

TAXATION LEGISLATION AMENDMENT BILL 2014

EXPLANATORY MEMORANDUM

This Bill seeks to amend the:

- *Duties Act 2008*;
- *Land Tax Assessment Act 2002*;
- *Pay-roll Tax Assessment Act 2002*; and
- *Taxation Administration Act 2003*,

to improve the efficacy of existing State tax exemptions for charitable institutions.

As announced by the former Treasurer in the Legislative Assembly on 15 May 2013, the amendments are in response to a decision of the State Administrative Tribunal that found the Chamber of Commerce and Industry of Western Australia to be a charitable organisation and therefore, eligible for State taxation exemptions.

The State Government is concerned with the precedent created by that decision, including the potential extension to other organisations for which a State taxation exemption is considered inappropriate.

By way of background, the common law definition of charity encompasses organisations that promote:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; or
- other purposes considered beneficial to the community,

the last of which is commonly known as a 'fourth limb' charity.

Broadly, the amendments contained in this Bill seek to narrow the scope of the existing payroll tax, transfer duty and land tax exemptions as they apply to 'fourth limb' charities.

They do this by excluding any 'fourth limb' charity that has been established and carried on for the promotion of trade, industry or commerce, unless the sole or dominant purpose of that charity is the relief of poverty, the advancement of education or the advancement of religion. The amendments also exclude professional associations.

Although trade unions and political parties do not currently fall within the common law definition of a charity, the legislation will specifically exclude these organisations from obtaining an exemption in the event of any future expansion of the definition of charity to these classes of organisations.

In addition, a regulation making power will allow other classes of organisations to be excluded from the exemptions.

This will allow the Government to quickly respond to any continued expansion of the 'fourth limb' charity category to other types of organisations for which a State tax exemption is considered inappropriate.

It is expected that these amendments will result in only a very small number of 'fourth limb' charities being excluded from receiving a State tax exemption.

For organisations that have been granted an exemption, but will become taxable under these amendments, the legislation will operate to remove the exemption prospectively.

For payroll tax and land tax, this will be from a date advised to each affected organisation.

Duties apply to one-off transactions. As such the amended provisions will apply to transactions that take place after the date of Assent.

Safeguards have been built into the proposed amendments to enable the Minister for Finance, in consultation with the Treasurer, to reinstate the exempt status of an organisation, other than a trade union or political party, which has been excluded from the relevant category of exemptions because of the operation of these amendments.

In order to apply to have its exempt status reinstated, an organisation must have concluded all appeals against the decision that it is an organisation to which the relevant State tax exemptions do not apply.

Alternatively, an organisation can choose to relinquish its appeal rights to expedite the process for making an application to the Minister.

The Minister must be satisfied that it is in the public interest to reinstate the exempt status of an organisation before doing so.

Any exemptions reinstated by the Minister will be published in the *Government Gazette*.

For affected organisations that have already been granted an exemption under the current arrangements, any reinstatement of their exempt status will take effect from the date it ceased.

This will ensure a seamless continuation of their exempt status, with any tax paid in the intervening period being refunded to the organisation.

Any determination made by the Minister to reinstate the exempt status of an organisation will apply across all three taxes.

The amendments also legislatively authorise the current discretion of the Commissioner of State Revenue to limit payroll tax refunds for charitable organisations to the beginning of the financial year in which the application for exemption was made.

This restriction is intended to limit the exposure of the revenue to retrospective refund claims.

It is expected that these State taxation integrity measures will have an immaterial or no impact on the budget forward estimates.

Part 1 – Preliminary

Clause 1: Short title

This clause provides that the short title of this Act is the *Taxation Legislation Amendment Act 2014*.

Clause 2: Commencement

This clause provides the commencement dates for the Act.

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

Paragraph (b) provides that the rest of this Act comes into operation on the day after the Royal Assent is received.

Part 2 – Duties Act 2008 amended

Clause 3: Act amended

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

Clause 4: Section 3 amended

Section 3 of the Duties Act contains the definitions of terms used throughout the Act.

This clause inserts self explanatory definitions of the terms ***political party; professional association; promote trade, industry or commerce; relevant body*** and ***trade union*** into section 3.

Clause 5: Section 95 amended

Section 95 of the Duties Act provides an exemption from transfer duty on dutiable transactions that have been entered into or occurred for charitable or similar public purposes.

Subclause (1) recasts existing section 95 as section 95(1) to allow for the insertion of two new subsections.

Subclause (2) inserts new subsections (2) and (3) into section 95.

Subsection (2) provides that an exemption under subsection (1) cannot apply if the person liable to pay duty is a relevant body, or if that person is related to a relevant body, unless a beneficial body determination is in force in respect of the relevant body.

The meaning of a relevant body is set out in new section 96A.

Subsection (3) provides that a person liable to pay duty is considered to be related to a relevant body if the person holds the dutiable property the subject of the transaction as trustee of a trust (including a discretionary trust) of which the relevant body is a beneficiary.

Clause 6: Sections 96A, 96B and 96C inserted

Clause 6 inserts new sections 96A, 96B and 96C after section 95.

96A. What is a relevant body

Section 96A lists in paragraphs (a) to (f) the categories of bodies that are relevant bodies, and which are therefore unable to access an exemption under section 95.

Paragraphs (a) and (b) provide that political parties and trade unions are relevant bodies. These bodies are not considered to be charities, but have been included as relevant bodies in case the common law evolves to include these classes of organisations as charities.

Paragraph (c) provides that a professional association is a relevant body.

Paragraph (d) refers to a body (other than one listed in paragraph (a), (b), (c) or (e)) that promotes trade, industry or commerce, unless its sole or dominant purpose is the relief of poverty, or the advancement of education or religion.

For example, if such a body promotes trade, but its constitution or rules indicate that its dominant purpose is the relief of poverty, then it will not be a relevant body and so will remain eligible to receive an exemption (provided the purpose test set out in section 95(1) is met).

However, if the relief of poverty were only a minor or ancillary purpose, or were a purpose of equal importance, then the body would not be eligible for an exemption.

A body will not come under paragraph (d) where it comes under paragraph (a), (b), (c) or (e). For example, paragraph (c) refers to a professional association. A professional association claiming to have a dominant purpose being the advancement of education would still be a relevant body and not eligible for an exemption.

Paragraph (e) provides that a class of bodies may be prescribed for the purposes of this section.

It is not intended at this time to make any such prescriptions. However, should the common law definition of a charity expand in the future to include other classes of organisations, the regulation making power will allow a quick response to exclude a class of organisation in respect of which it is not considered appropriate that it should benefit from the exemption.

Where there is a relevant body under any of paragraphs (a) to (e), then paragraph (f) provides that any other body that –

- is a member of the same group as the relevant body under the *Pay-roll Tax Assessment Act 2002*; or
- is a related body corporate to the relevant body under the *Corporations Act 2001* (Commonwealth); or
- has as its sole or dominant purpose or object the conferral of a benefit on the relevant body;

is itself a relevant body. It is not necessary that this relevant body otherwise comes within any of paragraphs (a) to (e).

96B. Application for a beneficial body determination

Subsection (1) provides that an application can be made to the Minister for a determination under section 96C that a relevant body is a beneficial body. Such a determination results in the reinstatement of the exempt status of the relevant body.

An application can only be made where the Commissioner has decided that a dutiable transaction is not exempt under section 95, and the Commissioner's decision was made solely on the ground that the person liable for duty was a relevant body referred to in section 96A(c), (d), (e) or (f), or was related to such a relevant body as described in section 95(3).

It should be noted that –

- political parties and trade unions, which are referred to in paragraphs (a) and (b) respectively of section 96A, cannot apply for a beneficial body determination; and
- if an exemption is denied on some additional ground, for example, that the use test set out in section 95(1) was not satisfied, then an application for a beneficial body determination cannot be made.

The subsection also allows for an application to be made in respect of the hypothetical transfer that is required to be considered for the purposes of the exemption from landholder duty provided under section 168 of the Duties Act.

Subsection (2) provides that an application under subsection (1) can only be made if an objection is made to the decision and all objection and review proceedings in relation to the decision have been finalised.

Alternatively, relevant bodies will have the option to surrender their objection rights should they wish to access a Ministerial determination without first going through the objection process. For example, if a body accepts that it is a relevant body as described in section 96A, it can surrender its right to object or appeal and make application directly to the Minister for a beneficial body determination.

To give effect to this provision, Part 5 of this Bill also seeks to make amendments to the *Taxation Administration Act 2003*. These will provide that a taxpayer may surrender their right to object or appeal in the particular circumstances of a decision by the Commissioner that they are a relevant body.

Subsection (3) provides that an application for a Ministerial determination cannot be made where the Commissioner's decision results from an application for a reassessment under section 16(2)(b) of the Taxation Administration Act, and that application was made after the period within which an objection to the original assessment could have been lodged.

Subsection (4) provides that an application to the Minister must be made within 60 days after the objection and review rights have been exhausted or surrendered.

This time limit is consistent with the time limits provided in the Taxation Administration Act in respect of the lodgment of objections with the Commissioner and of review proceedings with the State Administrative Tribunal.

96C. Beneficial body determination

Subsection (1) provides that on an application under section 96B the Minister, with the Treasurer's concurrence, may determine that a relevant body is a beneficial body for the purpose of the taxation Acts.

Given the financial implications associated with the taxation Acts, the Treasurer has responsibility for the underlying policy of the taxation schemes. Accordingly, it is considered appropriate that the Treasurer has input into these decisions.

The taxation Acts include the Duties Act, the *Land Tax Assessment Act 2002* and the *Pay-roll Tax Assessment Act 2002*. Consequently, a determination made under this section will have application across all three Acts. This eliminates the need for a taxpayer who has a liability under more than one of these Acts to make multiple applications.

Subsection (2) provides that the Minister, with the Treasurer's concurrence, may amend or revoke a determination.

Subsection (3) provides that the Minister may make, amend or revoke a determination only if the Minister is of the opinion that it is in the public interest to do so and after considering any information the Minister considers relevant.

Subsection (4) requires the Minister to publish notice of the making, amendment or revocation of a determination in the *Gazette*.

Subsection (5) provides that a determination is subject to any conditions specified therein.

Subsection (6) provides that a determination comes into force for the purposes of the Duties Act on the day it is made. For the purposes of the Land Tax Assessment Act and the Pay-roll Tax Assessment Act, the determination comes into force on the day specified in the notice in respect of each of those Acts.

Subsection (7) provides that notwithstanding that a determination only comes into force on the day it is made, it applies in relation to the relevant body in respect of the dutiable transaction the subject of the application under section 96B. It also applies in respect of any subsequent dutiable transactions entered into before the determination is made and on which duty would not have been chargeable under section 95 had the determination been in force.

The effect of the beneficial body determination is that section 95(2) no longer applies to prevent an exemption from duty being granted on a dutiable transaction for which the liable party is a relevant body, or is related to a relevant body.

Subsection (8) authorises the Commissioner to reassess each transaction to which a determination applies under subsection (7).

Subsection (9) provides that the reassessment time limits set out in section 17 of the Taxation Administration Act do not apply to a reassessment under subsection (8).

Subsection (10) provides that a determination continues in force until the day notice of revocation is published in the *Gazette*.

Part 3 – *Land Tax Assessment Act 2002* amended

Clause 7: Act amended

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

Clause 8: Section 37 replaced

Section 37 of the Land Tax Assessment Act provides an exemption for land that is -

- at midnight 30 June in the previous financial year, owned by, vested in or held in trust for a public charitable or benevolent institution; and
- used solely for the public charitable or benevolent purposes for which the institution was established.

This clause replaces section 37 with a new section which provides as follows.

37. Land owned by public charitable or benevolent institutions, exemption for

Subsection (1) provides that in this section, a reference to a public charitable or benevolent institution does not include a relevant body, unless a beneficial body determination is in force in respect of the relevant body.

The meaning of a relevant body is set out in new section 38AA.

Subsection (2) contains the exemption currently set out in the deleted section 37. It also clarifies that the use of the land for the charitable or benevolent purpose must be satisfied at midnight 30 June in the previous financial year to qualify for the exemption.

Subsection (3) provides that this section applies to an assessment year that commences on or after 1 July 2015.

Clause 9: Sections 38AA, 38AB and 38AC inserted

Clause 9 inserts new sections 38AA, 38AB and 38AC after section 37.

38AA. What is a relevant body

Section 38AA lists in paragraphs (a) to (f) the categories of bodies that are relevant bodies, and which are therefore unable to access an exemption under section 37.

Paragraphs (a) and (b) provide that political parties and trade unions are relevant bodies. These bodies are not considered to be charities, but have been included as relevant bodies in case the common law evolves to include these classes of organisations as charities.

Paragraph (c) provides that a professional association is a relevant body.

Paragraph (d) refers to a body (other than one listed in paragraph (a), (b), (c) or (e)) that promotes trade, industry or commerce, unless its sole or dominant purpose is the relief of poverty, or the advancement of education or religion.

For example, if such a body promotes trade, but its constitution or rules indicate that its dominant purpose is the relief of poverty, then it will not be a relevant body and so will remain eligible to receive an exemption (provided the use test set out in section 37(2)(b) is met).

However, if the relief of poverty were only a minor or ancillary purpose, or were a purpose of equal importance, then the body would not be eligible for an exemption.

A body will not come under paragraph (d) where it comes under paragraph (a), (b), (c) or (e). For example, paragraph (c) refers to a professional association. A professional association claiming to have a dominant purpose being the advancement of education would still be a relevant body and not eligible for an exemption.

Paragraph (e) provides that a class of bodies may be prescribed for

the purposes of this section.

It is not intended at this time to make any such prescriptions. However, should the common law definition of a charity expand in the future to include other classes of organisations, the regulation making power will allow a quick response to exclude a class of organisation in respect of which it is not considered appropriate that it should benefit from the exemption.

Where there is a relevant body under any of paragraphs (a) to (e), then paragraph (f) provides that any other body that –

- is a member of the same group as the relevant body under the *Pay-roll Tax Assessment Act 2002*; or
- is a related body corporate to the relevant body under the *Corporations Act 2001 (Commonwealth)*; or
- has as its sole or dominant purpose or object the conferral of a benefit on the relevant body;

is itself a relevant body. It is not necessary that this relevant body otherwise comes within any of paragraphs (a) to (e).

38AB. Application for a beneficial body determination

Subsection (1) provides that an application can be made to the Minister for a determination under section 38AC that a relevant body is a beneficial body. Such a determination results in the reinstatement of the exempt status of the relevant body.

An application can only be made where the Commissioner has decided that land is not exempt under section 37, and that decision was made solely on the ground that the land was owned by, vested in or held in trust for a relevant body referred to in section 38AA(c), (d), (e) or (f).

It should be noted that –

- political parties and trade unions, which are referred to in paragraphs (a) and (b) respectively of section 38AA, cannot apply for beneficial body determinations; and
- if an exemption were to be denied on some additional ground, e.g. that the use test set out in section 37(2)(b) was not satisfied, then an application for a beneficial body determination cannot be made.

Subsection (2) provides that an application under subsection (1) can only be made if an objection is made to the decision and all objection and review proceedings in relation to the decision have been finalised.

Alternatively, relevant bodies will have the option to surrender their objection rights should they wish to access a Ministerial determination without first going through the objection process. For example, if a body accepts that it is a relevant body as described in section 38AA, it can surrender its right to object or appeal and make

application directly to the Minister for a beneficial body determination.

To give effect to this provision, Part 5 of this Bill also seeks to make amendments to the *Taxation Administration Act 2003*. These will provide that a taxpayer may surrender their right to object or appeal in the particular circumstances of a decision by the Commissioner that they are a relevant body.

Subsection (3) provides that an application for a Ministerial determination cannot be made where the Commissioner's decision results from an application for a reassessment under section 16(2)(b) of the Taxation Administration Act, and that application was made after the period within which an objection to the original assessment could have been lodged.

Subsection (4) provides that an application to the Minister must be made within 60 days after the objection and review rights have been exhausted or surrendered.

This time limit is consistent with the time limits provided in the Taxation Administration Act in respect of the lodgment of objections with the Commissioner and of review proceedings with the State Administrative Tribunal.

38AC. Beneficial body determination

Subsection (1) provides that on an application under section 38AB the Minister, with the Treasurer's concurrence, may determine that a relevant body is a beneficial body for the purpose of the taxation Acts.

Given the financial implications associated with the taxation Acts, the Treasurer has responsibility for the underlying policy of the taxation schemes. Accordingly, it is considered appropriate that the Treasurer has input into these decisions.

The taxation Acts include the Land Tax Assessment Act, the *Duties Act 2008* and the *Pay-roll Tax Assessment Act 2002*. Consequently, a determination made under this section will have application across all three Acts. This eliminates the need for a taxpayer who has a liability under more than one of these Acts to make multiple applications.

Subsection (2) provides that the Minister, with the Treasurer's concurrence, may amend or revoke a determination.

Subsection (3) provides that the Minister may make, amend or revoke a determination only if the Minister is of the opinion that it is in the public interest to do so and after considering any information the Minister considers relevant.

Subsection (4) requires the Minister to publish notice of the making, amendment or revocation of a determination in the *Gazette*.

Subsection (5) provides that a determination is subject to any conditions specified therein.

Subsection (6) provides that a determination comes into force for the purposes of the Land Tax Assessment Act on the day it is made. For the purposes of the Duties Act and the Pay-roll Tax Assessment Act, the determination comes into force on the day specified in the notice in respect of each of those Acts.

Subsection (7) provides that notwithstanding that a determination comes into force on the day it is made, it applies in relation to the relevant body for the assessment year in respect of which the application under section 38AB was made. The determination also applies in respect of any later assessment year up to and including the one in which it was made, and in respect of which land would have been exempt under section 37 had the determination been in force.

The effect of a beneficial body determination is that a public charitable or benevolent institution that is a relevant body will not be precluded from accessing an exemption under section 37 in respect of land owned by, vested in or held in trust for the relevant body.

Subsection (8) authorises the Commissioner to reassess the land tax payable for each assessment year in respect of which a determination applies under subsection (7).

Subsection (9) provides that the reassessment time limits set out in section 17 of the Taxation Administration Act do not apply to a reassessment under subsection (8).

Subsection (10) provides that a determination continues in force until the day notice of revocation is published in the *Gazette*.

Clause 10: Schedule 1 amended

Schedule 1 to the Act contains transitional provisions. This clause inserts a new Division 3 into Schedule 1.

Division 3 – Provisions for the *Taxation Legislation Amendment Act 2014*

3. Terms used

This clause defines the terms ***new provisions*** and ***previously exempt land***, which are used in Division 3.

4. Previously exempt land: section 37

Subclause (1) provides that if the Commissioner forms the preliminary view that previously exempt land (that is, land for which a current exemption under section 37 exists) may not be exempt under the new provisions, then the Commissioner is to give a preliminary notice to the person who would be liable to pay the land tax, informing them of the Commissioner's view and of the effects of this clause.

Subclause (2) provides that if a preliminary notice is given, the Commissioner is to decide whether or not the previously exempt land will be exempt under the new provisions.

Subclause (3) requires the Commissioner to give notice to the person informing them of the Commissioner's decision and the grounds upon which it was made.

Subclause (4) provides that despite the amendments effected by Part 3 of this Bill –

- the new provisions do not apply in relation to previously exempt land until the assessment year following the financial year in which a notice is given under subclause (3); and
- until that time, this Act as in force immediately before the commencement of the amendments continues to apply to that land.

The effect of this subclause is that the new provisions don't apply to previously exempt land until the assessment year following that in which notice is given, rather than the assessment year following that in which the new provisions come into effect. This takes into account the fact that the time taken for the processes described in subclauses (1) to (3) may continue into a later assessment year before it is finalised.

5. Beneficial body determination: application may be made

This clause provides that despite clause 4(4), if the Commissioner decides that previously exempt land is not exempt under the new provisions solely on the ground that an institution is a relevant body referred to in section 38AA(c), (d), (e) or (f), then –

- an application may be made to the Minister under section 38AB for a beneficial body determination; and
- the new provisions apply in respect of the application and the determination as if the decision referred to in section 38AB(1) were the decision of the Commissioner under clause 4.

This clause allows a relevant body to proceed with an application for determination, notwithstanding that the new provisions will not apply to the previously exempt land until the assessment year following the one in which notice was given by the Commissioner. For this purpose, the reference in section 38AB(1) to the decision that land is not exempt is taken to be a reference under clause 4 to the decision that previously exempt land will not be exempt under the new provisions.

Clause 11: Glossary amended

This clause inserts self explanatory definitions of the terms ***political party***; ***professional association***; ***promote trade, industry or commerce***; ***relevant body*** and ***trade union*** into the Glossary of the Land Tax Assessment Act.

Part 4 – Pay-roll Tax Assessment Act 2002 amended

Clause 12: Act amended

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

Clause 13: Section 41 amended

Section 41(1) of the Pay-roll Tax Assessment Act provides that a charitable body or organisation may apply to the Commissioner for exemption from liability to payroll tax. Section 41(2) authorises the Commissioner to grant an exemption by giving notice to the charitable body or organisation.

This clause inserts new subsections (1A), (3A) and (5) and amends existing subsections (3), (4), (6) and (7).

Subsection (1A) provides that a charitable body or organisation is exempt from liability to payroll tax if either –

- an exemption given by the Commissioner under section 41(2) is in force; or
- it is a relevant body in respect of which a beneficial body determination is in force.

Subsection (3A) provides that where a charitable body or organisation is a relevant body, it cannot be given an exemption by the Commissioner under subsection (2). The only avenue for a relevant body to gain an exemption is to obtain a beneficial body determination from the Minister.

New section 42A sets out what a relevant body is.

Subclause (3) amends section 41(3) and (4) by qualifying the exemption referred to therein as being an exemption given by the Commissioner under subsection (2). This is to differentiate it from an exemption resulting from a determination by the Minister.

Subsection (5) provides that the day on which an exemption given by the Commissioner comes into operation cannot be earlier than –

- where the charitable body or organisation is, or at any time was, registered for payroll tax purposes, the commencement of the assessment year in which the application was made; or
- otherwise, the commencement of the assessment year that is five years before the assessment year in which the charitable body or organisation is found to be liable for payroll tax.

Subsection (5) is intended to provide legislative support for the policy established by the Commissioner regarding the commencement date of an exemption, as set out in Commissioner's Practice PT 3.

Subclause (5) amends section 41(6) by qualifying the exemption referred to therein as being an exemption given by the Commissioner

under subsection (2). This is to differentiate it from an exemption resulting from a determination by the Minister.

Subclause (6) amends section 41(7) by qualifying the exemption referred to therein as being an exemption given under subsection (2). This is to differentiate it from an exemption resulting from a determination by the Minister.

Clause 14: Sections 42A, 42B and 42C inserted

This clause inserts new sections 42A, 42B and 42C after section 41.

42A. What is a relevant body

Section 42A lists in paragraphs (a) to (f) the categories of bodies that are relevant bodies, and which are therefore unable to access an exemption under section 41.

Paragraphs (a) and (b) provide that political parties and trade unions are relevant bodies. These bodies are not considered to be charities, but have been included as relevant bodies in case the common law evolves to include these classes of organisations as charities.

Paragraph (c) provides that a professional association is a relevant body.

Paragraph (d) refers to a body (other than one listed in paragraph (a), (b), (c) or (e)) that promotes trade, industry or commerce, unless its sole or dominant purpose is the relief of poverty, or the advancement of education or religion.

For example, if such a body promotes trade, but its constitution or rules indicate that its dominant purpose is the relief of poverty, then it will not be a relevant body and so will remain eligible to receive an exemption (in respect of those wages paid for work performed in connection with the charitable purpose – refer section 40(2)(n) of the Pay-roll Tax Assessment Act).

However, if the relief of poverty were only a minor or ancillary purpose, or were a purpose of equal importance, then the body would not be eligible for an exemption.

A body will not come under paragraph (d) where it comes under paragraph (a), (b), (c) or (e). For example, paragraph (c) refers to a professional association. A professional association claiming to have a dominant purpose being the advancement of education would still be a relevant body and not eligible for an exemption.

Paragraph (e) provides that a class of bodies may be prescribed for the purposes of this section.

It is not intended at this time to make any such prescriptions. However, should the common law definition of a charity expand in the future to include other classes of organisations, the regulation making power will allow a quick response to exclude a class of organisation in respect of which it is not considered appropriate that it should benefit from the exemption.

Where there is a relevant body under any of paragraphs (a) to (e), then paragraph (f) provides that any other body that –

- is a member of the same group as the relevant body under the Pay-roll Tax Assessment Act; or
- is a related body corporate to the relevant body under the *Corporations Act 2001* (Commonwealth); or
- has as its sole or dominant purpose or object the conferral of a benefit on the relevant body;

is itself a relevant body. It is not necessary that this relevant body otherwise comes within any of paragraphs (a) to (e).

42B. Application for a beneficial body determination

Subsection (1) provides that an application can be made to the Minister for a determination under section 42C that a relevant body is a beneficial body. Such a determination results in the reinstatement of the exempt status of the relevant body.

An application can only be made where the Commissioner has decided not to grant an exemption to a charitable body or organisation under section 41, or to revoke an exemption previously granted under that section, and this decision was made solely on the ground that the charitable body or organisation is a relevant body referred to in section 42A(c), (d), (e) or (f).

It should be noted that –

- political parties and trade unions, which are referred to in paragraphs (a) and (b) respectively of section 42A, cannot apply for a beneficial body determination; and
- if an exemption were to be denied on some other ground, then an application for a beneficial body determination cannot be made.

Subsection (2) provides that an application under subsection (1) can only be made if an objection is made to the decision and all objection and review proceedings in relation to the decision have been finalised.

Alternatively, relevant bodies will have the option to surrender their objection rights, should they wish to access a Ministerial determination without first going through the objection process. For example, if a body accepts that it is a relevant body as described in section 42A, it can surrender its right to object or appeal and make application direct to the Minister for a beneficial body determination.

To give effect to this provision, Part 5 of this Bill also seeks to make amendments to the *Taxation Administration Act 2003*. These will provide that a taxpayer may surrender their right to object or appeal in the particular circumstances of a decision by the Commissioner that they are a relevant body.

Subsection (3) provides that an application for a Ministerial determination cannot be made where the Commissioner's decision results from an application for a reassessment under section 16(2)(b)

of the Taxation Administration Act, and that application was made after the period within which an objection to the original assessment could have been lodged.

Subsection (4) provides that an application to the Minister must be made within 60 days after the objection and review rights have been exhausted or surrendered.

This time limit is consistent with the time limits provided in the Taxation Administration Act in respect of the lodgment of objections with the Commissioner and of review proceedings with the State Administrative Tribunal.

42C. Beneficial body determination

Subsection (1) provides that on an application under section 42B the Minister, with the Treasurer's concurrence, may determine that a relevant body is a beneficial body for the purpose of the taxation Acts.

Given the financial implications associated with the taxation Acts, the Treasurer has responsibility for the underlying policy of the taxation schemes. Accordingly, it is considered appropriate that the Treasurer has input into these decisions.

The taxation Acts include the Pay-roll Tax Assessment Act, the *Duties Act 2008* and the *Land Tax Assessment Act 2002*. Consequently, a determination made under this section will have application across all three Acts. This eliminates the need for a taxpayer who has a liability under more than one of these Acts to make multiple applications.

Subsection (2) provides that the Minister, with the Treasurer's concurrence, may amend or revoke a determination.

Subsection (3) provides that the Minister may make, amend or revoke a determination only if the Minister is of the opinion that it is in the public interest to do so and after considering any information the Minister considers relevant.

Subsection (4) requires the Minister to publish notice of the making, amendment or revocation of a determination in the *Gazette*.

Subsection (5) provides that a determination is subject to any conditions specified therein.

Subsection (6) provides that a determination comes into force for the purposes of the Pay-roll Tax Assessment Act on the day it is made. For the purposes of the Duties Act and the Land Tax Assessment Act, the determination comes into force on the day specified in the notice in respect of each of those Acts.

Subsection (7) provides that notwithstanding that a determination comes into force on the day it is made, it applies on and from the day specified by the Minister in the determination. However, this is made subject to section 41(5), which applies in relation to specifying that day as if it were the day an exemption given by the Commissioner

comes into operation pursuant to that section. This ensures that the commencement date of an exemption resulting from a determination is consistent with the commencement date of an exemption granted by the Commissioner.

The determination applies in relation to any payroll tax liability of the relevant body which would have been exempt under section 41 had the determination been in force.

The effect of the beneficial body determination is that the charitable body or organisation concerned will be exempt from liability to payroll tax under section 41(1A)(b).

Subsection (8) authorises the Commissioner to reassess the liability to payroll tax of a relevant body for the period in respect of which a determination applies under subsection (7).

Subsection (9) provides that the reassessment time limits set out in section 17 of the Taxation Administration Act do not apply to a reassessment under subsection (8).

Subsection (10) provides that a determination continues in force until the day notice of revocation is published in the *Gazette*.

Clause 15: Schedule 1 amended

Schedule 1 to the Act contains transitional provisions. This clause inserts a new Division 4 into Schedule 1.

Division 4 – Provisions for the *Taxation Legislation Amendment Act 2014*

10. Terms used

This clause contains definitions of the terms ***commencement day***; ***exemption***; ***new provisions*** and ***previously exempt charitable body or organisation***, which are used in Division 4.

11. Exemptions currently held by relevant bodies may be revoked

This clause concerns the treatment of previously exempt charitable bodies or organisations once the new provisions come into effect.

Subclause (1) provides that if the Commissioner forms the preliminary view that a previously exempt charitable body or organisation (that is, one that is currently exempt under section 41) may be a relevant body, then the Commissioner is to give a preliminary notice to that body or organisation, informing it of the Commissioner's view, and that the exemption may be revoked on and from the day specified in the notice. This specified day must be at least two months after the day the preliminary notice is given.

Subclause (2) provides that if a preliminary notice is given, the Commissioner is to decide whether or not the previously exempt charitable body or organisation is a relevant body.

Subclause (3) provides that if the Commissioner decides that the

previously exempt body or organisation is a relevant body, the Commissioner is to revoke the exemption and inform the previously exempt charitable body or organisation of the grounds on which the decision was made.

Subclause (4) specifies that the revocation of an exemption under this clause has effect on and from the specified day, and also has effect as if it were made under section 41(7) for the purposes of an application under section 42B for a beneficial body determination.

Subclause (5) provides that if the Minister subsequently makes a beneficial body determination, then the new provisions apply to that determination as if a reference in section 42C(6)(a) to the day on which the determination comes into force were a reference to the specified day, and also as if a reference in section 42C(7) to the day on which the determination applies were a reference to the specified day.

This ensures that there is a continuity of exemption, as the determination will reinstate the exemption as and from the same day that it was previously revoked by the Commissioner.

12. Exemptions for periods before the commencement of the *Taxation Legislation Amendment Act 2014 Part 4*

Clause 12 concerns charitable bodies or organisations that –

- are not registered for the purposes of this Act when the new provisions come into effect;
- are registered by the Commissioner after the new provisions come into effect;
- are relevant bodies under the new provisions; and
- after the new provisions come into effect, apply for exemption in respect of a period before the new provisions came into effect and for which period the Commissioner has, upon registration, established liability to payroll tax.

Subclause (1) provides that this clause applies to a charitable body or organisation if, after commencement day, the body is registered and applies for an exemption and the Commissioner decides that the body is a relevant body.

Subclause (2) provides that despite section 41(3A) (which provides that a relevant body cannot be given an exemption by the Commissioner under section 41(2)), the Commissioner may give an exemption to a body to which this clause applies, but the exemption does not apply to the period on and after commencement day and is taken to have been revoked immediately before that day.

These provisions allow a charitable body or organisation that is a relevant body to obtain an exemption under section 41 after these amendments come into effect, in respect of the period ending immediately before the amendments come into effect (when the qualifications as to relevant bodies did not apply).

13. A body or organisation given an exemption under clause 12 may apply for a beneficial body determination

Subclause (1) provides that if the Commissioner makes a decision under clause 12 solely on the ground that the charitable body or organisation is a relevant body under section 42A(c), (d), (e) or (f), then an application may be made under section 42B for a determination by the Minister, and the new provisions apply to that application and any determination as if a reference in section 42B(1) to the decision were a reference to the decision under clause 12.

Subclause (2) provides that if the Minister subsequently makes a beneficial body determination, then the new provisions apply to that determination as if a reference in section 42C(6)(a) to the day on which the determination comes into force were a reference to the commencement day, and also as if a reference in section 42C(7) to the day on which the determination applies were a reference to the commencement day.

This ensures that there is a continuity of exemption, as the determination will apply the exemption as and from commencement day (the exemption previously granted under clause 12 having ceased immediately before that day).

Clause 16: Glossary amended

This clause inserts self explanatory definitions of the terms *political party*; *professional association*; *promote trade, industry or commerce*; *relevant body* and *trade union* into the Glossary of the Pay-roll Tax Assessment Act.

Part 5 – Taxation Administration Act 2003 amended

Clause 17: Act amended

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

Clause 18: Sections 34A and 34B inserted

This clause inserts new sections 34A and 34B at the end of Part 4 Division 1 of the Taxation Administration Act. Part 4 of this Act deals with objections and review proceedings.

34A. Beneficial body determinations

Subsection (1) provides that a decision of the Minister to make or not make, or to revoke or amend a beneficial body determination is not subject to objection or review under the Taxation Administration Act.

Subsection (2) provides that no action can be brought in any court or tribunal to compel the Minister to make a determination.

34B. Surrender of right of objection or review

Subsection (1) provides that this section applies to a decision in respect of which an application for a beneficial body determination may be made.

This will arise where the Commissioner has decided to refuse to grant, or to revoke, a charitable exemption under a taxation Act solely on the ground that a body is a relevant body. The relevant body (except a political party or a trade union) will then have as a result of that decision a right to apply to the Minister for a beneficial body determination.

Subsection (2) provides that a taxpayer may, by written notice to the Commissioner, surrender their right to object or appeal in respect of a decision that they are a relevant body.

This will allow the taxpayer to make an immediate application to the Minister for a determination that they are a beneficial body without having to pursue the process of objection and appeal, or having to wait until all rights to take such actions have expired.

This option to surrender rights of objection and appeal will be of benefit to bodies that accept the Commissioner's decision that they are a relevant body and wish to approach the Minister directly without having to first contest that decision.

Subsection (3) provides that a notice to surrender a right to object or appeal cannot be given after the time periods allowed in the Taxation Administration Act to exercise those rights have expired.

A taxpayer generally has 60 days in which to lodge an objection to an assessment (which includes a decision of the Commissioner that a body is a relevant body). The Commissioner is able to extend that time period, and an application for an extension can be made up to 12 months after the right to lodge an objection has expired.

Where an objection has been determined by the Commissioner, a taxpayer has 60 days in which to apply to the State Administrative Tribunal for a review of the Commissioner's determination. This time period is not subject to extension.

Clause 19: Section 34 amended

Section 34(2) of the Taxation Administration Act lists certain matters against which an objection cannot be made.

This clause inserts the following further matters in respect of which an objection cannot be made.

Paragraph (cb) refers to a decision (by the Minister) to make, or not to make, or to revoke or amend, a beneficial body determination. This relates to new section 34A(1).

Paragraph (cc) refers to a decision which under section 34B(2)(a) is not subject to objection under this Part. This relates to a decision of the Commissioner that a body is a relevant body and in respect of

which objection rights have been surrendered.

Clause 20: Section 40 amended

Section 40(1) of the Taxation Administration Act provides that a person who is dissatisfied with the Commissioner's decision on an objection may apply to the State Administrative Tribunal for a review of that decision.

This clause amends section 40 by inserting a new subsection (3). This provides that subsection (1) does not apply to a decision in respect of which the Act expressly provides that the decision is not subject to review. This will apply to a decision of the Commissioner that a body is a relevant body and in respect of which rights of review have been surrendered pursuant to section 34B.

A decision by the Minister regarding a beneficial body determination, as referred to in section 34A(1), is beyond the ambit of subsection (1) and is therefore not provided with a right of review under this Act.

Clause 21: Glossary amended

This clause inserts self explanatory definitions of the terms ***beneficial body determination*** and ***objection*** into clause 1 of the Glossary of the Taxation Administration Act.