

**2002**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**REVENUE LEGISLATION AMENDMENT BILL 2002 (No. 2)**

**EXPLANATORY MEMORANDUM**

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## REVENUE LEGISLATION AMENDMENT BILL 2002 (No. 2)

### Summary

This Bill makes a number of minor and technical amendments to three acts administered by the Commissioner for ACT Revenue: the *First Home Owner Grant Act 2000*; the *Payroll Tax Act 1987*; and the *Rates and Land Tax Act 1926*.

This Bill corrects an omission to the First Home Owner Grant Act to preclude a person from receiving a grant, if, after 1 July 2000, they have purchased and lived in a property prior to a subsequent acquisition of property for which they seek to apply for a grant. This amendment will bring the ACT's administration of the Commonwealth's First Home Owners' Scheme into line with other jurisdictions.

The amendment to the Payroll Tax Act merely reflects the Commonwealth's repeal of the requirement for unemployment registration with the Commonwealth Employment Service (the CES). This Bill will remove a reference to the CES in the Payroll Tax Act without altering the policy objective of providing a two year tax exemption for wages paid to staff who, immediately prior to commencing employment, had been unemployed for 12 months or more and had been receiving an allowance with respect to that unemployment under the *Social Security Act 1991*.

This Bill also amends the Rates and Land Tax Act in two respects. Firstly, this Bill will enable the determination of fees by a disallowable instrument for the issue of conveyancing certificates and statements of account. These fees are currently imposed by an Administrative Order. However, this amendment will provide the Legislative Assembly the opportunity to approve the level of fees for providing these services.

Secondly, this Bill removes an obsolete term in the Rates and Land Tax Act; namely, the term "city area". As a related measure, this Bill will consolidate the current rating system so that the level of rating for properties will be dependent on whether it is leased or used for residential, commercial or rural purposes. This is in contrast to the current method of ascertaining whether a property is located inside or outside the city area. For example, instead of applying the rural rate to properties located outside the city area, this Bill applies the rural rating factor to all properties within the ACT that are leased and used primarily for the purpose of primary production. This amendment does not change the rating factors; it only changes how properties are categorised.

### Revenue/Cost Implications

It is estimated that this Bill will provide an additional \$7,000 in revenue per annum.

Details of the Bill are attached.

## Details of the Revenue Legislation Amendment Bill 2002 (No.2)

### **Part 1 Preliminary**

#### **Clauses 1 and 2**

These are mechanical clauses that state the name of the Act and define the commencement dates for the different parts of the Bill.

### **Part 2 First Home Owner Grant Act 2000**

**Clause 3** notes that Part 2 of this Bill amends the *First Home Owner Grant Act 2000* (FHOG Act).

#### **Clause 4-Criterion 4—Applicant (or applicant's partner) must not have had relevant interest in residential property**

This clause inserts a new section 11(3) into the *First Home Owner Grant Act 2000* which ensures that an applicant is also ineligible for a grant, if, before the commencement date of the relevant transaction, the applicant or the applicant's partner—

- (a) held a relevant interest in residential property in the ACT or an interest in residential property in a State that is a relevant interest under the corresponding law of the State; and
- (b) occupied the property as a place of residence.

### **Example 1**

The applicant for the grant (A) was a joint beneficiary in equal shares with her brother (B) in the estate of their father, who died early in 2001.

Probate under the will was granted to the beneficiaries in July 2001.

In September 2001 a residential property owned by the father which was part of the estate, and at which A was resident, was transferred to the beneficiaries as tenants in common.

In October 2001 a contract of sale and subsequent transfer were executed which transferred B's half share to A for consideration. A subsequently applied for the FHOG.

Given that A has held a relevant interest in the home prior to the contract for the purchase being made and the transfer executed and the fact that A has lived continuously at the property prior to that time, this amendment will ensure that A ineligible for the grant.

### **Example 2**

B buys a house after 1 July 2000 as an investment property. He does not apply for the grant for this transaction. Eighteen months later he purchases a home that he intends to reside in and

applies for the grant. Prior to residing in the second home, he decides to move into the first home and renovate.

He is not eligible for the grant for the first home he has purchased as he did not reside in it as his principal place of residence (within the required time of 12 months – although the Commissioner may extend the time). This amendment will ensure that he is not eligible for the grant for the second home, as he has held an interest in property (the first home) that he has used after 1 July 2000 as his residence.

The policy intention is that purchasers in situations of examples 1 and 2 should not be eligible for the grant. The amendment will bring the ACT FHOG Act into line with legislation in other jurisdictions and apply the original policy intention.

### **Part 3 Payroll Tax Act 1987**

**Clause 5** notes that Part 3 of this Bill amends the *Payroll Tax Act 1987*.

#### **Clause 6-Exemption from tax Section 9(5)**

This clause replaces section 9(5) of the *Payroll Tax Act 1987* with the following new sections 9(5) and 9(6):

(5) In subsection (1)(g):

***prescribed person***, in relation to an employer, means a person who was, for longer than 12 months immediately before starting employment with the employer—

- (a) unemployed; and
- (b) receiving an allowance under the *Social Security Act 1991* (Cwlth) for that unemployment.

(6) For subsection (5), definition of ***prescribed person***, a period of not longer than 4 weeks, or periods totalling not longer than 4 weeks, when a person was employed, or was not receiving an allowance under the *Social Security Act 1991* (Cwlth) for unemployment, must be disregarded in working out whether a period is a period of longer than 12 months mentioned in the definition.

This amendment removes a reference to the Commonwealth Employment Service (CES). Unemployment registration with the CES is no longer required under the *Social Security Act 1991*. This amendment does not change the policy objective of providing a two year tax exemption for wages paid to staff who, immediately prior to commencing employment, had been unemployed for 12 months or more and had been receiving an allowance with respect to that unemployment under the *Social Security Act 1991*.

### **Part 4 Rates and Land Tax Act 1926**

**Clause 7** notes that Part 4 of this Bill amends the *Rates and Land Tax Act 1926*.

### **Clause 8-Interpretation for Act**

#### **Section 4(1), definitions of *city area* and *commissioner***

Clause 8 omits the definition of “city area”, which is an obsolete term and “commissioner”, which will be defined in the Dictionary inserted by clause 31 of this Bill.

### **Clause 9-Section 4(1), remaining definitions**

This clause relocates the remaining definitions in section 4(1) to the Dictionary.

### **Clause 10-Section 4, remainder**

Due to the amendments by clauses 8, 9 and 31 of this Bill, this clause replaces the rest of section 4 with the following sections:

#### **4 Dictionary**

The dictionary at the end of this Act is part of the Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156(1)).

#### **4A Notes**

A note included in this Act is explanatory and is not part of the Act.

*Note* See *Legislation Act 2001*, s 127(1), (4) and (5) for the legal status of notes.

### **Clause 11-Unimproved value**

This clause is a technical amendment, which removes a reference to the repealed *City Area Leases Act 1936*. It replaces sections 5(1)(d) and (e) with a new section 5(1)(d), which states:

- (d) that the rent payable under the lease throughout the term of 99 years beginning on the relevant date was a nominal rent.

### **Clause 12-Rateable lands**

#### **Section 6(1)**

This clause is a technical amendment made in conjunction with clause 13.

### **Clause 13-Section 6(2)**

This clause is a technical amendment, which removes a reference to the repealed *City Area Leases Act 1936*. This amendment removes section 6(2), as it is obsolete.

### **Clause 14-Application of determination or redetermination to rates**

#### **Section 11(3)(b) and (c)**

This clause is a technical amendment, which removes a reference to the repealed *City Area Leases Act 1936*. It replaces sections 11(3)(b) and (c) with a new section 11(3)(b), which states:

- (b) if section 10(1)(b) applies—on the day of the relevant change of circumstances.

### **Clause 15-Imposition**

#### **Section 13(2) and (3)**

This is a technical amendment. It updates references to an obsolete term, namely, “city area” in sections 13(2) and (3) by replacing the words “rateable land in the city area” with the words “residential or commercial land”.

The terms “residential land” and “commercial land” are now defined in the Dictionary by virtue of clause 31 of this Bill.

#### **Clause 16-Section 13(3), definition of *P***

This clause is a technical amendment. As a result of the removal of the obsolete term “city area”, the ‘P’ in the formula under section 13(3) is now described as:

- (a) for a parcel of residential land—0.7820%; or
- (b) for a parcel of commercial land—1.3356%.

The rating factors (ie the numerals) have not been changed.

#### **Clause 17-Section 13(4)**

This clause is a technical amendment. As a result of the removal of the obsolete term “city area”, the words “rateable land outside the city area” in section 13(4) are replaced by the words “rural land”.

The term “rural land” is defined in the Dictionary by virtue of clause 31 of this Bill.

### **Clause 18-Imposition of land tax**

#### **Section 22A(2)(b)**

This is a technical amendment to replace the words “non-residential land” in section 22A(2)(b) with the words “commercial land” (as defined in the Dictionary).

#### **Clause 19-Section 22A, table, column 4 heading**

This is a technical amendment to replace the words “non-residential land” in the 4<sup>th</sup> column heading of the table in section 22A with the words “commercial land” (as defined in the Dictionary).

### **Clause 20-Exempt land**

#### **Section 22B(1)(a)**

This is a technical amendment to replace the words “land leased for residential purposes to” in section 22B(1)(a) with the words “residential land owned by”.

This amendment is necessary because there is a difference in the meaning between a “residential purpose” and “residential land”. “Residential land” is defined in the Dictionary to mean land used for residential purposes only or land leased for residential and other purposes but used for residential purposes only. However, if land is leased for ‘residential purposes’, it may not fall within the definition of ‘residential land’ if it is used for other purposes.

**Clause 21-Section 22B(1)(b)**

This clause is a technical amendment. As a result of the removal of the obsolete term “city area”, section 22B(1)(b) is recast to state:

(b) a parcel of rural land;

**Clause 22-Section 22B(8), definition of *primary production***

This is a technical amendment. The definition of “primary production” is removed from section 22B(8) since it will be restated in the Dictionary by virtue of clause 31 of this Bill.

**Clause 23-Section 22BB heading**

This is a technical amendment, which replaces the heading of section 22BB with:

**22BB Commissioner must be told if land leased for residential purposes is rented**

**Clause 24-Section 22BB(2)**

This is a technical amendment, which removes a reference to a section repealed by section 15 of the *Revenue Legislation Amendment Act 2002*.

**Clause 25-New section 22BB(3)**

This clause inserts a new section 22BB(3), which states:

(3) Subsections (1) and (2) do not apply to a company.

This amendment means that a company will not have to provide a notice to the commissioner within 30 days if the land it owns is rented out. This is because by virtue of section 22A, residential land that is owned by a company is already subject to land tax. This is in contrast to residential land owned by individuals, where the land is exempt from land tax, unless it is rented out, and the owner is required to provide notice if it is rented out. Although residential land owned by a trustee is also subject to land tax (whether or not it is rented out), it is not always obvious that land is being held under a trust. Hence a trustee must also provide notice within 30 days if the property becomes rented.

**Clause 26-Section 22GM heading**

This clause replaces the heading for section 22GM, which states:

**22GM Imposition and assessment of rates—certain qualifying parcels of land**

**Clause 27-Section 22GM(1)(a)**

This clause is a technical amendment which removes the obsolete words “in the city area” in section 22GM(1)(a).

**Clause 28-Section 22GM(2)**

This clause is a technical amendment. As a result of the removal of the obsolete term “city area”, the words “rateable land in the city area” in section 22GM(2) are replaced by the words “residential or commercial land”.

**Clause 29-New sections 34B and 34C**

Clause 30 inserts sections 34B and 34C.

Section 34B provides further details for the current reference to what is commonly known as a conveyancing certificate in section 21A(2). It does not change the current practice of providing conveyancing certificates and the purpose to which it may be used.

The commissioner must issue, on application, a conveyancing certificate. A fee may be determined by a disallowable instrument for this service.

Section 34C allows the commissioner to issue, on application, a statement of account with respect to a stated financial year. A fee may be determined by a disallowable instrument for this service. For, if the fee is \$20 for providing a statement of account for one financial year and an application is with respect to two financial years (eg 1999/2000 and 2000/2001), then the fee payable is \$40 (2 x \$20).

### **Clause 30-New dictionary**

This clause inserts a Dictionary at the end of the *Rates and Land Tax Act 1926*, it states:

#### **Dictionary**

(see s 4)

*Note 1* The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- commissioner for revenue
- contravene
- fail
- financial year
- person.

***commercial land*** means rateable land that is not residential land or rural land.

The term ‘commercial land’ is used in preference to ‘non-residential land’ to define the category of properties that are not within the meaning of ‘residential land’ and ‘rural land’.

***commissioner*** means the commissioner for revenue.

***primary production*** means—

- (a) production resulting directly from—
  - (i) cultivation of land; or
  - (ii) keeping animals for sale of the animals, their bodily produce or their natural increase; or
  - (iii) fishing operations; or
  - (iv) forest operations; and
- (b) the manufacture of dairy produce by the person who produced the raw material used in that manufacture.



***residential land*** means rateable land—

- (a) leased for residential purposes only; or
- (b) leased for residential purposes and other purposes but used for residential purposes only.

It is intended that a property's status as residential land is not affected by it being part used for carrying on a profession, trade, occupation or calling, ie a home business.

***rural land*** means rateable land—

- (a) leased for the purpose of primary production only; or
- (b) leased for the purpose of primary production and other purposes but used primarily for primary production.

***year*** means a financial year.

The definitions in section 4 of the Rates and Land Tax Act are incorporated into this Dictionary by virtue of clause 9 of this Bill.