

**2006**

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

**REVENUE LEGISLATION AMENDMENT BILL 2006**

**EXPLANATORY STATEMENT**

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## Revenue Legislation Amendment Bill 2006

### Summary

This Bill amends the *Duties Act 1999*, the *Payroll Tax Act 1987* and the *Taxation Administration Act 1999*.

### Overview

#### *Duties Act 1999*

The provisions in the Bill amending the *Duties Act 1999* address an issue that has arisen as a result of Commonwealth legislation applying to self managed superannuation funds. Section 54 of the *Duties Act 1999* allows concessional duty treatment where a trustee retires from, or a new trustee is appointed to, a trust provided that none of the trustees are, or can be, a beneficiary of the trust. An issue has arisen because all members (beneficiaries) of self managed superannuation funds are required to be trustees under Commonwealth law. Superannuation funds that are not self managed superannuation funds have no requirement for beneficiaries under the trust to also be trustees, and they can therefore arrange their affairs to prevent this duty issue from arising. The amendments in this Bill will allow self managed superannuation funds to access concessional duty treatment when an existing trustee retires, or a new trustee is appointed.

#### *Payroll Tax Act 1987*

Section 2D (3) of the *Payroll Tax Act 1987* provides for circumstances in which wages paid or payable by means of a bill of exchange, promissory note, money order, postal order or other instrument are liable to ACT payroll tax. The provisions in the Bill to amend the *Payroll Tax Act 1987* modernise and expand section 2D of the *Payroll Tax Act 1987* to include the payment of wages by means of an instruction to credit an account (such as an electronic transfer of funds).

#### *Taxation Administration Act 1999*

Currently, section 99 of the *Taxation Administration Act 1999* seeks to prevent the release of “confidential” information or documents to a court. “Confidential” is not defined. Accordingly, the common law definition of the term is relied upon by tax officers and the courts to determine the meaning of “confidential” for the purposes of section 99 of the *Taxation Administration Act*.

For the sake of certainty and clarity in the administration of section 99, and for the avoidance of litigation, the Bill seeks to strengthen section 99 by preventing a tax officer from being required to release “protected” information or documents to a court unless such information is necessary for the administration or execution of a tax law. Protected information and documents are defined in the Bill as information and documents obtained (or also created in the case of documents) in the administration or execution of a tax law.

The proposed amendment of section 99 of the *Taxation Administration Act* to provide immunity to a tax officer in specified circumstances will engage the right to privacy and the right to a fair trial under the *Human Rights Act 2004*.

However, the restrictions proposed in the Bill on disclosure by a tax officer to courts and tribunals are considered to be a reasonable limitation on these rights for the following reasons.

The exercise of coercive powers under tax laws to obtain and create documents relating to individuals are subject to limitations generally regarded as appropriate to circumstances of investigation and inquiry. In this context, the right to privacy must be balanced against the right of a party to a civil or criminal proceeding to access information relevant to their claim. The appropriate limitation in these circumstances in safeguarding the right to privacy is that any disclosure of protected information must be necessary for the purpose of a proceeding relating to the administration or execution of a tax law.

Similarly, the right to a fair trial is safeguarded primarily by the ordinary pre-trial litigation process. In a proceeding relating to the administration or execution of a tax law, protected information will be available to all of the parties through the subpoena process. Protected information disclosed to a party will be available to other parties:

- in civil and criminal proceedings — through the discovery and inspection processes; and
- in criminal proceedings — through the special disclosure obligations of the Director of Public Prosecutions.

Further, the *Taxation Administration Act 1999* provides for protected information to be disclosed in other proceedings if it does not contain personal information (section 96) or if it is the subject of a permitted disclosure (section 97).

Section 97 permits disclosure of information to a range of persons, including:

- any person, with the consent of the person to whom it relates (subsection 97(a));
- any person, in accordance with a statutory requirement (subsection 97(c)); and
- the commissioner of police, for the purpose of a criminal investigation (paragraph 97(d)(ii)).

Each of the above powers to make disclosures under sections 96, 97 and 99 of the Taxation Administration Act must, as far as possible, be exercised consistently with the Human Rights Act. The lawful exercise of these powers provides a practical safeguard for the right to privacy and the right to a fair trial. The proposed amendment in the Bill to section 99 of the Taxation Administration Act will not affect these safeguards.

Accordingly, the proposed amendment in the Bill to section 99 of the Taxation Administration Act will not unduly trespass on rights previously established by law. To the extent that any trespass may be contemplated, there are appropriate limitations as set out above.

## **Financial Implications**

The *Duties Act 1999* amendments may result in a minor negative revenue impact. However, it is difficult to estimate the extent of any impact, as the take up of the concession will be determined by the extent to which the trustees of self managed superannuation funds change.

The *Payroll Tax 1987* amendments seek to improve the operation of the Act and will have no financial impact.

The *Taxation Administration Act 1999* amendment seeks to protect taxpayer information and is expected to have no financial implications.

Details of the Bill are attached.



## Details of the Revenue Legislation Amendment Bill 2006

### **Part 1 Preliminary**

**Clause 1 - Name of Act.** This clause names the Act as the *Revenue Legislation Amendment Act 2006*.

**Clause 2 - Commencement.** The Act commences on the day after notification.

### **Part 2 Duties Act 1999**

**Clause 3 - Legislation amended – pt 2.** This part amends the *Duties Act 1999*.

**Clause 4 - New section 54 (4).** Clause 4 inserts a new section 54 (4), which allows concessional duty of \$20 to be applied on the retirement of a trustee or the appointment of a new trustee of a self managed superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

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

**Clause 5 - Legislation amended – pt 3.** This part amends the *Payroll Tax Act 1987*.

**Clause 6 - New section 2D (4).** Clause 6 inserts a new section to determine, for payroll tax purposes, that wages paid by means of an instruction to credit an account are paid at the place where the wages are received and at the time the account is credited.

### **Part 4 Taxation Administration Act 1999**

**Clause 7 - Legislation amended – pt 4.** This part amends the *Taxation Administration Act 1999*.

**Clause 8 - Section 99.** This clause amends section 99 of the *Taxation Administration Act 1999* by removing the term “confidential” and replacing it with the term “protected”. It also introduces definitions for a “protected document” and “protected information” which are defined as documents and information obtained (or also created in the case of documents) in the administration or execution of a tax law.