgages.

Exemption for grant of certain mining rights

Under the repealed *Stamp Act 1894*, conveyance duty was imposed on the grant of a mining lease, mineral development lease and mining claims (“mining rights”) under the *Mineral Resources Act 1989*. Similarly, the *Duties Act 2001* imposes transfer duty on the grant of mining rights under the *Mineral Resources Act 1989*.

However, under the *Mining Act 1968*, an exemption from conveyance duty for grants of mining rights was provided by an Order in Council which lapsed following the repeal of that Act and the enactment of the *Mineral Resources Act 1989*. Despite the lapse of the exemption, the assessing practice of not imposing duty on these grants continued.

The *Duties Act 2001* will be amended with retrospective effect from 1 March 2002 to give effect to the assessing practice so that transfer duty is not imposed on a dutiable transaction that is the grant of a mining right under the *Mineral Resources Act 1989*. Duty will, however, continue to apply to transfers of existing mining rights.

Requirement to register as a credit provider – pawnbroker exemption

Section 299 of the *Duties Act 2001* provides that a “credit provider” is a person carrying on the business of entering into credit transactions, but does not include a licensed pawnbroker carrying on business under the *Pawnbrokers Act 1984*. The effect of the section is that pawnbrokers are not required to pay credit business duty on loans entered into in the course of pawnbroking.

The *Second-hand Dealers and Pawnbrokers Act 2003* repeals the *Pawnbrokers Act 1984* and the *Second-hand Dealers and Collectors Act 1984*. Section 299 will therefore be amended to reflect the new legislation.

Mortgage duty changes for multi-jurisdictional mortgages following abolition of mortgage duty in Victoria from 1 July 2004

Mortgage duty is currently imposed in all States. In Queensland, mortgage duty under the *Duties Act 2001* applies to a mortgage instrument

over property wholly or partly in Queensland. The duty is on the amount secured by the mortgage.

For a mortgage that secures property in Queensland and elsewhere (a “multi-jurisdictional mortgage”), mortgage duty is charged on a proportion of the amount secured by the mortgage. The proportion is worked out by comparing the value of Queensland property to the value of all property secured, other than property in the Australian Capital Territory, Northern Territory and outside Australia. That is, property located in a Territory or outside Australia is disregarded.

Example

Before 1 July 2004, a mortgage is executed securing property in the Australian Capital Territory, Victoria and Queensland. The property in each jurisdiction is of equal value. Upon the making of an advance of \$1 million secured by the mortgage, Queensland mortgage duty would be payable on \$500,000.

From 1 July 2004, mortgage duty will be abolished in Victoria. The *Duties Act 2001* is to be amended to treat secured property in Victoria in the same way that property in the Australian Capital Territory, Northern Territory and outside Australia is treated for calculating Queensland mortgage duty on a multi-jurisdictional mortgage over Queensland and Victorian property. That is, Victorian property will be disregarded in working out the proportion of the amount secured that will be subject to Queensland mortgage duty. This will ensure consistent treatment of property in any jurisdiction which does not impose mortgage duty.

Consequential amendments are also to be made to ensure that Victorian stampings prior to 1 July 2004 may be taken into account when determining the extent to which a mortgage or mortgage package has been properly stamped, protect the Queensland mortgage duty revenue base in relation to the stamping of a mortgage or mortgage package in advance and prevent the avoidance of Queensland mortgage duty through the use of collateral mortgages.

Conditional registration of vehicles

Chapter 9 of the *Duties Act 2001* imposes vehicle registration duty on applications to register, or transfer registration of, vehicles. Duty is imposed at the rate of 2% of the vehicle’s dutiable value. A “vehicle” is defined in the Dictionary to the Act as a vehicle that is required to be registered under the Transport Operations (Road Use Management) Act 1995, with some exclusions.

From 1 May 2003, changes to the *Transport Operations (Road Use Management – Vehicle Registration) Regulation 1999* introduced a new requirement to conditionally register non-complying vehicles that require access to the road network. Examples include road plant and some farm equipment. Previously, these vehicles were either exempt from registration or unable to be registered because they did not comply with registration requirements.

Registration of these vehicles will give rise to a liability to pay vehicle registration duty on the applications to register these vehicles and any subsequent applications to transfer registrations. As these vehicles are usually very valuable, the vehicle registration duty imposed would be significant and would have been an impediment to the successful implementation of the conditional registration scheme.

The *Duties Act 2001* will therefore be amended with effect from a date yet to be proclaimed so that concessional vehicle registration duty of \$25 applies to the conditional registration of a vehicle and transfers of the registration of conditionally registered vehicles. The targeted commencement date is 1 September 2004. As a transitional measure, an exemption from duty to 1 September 2004 is being provided by regulation made under section 508 of the *Duties Act 2001*.

As part of these arrangements, the current duty exemption for tractors and tractor-based mobile machinery will be removed, and the new concessional duty rate applied for these vehicles.

Corporate reconstruction - extension of the interposed company provisions

The *Duties Act 2001* provides duty exemptions for certain transactions carried out for a corporate reconstruction.

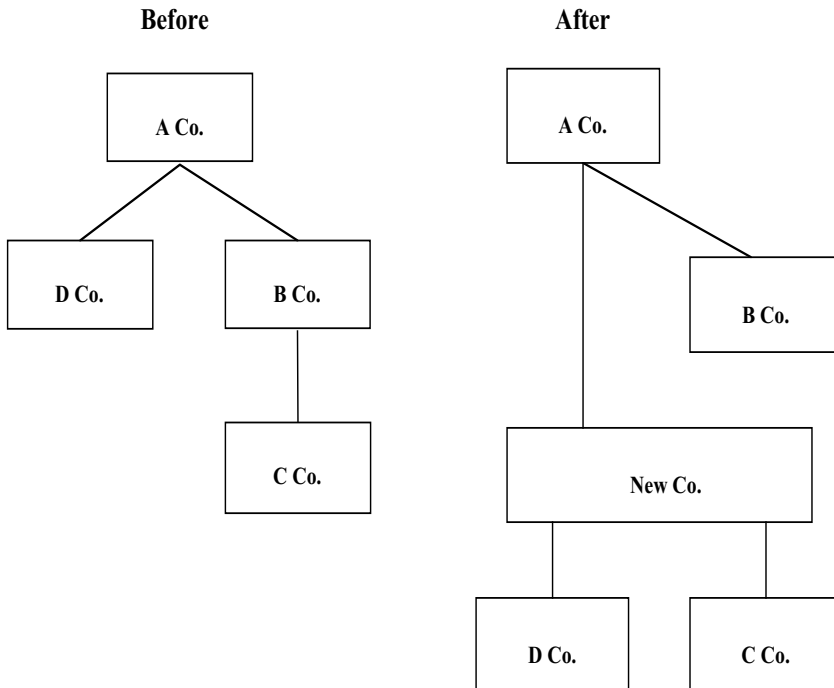
Under the *Duties Act 2001* (and formerly under the repealed *Stamp Act 1894*), relief from duty is provided where a company (a “new parent company”) is interposed between an existing company and its shareholders. Transfer duty is not imposed on the transfer of the shares in the existing company from the shareholders to the new parent company provided certain conditions are met.

Where more than one existing company is involved, there is a condition that the shareholders in the new company owned at least 90% of the issued shares in the existing companies, and had voting control of those companies before the acquisition by the new parent company.

The corresponding condition under the repealed *Stamp Act 1894* referred to both direct and indirect ownership and covered a wider range of

circumstances. In the following example, the exemption would have been available under the *Stamp Act 1894*, but is not available under the *Duties Act 2001*.

Example



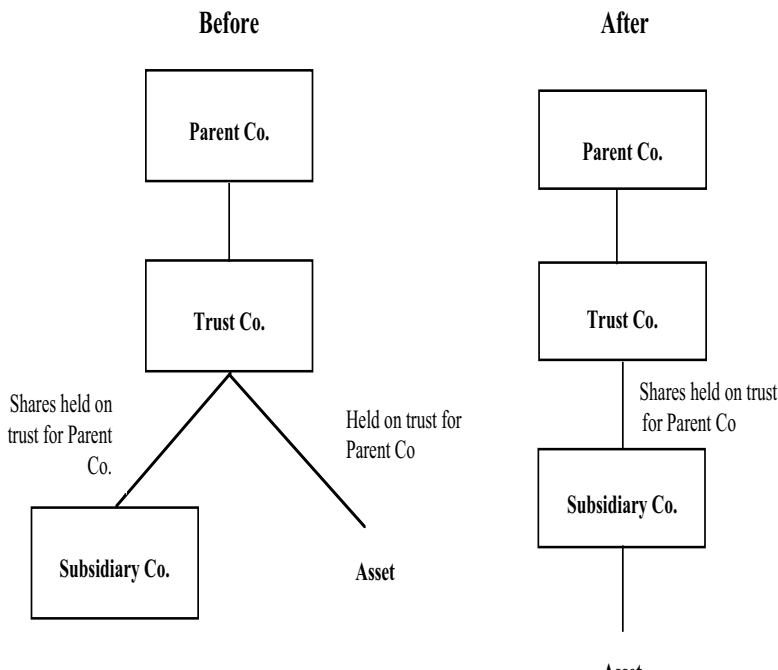
Before the transfer, A Co directly owned D Co and indirectly owned C Co. However, the *Duties Act 2001* condition requires that A Co directly owned both companies.

The *Duties Act 2001* will therefore be amended so that, consistent with the operation of the repealed *Stamp Act 1894*, the exemption applies to an interposition where the same shareholders who own shares in the new parent company, owned, directly or indirectly, at least 90% of the issued shares in the existing companies and had voting control of the existing companies.

Corporate reconstruction – transactions involving trustees

Under the *Duties Act 2001*, relief from duty is provided for corporate reconstructions involving the transfer of certain property between companies which are members of a corporate group, if certain conditions are met. This relief is extended by section 408 to allow certain trust assets to be aligned into a subsidiary company. As only entities within a corporate group are intended to benefit from this exemption, it is limited to situations in which the transferor holds at least 90% of the shares in the transferee as trustee for the unitholders or beneficiaries and the transferor, transferee and unitholders or beneficiaries are all group companies.

Example



One of the conditions of this exemption is that the transferee (that is, Subsidiary Co in the example) and the unitholders or beneficiaries (that is, Parent Co in the example) are group companies. This condition can never be satisfied, as a company whose shares are owned by another company in the capacity of trustee is not a “group company” for the purposes of the exemption.

Section 408 will be amended so that, for applying the corporate reconstruction provisions to a transaction under that section, the transferor is taken to beneficially own the shares in the transferee.

Corporate reconstruction – clarification of extent to which private rulings are binding

The corporate reconstruction provisions of the *Duties Act 2001* provide that, prior to a proposed transaction, the parties may apply to the Commissioner for a ruling whether the proposed transaction will qualify for a corporate reconstruction exemption. If the Commissioner decides, on the application, that the proposed transaction would be exempt, the Commissioner must assess nil duty on the transaction when it occurs.

However, the Commissioner is not bound by a ruling in relation to a corporate reconstruction where the circumstances lodged with the application change in a material way.

The *Duties Act 2001* is to be amended to clarify the scope of this qualification. In particular, the Commissioner will not be bound by the ruling if either:

- (a) any circumstances relating to the relevant transaction are materially different from the circumstances existing at the time the application for the ruling was made; or
- (b) between the ruling and the exemption application, there has been a legislative change or court decision that would have materially affected the Commissioner's ruling, had it taken effect or been given before the ruling.

Transactions effected under the *Housing Act 2003*

The *Duties Act 2001* provides an exemption from duty for certain instruments or transactions made or entered into under the *Housing Act 2003*. However, an amendment to the exemption provision to reflect the commencement of the *Housing Act 2003* on 1 January 2004 inadvertently resulted in the exemption no longer applying to certain instruments or transactions that would have been exempt before the amendment.

The exemption is to be amended to restore the duty treatment of instruments or transactions under the *Housing Act 2003* that applied prior to 1 January 2004. Amendments will also clarify that the exemption does not apply where financial or other assistance is not provided by the Department of Housing to the transferee under those instruments or transactions.

Self assessment

The *Duties Act 2001* requires the Commissioner to assess duty on dutiable instruments and transactions. Consequently, it imposes obligations on taxpayers to lodge with the Commissioner instruments that are subject to duty and other instruments, such as forms, relating to the transaction. Failure to comply with a lodgment requirement is an offence or can result in the imposition of penalty tax and unpaid tax interest.

However, many duties under the *Duties Act 2001* are self assessed. Parties to dutiable instruments and transactions, or an agent for the parties, may be permitted or required to register with the Commissioner as a self assessor under Chapter 12 of the Act. A self assessor lodges periodic returns and, at the same time, pays the duty and any accrued interest for all instruments and transactions for which a duty liability falls in the return period. A self assessor's failure to lodge their return and pay any accompanying tax on time may result in the imposition of unpaid tax interest on an instrument or transaction stamped by return or, ultimately, prosecution for the commission of an offence.

The *Duties Act 2001* is to be amended to clarify the interaction between the self assessment provisions in Chapter 12 of the Act and those applying to instruments and transactions not self assessed. For example, where a taxpayer engages a self assessor for an instrument or transaction, the taxpayer's obligations to lodge documents with the Commissioner that would otherwise apply will be replaced with obligations to lodge those documents with, and pay the relevant tax to, the self assessor. Clarification will also be provided on how documents may be lodged with an agent self assessor and prohibitions will apply to giving false or misleading documents or information to the self assessor. Similarly, the requirement to lodge documents with the Commissioner will not apply for a taxpayer who is party to an instrument or transaction and registered as a self assessor accordingly, provided that certain conditions are satisfied.

Cessation of unpaid succession duty debts

The Succession and Gift Duties Abolition Act 1976 ("the Abolition Act") abolished succession duty on successions vesting after 1 January 1977.

As is usual when a revenue law is repealed, abolition did not affect any liability to tax arising before that date. Consequently, the Abolition Act allowed for succession duty to remain payable in certain circumstances, and continued the obligation of the Registrar of Titles to register an encumbrance on the land title in the absence of a certificate indicating that succession duty had been paid in respect of an estate.

Only a small number of unpaid succession duty debts now remain. An administrative arrangement ceasing the effects of the succession duties Acts was therefore publicly announced on 2 February 2003, with effect on and from 31 January 2003. A provision is to be inserted in the *Duties Act 2001* to give effect to that arrangement. However, succession duty paid before 31 January 2003 will not be refunded.

Transitional provision for lease variation instruments

The *Duties (Transitional) Regulation 2003* was made to clarify the duty implications where a lease signed prior to 1 March 2002, but varied by another instrument in respect of the cost of the lease on or after 1 March 2002 (the commencement date of the *Duties Act 2001*). The Regulation ensured that stamp duty under the *Stamp Act 1894* continued to apply to these rent variation instruments despite the repeal of the *Stamp Act 1894*, with effect from 1 March 2002.

As the regulation expires on 1 March 2007, a transitional provision to the same effect as the Regulation will be inserted in Chapter 17, Part 2, Division 6 of the *Duties Act 2001*.

Other Minor Technical Amendments

The following minor technical amendments will clarify the operation of the *Duties Act 2001*, or correct technical errors.

- Sections 60(1)(b) will be amended to clarify that a beneficiary's interest for a trust is the proportion that the value of the beneficiary's entitlement bears to the value of the entitlements of all beneficiaries expressed as a percentage.
- Subsections 252(3) and (4) of the *Duties Act 2001* are anti-avoidance provisions that deal with the situation where an instrument of security that does not affect property in Queensland when it is first signed does so at a later date. Section 252(3) of the *Duties Act 2001* will be amended to clarify when section 252(4) applies.

Fuel Subsidy Act 1997

Definition of "off-road purpose"

The *Fuel Subsidy Act 1997* provides that the fuel subsidy is not payable in respect of diesel fuel used for off-road purposes. Diesel fuel used for off-road purposes includes diesel used for a private or domestic purpose where that diesel is purchased from a retailer and is eligible for a rebate

under the Commonwealth Diesel Fuel Rebate Scheme established under the *Customs Act 1901* (Cwlth) and *Excise Act 1901* (Cwlth).

On 1 July 2003, the Commonwealth Government replaced the Diesel Fuel Rebate Scheme with the Energy Grants Credits Scheme which is administered under the *Energy Grants (Credits) Scheme Act 2003* (Cwlth). The *Fuel Subsidy Act 1997* is to be amended to reflect this change.

Land Tax Act 1915

Definition of Retirement Village

The definition of “retirement village” under the *Land Tax Act 1915* takes its meaning from the definition of the term in the *Retirement Villages Act 1988*. The *Retirement Villages Act 1988* has been replaced by the *Retirement Villages Act 1999*. The definition of “retirement village” in the *Land Tax Act 1915* is to be updated to reflect this change.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Any additional administrative costs are not expected to be significant.

Consistency with Fundamental Legislative Principles

The amendments relating to transactions effected under the *Housing Act 2003*, the provision of the mining rights exemption and cessation of debts for succession duty will be retrospective. These measures are beneficial to taxpayers as, in all cases, liability to taxation is extinguished or waived. The cessation of succession duty was publicly announced and the other exemptions were notified to the Department of Housing and the mining industry respectively.

If the *Second-hand Dealers and Pawnbrokers Act 2003* commences before this Bill, the amendment to the pawnbroker exemption in section 299 of the *Duties Act 2001* will be retrospective. However, that amendment will ensure the continued operation of the exemption to the benefit of taxpayers.

The Bill confers on the Commissioner of State Revenue a discretion to not treat a mortgage that satisfies certain conditions as a collateral

mortgage, where the Commissioner is satisfied there was an arrangement to avoid the imposition of mortgage duty on the mortgage. In determining whether there is an arrangement for the avoidance of duty, the Commissioner will have regard to all relevant factors.

The discretion will assist to ensure the effective operation and integrity of the *Duties Act 2001*, following the abolition of mortgage duty in Victoria. Where the Commissioner decides that there is an arrangement for the avoidance of duty, the taxpayer may seek a review of the decision through the objection and appeal provisions in the *Taxation Administration Act 2001*.

There are no fundamental legislative principles raised in respect of the remaining amendments proposed in the *Revenue Legislation Amendment Bill 2004*.

Consultation

Consultation has not been undertaken regarding the proposed amendments to the *Duties Act 2001* to modify the mortgage duty provisions following the abolition of mortgage duty in Victoria. As passage of the *Revenue Legislation Amendment Bill 2004* will not occur until after 1 July 2004, when the Victorian initiative takes effect, these amendments will commence on a date to be proclaimed. Consultation will be undertaken with financial institutions on the timing of commencement of these provisions, having regard to any issues that will be encountered by the institutions in implementing the amendments.

Queensland Transport consulted AgForce and the Queensland Farmers' Federation with respect to the conditional registration concessional duty measures.

Though the duty exemption for tractors (and therefore the exemption for tractor-based mobile machinery) is being removed, concessional duty is being adopted for those vehicles required to be registered under the conditional registration scheme. Consultation has not yet been undertaken regarding the proposed duty treatment of tractor-based mobile machinery. Queensland Transport will advise the relevant industry sectors of the change.

Consultation on the other amendments contained in this Bill was considered either unnecessary or inappropriate.

NOTES ON PROVISIONS

Clause 1 cites the short title of the Bill.

Clause 2 cites the commencement dates of various provisions in the Bill.

Clause 3 provides that Part 2 amends the *Duties Act 2001*.

Clause 4 omits section 24(3)(b) and inserts a new section 24(3)(b) which ensures that the duty concession provided in section 24(3) is not limited to mortgages securing dutiable property, but also extends to mortgages securing any property wholly or partly in Queensland. The new subparagraph also removes superfluous terms already covered by the definition of mortgage in section 248. The new section 24(3)(b) will still allow the concessional rate of duty to apply to a mortgage that is incidental to, and transferred with, another mortgage (“the primary mortgage”) solely over land in Queensland. The primary mortgage must be the principal (ie. the most valuable) mortgage held by the transferor.

Clause 5 amends section 60(1)(b) to clarify that the beneficiary’s interest is the proportion that the value of the beneficiary’s entitlement bears to the value of the entitlements of all beneficiaries expressed as a percentage.

Clause 6 omits section 137(1) and inserts a new section 137(1). New section 137(1)(a) provides an exemption from transfer duty on the grant of a mineral development licence, mining claim or mining lease under the *Mineral Resources Act 1989*. New section 137(1)(b) maintains the duty exemption currently provided in section 137(1) for the transfer, or agreement for the transfer of certain mining claims, or a share in those claims. New section 137(5) gives new section 137(1) retrospective affect to 1 March 2002.

Clause 7 inserts a new section 251A. The section provides that Victorian stampings prior to 1 July 2004 will be taken into account when determining, for Queensland mortgage duty purposes, whether a mortgage or mortgage package has been properly stamped, stamped with similar duty, duly stamped or is exempt from duty.

Example

A mortgage is signed on 1 July 2002 over Queensland and Victorian property, securing an advance of \$3 million. The Queensland property comprises one third of the value of all securities. Mortgage duty is paid on \$2 million in Victoria and \$1 million in Queensland.

On 30 December 2004, a further advance of \$1 million is made. Assuming that no repayments have been made, nor changes in property values have occurred, new section 251A requires that a mortgage be treated as properly stamped to \$2 million in Victoria. The mortgage has also been properly stamped with Queensland duty of \$1 million. Additional Queensland mortgage duty is therefore chargeable on \$1 million in respect of the further advance.

Clause 8 clarifies the operation of section 252(3). Section 252(3) and (4) provide special liability rules for an instrument of security that does not affect property in Queensland when first signed, but, which later affects certain property in Queensland and has not been stamped with, or is not exempt from, similar duty under a corresponding Act.

These are anti-avoidance provisions and will apply to impose duty on the security where any property, including land, is specifically identified and, under an arrangement, is intended to be brought under the security. An additional rule applies for land. Where land, other than a security interest, is brought under the security within one year after it is first signed, duty will be imposed on the security, whether or not there was an arrangement to that effect.

Clause 9 amends section 260(2) to provide that property in Victoria is disregarded when determining the dutiable proportion on a liability date on or after commencement of this amendment.

Clause 10 inserts a new subsection (1A) in section 262 to prevent the avoidance of Queensland mortgage duty through the use of collateral mortgages.

Clause 11 inserts a new subsection (3) in section 263 to clarify that Victorian mortgage duty paid, or a Victorian mortgage duty exemption that applied, before 1 July 2004 may be taken into account when determining the extent to which a mortgage or mortgage package is enforceable after commencement of new subsection (3).

Example

A mortgage is signed on 1 July 2002 over Queensland and Victorian property, securing an advance of \$3 million. The Queensland property comprises one third of the value of all securities. Mortgage duty is paid on \$2 million in Victoria and \$1 million in Queensland.

On 30 December 2004, a further advance of \$1 million is made. New section 263 will ensure that the mortgage duty paid on \$2 million in Victoria may be taken into account, with the duty paid on \$1 million in

Queensland, when determining the extent to which the mortgage is enforceable.

Clause 12 inserts a new section 290A in Chapter 5, Part 8 of the *Duties Act 2001*. This new section ensures that, where Victorian and Queensland mortgage duty is paid under the advance stamping provisions in those States prior to 1 July 2004 for an advance made on or after the commencement of new section 290A and the duty paid in Victoria is later refunded because the relevant mortgage or mortgage package is no longer to be stamped in advance, Queensland mortgage duty will be reassessed having regard to the value of secured properties on the date on which the advance is made.

Clause 13 amends section 299 to ensure that a person continues to be excluded from the definition of “credit provider” in section 299, to the extent that the person enters into credit transactions as part of their pawnbroking business, following the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*.

Clause 14 amends section 377 to enable a concessional rate of vehicle registration duty to be imposed on the registration, or on the transfer of the registration, of a special vehicle. A “special vehicle” is defined in the Schedule 6 Dictionary.

Clause 15 amends section 382 to provide that the duty liability assessed on the registration, or transfer of the registration, of a special vehicle is \$25, while maintaining the existing basis of assessment of vehicle registration duty for other vehicles according to the vehicle’s dutiable value.

Clause 16 amends s.383 to ensure that the normal rate of vehicle registration duty does not apply to the registration, or transfer of registration, of a special vehicle.

Clause 17 incorporates the concessional rate of duty into the vehicle registration duty reduction provisions. The maximum amount of the vehicle registration duty deduction available under section 384 is \$25, where a special vehicle is the subject of an application for registration, or transfer of registration, and also a dutiable transaction. Conditions apply as outlined in section 384(1).

Clause 18 corrects a paragraph numbering error in section 386(2)(b).

Clause 19 amends section 405(4) so that the corporate reconstruction exemption for the interposition of a new parent company applies where, before the acquisition by the new parent company, the same shareholders

owned, directly or indirectly, at least 90% of the issued shares in the existing companies and had voting control in those companies.

Clause 20 amends section 408 to ensure the intended operation of the corporate reconstruction provisions in relation to their application to a transfer of property from a company (“the transferor”) holding that property as trustee of a fixed trust to another company (“the transferee”). Where at least 90% of the shares in the transferee are held by the transferor as trustee for the same fixed trust as that for which the property is held, the provisions apply as if the transferor owns the shares in the transferee beneficially when determining whether section 408 applies. This provision is particularly relevant when applying sections 400-402 of the *Duties Act 2001* to determine whether the transferee and the trust unitholders or beneficiaries are group companies for the purposes of section 406(2).

Clause 21 amends section 411(4) to clarify the operation of section 411(3)(b) in relation to a transaction for which an application for a ruling under section 410 is made and for which an application for exemption is subsequently made under section 411. Section 411(3)(b) does not apply if the circumstances relating to the transaction or acquisition at the time of the application for exemption are materially different from the circumstances that related to the transaction at the time the application for the ruling was made. Also, section 411(3)(b) does not apply if the Commissioner has provided a ruling for a transaction and, prior to an exemption being provided pursuant to the ruling, a legislative change occurs or a judgement is given that would have materially affected the ruling.

Clause 22 amends section 429 to ensure that a duty exemption is provided for certain transactions entered into by the Chief Executive under the *Housing Act 2003* in the same circumstances in which a duty exemption was provided for transactions entered into by the Queensland Housing Commission under the *State Housing Act 1945*, prior to that Act’s repeal by the *Housing Act 2003* on 1 January 2004.

Clause 23 amends section 445(2) so that a notice of registration for a self assessor registered under Chapter 12, Part 2 of the *Duties Act 2001* may require the self assessor to lodge specified documents with a return.

Clause 24 amends section 452(2) so that a notice of registration for a self assessor registered under Chapter 12, Part 3 of the *Duties Act 2001* may require the self assessor to lodge specified documents with a return.

Clause 25 amends section 455(1) of the *Duties Act 2001* to require self assessors to lodge with the Commissioner documents required to accompany returns.

Clause 26 inserts a new Chapter 12A into the *Duties Act 2001*. This Chapter sets out the obligations of parties to instruments or transactions for which self assessments of duty are made. Chapter 12A, Part 1 (new sections 471A and 471B) provides definitions for terms used in the Chapter. Chapter 12A, Part 2 outlines the manner in which a liable party is required to give documents and information relating to a dutiable instrument or transaction to an agent self assessor, where the liable party has engaged the self assessor for the instrument or transaction. Chapter 12A, Part 3 outlines the circumstances in which the lodgment requirements for a dutiable instrument or transaction are removed where a party self assessor is registered for the instrument or transaction.

Chapter 12A, Part 2 lists a number of requirements that apply to liable parties to an instrument or transaction who have engaged a self assessor registered under Chapter 12, Part 3 (an “agent self assessor”), for the instrument or transaction.

- New section 471C(1) states that Chapter 12A, Part 2 of the *Duties Act 2001* applies to an instrument or transaction for which an agent self assessor has been engaged by a liable party. However, section 471C(2) ensures that Chapter 12A, Part 2 does not apply to an instrument or transaction for the making of a reassessment of duty on the instrument or transaction, where the self assessor is not permitted to make the reassessment.
- New section 471D excludes the operation of any lodgment requirements for an instrument or transaction to which new Chapter 12A, Part 2 applies. This ensures that section 121 of the *Taxation Administration Act 2001* does not apply as a result of a liable party not lodging with the Commissioner documents otherwise required to be so lodged, when duty for the instrument or transaction to which the documents relate has been paid by return.
- New section 471E(1) and (2) requires a liable party for an instrument or transaction to which Chapter 12A, Part 2 applies to lodge certain instruments with, and pay any duty, assessed interest and penalty tax, to their agent self assessor by the date on which the self assessor is required to lodge a return for the instrument or transaction with the Commissioner.

Section 471E(3) provides clarification as to when the requirement in section 471E(1) is satisfied. Where a liable party is required to give a document to the self assessor, the liable party complies with the requirement only if all relevant documents are given. In addition, where an approved form is required to be given to the self assessor, it must be sufficiently completed. For instance, where an approved form requires the inclusion of particular information to enable the proper determination of tax liability and that information is not included with the form, the approved form will not be taken to have been given to the self assessor until the information is provided. This means that unpaid tax interest may apply under section 54 of the *Taxation Administration Act 2001* if, as a result of a liable party not satisfying their requirements under section 471E(1), the self assessor is unable to include the relevant instrument or transaction in a return and pay the appropriate tax for the instrument or transaction by the due date.

- New section 471F outlines how a document may be, and when a document is, given by a liable party to an agent self assessor.
- New section 471G creates an offence where a liable party gives an agent self assessor a document containing information that the person knows or should reasonably know is false or misleading in a material particular. A document can be false or misleading because it is incomplete. A defence is also provided. This prohibition is similar to that imposed on persons giving false or misleading documents to the Commissioner, or an investigator, under section 122 of the *Taxation Administration Act 2001*.
- New section 471H creates an offence where a liable party states anything to an agent self assessor that the person knows or should reasonably know is false or misleading in a material particular. A statement can be false or misleading because of the omission of information. This prohibition is similar to that imposed on persons giving false or misleading information to the Commissioner, or an investigator, under section 123 of the *Taxation Administration Act 2001*.

New Chapter 12A, Part 3 outlines the effect on a relevant lodgment requirement if an instrument or transaction is stamped by a self assessor registered under Chapter 12, Part 3 (a “party self assessor”).

- New section 471I(1) states that Chapter 12A, Part 3 of the *Duties Act 2001* applies to an instrument or transaction for which there

is a party self assessor, provided that the self assessor is required or permitted to lodge returns for the instrument or transaction. However, section 471I(2) ensures that Chapter 12A, Part 3 does not apply to an instrument or transaction for the making of a reassessment of duty on the instrument or transaction, where the self assessor is not permitted to make the reassessment.

- New section 471J outlines the circumstances in which a relevant lodgment requirement does not apply for an instrument or transaction to which new Chapter 12A, Part 3 applies. For instruments or transactions for which a party self assessor is required to lodge an instrument or transaction, the removal of relevant lodgment requirements is automatic, due to the prohibition on party self assessors from lodging documents with the Commissioner in section 447. For other instruments or transactions, the conditions specified in section 471J(b) must be satisfied before any relevant lodgment requirement will not apply. Again, new section 471J ensures that section 121 of the *Taxation Administration Act 2001* does not apply in relation to the failure by parties to the instrument or transaction not lodging with the Commissioner documents otherwise required to be so lodged, when duty for the instrument or transaction to which the documents relate has been paid by return.

Clause 27 ensures that the Commissioner cannot impose a penalty for understatement of a vehicle's dutiable value as referred to in section 488(1)(c) where the vehicle is a special vehicle. Nominal duty applies to applications to register, or transfer registration of, those vehicles.

Clause 28 amends the note to section 496(2) to correct a cross-referencing error.

Clause 29 inserts a new section 508A into the *Duties Act 2001* which provides for the cessation of all debts owed to the State under the repealed succession duties Acts, as well as the cessation of all other amounts recoverable by the Commissioner under those Acts, on and from 31 January 2003.

Clause 30 amends section 511(2)(a) to ensure that the repealed *Stamp Act 1894* continues to apply to transactions referred to in the new section 530A.

Clause 31 inserts a new section 530A into the *Duties Act 2001* to ensure that, where rent payable for a lease assessed under the repealed *Stamp Act 1894* is increased by an instrument after the commencement of the *Duties*

Act 2001, the instrument that increases the rent payable for the lease is assessable under the repealed *Stamp Act 1894*.

Clause 32 incorporates the concessional rate of duty for special vehicles into the vehicle registration duty reduction provisions in the transitional provisions in the *Duties Act 2001*. The maximum amount of the deduction available under section 384 is \$25, where a special vehicle is the subject of an application for registration, or transfer of registration, and also an instrument on which ad valorem duty was chargeable and paid under the repealed *Stamp Act 1894*. Conditions apply as outlined in section 537(1).

Clause 33 amends and inserts a number of definitions in Schedule 6 of the *Duties Act 2001*.

Clause 34 provides that Part 3 amends the *Fuel Subsidy Act 1997*.

Clause 35 amends the definition of “off-road purpose” in section 8 of the *Fuel Subsidy Act 1997* to reflect the replacement of the diesel fuel rebate scheme with the Commonwealth Government’s energy grants (credits) scheme.

Clause 36 provides that Part 4 amends the *Land Tax 1915*.

Clause 37 amends the definition of “retirement village” in section 3 of the *Land Tax Act 1915* to reflect the repeal and replacement of the *Retirement Villages Act 1988* by the *Retirement Villages Act 1999*.