



Western Australia

Revenue Laws Amendment Act 2019

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Western Australia

Revenue Laws Amendment Act 2019

No. 12 of 2019

An Act to amend —

- the *Duties Act 2008*; and
- the *Land Tax Assessment Act 2002*; and
- the *Pay-roll Tax Assessment Act 2002*.

[Assented to 12 June 2019]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Revenue Laws Amendment Act 2019*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 —
 - (i) if the *Duties Amendment (Additional Duty for Foreign Persons) Act 2018* section 3 comes into operation on or before assent day — on the day after assent day; or
 - (ii) otherwise — when that section comes into operation;
- (c) Part 3 Division 3 — on 1 July 2019;
- (d) Part 3 Division 4 —
 - (i) if the *Community Titles Act 2018* section 219(3) comes into operation on or before 1 July 2019 — on 1 July 2019; or
 - (ii) otherwise — when that section comes into operation;
- (e) the rest of the Act — on the day after assent day.

Part 2 — *Duties Act 2008* amended

3. Act amended

This Part amends the *Duties Act 2008*.

4. Section 3 amended

- (1) In section 3 delete the definition of *land*.
- (2) In section 3 insert in alphabetical order:

derivative mining right means an authorisation of a kind described in the *Mining Act 1978* section 118A (whether or not the authorisation purports to be made under that section);

fixed infrastructure has the meaning given in section 91A;

fixed infrastructure access right has the meaning given in section 91A;

fixed infrastructure control right has the meaning given in section 91A;

fixed infrastructure statutory licence has the meaning given in section 91A;

land has a meaning affected by section 3A;

pastoral lease has the meaning given in the *Land Administration Act 1997* section 3(1);

pastoral lessee has the meaning given in the *Land Administration Act 1997* section 3(1);

public float has the meaning given in section 257;

relocatable home means a relocatable home as defined in the *Residential Parks (Long-stay Tenants) Act 2006* Glossary;

residential park site means a site (as defined in the *Residential Parks (Long-stay Tenants) Act 2006* Glossary) in a residential park (as defined in that Glossary);

- (3) In section 3 in the definition of *chattel* after paragraph (g) insert:

(ga) a thing that is land to which section 3A(1)(f) applies;

- (4) In section 3 in the definition of *discretionary trust* after paragraph (c) insert:

(ca) a unit trust scheme; or

5. Section 3A inserted

After section 3 insert:

3A. Term used: land

- (1) In this Act, *land* includes the following —
- (a) an estate or interest in land;
 - (b) a mining tenement;
 - (c) an estate or interest in a mining tenement;
 - (d) a pastoral lease;
 - (e) an interest of a pastoral lessee under a pastoral lease;
 - (f) anything fixed to land (including land the subject of a mining tenement or pastoral lease), whether or not the thing —

- (i) constitutes a fixture at law; or
 - (ii) is owned separately from the land; or
 - (iii) is notionally severed or considered to be legally separate from the land as a result of the operation of any law of the State or the Commonwealth;
 - (g) an estate or interest in a thing to which subsection (1)(f) applies.
- (2) In this Act, **land** does not include —
- (a) a carbon right or a carbon covenant registered under the *Carbon Rights Act 2003*; or
 - (b) a derivative mining right.
- (3) Without limiting subsection (1)(f), a thing is taken to be fixed to land if it has a physical connection to the land or is buried or partly buried under the surface of the land.
- (4) Subsection (1)(f) does not apply to the following —
- (a) a thing that is fixed to land on a temporary basis and only for the purpose of being used in construction works;
 - (b) a thing that does not constitute a fixture at law and that is held or used in connection with the business of primary production;
 - (c) a relocatable home fixed to a residential park site, or an addition or structure fixed or attached to the home or site for the use or enjoyment of the occupier of the home, that does not constitute a fixture at law;
 - (d) a thing of a kind prescribed for the purposes of this paragraph.

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- (5) A paragraph of subsection (1) is not to be taken into account in determining the meaning of *land* when used in another paragraph of subsection (1).

6. Section 6 amended

- (1) At the beginning of section 6 insert:
- (1) In this section —
step-child, of a person, means a child of a spouse or de facto partner of the person.
- (2) In section 6 delete “In determining whether” and insert:
- (2) In determining whether
- (3) At the end of section 6 insert:
- (3) In determining for the purposes of section 43(1)(c) or (ca), 87(6)(a), (c) or (h) or 100(1)(a) or (c) whether a person is a child or remoter lineal descendant of another person, a step-child of a person is to be treated as a child.
- (4) In determining for the purposes of section 162(1)(b) whether the relationship between individuals is that of parent and child, a step-child of a person is to be treated as a child.

Note: The heading to amended section 6 is to read:

Determining family relationships

7. Section 11 amended

After section 11(2) insert:

- (3) Subsection (2)(a) does not apply to a right referred to in section 16(1)(h), (i) or (j) or (3)(aa).
- (4) Subsection (2)(b) does not apply to a pastoral lease.

8. Section 13 amended

In section 13(1):

- (a) in paragraph (a) delete “right to exploit” and insert:

derivative mining right in relation to

- (b) in paragraph (c)(ii) delete “a right to exploit, or an entitlement to a right to exploit,” and insert:

a derivative mining right, or an entitlement to a derivative mining right, in relation to

- (c) in paragraph (d) delete “right to exploit the mining tenement,” and insert:

derivative mining right,

9. Section 14 amended

- (1) In section 14(1) delete “subsection (2),” and insert:

subsections (2) and (3),

- (2) After section 14(2) insert:
- (3) A transaction referred to in subsection (1) is a dutiable transaction if —
- (a) there is a relevant acquisition for the purposes of Chapter 3 or an agreement for the making of such an acquisition; and
 - (b) the transaction and the acquisition or agreement together form, evidence, give effect to or arise from what is, substantially one arrangement.
- (4) Without limiting subsection (3), unless the Commissioner is satisfied to the contrary, a transaction and an acquisition or agreement together form, evidence, give effect to or arise from what is, substantially one arrangement if —
- (a) the transaction has taken place, and the acquisition or agreement has been made, within 12 months; and
 - (b) in respect of both the transaction and the acquisition or agreement, the person liable to pay duty is the same person (whether that person is the only person liable to pay duty or is liable to pay duty with the same or different persons).
- (5) A reference in subsection (4) to a person liable to pay duty on the transaction is a reference to a person that would be liable to pay duty if the transaction were a dutiable transaction.

Note: The heading to amended section 14 is to read:

Transactions as to chattels alone not usually dutiable

10. Section 16 amended

- (1) In section 16(1):
 - (a) in paragraph (g) delete “property.” and insert:

property;
 - (b) after paragraph (g) insert:
 - (h) a fixed infrastructure control right;
 - (i) a fixed infrastructure access right;
 - (j) a fixed infrastructure statutory licence.
- (2) In section 16(2) after “right” insert:

referred to in subsection (1)(a) to (g)
- (3) In section 16(3):
 - (a) after paragraph (a) insert:
 - (aa) a derivative mining right;
 - (b) after paragraph (b) insert:
 - (ba) a part of, or an interest in, a right referred to in subsection (1) or this subsection;
- (4) After section 16(3) insert:
 - (4) Subsection (1)(a) to (g) do not apply to a right to the extent that the right is a fixed infrastructure control

right, a fixed infrastructure access right or a fixed infrastructure statutory licence.

11. Section 17 amended

(1) After section 17(1)(b)(ii) insert:

- (ia) a fixed infrastructure control right;
- (ib) a fixed infrastructure access right;
- (ic) a derivative mining right;

(2) In section 17(2):

(a) in paragraph (c) delete “a lease” and insert:

a lease (other than a pastoral lease)

(b) after paragraph (c) insert:

(ca) a pastoral lease, or an interest of a pastoral lessee under a pastoral lease, if the grant of the lease under the *Land Administration Act 1997* section 101 is not subject to the payment of a sale price;

(c) delete paragraph (e).

12. Section 18 amended

In section 18:

(a) in paragraph (c) delete “lease,” and insert:

lease (other than a pastoral lease),

(b) after paragraph (g) insert:

- (ga) a fixed infrastructure control right, if consideration is paid, or agreed to be paid, for the surrender of the right;
- (gb) a fixed infrastructure access right, if consideration is paid, or agreed to be paid, for the surrender of the right;
- (gc) a derivative mining right, if consideration is paid, or agreed to be paid, for the surrender of the right;

13. Section 18A inserted

At the end of Chapter 2 Part 3 Division 2 insert:

18A. Things fixed to land that are to be permanently removed

- (1) Despite section 3A(1)(f) and (g), a thing fixed to land, or an estate or interest in such a thing, is taken not to be land in relation to a particular transaction if —
 - (a) the transaction is the transfer, or an agreement for the transfer, of the thing or the estate or interest in the thing; and
 - (b) none of the following are transferred as part of the transaction or another transaction that is aggregated with the transaction under section 37 —
 - (i) the land, or an estate or interest in the land, to which the thing is fixed;
 - (ii) if the land to which the thing is fixed is land the subject of a mining tenement — the mining tenement, or an

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estate or interest in the mining
tenement;

and

- (c) there is an agreement, arrangement or understanding relating to the transaction under which the thing is to be permanently removed from the land.
- (2) Subsection (1) applies whether or not the thing constitutes a fixture at law.
- (3) If subsection (1) applies to a thing fixed to land, or an estate or interest in such a thing, the thing is taken to be a chattel for the purposes of this Act.
- (4) Subsection (1) ceases to apply to a thing fixed to land, or an estate or interest in such a thing, if the thing is not permanently removed from the land within —
 - (a) the period of 90 days after the day on which the transfer referred to in subsection (1)(a) occurs;
or
 - (b) any longer period allowed, on application within the period referred to in paragraph (a), by the Commissioner on any conditions the Commissioner thinks fit.
- (5) If a failure to remove a thing as referred to in subsection (4) occurs, the transferee must lodge a notice of the failure in the approved form within 2 months after the last day of the period that applies under subsection (4)(a) or (b).

Penalty for this subsection: a fine of \$20 000.

- (6) Subject to the Taxation Administration Act section 17, the Commissioner must make any reassessment necessary as a result of the operation of subsection (4).

14. Section 28 amended

- (1) In section 28(4) after “grant of a lease” insert:

(other than a pastoral lease)
- (2) After section 28(4) insert:

(4A) The dutiable value of a dutiable transaction that is the grant of a pastoral lease is the sale price subject to the payment of which the lease is granted under the *Land Administration Act 1997* section 101.

15. Section 36 amended

- (1) In section 36(4):
 - (a) in paragraph (ca)(ii) delete “ascribed;” and insert:

ascribed.
 - (b) after paragraph (ca) delete “and”;
 - (c) delete paragraph (c).
- (2) After section 36(4) insert:

(5) When determining the unencumbered value of property that is land —

 - (a) if the land is the subject of an agreement for transfer, any improvement made to the land at the expense of the purchaser or transferee before the date liability to duty arises on the agreement is to be taken not to have been made to the land; and

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- (b) if the land is the subject of a transfer, any improvement made to the land at the expense of the transferee before the land is transferred is to be taken not to have been made to the land; and
 - (c) the value is to be determined having regard to the use of the land that would best enhance its commercial value; and
 - (d) the value is to be determined having regard to commercial advantages (such as goodwill) that —
 - (i) attach to the location or other aspects of the land; and
 - (ii) would affect the price that a reasonable purchaser would be willing to pay for the land;
- and
- (e) if section 36A applies, the value is to be determined having regard to that section.

Note: The heading to amended section 36 is to read:

Determining unencumbered value of property

16. Section 36A inserted

At the end of Chapter 2 Part 4 Division 5 Subdivision 3 insert:

36A. Determining unencumbered value: fixtures and mining tenement fixtures

- (1) In this section —
mining tenement fixture, in relation to a mining tenement, means a thing that —
 - (a) under the authority (whether direct or indirect) of the mining tenement, is fixed to land that is the subject of the mining tenement; and

- (b) would be part of that land as a fixture if the mining tenement were a freehold estate in the land.
- (2) In determining the unencumbered value of dutiable property that is land, anything that is part of the land as a fixture is to be taken into account even if the dutiable transaction does not, or purports not to, apply to the fixture as well as the land.
- (3) Subsection (2) does not apply if the value of the fixture would, apart from that subsection, be taken into account separately in determining the dutiable value of the dutiable transaction relating to the land or another dutiable transaction that is aggregated with that dutiable transaction under section 37.
- (4) In determining the unencumbered value of dutiable property that is a mining tenement or an estate or interest in a mining tenement, anything that is a mining tenement fixture in relation to the mining tenement is to be taken into account even if the dutiable transaction does not, or purports not to, apply to the mining tenement fixture as well as the mining tenement or the estate or interest in the mining tenement.
- (5) Subsection (4) does not apply if the value of the mining tenement fixture would, apart from that subsection, be taken into account separately in determining the dutiable value of the dutiable transaction relating to the mining tenement or the estate or interest in the mining tenement or another dutiable transaction that is aggregated with that dutiable transaction under section 37.
- (6) In this section, a reference to land does not include anything that is land under section 3A(1)(b), (c), (f) or (g).

17. Section 39 amended

After section 39(3) insert:

- (4) This section does not apply to a transaction if section 78 or 78A applies to the transaction or if the transaction is a subsequent transfer referred to in section 120A.

18. Section 42 amended

- (1) Delete section 42(4B) and insert:

- (4B) If an agreement is for the transfer of dutiable property to a purchaser acting in the purchaser's own capacity, but the property is transferred to the purchaser acting in a capacity as a trustee of a trust, subsection (1) does not apply to the transfer of the property unless —
 - (a) the purchaser is an individual and the trust is a unit trust scheme in which the purchaser is the sole unit holder; or
 - (b) the trust is a unit trust scheme in which the purchaser is a unit holder and each of the other unit holders are related, as referred to in section 43(1)(a), (b), (c), (ca), (cb), (d) or (e), to the purchaser; or
 - (c) the trust is not a discretionary trust or a unit trust scheme and each beneficiary of the trust is related, as referred to in section 43(1)(a), (b), (c), (ca), (cb), (d) or (e), to the purchaser.

- (2) In section 42(4C) delete “whose interest in the scheme or trust is a beneficial interest.” and insert:

acting in their own capacity and not as agent, trustee or otherwise on behalf of any other person.

19. Section 43 amended

- (1) Delete section 43(1)(c) and insert:

- (c) a child or remoter lineal descendant of the purchaser;
- (ca) a spouse or de facto partner of a child, or remoter lineal descendant, of the purchaser;
- (cb) a spouse or de facto partner of a parent, or remoter lineal ancestor, of the purchaser;

- (2) In section 43(4)(c)(i) and (ii) after “(c),” insert:

(ca), (cb),

20. Section 57 amended

- (1) In section 57(2) delete “Section 156 applies” and insert:

Sections 156 and 156A apply

- (2) In section 57(3) delete “section 156, the trustee of the discretionary trust is the main entity, despite section 152(2).” and insert:

sections 156 and 156A, the trustee of the discretionary trust is the main entity, despite section 152(2) and (3).

21. Section 61 amended

Delete section 61(b)(i) and (ii) and insert:

- (i) to land assets were a reference to dutiable property; and
- (ii) to the main entity's total direct or indirect interest in the linked entity calculated under section 154A were a reference to the total direct or indirect interest that the trustee of the discretionary trust has in the linked entity, calculated under section 154A(2) to (5) as if the trustee of the discretionary trust were a higher entity referred to in that section.

22. Section 66 amended

- (1) In section 66(2) delete "Section 156 applies" and insert:

Sections 156 and 156A apply

- (2) In section 66(3) delete "section 156, the corporate trustee is the main entity, despite section 152(2)." and insert:

sections 156 and 156A, the corporate trustee is the main entity, despite section 152(2) and (3).

23. Section 67 amended

In section 67(1) delete “results in a change in the beneficial ownership of” and insert:

results, or will or may result, in a change in any beneficial interest, whether vested or contingent, in

24. Section 68 amended

Delete section 68(2)(a) and (b) and insert:

- (a) to land assets were a reference to dutiable property; and
- (b) to the main entity’s total direct or indirect interest in the linked entity calculated under section 154A were a reference to the total direct or indirect interest that the corporate trustee has in the linked entity, calculated under section 154A(2) to (5) as if the corporate trustee were a higher entity referred to in that section.

25. Section 70 amended

In section 70 in the definition of *dutiable property*:

- (a) in paragraph (b) delete “Australia.” and insert:

Australia;

- (b) after paragraph (b) insert:

- (c) a fixed infrastructure control right;
- (d) a fixed infrastructure access right;

- (e) a fixed infrastructure statutory licence;
- (f) a derivative mining right.

26. Section 72 amended

Delete section 72(b) and insert:

- (b) a fixed infrastructure control right; or
- (c) a fixed infrastructure access right; or
- (d) a derivative mining right; or
- (e) an indirect interest in property referred to in paragraph (a), (b), (c) or (d).

27. Section 73 amended

- (1) Delete section 73(1) and insert:

- (1) A partnership holds an indirect interest in property of a kind referred to in section 72(a), (b), (c) or (d) if an entity linked to the partnership is entitled to property of that kind.

- (2) In section 73(2) delete “Section 156 applies” and insert:

Sections 156 and 156A apply

- (3) In section 73(3) delete “section 156, the partnership is the main entity, despite section 152(2).” and insert:

sections 156 and 156A, the partnership is the main entity, despite section 152(2) and (3).

Note: The heading to amended section 73 is to read:

When partnership holds indirect interest in property

28. Section 77 amended

(1) Delete section 77(1)(b)(i) and (ii) and insert:

- (i) to land assets were a reference to dutiable property; and
- (ii) to the main entity's total direct or indirect interest in the linked entity calculated under section 154A were a reference to the total direct or indirect interest that the partnership has in the linked entity, calculated under section 154A(2) to (5) as if the partnership were a higher entity referred to in that section.

(2) In section 77(2) after "on its formation" insert:

(other than any joint property)

(3) After section 77(2) insert:

- (2A) In determining the value of a partnership interest the subject of a new partner's partnership acquisition on formation of a partnership, the value determined under subsections (1) and (2) is to be reduced, for each interest in joint property the new partner contributed to the partnership on its formation, by —
- (a) the unencumbered value, when liability for duty on the transaction arises, of that interest; or
 - (b) if the amount determined under paragraph (a) is greater than the amount (the *cap amount*)

determined by applying the new partner's partnership interest to the total unencumbered value, when liability for duty on the transaction arises, of the joint property to which that interest relates — the cap amount.

- (2B) For the purposes of subsections (2) and (2A), joint property is property held by the new partner jointly with 1 or more other partners.

- (4) In section 77(3) delete “subsection (2),” and insert:

subsections (2) and (2A),

29. Section 78 replaced

Delete section 78 and insert:

78. Dutiable value of transfer of dutiable property to retiring partner

- (1) This section applies if —
- (a) a person (the *retiring partner*) ceases to be a partner in a partnership because of the retiring partner's retirement from the partnership or its dissolution; and
 - (b) on the retirement or dissolution, dutiable property (the *transfer property*) of the partnership is transferred or agreed to be transferred to the retiring partner; and
 - (c) the transfer property is, or is an interest in, a particular item of dutiable property (the *relevant partnership property*) held by the partnership immediately before the retirement or dissolution.

- (2) In determining the dutiable value of the dutiable transaction that is the transfer or agreement referred to in subsection (1)(b), the unencumbered value of the transfer property is to be determined as follows —
 - (a) first, the aggregate unencumbered value of the following is to be determined —
 - (i) the transfer property;
 - (ii) if the transfer property is an interest in the relevant partnership property — relevant retained property (if any) in relation to the transfer property;
 - (b) second, the value determined in accordance with paragraph (a) is to be reduced by an amount calculated by applying the retiring partner's partnership interest in the partnership to the unencumbered value, immediately before the retirement or dissolution, of the relevant partnership property.
- (3) Property is relevant retained property in relation to the transfer property for the purposes of subsection (2)(a)(ii) if —
 - (a) the property is also an interest in the relevant partnership property; and
 - (b) immediately before the retirement or dissolution, the retiring partner was the legal owner of the property and held it for the partnership; and
 - (c) immediately after the retirement or dissolution, the retiring partner remains the legal owner of the property but no longer holds it for the partnership.
- (4) This section does not apply to a transfer that is taken to occur under section 78A(2).

78A. Certain retained property taken to be transferred to retiring partner

- (1) This section applies if —
 - (a) a person (a *retiring partner*) ceases to be a partner in a partnership because of the retiring partner's retirement from the partnership or its dissolution; and
 - (b) immediately before the retirement or dissolution, the retiring partner was the legal owner of dutiable property (the *retained property*) and held the property for the partnership; and
 - (c) immediately after the retirement or dissolution, the retiring partner remains the legal owner of the retained property but no longer holds it for the partnership; and
 - (d) the retained property is, or is an interest in, a particular item of dutiable property (the *relevant partnership property*) held by the partnership immediately before the retirement or dissolution; and
 - (e) the retained property is or includes property referred to in section 72(a) to (d).
- (2) When the retirement or dissolution occurs, there is taken to be a dutiable transaction consisting of the transfer of the retained property to the retiring partner.
- (3) In determining the dutiable value of a dutiable transaction under subsection (2) (a *deemed transaction*), the unencumbered value of the retained property is to be determined as follows —
 - (a) first, the unencumbered value of the retained property when liability for duty on the deemed transaction arises is to be determined;

- (b) second, the value determined in accordance with paragraph (a) is to be reduced by an amount calculated by applying the retiring partner's partnership interest in the partnership to the unencumbered value, immediately before the retirement or dissolution, of the relevant partnership property.
- (4) This section does not apply to retained property if the unencumbered value of the retained property is to be taken into account in determining the dutiable value of a transaction to which section 78 applies.

30. Section 79 amended

In section 79 delete the definition of *business licence* and insert:

business licence —

- (a) means a licence, permit or authority which is issued, granted or given under —
 - (i) a written law and which is required by a written law to be held by a person carrying out an activity for gain or reward; or
 - (ii) a law of the Commonwealth and which is required by a law of the Commonwealth to be held by a person carrying out an activity in Western Australia for gain or reward;
- but
- (b) does not include a fixed infrastructure access right, a fixed infrastructure control right or a fixed infrastructure statutory licence;

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31. Section 80 amended

In section 80 delete “to transfer a Western Australian business asset and is liable to duty accordingly.” and insert:

for the transfer to the other person of the business licence that is to be relinquished or is not to be renewed.

Note: The heading to amended section 80 is to read:

Some transactions involving business licences to be taken to be agreements for transfer

32. Section 81 amended

In section 81(3) delete “business asset” and insert:

business asset, a fixed infrastructure control right, a fixed infrastructure access right or a fixed infrastructure statutory licence,

33. Section 87 amended

In section 87(6):

- (a) in paragraph (c) after “brother or sister of the person or” insert:

a child or

- (b) in paragraph (f) delete “(a),”;
- (c) in paragraph (g) delete “(d),” and insert:

(d); or

(d) after paragraph (g) insert:

- (h) a child or remoter lineal descendant of a former spouse or former de facto partner of a person,

34. Chapter 2 Part 5 Divisions 7 and 8 inserted

At the end of Chapter 2 Part 5 insert:

Division 7 — Rights relating to fixed infrastructure

91A. Terms used

(1) In this Division —

fixed infrastructure means dutiable property that is land in Western Australia that is a thing to which section 3A(1)(f) applies;

fixed infrastructure access right means a licence or other right that authorises access to or use of any land for —

- (a) a purpose related to the control, operation, use, construction, inspection, testing, maintenance or repair of fixed infrastructure or of things used in conjunction with fixed infrastructure; or
- (b) any other purpose associated with fixed infrastructure;

fixed infrastructure control right —

- (a) means a lease, licence or other right that enables the holder to have the day-to-day control, and the operation or use, of fixed infrastructure; but
- (b) does not include —
 - (i) a security interest; or
 - (ii) a fixed infrastructure statutory licence;

fixed infrastructure statutory licence means a licence, permit or authority that is issued, granted or given under a written law or a law of the Commonwealth (the *issuing law*) if —

- (a) the licence, permit or authority authorises the ownership, control, operation or use of a thing (the *relevant activity*); and
- (b) the issuing law prohibits a person that does not hold such a licence, permit or authority from engaging in the relevant activity; and
- (c) the thing referred to in paragraph (a) is fixed infrastructure;

landholder has the meaning given in section 148(1);

linked entity has the meaning given in section 148(1).

- (2) In the definition of *fixed infrastructure access right* in subsection (1), a reference to land does not include anything that is land under section 3A(1)(f) or (g).
- (3) Despite subsection (1), anything that is land is not a fixed infrastructure control right, fixed infrastructure access right or fixed infrastructure statutory licence.
- (4) The regulations may prescribe classes of right that, despite subsection (1), are excluded from the definition of *fixed infrastructure access right*, *fixed infrastructure control right* or *fixed infrastructure statutory licence* in that subsection.

91B. Some transactions involving fixed infrastructure statutory licences to be taken to be agreements for transfer

When a person agrees to relinquish a fixed infrastructure statutory licence held by that person, or agrees not to apply for a renewal of such a fixed infrastructure statutory licence, so that it, or another,

can be issued, granted or given to another person, that agreement is taken to be an agreement for the transfer to the other person of the fixed infrastructure statutory licence that is to be relinquished or is not to be renewed.

91C. Which transactions as to fixed infrastructure access rights and fixed infrastructure statutory licences are dutiable

- (1) For the purposes of this section, a transaction (the *fixed infrastructure transaction*) is not a dutiable transaction to the extent that the fixed infrastructure transaction relates to dutiable property that consists of a fixed infrastructure access right or a fixed infrastructure statutory licence unless subsection (2), (3) or (4) applies.
- (2) This subsection applies if the dutiable property to which the fixed infrastructure transaction relates also includes any of the following —
 - (a) fixed infrastructure (*relevant fixed infrastructure*) to which the fixed infrastructure access right or fixed infrastructure statutory licence relates;
 - (b) an estate or interest in relevant fixed infrastructure;
 - (c) a fixed infrastructure control right that relates to relevant fixed infrastructure.
- (3) This subsection applies if —
 - (a) there is another transaction that is a dutiable transaction and that relates to any dutiable property referred to in subsection (2)(a), (b) or (c); and
 - (b) the fixed infrastructure transaction and the other transaction together form, evidence, give

effect to or arise from what is, substantially one arrangement.

- (4) This subsection applies if —
- (a) there is a relevant acquisition of an interest in a landholder for the purposes of Chapter 3 or an agreement for the making of such an acquisition; and
 - (b) the landholder, or a linked entity in respect of the landholder, is entitled to any property referred to in subsection (2)(a), (b) or (c); and
 - (c) the fixed infrastructure transaction and the acquisition or agreement together form, evidence, give effect to or arise from what is, substantially one arrangement.
- (5) Section 37(2) applies in relation to transactions referred to in subsection (3)(b) as if the fixed infrastructure transaction were a dutiable transaction.
- (6) Section 14(4) and (5) apply in relation to a fixed infrastructure transaction and acquisition or agreement referred to in subsection (4)(c) as if they were a transaction and acquisition or agreement referred to in section 14(3).
- (7) For the purposes of the application of this section to a transaction that is a partnership acquisition, the partnership acquisition is taken to relate to the property of a kind referred to in section 72(a) to (d) held by the partnership or in which the partnership has an indirect interest under section 73.

91D. Dutiable value of fixed infrastructure statutory licences

- (1) The dutiable value of a dutiable transaction for a fixed infrastructure statutory licence issued, granted or given under a law of the Commonwealth is the greater of —
 - (a) the value of the fixed infrastructure statutory licence so far as it authorises the ownership, control, operation or use of fixed infrastructure (a *fixed infrastructure activity*); or
 - (b) the portion of the consideration for the transaction that relates to the carrying out of a fixed infrastructure activity under the authority of the licence.
- (2) The dutiable value of a dutiable transaction for a fixed infrastructure statutory licence issued, granted or given under a law of Western Australia is —
 - (a) the consideration for the dutiable transaction; or
 - (b) the unencumbered value of the fixed infrastructure statutory licence at the time when liability for duty on the transaction arises if —
 - (i) there is no consideration for the transaction; or
 - (ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or
 - (iii) the unencumbered value is greater than the consideration for the transaction.

Division 8 — Derivative mining rights

91E. Agreement for transfer of mining tenement conditional on grant of derivative mining right to transferor

- (1) This section applies if —
 - (a) there is an agreement for the transfer of a mining tenement from a person (*person A*) to another person (*person B*); and
 - (b) it is a condition of the agreement for the transfer that after the transfer person B is to grant a derivative mining right (the *prospective right*) in relation to the mining tenement to person A.
- (2) In determining the dutiable value of the agreement referred to in subsection (1)(a), the unencumbered value of the mining tenement is to be determined, despite section 36(1), having regard to the effect of the prospective right on the value of the mining tenement, as if the prospective right were in force when liability for duty on the agreement arose.
- (3) If the agreement referred to in subsection (1)(a) is duty endorsed, duty is not chargeable on the acquisition of the prospective right on its grant by person B.

91F. Agreement for transfer of mining tenement conditional on grant of derivative mining right to current right holder

- (1) This section applies if —
 - (a) there is an agreement for the transfer of a mining tenement to a person (*person A*); and
 - (b) it is a condition of the agreement for the transfer that after the transfer person A is to grant a derivative mining right (the *prospective*

right) in relation to the mining tenement to another person (*person B*) who —

- (i) when the agreement is made, holds a derivative mining right (the *previous right*) in relation to the mining tenement that is substantially the same as the prospective right; and
 - (ii) will hold the previous right until immediately before the transfer of the mining tenement.
- (2) In determining the dutiable value of the agreement referred to in subsection (1)(a), the unencumbered value of the mining tenement is to be determined, despite section 36(1), having regard to the effect of the previous right on the value of the mining tenement when liability for duty on the agreement arose.
- (3) Duty is not chargeable on the acquisition of the prospective right on its grant by person A if both of the following are duty endorsed —
- (a) the agreement referred to in subsection (1)(a);
 - (b) the acquisition, on its grant, of the previous right.

91G. Transfer or agreement for transfer of mining tenement to holder of derivative mining right

- (1) This section applies if —
- (a) a person (*person A*) holds a derivative mining right (the *previous right*) in relation to a mining tenement held by another person (*person B*); and
 - (b) the acquisition of the previous right, on its grant, is duty endorsed; and

- (c) there is a transfer, or agreement for the transfer, of the mining tenement from person B to person A; and
 - (d) person A holds, or will hold, the previous right until immediately before the transfer of the mining tenement.
- (2) In determining the dutiable value of a transfer referred to in subsection (1)(c), the unencumbered value of the mining tenement is to be determined, despite section 36(1), having regard to the effect of the previous right on the value of the mining tenement, as if the previous right were in force when liability for duty on the transfer arose.
- (3) In determining the dutiable value of an agreement referred to in subsection (1)(c), the unencumbered value of the mining tenement is to be determined, despite section 36(1), having regard to the effect of the previous right on the value of the mining tenement when liability for duty on the agreement arose.

91H. Acquisition of derivative mining right substantially the same as was held in relation to previous mining tenement

- (1) Duty is not chargeable on an acquisition of a derivative mining right by a person (*person A*) on its grant by another person (*person B*) if —
 - (a) the derivative mining right relates to a mining lease granted to person B; and
 - (b) before the grant of the mining lease, person B held a prospecting licence or an exploration licence in relation to land including the land the subject of the mining lease; and
 - (c) person A held a derivative mining right in relation to the prospecting licence or

exploration licence that was substantially the same as the derivative mining right in relation to the mining lease; and

- (d) the acquisition of the derivative mining right in relation to the prospecting licence or exploration licence, on its grant, is duty endorsed.

- (2) A reference in this section to a mining lease, prospecting licence or exploration licence is to a mining lease, prospecting licence or exploration licence (as the case requires) granted or continued under the *Mining Act 1978*.

91I. Failure to grant, or surrender of, derivative mining right after transfer of mining tenement

- (1) In this section —
mining tenement valuation provision means section 91E(2) or 91F(2);
prospective right, in relation to a mining tenement valuation provision, means the prospective right referred to in whichever of section 91E(1)(b) or 91F(1)(b) is relevant.
- (2) A mining tenement valuation provision that applies to an agreement for the transfer of a mining tenement when liability for duty on the agreement arises ceases to apply to the agreement if —
 - (a) the prospective right is not granted within the period that applies under subsection (3); or
 - (b) the prospective right is surrendered for no consideration within 12 months after the day on which the mining tenement is transferred.

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- (3) For the purposes of subsection (2)(a), the period is —
 - (a) the period of 90 days starting on the day on which the mining tenement is transferred; or
 - (b) any longer period allowed, on application within the period referred to in paragraph (a), by the Commissioner on any conditions the Commissioner thinks fit.
- (4) If a failure to grant the prospective right referred to in subsection (2)(a) occurs, the transferee in respect of the agreement for transfer referred to in subsection (2) must lodge a notice of the failure in the approved form within 2 months after the last day of the period that applies under subsection (3).

Penalty for this subsection: a fine of \$20 000.
- (5) If a surrender referred to in subsection (2)(b) occurs, the person who surrenders the prospective right must lodge a notice of the surrender in the approved form within 2 months after the day on which the surrender occurs.

Penalty for this subsection: a fine of \$20 000.
- (6) Subject to the Taxation Administration Act section 17, the Commissioner must make any reassessment necessary as a result of the operation of subsection (2).

35. Section 96B amended

In section 96B(1)(a)(ii) delete “section 168(1)” and insert:

section 168(3)

36. Section 99 amended

In section 99(3) delete “acquisition, if the land referred to in section 72 is farming land.” and insert:

acquisition to the extent that the property of a kind referred to in section 72(a) to (d) held by the partnership, or in which the partnership has an indirect interest under section 73, is farming property.

37. Section 100 amended

(1) In section 100:

(a) delete “A reference” and insert:

(1) A reference

(b) in paragraph (c) after “brother or sister of the person or” insert:

a child or

(c) in paragraph (f) delete “(d),” and insert:

(d); or

(d) after paragraph (f) insert:

- (g) a brother or sister of the person’s spouse or of the person’s de facto partner of 2 years; or
- (h) the spouse or de facto partner of 2 years of a brother or sister to whom paragraph (g) applies,

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(2) At the end of section 100 insert:

- (2) A reference in this Subdivision to a family member is to a family member acting in their own capacity and not as agent, trustee or otherwise on behalf of any other person.

38. Section 101 amended

In section 101:

(a) delete paragraph (a) and insert:

(a) a family member of the transferor; or

(b) in paragraph (b) delete “the beneficial owner of the trust property under the trust” and insert:

each beneficiary of the trust

(c) delete paragraph (c)(i) and insert:

(i) each beneficiary of the trust is the transferor or a family member of the transferor; and

(ia) the transferor is not the only beneficiary of the trust; and

39. Section 102 amended

(1) Delete section 102(3)(a) to (c) and insert:

(a) personally or with others; or

- (b) through a trust or corporation (an *entity*) to which the transferor or transferee, as is relevant, is related under section 102A; or
- (c) through a combination of entities to which the transferor or transferee, as is relevant, is related under section 102A.

(2) Delete section 102(4) and (5) and insert:

- (4) The Commissioner may treat the requirement in subsection (2)(a) as being satisfied, even though any of the transferors was not using the farming property in the business of primary production immediately before the transaction took place, if the Commissioner is satisfied that —
 - (a) the relevant transferor had previously used the farming property in the business of primary production; and
 - (b) a family member of the relevant transferor, or an entity to which a family member of the relevant transferor is related under section 102A, was using the farming property in the business of primary production immediately before the transaction took place.

(3) In section 102(6) delete “subsection (2),” and insert:

this section,

40. Section 102A inserted

After section 102 insert:

102A. Related entities for s. 102

- (1) For the purposes of section 102(3), a transferor is related to an entity that is —
 - (a) a trust (other than a unit trust scheme) if the transferor is a beneficiary of the trust and every other beneficiary is a family member of the transferor; or
 - (b) a unit trust scheme if the transferor holds a unit in the unit trust scheme and every other person who holds a unit in the unit trust scheme is a family member of the transferor; or
 - (c) a corporation if the transferor is a shareholder in the corporation and every other shareholder is a family member of the transferor.
- (2) For the purposes of section 102(3), a transferee is related to an entity that is —
 - (a) a trust (other than a unit trust scheme or a discretionary trust) if the transferee is a beneficiary of the trust and every other beneficiary is the transferor or a family member of the transferor; or
 - (b) a discretionary trust if —
 - (i) the transferee is a beneficiary of the trust; and
 - (ii) every other beneficiary is the transferor or a family member of the transferor; and
 - (iii) the transferor does not control the discretionary trust;

or

(c) a unit trust scheme if the transferee holds a unit in the unit trust scheme and every other person who holds a unit in the unit trust scheme is the transferor or a family member of the transferor;
or

(d) a corporation if the transferee is a shareholder in the corporation and every other shareholder is the transferor or a family member of the transferor.

(3) If a transferee is a trustee of a trust to which section 101(b) applies, subsection (2) applies to the transferee as if the references to the transferee in subsection (2)(a), (b), (c) and (d) were references to each beneficiary of that trust.

(4) For the purposes of section 102(4)(b), subsection (2) applies in determining whether a family member of a relevant transferor is related to an entity as if the family member were a transferee referred to in that subsection.

41. Section 105 amended

In section 105(1)(a) after “person that is not” insert:

the transferor or

42. Section 107 amended

In section 107(1) in the definition of *replacement transaction* paragraph (c) delete “duty;” and insert:

tax;

43. Section 113A inserted

At the end of Chapter 2 Part 6 Division 1 Subdivision 4 insert:

113A. Certain incorporated association transactions

- (1) In this section —
- Commissioner* has the meaning given in the *Associations Incorporation Act 2015* section 3;
- prescribed body corporate* has the meaning given in the *Associations Incorporation Act 2015* section 92;
- surplus property* has the meaning given in the *Associations Incorporation Act 2015* section 3;
- surplus receiving body* means a body described in the *Associations Incorporation Act 2015* section 24(1).
- (2) Duty is not chargeable on the following transactions —
- (a) a vesting of dutiable property by, or expressly authorised by, statute law (as referred to in section 11(1)(d)(i)) in an incorporated association (that is an amalgamation of 2 or more former associations) on the incorporation of the association under the *Associations Incorporation Act 2015* Part 7;
 - (b) a transfer of, or an agreement for the transfer of, dutiable property from an incorporated association to a prescribed body corporate on the transfer of incorporation by the association under the *Associations Incorporation Act 2015* Part 6;
 - (c) a transfer of, or an agreement for the transfer of, dutiable property that is surplus property to a surplus receiving body —
 - (i) from an incorporated association on the winding up of the association under the

Associations Incorporation Act 2015
Part 9; or

- (ii) from an incorporated association under a distribution plan approved under the *Associations Incorporation Act 2015* Part 10 Division 1; or
- (iii) where the property is vested in the State under the *Associations Incorporation Act 2015* section 148(1)(a), from the Commissioner, acting under subsection (1)(b) of that section.

44. Section 116 amended

After section 116(2) insert:

- (3) Subsection (1) does not apply to a subsequent transfer to which section 118(1) applies.

45. Section 118 replaced

Delete section 118 and insert:

118. Transfers to and from bare trustee

- (1) Nominal duty is chargeable on a transfer (the *subsequent transfer*) if —
 - (a) there has been a dutiable transaction (the *original transfer*) that is a transfer of dutiable property from a person (the *transferor*) to another person who is to hold the property solely as a bare trustee for the transferor; and

- (b) any of the following transactions (the ***endorsed transaction***) is duty endorsed —
 - (i) the original transfer;
 - (ii) the agreement for the original transfer;
 - (iii) the declaration of trust;and
 - (c) the subsequent transfer is a transfer of the dutiable property back to the transferor or to a person to whom the transferor's beneficial interest in the property has been transmitted by death or bankruptcy; and
 - (d) the Commissioner is satisfied that, between the original transfer and the subsequent transfer, no person other than the transferor has held a beneficial interest in the dutiable property (other than the trustee's right of indemnity).
- (2) In subsection (1) —
- bare trustee*** —
- (a) means a trustee of a trust, other than a unit trust scheme or a discretionary trust, if the trustee has no active duties or powers in relation to the trust other than conveying the dutiable property to the transferor or as directed by the transferor; and
 - (b) includes a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees.
- (3) If nominal duty is chargeable on a subsequent transfer under subsection (1), nominal duty is also chargeable on the endorsed transaction.

- (4) The Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the endorsed transaction in accordance with subsection (3).
- (5) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (4).

118A. Transfers to and from bare trustee: failure to lodge subsequent transfer

- (1) This section applies if —
 - (a) under section 118, nominal duty is chargeable on a subsequent transfer and an endorsed transaction referred to in that section; and
 - (b) the subsequent transfer is required to be lodged for registration under —
 - (i) the *Transfer of Land Act 1893*; or
 - (ii) the *Registration of Deeds Act 1856*; or
 - (iii) the *Mining Act 1978*;and
 - (c) the liability to duty of the subsequent transfer is assessed in accordance with section 118(1) on the basis that nominal duty is chargeable; and
 - (d) the liability to duty of the endorsed transaction is reassessed in accordance with section 118(3) on the basis that nominal duty is chargeable; and
 - (e) the subsequent transfer is not lodged for registration under the *Transfer of Land Act 1893*, the *Registration of Deeds Act 1856* or the *Mining Act 1978* (whichever is relevant) within 60 days after it is duty endorsed.

- (2) Despite section 118(1) and (3), nominal duty is not chargeable on the subsequent transfer or the endorsed transaction.
- (3) The Commissioner must make any reassessment necessary as a result of the operation of subsection (2).
- (4) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (3).

46. Chapter 2 Part 6 Division 2 Subdivision 1A inserted

After Chapter 2 Part 6 Division 2 Subdivision 1 insert:

Subdivision 1A — Transfers to facilitate subdivision of land

120A. Transfers to facilitate subdivision of land

- (1) Nominal duty is chargeable on a dutiable transaction (the *original transfer*) if —
 - (a) the transaction is a transfer, or agreement for the transfer, of land in Western Australia from a person (the *original transferor*) to another person; and
 - (b) the Commissioner is satisfied that —
 - (i) the transfer is for the sole purpose of facilitating a subdivision of the land; and
 - (ii) after the subdivision there is to be a transfer back to the original transferor of the land or part of the land.
- (2) If nominal duty is chargeable on an original transfer under subsection (1), nominal duty is also chargeable on a transfer (the *subsequent transfer*) of the land, or

part of the land, back to the original transferor after the subdivision.

- (3) If the land the subject of the subsequent transfer includes land that was not the subject of the original transfer, then despite subsection (2) nominal duty is chargeable on the subsequent transfer only to the extent that it relates to land that is also the subject of the original transfer.

120B. Land retained by transferee following transfer to facilitate subdivision

- (1) This section applies if —
- (a) nominal duty is chargeable under section 120A(1) on an original transfer of land from a person (the *original transferor*) to another person (the *original transferee*) for the purpose of facilitating a subdivision of the land; and
 - (b) after the subdivision, there is a transfer (the *subsequent transfer*) of the land, or part of the land, back to the original transferor; and
 - (c) either or both of the following applies —
 - (i) the land the subject of the subsequent transfer is only a part of the land the subject of the original transfer and the remainder of that land is retained by the original transferee after the subsequent transfer;
 - (ii) after the subsequent transfer, the land the subject of the subsequent transfer, or part of that land, is held jointly by the original transferor with the original transferee.

- (2) When the subsequent transfer is made, there is taken to be a dutiable transaction consisting of the transfer to the original transferee of the following —
 - (a) any land the subject of the original transfer that is not also the subject of the subsequent transfer;
 - (b) the original transferee's interest in any land held jointly with the original transferor as referred to in subsection (1)(c)(ii).
- (3) In determining the dutiable value of a dutiable transaction under subsection (2) (a ***deemed transaction***), the unencumbered value of the dutiable property the subject of the deemed transaction is the unencumbered value of that property when liability for duty arose on the original transfer.
- (4) Subsection (1)(c)(i) does not apply if the original transferee is to transfer the remainder of the land to another person for the purposes of the subdivision.

120C. Transfers to facilitate subdivision: failure to lodge subsequent transfer within 5 years

- (1) If a subsequent transfer referred to in section 120A is not lodged for registration under the *Transfer of Land Act 1893* within the period of 5 years after the day on which the original transfer referred to in that section was registered under the *Transfer of Land Act 1893*, then, despite that section, nominal duty is not chargeable on the original transfer or the subsequent transfer.
- (2) The Commissioner may on application extend the period of 5 years referred to in subsection (1) and may do so on any conditions the Commissioner thinks fit.

- (3) The Commissioner must make any reassessment necessary as a result of the operation of subsection (1).
- (4) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (3).

120D. Subdivisions of land excluded from s. 120A and 120B

Sections 120A and 120B do not apply in relation to —

- (a) a subdivision under —
 - (i) before the coming into operation of the *Strata Titles Amendment Act 2018* section 7 — a strata plan registered under the *Strata Titles Act 1985* (other than under a strata plan for a single tier strata scheme as defined in the *Strata Titles Act 1985* section 3(1)); or
 - (ii) after the coming into operation of the *Strata Titles Amendment Act 2018* section 7 — a strata scheme as defined in the *Strata Titles Act 1985* section 3(1) (other than a single tier strata scheme as defined in the *Strata Titles Act 1985* Schedule 2A clause 3);
- or
- (b) a subdivision of land in circumstances prescribed by the regulations.

120E. References to transfer of land back to person

For the purposes of sections 120A and 120B, land that is transferred by a person for the purposes of a subdivision of the land is to be treated as being transferred back to the person after the subdivision —

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- (a) even though there will be a change in the legal description of the land between the transfers;
and
- (b) whether or not, after the transfer back to the person, the land is to be held jointly with 1 or more other persons.

47. Section 139 amended

In section 139(2):

- (a) in paragraph (c)(ii) delete “1972.” and insert:

1972;

- (b) after paragraph (c) insert:

- (d) a partnership acquisition, to the extent that —
 - (i) the partnership acquisition gives effect to a distribution in the estate of a deceased person; and
 - (ii) there is no consideration for the partnership acquisition.

48. Section 139A inserted

After section 139 insert:

139A. Some transfers and vestings under orders made under *Guardianship and Administration Act 1990*

- (1) In this section —
administration order means —

- (a) an administration order (as defined in the *Guardianship and Administration Act 1990* section 3(1)); or
- (b) an order or instrument referred to in paragraph (b) or (c) of the definition of ***administrator*** in this subsection;

administrator means —

- (a) an administrator (as defined in the *Guardianship and Administration Act 1990* section 3(1)); or
 - (b) a person acting under the authority of an order made under the *Guardianship and Administration Act 1990* section 66; or
 - (c) the Public Trustee acting under the authority of an instrument referred to in the *Guardianship and Administration Act 1990* section 83B.
- (2) Nominal duty applies to a dutiable transaction that is —
- (a) a transfer to an administrator of dutiable property of the person to whom the administration order relates (the ***represented person***) made under the authority of the administration order; or
 - (b) a vesting in an administrator of dutiable property of a person to whom the administration order relates (the ***represented person***) by, or as a consequence of, an order of the State Administrative Tribunal under the *Guardianship and Administration Act 1990*.
- (3) If nominal duty is chargeable on a transfer or vesting of dutiable property under subsection (2), nominal duty is also chargeable on —

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- (a) any transfer of the dutiable property back from an administrator to the represented person; or
- (b) any subsequent vesting in the represented person of the dutiable property by, or as a consequence of, an order of the State Administrative Tribunal under the *Guardianship and Administration Act 1990*.

49. Section 141 amended

After section 141(2) insert:

- (3) For the purposes of this Division, a person is a ***substituted transferee*** in relation to a dutiable transaction if —
 - (a) the dutiable transaction is an agreement for the transfer of dutiable property referred to in section 11(1)(b); and
 - (b) due to the operation of section 42(2) or (4), duty is not chargeable on the transfer to the person of the dutiable property under the agreement.

50. Section 142A amended

In section 142A(3)(b) delete “section 14AA(2)(a)(ii)” and insert:

section 14AA(2)(a)

51. Section 142 amended

- (1) Delete section 142(1) and insert:

- (1) A reference in this Division to a first home owner concessional transaction is to a transfer of, or an agreement for the transfer of, dutiable property where —
- (a) either —
 - (i) each transferee is a concessional first home owner; or
 - (ii) if the transaction is an agreement for transfer in relation to which there are 1 or more substituted transferees — each substituted transferee is a concessional first home owner;
 - and
 - (b) the unencumbered value of the land, or the land and home, the subject of the transaction does not exceed —
 - (i) if there is no home on the land — \$400 000; or
 - (ii) otherwise — \$530 000.
- (2) In section 142(2):
- (a) in paragraph (c) delete “transaction,” and insert:

transaction.
 - (b) delete the passage that begins with “and includes” and ends with “subject of the transaction.”

52. Section 146 amended

Delete section 146(b) and insert:

- (b) the FHOG Act applies to and in relation to an application under this Division, to the extent that it can be applied for those purposes, as if —
 - (i) a reference in the FHOG Act to an application or an applicant were a reference to the application or applicant under this Division; and
 - (ii) the reference in the FHOG Act section 37(1)(a) to functions of the Commissioner were a reference to functions of the Commissioner related to an application under this Division;
- and

53. Section 147A amended

After section 147A(2) insert:

- (3) For the purposes of this Division, a person is a *substituted transferee* in relation to an eligible transaction if —
 - (a) the eligible transaction is of a kind referred to in section 147B(b); and
 - (b) due to the operation of section 42(2), (4) or (5), duty is not chargeable on the transfer to the person of the dutiable property under the agreement.

54. Section 147D amended

In section 147D:

- (a) after “Land” insert:

that is the subject of an eligible transaction

- (b) in paragraphs (b) to (d) delete “taxpayer” (each occurrence) and insert:

taxpayer, or a substituted transferee in relation to the eligible transaction,

55. Section 147F amended

- (1) In section 147F(2) delete “taxpayer —” and insert:

taxpayer or a substituted transferee in relation to the eligible transaction —

- (2) In section 147F(4) delete “taxpayer —” and insert:

taxpayer, or a substituted transferee in relation to the eligible transaction for the land —

56. Section 148 amended

- (1) In section 148 delete “In this Chapter,” and insert:

(1) In this Chapter,

- (2) In section 148 insert in alphabetical order:

further interest means an interest in a landholder acquired by a relevant acquisition to which section 163(1)(c) or (d) applies;

land asset means any of the following —

- (a) land;
- (b) a fixed infrastructure control right;
- (c) a derivative mining right;
- (d) subject to section 204A, a fixed infrastructure access right;

- (3) In section 148 in the definition of *relevant acquisition* delete “sections 163 and 164;” and insert:

section 163(1);

- (4) In section 148 in the definition of *unencumbered value* delete “section 36 as applied by section 150.” and insert:

sections 36 and 36A as applied by sections 150 and 204C.

- (5) At the end of section 148 insert:

- (2) For the purposes of this Chapter, a land asset referred to in paragraph (b), (c) or (d) of the definition of *land asset* in subsection (1) is taken to be a land asset in Western Australia.

57. Section 149 amended

- (1) In section 149(1):
- (a) delete “to land” and insert:

to land assets, chattels, or land assets and chattels,

(b) in paragraph (a) delete “land,” and insert:

land assets, chattels, or land assets and chattels,

(c) in paragraph (b) delete “land” and insert:

land assets, chattels, or land assets and chattels,

(2) Delete section 149(2A) to (4) and insert:

- (2) In determining the entitlement of an entity to land assets, chattels, or land assets and chattels, for the purposes of this Chapter —
- (a) an entity that is a partnership is taken to be entitled to land assets or chattels if the partnership property is or includes those land assets or chattels; and
 - (b) an entity that is a unit trust scheme or the trustee of a discretionary trust is taken to be entitled to land assets or chattels if the trust property is or includes those land assets or chattels.

Note: The heading to amended section 149 is to read:

Determining entitlement to land assets and chattels

58. Section 149A inserted

After section 149 insert:

149A. Determining entitlement to land assets: fixtures and mining tenement fixtures

(1) In this section —

mining tenement fixture, in relation to a mining tenement, means a thing that —

- (a) under the authority (whether direct or indirect) of the mining tenement, is fixed to land that is the subject of the mining tenement; and
 - (b) would be part of that land as a fixture if the mining tenement were a freehold estate in the subject land.
- (2) In determining the entitlement of an entity to a land asset that is land, anything that is part of the land as a fixture is to be taken into account even if the fixture is, or purports to be, the subject of an entitlement separate from the ownership of the rest of the land.
- (3) In determining the entitlement of an entity to a land asset that is a mining tenement or an estate or interest in a mining tenement (a ***mining tenement land asset***), anything that is a mining tenement fixture in relation to the mining tenement is to be taken into account even if the mining tenement fixture is, or purports to be, the subject of an entitlement separate from the ownership of the rest of the mining tenement land asset.
- (4) Subsection (2) or (3) (whichever is relevant) does not apply for the purposes of determining the land assets to which an entity is entitled in relation to an acquisition if the fixture or the mining tenement fixture would, apart from that subsection, be taken into account separately in relation to that acquisition in determining the land assets to which that entity or another entity is entitled.
- (5) In this section, a reference to land does not include anything that is land under section 3A(1)(b), (c), (f) or (g).

59. Section 150 amended

In section 150:

- (a) delete “Section 36 applies,” and insert:

Sections 36 and 36A apply,

- (b) after “land” insert:

assets

Note: The heading to amended section 150 is to read:

Unencumbered value of land assets or chattels

60. Section 152 amended

- (1) In section 152(2) delete “this extent, namely that the trustee of a discretionary trust or a partnership may be a linked entity under section 156,” and insert:

the extent set out in subsection (3),

- (2) After section 152(2) insert:

- (3) The trustee of a discretionary trust or a partnership may be —

- (a) an entity in an ownership chain referred to in section 154A (other than the main entity referred to in that section); or
- (b) an entity referred to in section 154B; or
- (c) a linked entity under section 156; or
- (d) a relevant entity referred to in section 156A(1)(b)(i).

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61. Section 153 amended

- (1) In section 153(1) after “an interest” insert:

(other than a reference to an indirect interest)

- (2) In section 153(3) delete “section 159.” and insert:

sections 153A and 153B.

62. Sections 153A and 153B inserted

After section 153 insert:

153A. References to interest in, or held by, trustee of discretionary trust

For the purposes of section 154A, if a trustee of a discretionary trust is an entity in an ownership chain referred to in that section —

- (a) an entity has an interest in the trustee of the discretionary trust if the entity is a potential beneficiary under the trust; and
- (b) the trustee of the discretionary trust has an interest in an entity if the trust property is or includes the interest; and
- (c) the percentage of the interest that the entity immediately above the trustee of the discretionary trust in the ownership chain has in the trustee of the discretionary trust is taken to be —
 - (i) a 100% interest; or

- (ii) if the Commissioner decides in a particular case that the operation of subparagraph (i) would be inequitable — an interest of some other percentage, or no interest, as determined by the Commissioner.

153B. References to interest in, or held by, partnership

For the purposes of section 154A, if a partnership is an entity in an ownership chain referred to in that section —

- (a) an entity has an interest in the partnership if the entity is a partner in the partnership or, in the case of a unit trust scheme, the trustee, as trustee of the scheme, is a partner in the partnership; and
- (b) the partnership has an interest in an entity if the partnership property is or includes the interest; and
- (c) the percentage of the interest that the entity immediately above the partnership in the ownership chain has in the partnership is taken to be the greater of the following —
 - (i) the percentage of the capital of the partnership that the entity has contributed or is required to contribute;
 - (ii) the percentage of the losses of the partnership that the entity is required to bear.

63. Section 154 amended

- (1) In section 154(3) delete “section 158 or 159” and insert:

section 153A(c) or 153B(c)

- (2) In section 154(6)(d) delete “section 163 or 164,” and insert:

section 163,

Note: The heading to amended section 154 is to read:

Calculating interest in entity

64. Sections 154A and 154B inserted

At the end of Chapter 3 Part 3 insert:

154A. Calculating total direct or indirect interest in entity

- (1) This section applies where it is necessary in relation to an acquisition of an interest in an entity (the *main entity*) to calculate the total direct or indirect interest that one entity (a *higher entity*) has in another entity (a *lower entity*).
- (2) A higher entity has a direct or indirect interest in a lower entity if there are 1 or more ownership chains between the higher entity and the lower entity.
- (3) An ownership chain exists if —
 - (a) the higher entity has an interest as defined in whichever of section 153, 153A or 153B is applicable (a *direct interest*) in the lower entity; or
 - (b) there is a series of at least 3 entities, starting with the higher entity and ending with the lower entity, each of which successively has a direct interest in the next.

- (4) The percentage of the interest that a higher entity has in a lower entity through a particular ownership chain is —
- (a) for an ownership chain referred to in subsection (3)(a) — the percentage of the higher entity's direct interest in the lower entity calculated under whichever of section 153A(c), 153B(c) or 154 is applicable; or
 - (b) for an ownership chain referred to in subsection (3)(b) — the percentage calculated by multiplying the percentage of the higher entity's direct interest in the entity immediately below it in the ownership chain by the percentage of the direct interest that each entity in the ownership chain between the higher entity and the lower entity has in the entity immediately below it in the ownership chain.
- (5) The percentage of the total direct or indirect interest that a higher entity has in a lower entity is the aggregate of the percentage interests calculated under subsection (4) for each ownership chain between the higher entity and the lower entity.

154B. Determining interest in entity: uncompleted agreements

In determining the interest that an entity has in another entity for the purposes of section 154A, 156, or 156A —

- (a) if the entity has entered into an agreement to acquire an interest in the other entity, the agreement is to be regarded as having been completed even if it has not yet been completed; and

- (b) if the entity has entered into an agreement to dispose of an interest in the other entity but the agreement has not yet been completed, the agreement is to be disregarded.

65. Section 155 amended

- (1) In section 155(1) delete “section 163 or 164.” and insert:

section 163.

- (2) In section 155(2):

- (a) delete “A corporation” and insert:

An entity

- (b) in paragraph (a) delete “land in Western Australia or an entity linked to the corporation” and insert:

land assets in Western Australia or an entity linked to the entity

- (3) Delete section 155(3) and (4) and insert:

- (3) An entity to which subsection (2) does not apply is a landholder if —

- (a) immediately before the acquisition, it is entitled to land assets, chattels, or land assets and chattels, in Western Australia or an entity linked to the entity is so entitled; and
 - (b) the acquisition is part of a relevant arrangement under subsection (4).

- (4) An acquisition of an interest in an entity (the **relevant entity**) is part of a relevant arrangement for the purposes of subsection (3)(b) if —
- (a) there are 1 or more acquisitions of interests in 1 or more other entities (the **other entities**), which may occur before or after the acquisition of the interest in the relevant entity; and
 - (b) the acquisition of the interest in the relevant entity and the acquisitions of the interests in the other entities together form, evidence, give effect to or arise from what is, substantially one arrangement; and
 - (c) either or both of the following applies —
 - (i) at least 1 of the other entities is, at the time the acquisition of the interest in that entity occurs, a landholder to which subsection (2) applies;
 - (ii) the total value of all of the entitlements to land assets in Western Australia referred to in subsection (4A) is \$2 000 000 or more.
- (4A) For the purposes of subsection (4)(c)(ii), the total value of the following entitlements is to be determined —
- (a) the entitlements to land assets in Western Australia, immediately before the acquisition of the interest in the relevant entity, of the relevant entity and each entity linked to the relevant entity;
 - (b) for each of the other entities — the entitlements to land assets in Western Australia, immediately before the acquisition of the interest in that other entity, of that other entity and each entity linked to that other entity.

- (4) In section 155(5):
 - (a) delete paragraph (a) and insert:
 - (a) land assets to which an entity is entitled are to be valued at their unencumbered value; and
 - (b) in paragraph (b) after “land” insert:
 - assets
- (5) After section 155(5) insert:
 - (6) An entity that, under subsection (3), is a landholder in relation to an acquisition is taken to be a landholder in relation to that acquisition even if the acquisition does not become part of a relevant arrangement referred to in subsection (4) until after the acquisition occurs.

66. Section 156 amended

- (1) In section 156(1) delete “section 155(2)(a) or (3)(a).” and insert:
 - section 155.
- (2) In section 156(2) delete “an ownership chain” and insert:
 - a linkage chain
- (3) In section 156(3) delete “An ownership chain” and insert:
 - A linkage chain

(4) Delete section 156(4) to (6) and insert:

(4) An entity is linked to another entity if —

- (a) where the other entity is a listed corporation or a listed unit trust scheme — it has an interest in the other entity of at least 90%; or
- (b) in any other case — it has a total direct or indirect interest in the other entity, calculated under section 154A, of at least 50%.

(5) In section 156(7) delete “subsection (4), (5) or (6).” and insert:

subsection (4).

(6) Delete section 156(8).

67. Section 156A inserted

After section 156 insert:

156A. Linked entities: acquisitions forming one arrangement

(1) Subsection (3) applies if —

- (a) there are acquisitions (the *related acquisitions*) of interests in 2 or more entities (the *main entities*) that together form, evidence, give effect to or arise from what is, substantially one arrangement; and
- (b) either —
 - (i) each of the main entities has a direct or indirect interest (as referred to in

section 154A(2)) in an entity (the *relevant entity*) that is not a listed corporation or listed unit trust scheme;
or

- (ii) one of the main entities (the *relevant entity*) is an entity that is not a listed corporation or listed unit trust scheme and each of the other main entities has a direct or indirect interest (as referred to in section 154A(2)) in the relevant entity;

and

- (c) there is at least 1 main entity that has a total direct or indirect interest in the relevant entity, calculated under section 154A, that is less than 50%; and
- (d) the aggregated direct or indirect interest in the relevant entity determined under subsection (2) is at least 50%.

- (2) The aggregated direct or indirect interest for the purposes of subsection (1)(d) is —

- (a) if subsection (1)(b)(i) applies, the aggregate of the total direct or indirect interests, calculated under section 154A, that each of the main entities has in the relevant entity; or
- (b) if subsection (1)(b)(ii) applies, the aggregate of —
 - (i) the interests in the relevant entity acquired by each related acquisition that is an acquisition of an interest in the relevant entity; and
 - (ii) the total direct or indirect interests, calculated under section 154A, that each of the main entities (other than the

relevant entity) has in the relevant entity.

- (3) The relevant entity is taken, in relation to a related acquisition of an interest in a main entity to which subsection (1)(c) applies, to be linked to that main entity under section 156(2).
- (4) A relevant entity that is linked to a main entity for the purposes of an acquisition because of subsection (3) is taken to be linked in relation to that acquisition even if that subsection does not become applicable in relation to the acquisition until after the acquisition occurs.
- (5) For the purposes of this section, the direct or indirect interest, or total direct or indirect interest, that a main entity has in the relevant entity is to be determined immediately after the related acquisition of an interest in that main entity.

68. Section 157 amended

- (1) In section 157(1) after “land” insert:

assets

- (2) In section 157(2):

- (a) after “land” insert:

assets

- (b) delete “interest in the linked entity.” and insert:

total direct or indirect interest in the linked entity
calculated under section 154A.

- (3) Delete section 157(3) and (4).

Note: The heading to amended section 157 is to read:

Value of land assets of linked entity for s. 155

69. Sections 158 and 159 deleted

Delete sections 158 and 159.

70. Section 160 amended

After section 160(3) insert:

- (4) This section is subject to section 160A.

Note: The heading to amended section 160 is to read:

How person acquires interest in entity

71. Section 160A inserted

At the end of Chapter 3 Part 5 Division 1 insert:

160A. Acquisition of interest by merger of corporations

- (1) If a corporation (*company A*) has an interest in an entity and there is a merger of company A with and into another corporation (*company B*) in circumstances where neither subsection (2) nor subsection (3) applies, company B is taken to acquire that interest.
- (2) If 2 or more corporations (the *merging corporations*) merge in circumstances where another corporation (*company C*) results as a consequence of the merger, and any of the merging corporations has an interest in an entity, company C is taken to acquire that interest.

- (3) If 2 or more corporations (the *merging corporations*) merge with and into each other in circumstances where each of the merging corporations continues in existence, and any of the merging corporations has an interest in an entity, the merging corporations are taken to acquire, jointly, 50% of that interest.

72. Section 161 amended

In section 161 delete the definition of *significant interest* and insert:

significant interest, in a landholder, means —

- (a) if the landholder is a listed landholder — an interest of at least 90%; or
- (b) otherwise — an interest of at least 50%.

73. Section 162 amended

- (1) In section 162(1):

- (a) delete “sections 163 and 164” and insert:

section 163

- (b) in paragraph (h) delete “form or arise from substantially one transaction or one series of transactions;” and insert:

form, evidence, give effect to or arise from what is, substantially one arrangement;

- (2) After section 162(1) insert:

- (1A) Subsection (1)(h) and (i) do not apply —

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- (a) in circumstances where the acquisitions result from a public float; or
 - (b) in prescribed circumstances.
- (3) In section 162(2):
 - (a) delete “persons, other than related corporations,” and insert:

persons
 - (b) delete “sections 163 and 164.” and insert:

section 163.
- (4) Delete section 162(3) and insert:
 - (2A) The Commissioner cannot make a determination under subsection (2) in relation to persons or entities that are related persons under subsection (1)(c), (h) or (i).
 - (3) This subsection applies to persons if their interests in the entity —
 - (a) were acquired independently and are, and will be, employed independently; and
 - (b) were not acquired for a common purpose and are not, and will not be, employed for a common purpose.

Note: The heading to amended 162 is to read:

Related persons for s. 163

74. Sections 163 and 164 replaced

Delete sections 163 and 164 and insert:

163. Relevant acquisitions

- (1) An acquisition by a person (the *acquirer*) of an interest in an entity that is a landholder in relation to the acquisition is a *relevant acquisition* in any of the following circumstances —
 - (a) if —
 - (i) immediately before the acquisition, the acquirer does not have a significant interest in the landholder; and
 - (ii) immediately after the acquisition, the acquirer has a significant interest in the landholder;
 - (b) if —
 - (i) immediately before the acquisition, the aggregated group interest in the landholder does not amount to a significant interest; and
 - (ii) immediately after the acquisition, the aggregated group interest in the landholder amounts to a significant interest;
 - (c) if —
 - (i) immediately before the acquisition, the acquirer has a significant interest in the landholder; and
 - (ii) as a result of the acquisition, the acquirer's interest in the landholder increases;

- (d) if —
 - (i) immediately before the acquisition, the aggregated group interest in the landholder amounts to a significant interest; and
 - (ii) as a result of the acquisition, the aggregated group interest in the landholder increases.
- (2) In subsection (1) —
aggregated group interest means the aggregate of —
 - (a) the interest (if any) that the acquirer has in the landholder; and
 - (b) if 1 or more related persons have an interest in the landholder — all of those interests.

75. Sections 167 and 168 replaced

Delete sections 167 and 168 and insert:

167. Exemption or reduction of duty if nominal duty would be chargeable on transfer

- (1) In this section —
acquiring person, in relation to an acquisition, means the person making the acquisition;
notional transfer, in relation to an acquisition, means a notional transaction consisting of the transfer, at the time of the acquisition, by the relinquishing person to the acquiring person of the relevant land assets, as if the relevant land assets were those of the relinquishing person;
relevant land assets, in relation to an acquisition of an interest in a landholder, means the land assets to which

the landholder, and each linked entity in respect of the landholder, are entitled;

relinquishing person, in relation to an acquisition, means the person from whom the interest in the landholder was acquired.

- (2) This section applies to an acquisition of an interest in a landholder if nominal duty would be chargeable, to any extent, on the notional transfer in relation to the acquisition.
- (3) If only nominal duty would be chargeable on the notional transfer, the acquisition is exempt.
- (4) If nominal duty would be chargeable on the notional transfer only to a particular extent, then despite Part 6 Division 5, the amount of duty chargeable in respect of the acquisition is the amount of duty calculated under that Division in respect of the acquisition reduced by the same proportion as the proportion of the notional transfer on which nominal duty would be chargeable.
- (5) If the acquiring person did not acquire the interest in the landholder from another person, the reference to the relinquishing person in the definition of ***notional transfer*** in subsection (1) is to be read (according to what is relevant) as a reference to the or a person —
 - (a) whose interest in the landholder is decreased because of the acquisition; or
 - (b) whose interest in the landholder decreased resulting in the acquisition.

Note for this subsection:

An acquiring person may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

168. Exemption or reduction of duty if transfer duty would not be chargeable

- (1) In this section —

acquiring person, in relation to an acquisition, means the person making the acquisition;

notional transfer, in relation to an acquisition, means a notional transaction consisting of the transfer, at the time of the acquisition, by the relinquishing person to the acquiring person of the relevant land assets, as if the relevant land assets were those of the relinquishing person;

relevant land assets, in relation to an acquisition of an interest in a landholder, means the land assets to which the landholder, and each linked entity in respect of the landholder, are entitled;

relinquishing person, in relation to an acquisition, means the person from whom the interest in the landholder was acquired.

- (2) This section applies to an acquisition of an interest in a landholder if no transfer duty would be chargeable, or transfer duty would be chargeable only to a particular extent, on the notional transfer in relation to the acquisition.
- (3) If no transfer duty would be chargeable on the notional transfer, the acquisition is exempt.
- (4) If transfer duty would be chargeable on the notional transfer only to a particular extent, then despite Part 6 Division 5, the amount of duty chargeable in respect of the acquisition is the amount of duty calculated under that Division in respect of the acquisition reduced by the same proportion as the proportion of the notional transfer on which no transfer duty would be chargeable.

- (5) If the acquiring person did not acquire the interest in the landholder from another person, the reference to the relinquishing person in the definition of ***notional transfer*** in subsection (1) is to be read (according to what is relevant) as a reference to the or a person —
- (a) whose interest in the landholder is decreased because of the acquisition; or
 - (b) whose interest in the landholder decreased resulting in the acquisition.

Note for this subsection:

An acquiring person may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

- (6) This section does not apply if —
- (a) no transfer duty would be chargeable, or transfer duty would be chargeable only to a particular extent, on the notional transfer because of an exemption or reduction under Chapter 6; or
 - (b) section 171 or 194 applies to the acquisition.

76. Section 171 amended

- (1) Delete section 171(1).
- (2) In section 171(2):
 - (a) delete “in a corporation” and insert:

in a landholder
 - (b) after “uses land” insert:

assets

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- (c) in paragraph (a)(i) delete “land to which the corporation or a linked entity in respect of the corporation” and insert:

land assets to which the landholder or a linked entity in respect of the landholder

- (d) in paragraph (a)(ii) delete “section 102(2), (3), (5) and (6)” and insert:

section 102(2)

- (e) in paragraph (b) delete “corporation, or a linked entity in respect of the corporation, intends to continue to use the land” and insert:

landholder, or a linked entity in respect of the landholder, intends to continue to use the land assets

- (3) After section 171(2) insert:

- (2A) If the acquirer did not acquire the interest in the landholder from another person, the reference in subsection (2) to the person from whom the interest in the landholder was acquired is to be read (according to what is relevant) as a reference to the or a person —
- (a) whose interest in the landholder is decreased because of the acquisition; or
 - (b) whose interest in the landholder decreased resulting in the acquisition.

Note for this subsection:

An acquirer may acquire an interest in a company by the company issuing shares to the person, or buying back shares of another person.

- (4) In section 171(3) after “subsection (2),” insert:

a land asset that is

Note: The heading to amended section 171 is to read:

**Exemption of acquisition by family member of interest in
landholder engaged in primary production**

77. Section 172 amended

- (1) In section 172(1):

- (a) delete “the corporation concerned, or a linked entity in respect of the corporation,” and insert:

the landholder concerned, or a linked entity in respect of the landholder,

- (b) in paragraphs (a) and (b) delete “land in Western Australia that is” and insert:

land assets in Western Australia that are

- (2) In section 172(2)(b) delete “land referred to in subsection (1)(b) bears to the value of the corporation” and insert:

land assets referred to in subsection (1)(b) bears to the value of the landholder

Note: The heading to amended 172 is to read:

**Calculation of duty where some land assets of landholder not
used for primary production**

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78. Section 173 amended

(1) In section 173(1):

(a) in paragraph (a) delete “a corporation” and insert:

an entity that is a landholder

(b) in paragraph (c)(i) delete “corporation” and insert:

entity

(c) in paragraph (c)(ii) delete “corporation or a linked entity in respect of the corporation, is using solely or dominantly in the business of primary production any of the land” and insert:

entity, or a linked entity in respect of the entity, is using solely or dominantly in the business of primary production any of the land assets

(2) In section 173(2)(a) after “that is not” insert:

the transferor or

(3) In section 173(4)(a) delete “corporation” and insert:

entity

79. Section 174 amended

In section 174(1):

- (a) in paragraphs (a) and (b) delete “corporation” and insert:

landholder

- (b) in paragraph (c) delete “corporation, or a linked entity in respect of the corporation, is using solely or dominantly in the business of primary production any of the land” and insert:

landholder, or a linked entity in respect of the landholder, is using solely or dominantly in the business of primary production any of the land assets

- (c) in paragraph (d) delete “corporation” and insert:

landholder

80. Section 176 amended

- (1) Delete section 176(1) and (2) and insert:

- (1) In making an assessment of duty in relation to an acquisition of an interest in an entity, the time when that acquisition occurs is, for the purposes of this Chapter but subject to section 173(4)(c) and 204G, to be determined under this section.

s. 81

- (2) If an agreement is made for the making of the acquisition, whether conditional or not, and subsection (3) does not apply to the agreement —
- (a) the acquisition is taken to occur when the agreement is made; and
 - (b) until the agreement is completed, the interests of persons in the entity are to be determined for the purposes of this Chapter as if the agreement had been completed.

Notes for this subsection:

- 1. Section 195C provides for the assessment of duty if an agreement referred to in this subsection is terminated before the assessment is made.
- 2. Section 196 provides for the reassessment of duty if an agreement referred to in this subsection is terminated after an assessment of duty is made.

- (2) After section 176(3) insert:

- (3A) If the acquisition results from a merger of corporations in accordance with section 160A, the acquisition occurs when the merger is completed.

- (3) In section 176(4) delete “subsections (2) and (3)” and insert:

subsections (2), (3) and (3A)

81. Section 177 amended

In section 177(2) delete “section 176,” and insert:

sections 154B and 176,

Note: The notes at the end of section 177 are to read:

1. Sections 195B and 195C provide for the assessment of duty if a deemed agreement is not completed.
2. Sections 195 and 196 provide for the reassessment of duty if a deemed agreement is not completed.

82. Section 179 amended

In section 179(2)(d) delete “any person taken into account under section 163 or 164 as being related to the acquirer for the purposes of the acquisition,” and insert:

any person that is a related person in respect of the acquirer and has an interest in the landholder immediately after the relevant acquisition,

83. Section 180 amended

Delete section 180(2)(b) and insert:

- (b) any person that is a related person in respect of a person referred to in paragraph (a) and has an interest in the entity immediately after the acquisition; or

84. Section 185 amended

In section 185:

- (a) delete “interests” and insert:

interests, immediately after the relevant acquisition,

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(b) delete paragraph (b) and insert:

- (b) each person that is a related person in respect of the acquirer and has an interest in the landholder.

85. Section 186 amended

(1) Delete section 186(1)(a) and (b) and insert:

- (a) the unencumbered value of the land assets, chattels, or land assets and chattels, in Western Australia (whichever is relevant) to which the landholder is entitled; and
- (b) the same percentage of the unencumbered value of the land assets, chattels, or land assets and chattels, in Western Australia (whichever is relevant) to which any linked entity in respect of the landholder is entitled as the percentage of the landholder's total direct or indirect interest in the linked entity calculated under section 154A.

(2) Delete section 186(2A).

86. Section 187 amended

In section 187(1)(a) after “a landholder” insert:

after a relevant acquisition

87. Section 189 amended

(1) In section 189(2):

(a) after “landholder concerned” insert:

after the relevant acquisition referred to in section 188,
other than the interest acquired by that relevant
acquisition,

(b) in paragraph (b) delete “acquisition, but only to the
extent to which the interest is held immediately before
the relevant acquisition referred to in section 188; or”
and insert:

acquisition; or

(c) in paragraph (c) after “land” insert:

assets

(2) In section 189(4)(a) delete “section 163; and” and insert:

section 163(1)(a) or (b); and

88. Section 193 amended

In section 193(1) delete “section 164” and insert:

section 163(1)(c) or (d)

89. Section 195A amended

- (1) In section 195A(1) and (2) after “statement” (each occurrence) insert:

or agreement

- (2) In section 195A(5)(a) and (b) after “land” insert:

assets

90. Chapter 3 Part 6 Division 6 heading replaced

Delete the heading to Chapter 3 Part 6 Division 6 and insert:

**Division 6 — Assessment or reassessment of liability for
landholder duty if uncompleted agreements terminated
or completed**

91. Sections 195B and 195C inserted

At the beginning of Chapter 3 Part 6 Division 6 insert:

**195B. Assessment of duty where s. 149(1) or 154B applied
at acquisition time**

- (1) Subsection (2) applies if —
- (a) at the time an acquisition (the *main acquisition*) of an interest in an entity (the *main entity*) occurs —
 - (i) there is an agreement to which section 149(1)(a) applies in determining

the entitlement to land assets, chattels, or land assets and chattels, of the main entity or a linked entity in respect of the main entity; or

- (ii) there is an agreement to which section 154B(a) applies in determining the interest that the main entity, or a linked entity in respect of the main entity, has in another entity;

and

- (b) after the main acquisition occurs but before an assessment is made in relation to the main acquisition, the agreement has been rescinded, annulled or otherwise terminated without being completed.
- (2) Section 149(1)(a) or 154B(a) (whichever is relevant) applies to the agreement for the purposes of making an assessment in relation to the main acquisition despite the rescission, annulment or other termination of the agreement, unless the Commissioner is satisfied that the rescission, annulment or other termination of the agreement was not part of a scheme or arrangement under which the object of the agreement has been or may be achieved in another way.
- (3) Subsection (4) applies if —
- (a) at the time an acquisition (the ***main acquisition***) of an interest in an entity (the ***main entity***) occurs —
 - (i) there is an agreement to which section 149(1)(b) applies in determining the entitlement to land assets, chattels, or land assets and chattels, of the main entity or a linked entity in respect of the main entity; or

- (ii) there is an agreement to which section 154B(b) applies in determining the interest that the main entity, or a linked entity in respect of the main entity, has in another entity;
- and
- (b) after the main acquisition occurs but before an assessment is made in relation to the main acquisition, the agreement is completed.
- (4) Despite section 149(1)(b) or 154B(b) (whichever is relevant), the agreement is not to be disregarded for the purposes of making an assessment in relation to the main acquisition.

195C. Assessment of duty where s. 176(2) applied at acquisition time

- (1) This section applies if —
 - (a) under section 176(2), an acquisition is taken to occur when the agreement for the acquisition is made; and
 - (b) after the agreement is made but before an assessment is made in relation to the acquisition, the agreement has been rescinded, annulled or otherwise terminated without being completed.
- (2) Section 176(2) applies to the terminated agreement, despite the rescission, annulment or other termination of the agreement, unless the Commissioner is satisfied that the rescission, annulment or other termination of the agreement was not part of a scheme or arrangement under which the object of the agreement has been or may be achieved in another way.

- (3) If the Commissioner is satisfied as described in subsection (2), section 176(2) ceases to apply to the terminated agreement.

92. Section 195 amended

- (1) In section 195(1):
- (a) in paragraph (a)(i) delete “land” and insert:
- land assets, chattels, or land assets and chattels
- (b) in paragraph (a)(ii) delete “section 156(8)(a),” and insert:
- section 154B(a),
- (2) In section 195(2):
- (a) in paragraph (a)(i) delete “land” and insert:
- land assets, chattels, or land assets and chattels
- (b) in paragraph (a)(ii) delete “section 156(8)(b),” and insert:
- section 154B(b),

Note: The heading to amended section 195 is to read:

Reassessment of duty where s. 149(1) or 154B applied

93. Section 196 replaced

Delete section 196 and insert:

196. Reassessment of duty where s. 176(2) applied

- (1) A reassessment of duty in respect of a relevant acquisition is required if —
 - (a) an assessment of duty is made on an acquisition that, under section 176(2), is taken to have occurred when the agreement for the acquisition was made; and
 - (b) since that assessment, the agreement has been rescinded, annulled or otherwise terminated without being completed; and
 - (c) had the acquisition not been taken to have occurred when the agreement for the acquisition was made as mentioned in paragraph (a), the liability for duty in respect of the relevant acquisition would not have arisen.
- (2) On application made by a person that has paid or is liable to pay the duty, if subsection (1) applies, the Commissioner is to make a reassessment of the duty disregarding that terminated agreement.
- (3) Section 176(2) does not apply to a terminated agreement for the purposes of a reassessment required under subsection (1).

94. Section 197 amended

In section 197 delete “196(3),” and insert:

196(2),

95. Section 197A inserted

After section 197 insert:

197A. Expired put and call options taken to be terminated

- (1) In this section —
- call option* means the call option of a simultaneous put and call option referred to in section 177(2) or (3);
- put option* means the put option of a simultaneous put and call option referred to in section 177(2) or (3).
- (2) For the purposes of this Division and section 200, an agreement that is taken to exist under section 177(2) or (3) is taken to be terminated without being completed if —
- (a) the call option and the put option both expire without being exercised; or
 - (b) the call option and the put option are both rescinded or cancelled by agreement; or
 - (c) either the call option or the put option is rescinded or cancelled by agreement and the other expires without being exercised.
- (3) Subsection (2) does not apply if the call option has been assigned or further assigned as referred to in section 177(3).
- (4) If a reassessment is required under section 195 or 196 as a result of an agreement that was taken to exist under section 177(2) or (3) being taken to be terminated under subsection (2) of this section, the Taxation Administration Act section 17 applies as if the original assessment had been made as soon as subsection (2) of this section became applicable.

96. Section 200 amended

- (1) In section 200(2):
 - (a) in paragraph (b) delete “section 201.” and insert:

section 201; or
 - (b) after paragraph (b) insert:
 - (c) the agreement for the making of the acquisition
has been lodged in accordance with
subsection (2A).
- (2) After section 200(2) insert:
 - (2A) If there is an agreement for the making of the
acquisition, the agreement may be lodged instead of an
acquisition statement.
- (3) In section 200(3) after “subsection (2)” insert:

or agreement under subsection (2A)
- (4) In section 200(4) after “acquisition statement” insert:

or agreement

- (5) In section 200(5):
- (a) after “acquisition statement” insert:

or agreement
 - (b) in paragraph (a) delete “statement; and” and insert:

statement or agreement; and
- (6) After section 200(5) insert:
- (6) The obligation to lodge an acquisition statement under subsection (2) or agreement under subsection (2A) applies in relation to an acquisition even if the agreement for the making of the acquisition has been rescinded, annulled or otherwise terminated without being completed, whether that rescission, annulment or termination occurs before or after the expiry of the allowed time applicable to the statement or agreement.

Note: The heading to amended section 200 is to read:

Acquisition statement or agreement to be lodged

97. Section 201 amended

In section 201(1)(a) delete “section 164” and insert:

section 163(1)(c) or (d)

98. Section 203 amended

Delete section 203(1) and insert:

- (1) An acquisition statement must be in the approved form.

Note: The heading to amended section 203 is to read:

Form of acquisition statements

99. Section 204 amended

In section 204:

- (a) delete “If an acquisition statement is not lodged in accordance with section 200(2), 201(6) or 202(2), the following persons commit an offence —” and insert:

The following persons commit an offence if there is a contravention of section 200(2), 201(6) or 202(2) in relation to an acquisition —

- (b) in paragraph (d) delete “taken into account under section 163 or 164 as being related to the acquirer for the purposes of the acquisition,” and insert:

that is a related person in respect of the acquirer and has an interest in the landholder concerned immediately after the acquisition,

100. Chapter 3 Part 7 inserted

At the end of Chapter 3 insert:

**Part 7 — Application of this Chapter to certain
acquisitions**

Division 1 — Rights relating to fixed infrastructure

**204A. When fixed infrastructure access rights are taken
into account in determining entitlement to land
assets**

- (1) In determining, in relation to an acquisition of an interest in an entity (the *main entity*), the entitlement to land assets of the main entity, or a linked entity in respect of the main entity, the value of any fixed infrastructure access right to which the main entity or linked entity is entitled is not to be taken into account unless subsection (2) applies to the fixed infrastructure access right.
- (2) This subsection applies to the fixed infrastructure access right if the main entity, or an entity that is associated with the main entity under section 204D, is entitled to any of the following —
 - (a) fixed infrastructure (*relevant fixed infrastructure*) to which the fixed infrastructure access right relates;
 - (b) an estate or interest in relevant fixed infrastructure;
 - (c) a fixed infrastructure control right that relates to relevant fixed infrastructure.

- (3) The entitlement referred to in subsection (2) is to be determined —
 - (a) for the main entity or an associated entity referred to in section 204D(2)(a), (b) or (c) — when the acquisition referred to in subsection (1) of this section occurs; or
 - (b) for an associated entity referred to in section 204D(2)(d) or (e) — when the acquisition referred to in section 204D(2)(d)(i) occurs.
- (4) The value of a fixed infrastructure access right that is to be taken into account for the purposes of an acquisition because subsection (2) applies is to be taken into account in relation to that acquisition even if that subsection does not become applicable until after the acquisition occurs.

204B. When fixed infrastructure statutory licences are treated as land assets in calculating duty

- (1) A fixed infrastructure statutory licence is to be treated as if it were a land asset for the purposes of calculating duty in respect of a relevant acquisition under section 186 if —
 - (a) the landholder, or a linked entity in respect of the landholder, is entitled to the fixed infrastructure statutory licence; and
 - (b) the landholder, or an entity that is associated with the landholder under section 204D, is entitled to any of the following —
 - (i) fixed infrastructure (***relevant fixed infrastructure***) to which the fixed infrastructure statutory licence relates;
 - (ii) an estate or interest in relevant fixed infrastructure;

- (iii) a fixed infrastructure control right that relates to relevant fixed infrastructure.
- (2) For the purposes of subsection (1)(a), a landholder or linked entity is taken to be entitled to the fixed infrastructure statutory licence if —
 - (a) the landholder or linked entity held the fixed infrastructure statutory licence immediately before the relevant acquisition; and
 - (b) as a result of the relevant acquisition, the fixed infrastructure statutory licence is cancelled or surrendered by operation of law; and
 - (c) there is an agreement, arrangement or understanding relating to the acquisition under which, after the acquisition, the fixed infrastructure statutory licence, or another fixed infrastructure statutory licence of that kind, will be issued, granted or given to the landholder or an entity that is associated with the landholder under section 204D.
- (3) The entitlement referred to in subsection (1)(b) is to be determined —
 - (a) for the landholder or an associated entity referred to in section 204D(2)(a), (b) or (c) — when the relevant acquisition referred to in subsection (1) of this section occurs; or
 - (b) for an associated entity referred to in section 204D(2)(d) or (e) — when the acquisition referred to in section 204D(2)(d)(i) occurs.
- (4) A fixed infrastructure statutory licence that under subsection (1) is to be treated as a land asset for the purposes of section 186 in relation to an acquisition is

to be so treated even if subsection (1) does not become applicable until after the acquisition occurs.

- (5) A fixed infrastructure statutory licence to which subsection (1) applies is also to be treated as a land asset in relation to the relevant acquisition referred to in that subsection for the purposes of sections 167, 168, 195A(5), 266B and 266C.

204C. Unencumbered value of fixed infrastructure statutory licences treated as land assets

- (1) Section 36 applies, with any appropriate modifications, where it is necessary to determine the unencumbered value of a fixed infrastructure statutory licence that under section 204B(1) is to be treated as if it were a land asset for the purposes of calculating duty in respect of a relevant acquisition under section 186.
- (2) The unencumbered value to be determined under section 36 (as applied by subsection (1)) for a fixed infrastructure statutory licence issued, granted or given under a law of the Commonwealth is the unencumbered value of that licence so far as it authorises the ownership, control, operation or use of fixed infrastructure.

204D. Associated entities for s. 204A and 204B

- (1) This section applies where it is necessary to determine for the purposes of section 204A(2) or 204B(1) or (2), in relation to an acquisition, which entities are associated with the main entity referred to in section 204A(2), or the landholder referred to in section 204B(1) or (2), as the case requires.
- (2) The associated entities are as follows —
 - (a) a linked entity in respect of the main entity or landholder;

- (b) an entity (a **higher entity**) in respect of which the main entity or landholder is a linked entity;
 - (c) another linked entity in respect of a higher entity to which paragraph (b) applies;
 - (d) another entity if —
 - (i) there is an acquisition of an interest in the entity, which may occur before or after the acquisition referred to in subsection (1); and
 - (ii) the acquisition referred to in subsection (1) and the acquisition referred to in subparagraph (i) together form, evidence, give effect to, or arise from what is, substantially one arrangement;
 - (e) an entity that is a linked entity in respect of an entity to which paragraph (d) applies in relation to the acquisition referred to in paragraph (d)(i).
- (3) A reference in subsection (2)(b) or (c) to a linked entity is a reference to an entity that would be a linked entity if, at the time of the acquisition referred to in subsection (1), the higher entity referred to in subsection (2)(b) or (c) were a main entity referred to in section 156(1).

Division 2 — Derivative mining rights

204E. Unencumbered value of mining tenement subject to derivative mining right

- (1) This section applies where it is necessary to determine, in relation to an acquisition of an interest in an entity, the unencumbered value of a land asset that is a mining tenement in relation to which a derivative mining right is in force.

- (2) If the acquisition of the derivative mining right, on its grant, is duly endorsed, the unencumbered value of the mining tenement is to be determined, despite section 36(1) as applied by section 150, having regard to the effect of the derivative mining right on the value of the mining tenement.
 - (3) Subsection (2) ceases to apply in relation to an acquisition of an interest in an entity if, within 12 months after the acquisition, the derivative mining right is surrendered for no consideration.
 - (4) If a surrender referred to in subsection (3) occurs, each of the following persons must lodge a notice of the surrender in the approved form within 2 months after the day on which the surrender occurs —
 - (a) the entity referred to in subsection (1);
 - (b) the person that acquired the interest referred to in subsection (1).
- Penalty for this subsection: a fine of \$20 000.
- (5) Subject to the Taxation Administration Act section 17, the Commissioner must make any reassessment necessary as a result of the operation of subsection (3).

Division 3 — Acquisitions forming one arrangement

204F. Acquisitions in 2 or more entities forming one arrangement

- (1) For the purposes of sections 155(4)(b), 156A(1)(a) and 204D(2)(d), unless the Commissioner is satisfied to the contrary, acquisitions of interests in 2 or more entities together form, evidence, give effect to or arise from what is, substantially one arrangement if —
 - (a) the acquisitions have occurred within 12 months; and

- (b) in respect of each of the acquisitions, the person that acquires the interest is the same person (whether the person is the only person that acquires the interest or acquires the interest with the same or different persons).
- (2) Subsection (1) does not limit section 155(4)(b), 156A(1)(a) or 204D(2)(d).

204G. Modified application of s. 176 if entity becomes landholder because of acquisitions forming one arrangement

- (1) This section modifies the application of section 176 in relation to an acquisition (the *main acquisition*) of an interest in an entity (the *main entity*) if —
 - (a) at the time the agreement for the main acquisition is made, the main entity is not a landholder in relation to the main acquisition; and
 - (b) after the agreement is made and either before or after it is completed, 1 or more other acquisitions of interests in entities occur; and
 - (c) as a result of the occurrence of the acquisition or acquisitions referred to in paragraph (b), the main entity becomes a landholder in relation to the main acquisition because any of the following occurs —
 - (i) section 155(3) becomes applicable to the main entity in relation to the main acquisition;
 - (ii) an entity becomes a linked entity in respect of the main entity in relation to the main acquisition under section 156A(3);

- (iii) section 204A(2) becomes applicable, in relation to the main acquisition, to a fixed infrastructure access right to which the main entity or a linked entity in respect of the main entity is entitled.
- (2) From the time at which section 155(3), 156A(3) or 204A(2) (whichever is relevant) becomes applicable, the application of section 176 in relation to the main acquisition is modified as follows —
 - (a) section 176(2) applies in relation to the acquisition subject to subsection (3) of this section;
 - (b) section 176(3) does not apply in relation to the acquisition.
- (3) For the purposes of the following provisions, the main acquisition is taken to occur at the time at which section 155(3), 156A(3) or 204A(2) (whichever is relevant) becomes applicable —
 - (a) section 180(1);
 - (b) section 183;
 - (c) section 200(3);
 - (d) section 201(5).

204H. Reassessment of landholder duty if amount of duty chargeable changes because of acquisitions forming one arrangement

- (1) This section applies if —
 - (a) an assessment of duty is made in relation to a relevant acquisition (the *main acquisition*) of an interest in a landholder; and
 - (b) after the assessment is made, 1 or more other acquisitions of interests in entities occur; and

- (c) as a result of the occurrence of the acquisition or acquisitions referred to in paragraph (b), there is a change in the amount of duty chargeable in relation to the main acquisition because any of the following occurs —
 - (i) an entity becomes a linked entity in respect of the landholder in relation to the main acquisition under section 156A(3);
 - (ii) section 204A(2) becomes applicable, in relation to the main acquisition, to a fixed infrastructure access right to which the landholder or a linked entity in respect of the landholder is entitled;
 - (iii) section 204B(1) becomes applicable, in relation to the main acquisition, to a fixed infrastructure statutory licence to which the landholder or a linked entity in respect of the landholder is entitled.
- (2) Subject to the Taxation Administration Act section 17, the Commissioner must make any reassessment necessary as a result of the change in amount of duty chargeable referred to in subsection (1)(c).

101. Section 205A amended

In section 205A(3) delete “section 148” and insert:

section 148(1)

s. 102

102. Section 205E amended

- (1) Delete section 205E(1)(c)(ii) and insert:
 - (ii) anything to which section 3A(1)(f) applies that is fixed to the land or an estate or interest in such a thing.
- (2) After section 205E(3)(f) insert:
 - (fa) anything to which section 18A(1) applies;
 - (fb) a mining tenement or an estate or interest in a mining tenement;
 - (fc) a pastoral lease or an interest of a pastoral lessee under a pastoral lease;
 - (fd) a derivative mining right;

103. Section 205P amended

In section 205P(1) delete “sections 31(5),” and insert:

sections 28(4A), 31(5), 36A(1), (4) and (5),

104. Section 205RA inserted

At the end of Chapter 3A Part 2 Division 4 insert:

205RA. Foreign transfer duty on deemed transaction under s. 120B(2)

Foreign transfer duty is chargeable on a transaction that is taken to occur under section 120B(2) if the transaction is a foreign dutiable transaction.

105. Section 205S amended

- (1) In section 205S(1) delete “Divisions 5 and 6” and insert:

Divisions 5 to 8

- (2) In section 205S(2):

- (a) in paragraph (h) delete “a reference in section 73 to land in Western Australia” and insert:

the reference in section 73 to property of a kind referred to in section 72(a), (b), (c) or (d)

- (b) after paragraph (i) insert:

- (ia) a reference in section 78(1)(a) or 78A(1)(a) to a person ceasing to be a partner in a partnership were a reference to a foreign person ceasing to be a partner in a partnership; and

106. Section 205W amended

In section 205W(1):

- (a) in paragraph (b) delete “results” and insert:

results, or will or may result,

- (b) in paragraph (b)(i) and (ii) delete “interest” and insert:

interest, whether vested or contingent,

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107. Section 205ZB amended

In section 205ZB(2)(b) delete “parcel of” (second occurrence).

108. Section 205ZD amended

- (1) In section 205ZD(1) delete the definition of *foreign acquirer* and insert:

foreign acquirer means —

- (a) in relation to a foreign landholder acquisition to which section 205ZH(1)(a)(i) applies —
- (i) a foreign person that acquires an interest in a residential landholder by the acquisition; and
 - (ii) if there is more than 1 person referred to in subparagraph (i), each of them;

or

- (b) in relation to a foreign landholder acquisition to which section 205ZH(1)(a)(ii) applies —
- (i) a foreign person that is a related person in respect of the acquirer of the interest in the residential landholder and has an interest in the residential landholder immediately after the acquisition; and
 - (ii) if there is more than 1 person referred to in subparagraph (i), each of them.

- (2) In section 205ZD(1) in the definition of *foreign landholder acquisition* delete “sections 205ZH and 205ZI;” and insert:

section 205ZH;

- (3) In section 205ZD(2) delete “A reference” and insert:

Unless the contrary intention appears, a reference

109. Section 205ZE amended

- (1) In section 205ZE(1) delete the Table and insert:

Table

s. 148(2)	s. 149A(1) and (3)
Part 2	s. 155
s. 157	Part 5 Division 2 Subdivision 2
s. 167	s. 168
s. 171	Part 5 Division 2 Subdivision 4
s. 175	Part 6 Division 4
s. 193	Part 6 Division 6A
Part 6 Division 7	Part 7 Divisions 1 and 2
s. 204G	

- (2) In section 205ZE(2):
- (a) in paragraph (b) after “an acquirer” insert:
- (other than in section 179)

- (b) in paragraph (e) delete “land, land in Western Australia” and insert:

land assets, land assets in Western Australia

- (c) delete paragraph (g) and insert:

- (g) the definition of **land asset** in section 148(1) were deleted;

- (d) delete paragraph (j) and insert:

- (j) the reference in section 179(2)(a) to the acquirer were a reference to a foreign acquirer, other than a person whose interest in the residential landholder is, for the purpose of calculating the duty, an excluded interest under section 189; and
- (ja) the reference in section 179(2)(d) or 185(b) to a related person in respect of the acquirer were a reference to a foreign person that is a related person in respect of a foreign acquirer (as defined in paragraph (a) of the definition of **foreign acquirer** in section 205ZD(1)); and
- (jb) a reference in section 189(2)(a) or (6) —
- (i) to the person were a reference to the foreign acquirer; and
 - (ii) to a related person were a reference to a foreign person that is a related person in respect of a foreign acquirer (as defined in paragraph (a) of the definition of **foreign acquirer** in section 205ZD(1));
- and

- (e) in paragraph (m) in the Table delete the row relating to section 164;
- (f) in paragraph (m) in the Table after the row relating to section 200 insert:

s. 204G	s. 205ZKA
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110. Section 205ZG amended

- (1) In section 205ZG(1) delete “section 205ZH or 205ZI.” and insert:

section 205ZH.

- (2) Delete section 205ZG(2) to (4) and insert:

- (2) An entity is a residential landholder if —
 - (a) immediately before the acquisition, it is entitled to residential property or an entity linked to the entity is so entitled; and
 - (b) it is a landholder in relation to the acquisition.

111. Sections 205ZH and 205ZI replaced

Delete sections 205ZH and 205ZI and insert:

205ZH. Foreign landholder acquisitions

- (1) An acquisition by a person (the *acquirer*) of an interest in an entity that is a residential landholder in relation to the acquisition is a *foreign landholder acquisition* if —

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- (a) either —
 - (i) the acquirer is a foreign person; or
 - (ii) the acquirer is not a foreign person but, immediately after the acquisition, there is at least 1 related person in respect of the acquirer that is a foreign person and has an interest in the residential landholder;and
 - (b) subsection (2) applies to the acquisition.
- (2) This subsection applies to an acquisition in any of the following circumstances —
- (a) if —
 - (i) immediately before the acquisition, the acquirer does not have a significant interest in the residential landholder; and
 - (ii) immediately after the acquisition, the acquirer has a significant interest in the residential landholder;
 - (b) if —
 - (i) immediately before the acquisition, the aggregated group interest in the residential landholder does not amount to a significant interest; and
 - (ii) immediately after the acquisition, the aggregated group interest in the residential landholder amounts to a significant interest;
 - (c) if —
 - (i) immediately before the acquisition, the acquirer has a significant interest in the residential landholder; and

- (ii) as a result of the acquisition, the acquirer's interest in the residential landholder increases;
- (d) if —
 - (i) immediately before the acquisition, the aggregated group interest in the residential landholder amounts to a significant interest; and
 - (ii) as a result of the acquisition, the aggregated group interest in the residential landholder increases.
- (3) In subsection (2) —
aggregated group interest means the aggregate of —
 - (a) the interest (if any) that the acquirer has in the residential landholder; and
 - (b) if 1 or more related persons have an interest in the residential landholder — all of those interests.

112. Section 205ZKA inserted

At the end of Chapter 3A Part 3 Division 6 insert:

205ZKA. Modified application of s. 176 if entity becomes residential landholder because of acquisitions forming one arrangement

- (1) This section modifies the application of section 176 in relation to an acquisition (the ***main acquisition***) of an interest in an entity (the ***main entity***) if —
 - (a) at the time the agreement for the main acquisition is made, the main entity is not a residential landholder in relation to the main acquisition; and

- (b) after the agreement is made and either before or after it is completed, 1 or more other acquisitions of interests in entities occur; and
 - (c) as a result of the occurrence of the acquisition or acquisitions referred to in paragraph (b) —
 - (i) the main entity becomes a landholder in relation to the main acquisition because section 155(3) or 156A(3) becomes applicable; and
 - (ii) the main entity becomes a residential landholder in relation to the main acquisition because section 205ZG(2)(b) becomes applicable.
- (2) From the time at which section 205ZG(2)(b) becomes applicable, the application of section 176 in relation to the main acquisition is modified as follows —
 - (a) section 176(2) applies in relation to the main acquisition subject to subsection (3) of this section;
 - (b) section 176(3) does not apply in relation to the main acquisition.
- (3) For the purposes of sections 180(1) and 183, the main acquisition is taken to occur at the time at which section 205ZG(2)(b) becomes applicable.

113. Section 205ZM amended

- (1) In section 205ZM(1) insert in alphabetical order:

notional transfer, in relation to an acquisition, means a notional transaction consisting of the transfer, at the time of the acquisition, by the relinquishing person to

the acquiring person of the relevant residential property, as if the relevant residential property were property of the relinquishing person;

relevant residential property, in relation to an acquisition of an interest in a residential landholder, means the residential property in Western Australia to which the landholder, and each linked entity in respect of the landholder, is entitled;

- (2) In section 205ZM(1) in the definition of ***relinquishing person*** after “in the” insert:

residential

- (3) Delete section 205ZM(2) and insert:

- (2) This section applies to an acquisition of an interest in a residential landholder if no foreign transfer duty would be chargeable, or foreign transfer duty would be chargeable only to a particular extent, on the notional transfer in relation to the acquisition.
- (2A) If no foreign transfer duty would be chargeable on the notional transfer, the acquisition is exempt.
- (2B) If foreign transfer duty would be chargeable on the notional transfer only to a particular extent, then despite Chapter 3 Part 6 Division 5, the amount of foreign landholder duty chargeable in respect of the acquisition is the amount of foreign landholder duty calculated under that Division in respect of the acquisition reduced by the same proportion as the proportion of the notional transfer on which no foreign transfer duty would be chargeable.

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- (4) In section 205ZM(3):
 - (a) delete “subsection (2),” and insert:

this section,
 - (b) delete “described in section 205ZH(2) or 205ZI(2)” and insert:

to which section 205ZH(1)(a)(ii) applies
- (5) In section 205ZM(4) after “relinquishing person” insert:

in the definition of *notional transfer* in subsection (1)
- (6) After section 205ZM(4) insert:
 - (5) This section does not apply if —
 - (a) no foreign transfer duty would be chargeable, or foreign transfer duty would be chargeable only to a particular extent, on the notional transfer because of an exemption or reduction under Chapter 6; or
 - (b) section 194 applies to the acquisition.

Note: The heading to amended section 205ZM is to read:

Exemption or reduction of foreign landholder duty if foreign transfer duty would not be chargeable

114. Section 205ZP amended

In section 205ZP(1)(b) delete “parcel of” (second occurrence).

115. Section 205ZS amended

In section 205ZS(2) delete “the acquisition statement is required to be lodged under section 200(3),” and insert:

an acquisition statement or agreement is required to be lodged under section 200,

116. Section 205ZT amended

In section 205ZT:

- (a) in paragraph (a) delete “acquirer;” and insert:

acquirer, other than a person whose interest in the residential landholder is, for the purposes of calculating the duty, an excluded interest under section 189;

- (b) in paragraphs (b) and (c) before “landholder” insert:

residential

- (c) in paragraph (d) delete “any person taken into account under section 205ZH or 205ZI as being related to the foreign acquirer for the purposes of the acquisition,” and insert:

a foreign person that is a related person in respect of a foreign acquirer (as defined in paragraph (a) of the definition of *foreign acquirer* in section 205ZD(1)) and has an interest in the residential landholder immediately after the foreign landholder acquisition,

117. Section 244A amended

- (1) Delete section 244A(1) and insert:

- (1) In this section —

car or bus means a motor vehicle, other than a motor cycle, or a motorised wheelchair, built mainly to carry people and includes the type of vehicle known as a utility;

de facto partners of 2 years has the meaning given in section 9;

goods vehicle means a motor vehicle built or modified to be used primarily to carry goods or materials used in any trade, business or industry;

motor cycle means a motor vehicle, other than a motorised wheelchair or a goods vehicle, that is not equipped with a permanent cab and cab roof and that —

- (a) is designed to travel on 2 wheels or, with a sidecar attached, 3 wheels; or
- (b) has 3 wheels arranged so that the axis of rotation of 2 wheels lies on the same straight line and each of those 2 wheels is equidistant from the third;

motorised wheelchair means a chair-type vehicle that —

- (a) is fitted with 3 or more wheels; and
- (b) is fitted and designed only for the use of persons with a physical disability.

(2) Delete section 244A(5) and insert:

- (5) This subsection applies if the vehicle is a car or bus or a goods vehicle —
- (a) with an unloaded mass that does not exceed 3 000 kg; and
 - (b) that is not a heavy vehicle; and
 - (c) that is to be used exclusively for social, domestic or pleasure purposes and is not to be used in any trade, business or industry or for the carrying of passengers, or goods, for hire or reward.

118. Section 257 amended

- (1) In section 257(1) delete the definition of *security*.
- (2) In section 257(1) insert in alphabetical order:

notifiable event has the meaning given by section 264(2) and (3);

public float means —

- (a) the securities of an entity being offered for sale or issue to the public for the purpose of listing the entity on a prescribed financial market; or
- (b) the securities of an entity being listed on a prescribed financial market within 12 months after being offered to the public as referred to in paragraph (a);

security —

- (a) in relation to an entity that is a corporation —
 - (i) means an issued share of the corporation; and

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- (ii) if the corporation is a hybrid company — includes an interest that the Commissioner considers is analogous to an issued share of the corporation;

or

- (b) in relation to an entity that is a unit trust scheme — means a unit issued under the scheme;

- (3) After section 257(2) insert:

- (3) A reference in section 260 or 264A to residential property includes a reference to a chattel in Western Australia to which section 205E(2) applies.

119. Section 259 amended

After section 259(4) insert:

- (5) An acquisition is not a ***relevant consolidation transaction*** if any part of the consideration for the acquisition, or an associated acquisition, has been or is to be provided by a person that is not a member of the family formed by the corporate consolidation referred to in subsection (2).
- (6) For the purposes of subsection (5) —
 - (a) if the acquisition concerned is an acquisition of securities of the affected entity by the head entity as referred to in subsection (2)(a) — an acquisition of securities of the head entity by a holder of securities of the affected entity that is made for the purposes of the same corporate consolidation is an associated acquisition; or

- (b) if the acquisition concerned is an acquisition of securities of the head entity by a holder of securities of the affected entity as referred to in subsection (2)(b) — an acquisition of securities of the affected entity by the head entity that is made for the purposes of the same corporate consolidation is an associated acquisition.
- (7) Subsection (5) does not apply in relation to consideration provided for an acquisition or an associated acquisition if —
 - (a) the acquisition or associated acquisition is of a kind referred to in subsection (2)(b); and
 - (b) the consideration is the transfer of securities of the affected entity by the holder of those securities to the head entity.

120. Section 260 amended

- (1) After section 260(1) insert:
 - (1A) For the purposes of subsection (1)(a)(v), a surrender of a mining tenement, in whole or in part, by one member of a family is taken to be a surrender to another member of the family if the surrender is made in contemplation of, or as part of an agreement that, the tenement, or the part of the tenement, be granted to or acquired by the other member of the family.
 - (1B) For the purposes of subsection (1)(d), an acquisition of an interest in an entity by one member of a family is taken to be an acquisition from another member of the family if —
 - (a) the interest of the other member of the family in the entity is decreased because of the acquisition; or

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- (b) the interest of the other member of the family in the entity decreased resulting in the acquisition.

(2) After section 260(4) insert:

- (5) A transaction, transfer or acquisition referred to in subsection (1) is not a ***relevant reconstruction transaction*** if any part of the consideration for the transaction, transfer or acquisition has been or is to be provided by a person that is not a member of the family referred to in that subsection.

121. Section 260A inserted

After section 260 insert:

260A. Consideration provided as loan

For the purposes of sections 259(5) and 260(5), consideration provided by a person other than a member of the family is taken to have been provided by a member of the family if the Commissioner is satisfied that the consideration was provided as a loan and has been or will be repaid by a member of the family.

122. Section 261 amended

- (1) In section 261(1) in the definition of ***pre-transaction decision request*** delete “subsection (2), (3)” and insert:

subsection (2)

- (2) Delete section 261(3).
- (3) Delete section 261(7)(a).
- (4) After section 261(7) insert:
 - (7A) The Commissioner must refuse a pre-transaction decision request if the transaction to which the request relates has been entered into.

123. Section 263 amended

Delete section 263(4) and insert:

- (4) An exemption cannot be granted in relation to a relevant transaction if —
 - (a) the Commissioner is satisfied that the transaction is part of a scheme or arrangement that has been, or is to be, entered into or carried out by a person —
 - (i) for a purpose of avoiding or reducing any liability of a person for duty; or
 - (ii) for the sole or dominant purpose of avoiding or reducing any liability of a person for tax other than duty;
 - or
 - (b) the Commissioner is satisfied that the exemption would be revoked under section 264A because of the occurrence of a notifiable event referred to in that section; or
 - (c) any member of the family has an outstanding tax liability.

124. Section 264 amended

- (1) In section 264(1) delete the definition of *notifiable event*.
- (2) Delete section 264(3)(c) and insert:
 - (c) an acquisition by one member of a family from another member of the family of an interest in an entity, if landholder duty is not chargeable on the acquisition; or

125. Section 264A inserted

After section 264 insert:

264A. Automatic revocation of exemption

- (1) The exemption for an exempt relevant reconstruction transaction is revoked by this subsection if —
 - (a) a notifiable event to which section 264(2)(b) applies occurs in relation to the relevant reconstruction transaction within 3 years after the date of the transaction; and
 - (b) the member of the transaction group referred to in whichever of section 264(2)(b)(i) or (ii) applies (the *relevant entity*) is —
 - (i) for a relevant reconstruction transaction referred to in section 260(1)(a)(iii) or (aa)(iii) — the entity for which the dutiable property or residential property is held on trust; or
 - (ii) for a relevant reconstruction transaction referred to in section 260(1)(d) — the acquirer of the interest referred to in that section; or

- (iii) otherwise — the entity who would, but for the exemption, be liable to pay the transfer duty, foreign transfer duty or vehicle licence duty chargeable on the transaction;
 - and
 - (c) when the notifiable event occurs, the property referred to in subsection (2), or a part of that property, is held by, or on trust for, the relevant entity.
- (2) For the purposes of subsection (1)(c), the property is —
- (a) for a relevant reconstruction transaction referred to in section 260(1)(a) — the dutiable property to which the transaction relates; or
 - (b) for a relevant reconstruction transaction referred to in section 260(1)(aa) — the residential property to which the transaction relates; or
 - (c) for a relevant reconstruction transaction referred to in section 260(1)(b) — the licence for a vehicle to which the transaction relates; or
 - (d) for a relevant reconstruction transaction referred to in section 260(1)(d) — the interest in an entity to which the transaction relates.
- (3) This section does not apply —
- (a) to a notifiable event that results from a public float; or
 - (b) in prescribed circumstances.
- (4) This section applies whether or not there has been a change in the legal description of the property referred to in subsection (2) between the relevant reconstruction transaction and the notifiable event.

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Note for this subsection:

For example, a change in the legal description of property when a new certificate of title is registered following a subdivision of land.

126. Section 265 amended

In section 265:

- (a) in paragraph (a) delete “duty on a transaction, transfer of licence or acquisition; or” and insert:

any liability of a person for duty; or

- (b) in paragraph (b) after “reducing” insert:

any liability of a person for

Note: The heading to amended section 265 is to read:

Revocation of exemption by Commissioner

127. Section 266 amended

- (1) In section 266(1) delete “On revoking an exemption for a relevant transaction” and insert:

If the exemption for a relevant transaction is revoked under section 264A or 265,

- (2) After section 266(1) insert:

- (1A) If the exemption is revoked under section 264A, the official assessment —

- (a) must determine the amount of duty payable on the relevant transaction as at the date of the

transaction (subject to any reduction that applies under section 266A or 266B); and

- (b) may include penalty tax equal to the amount of that duty.

- (3) In section 266(2) delete “The” and insert:

If the exemption is revoked under section 265, the

- (4) After section 266(5) insert:

- (6) Despite the Taxation Administration Act section 17, if an exemption for a relevant transaction is revoked under section 264A on the occurrence of a notifiable event, the Commissioner may make a reassessment in relation to the transaction at any time before the later of —

- (a) the day that is 5 years after the day on which the Commissioner made a reassessment under section 263(2), or issued a certificate or made an assessment under section 263(3), in relation to the transaction (whichever is relevant); or
 - (b) the day that is 12 months after the day on which notice of the notifiable event was lodged under section 264(4).

128. Sections 266A to 266D inserted

At the end of Chapter 6 insert:

266A. Reduction of duty following automatic revocation or refusal of exemption

- (1) The duty to be assessed on a relevant reconstruction transaction is to be reduced in accordance with subsection (2) if —
 - (a) either of the following occurs —
 - (i) an exemption is granted for a relevant reconstruction transaction but the exemption is revoked under section 264A on the occurrence of a notifiable event;
 - (ii) an exemption application is made in accordance with section 262 for a relevant reconstruction transaction and the exemption would have been granted but for the application of section 263(4)(b) because of the occurrence of a notifiable event;
 - and
 - (b) at the time of the notifiable event, only part of the property referred to in section 264A(2) to which the relevant reconstruction transaction relates is held by, or on trust for, the member of the transaction group referred to in whichever of section 264(2)(b)(i) or (ii) applies (the **relevant entity**).
- (2) Duty is chargeable on the relevant reconstruction transaction only to the extent that the transaction relates to the part of the property referred to in section 264A(2) that is held by, or on trust for, the relevant entity at the time of the notifiable event.

- (3) This section applies whether or not there has been a change in the legal description of the property referred to in section 264A(2) between the relevant reconstruction transaction and the notifiable event.

Note for this subsection:

For example, a change in the legal description of property when a new certificate of title is registered following a subdivision of land.

266B. Reduction of duty following automatic revocation or refusal of exemption resulting from relevant acquisition

- (1) In this section —
property means land assets (as defined in section 148(1)), or chattels, or both;
relevant acquisition has the meaning given in section 148(1).
- (2) The duty assessed on a relevant reconstruction transaction is to be reduced in accordance with subsection (3) if —
- (a) either of the following occurs —
- (i) an exemption is granted for the relevant reconstruction transaction but the exemption is revoked under section 264A on the occurrence of a notifiable event;
- (ii) an exemption application is made in accordance with section 262 for the relevant reconstruction transaction and the exemption would have been granted but for the application of section 263(4)(b) because of the occurrence of a notifiable event;
- and

- (b) the notifiable event results from a relevant acquisition (the *triggering acquisition*) on which landholder duty is chargeable; and
- (c) transfer duty or landholder duty is chargeable on the relevant reconstruction transaction in relation to particular property (the *relevant reconstruction transaction property*); and
- (d) landholder duty is chargeable on the triggering acquisition in relation to particular property (the *triggering acquisition property*); and
- (e) the triggering acquisition property is or includes the relevant reconstruction transaction property or part of the relevant reconstruction transaction property.

Note for this subsection:

Section 266C provides for the property in relation to which landholder duty is taken to be chargeable for the purposes of this section.

- (3) The duty assessed in respect of the relevant reconstruction transaction is to be reduced by the lesser of —
 - (a) the amount of transfer duty or landholder duty that is chargeable on the relevant reconstruction transaction, to the extent that the duty is chargeable in relation to relevant property; or
 - (b) the amount of landholder duty that is chargeable on the triggering acquisition, to the extent that the duty is chargeable in relation to relevant property.
- (4) For the purposes of subsection (3), relevant property is property that is both triggering acquisition property and relevant reconstruction transaction property, whether or not there has been a change in the legal description of

the property between the relevant reconstruction transaction and the triggering acquisition.

Note for this subsection:

For example, a change in the legal description of property when a new certificate of title is registered following a subdivision of land.

- (5) If the relevant reconstruction transaction property is or includes an interest in particular property, and the triggering acquisition property is or includes a different interest in the same property, property is relevant property for the purposes of subsection (3) only to the extent of the lesser of the 2 interests.

266C. Property in relation to which landholder duty taken to be chargeable for s. 266B

- (1) In this section —
property means land assets (as defined in section 148(1)), or chattels, or both;
relevant acquisition has the meaning given in section 148(1).
- (2) For the purposes of section 266B, landholder duty that is chargeable on a relevant acquisition of an interest in an entity is taken to be chargeable in relation to —
- (a) for property of which 100% of the value is taken into account for the purposes of calculating that landholder duty — that property; and
 - (b) for property of which a lower percentage of the value is taken into account for the purposes of calculating that landholder duty — a percentage interest in that property that is equal to the percentage taken into account for the purposes of calculating that landholder duty.

- (3) For the purposes of subsection (2), the percentage of the value of property that is taken into account for the purposes of calculating landholder duty is to be determined in accordance with the following formula —

$$P \times (I - E)$$

where —

- P is the percentage (expressed as a decimal) of the unencumbered value of that property taken into account under section 186 in determining the value of the landholder;
- I is the percentage (expressed as a decimal) of the interest of the acquirer in the landholder after the relevant acquisition referred to in section 188(3);
- E is the aggregate percentage (expressed as a decimal) of each excluded interest in relation to the relevant acquisition referred to in section 189.

266D. Application of s. 266B and 266C to foreign transfer duty and foreign landholder duty

If foreign transfer duty or foreign landholder duty is chargeable on a relevant reconstruction transaction, sections 266B and 266C apply in relation to the foreign transfer duty or foreign landholder duty chargeable on the relevant reconstruction transaction as if —

- (a) a reference to transfer duty were a reference to foreign transfer duty; and
- (b) a reference to landholder duty were a reference to foreign landholder duty; and
- (c) a reference to a landholder were a reference to a residential landholder (as defined in section 205ZD(1)); and

- (d) a reference to a relevant acquisition were a reference to a foreign landholder acquisition (as defined in section 205ZD(1)); and
- (e) a reference to land assets (as defined in section 148(1)) were a reference to residential property; and
- (f) a reference to an acquirer were a reference to a foreign acquirer (as defined in section 205ZD(1)); and
- (g) a reference to a provision of Chapter 3 were a reference to that provision as applied by section 205ZE(1).

129. Section 277 amended

- (1) Delete section 277(1) and insert:

- (1) In this section —

relevant licence means —

- (a) a business licence (as defined in section 79) that is issued, granted or given under a law of Western Australia; or
- (b) a fixed infrastructure statutory licence that is issued, granted or given under a law of Western Australia.

- (2) In section 277(2):

- (a) delete “business licence” and insert:

relevant licence

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(b) in paragraph (b) delete “business licences,” and insert:

relevant licences,

(3) In section 277(3)(a) delete “business licence” and insert:

relevant licence

130. Schedule 1 amended

In Schedule 1 in the item for section 11(1)(g) in column 4 after
“18(g),” insert:

(ga), (gb) or (gc),

131. Schedule 3 clause 1 amended

In Schedule 3 clause 1 in the definition of *relevant acquisition*
delete “sections 163 and 164.” and insert:

section 148.

132. Schedule 3 Division 9 inserted

At the end of Schedule 3 insert:

**Division 9 — Provisions for *Revenue Laws Amendment*
*Act 2019***

46. Terms used

(1) In this Division —

commencement day means the day on which the *Revenue Laws Amendment Act 2019* Part 2 comes into operation;

transaction means any transaction, transfer, acquisition or other matter of a kind on which duty is or may be chargeable under this Act and includes the following —

- (a) a transaction of a kind referred to in section 11 (including a transaction that would be a dutiable transaction if it related to dutiable property, new dutiable property or special dutiable property);
 - (b) an acquisition of an interest in an entity for the purposes of Chapter 3 or Chapter 3A Part 3;
 - (c) a transaction of a kind referred to in section 205H (including a transaction that would be a foreign dutiable transaction if it related to residential property, special residential property or new residential property);
 - (d) the grant or transfer of a licence for a vehicle for the purposes of Chapter 5.
- (2) In this Division a reference to doing anything includes omitting to do anything.
- (3) For the purposes of this Division —
- (a) when an acquisition of an interest in an entity for the purposes of Chapter 3 occurs is to be determined under section 176; and
 - (b) when an acquisition of an interest in an entity for the purposes of Chapter 3A Part 3 occurs is to be determined under section 176 as applied by section 205ZE(1).

47. Application of amendments made by *Revenue Laws Amendment Act 2019*

- (1) The amendments made by the *Revenue Laws Amendment Act 2019* apply in relation to the imposition of duty on transactions that occur on or after commencement day.

- (2) Sections 155(4), 156A, 204D(2)(d) and 204F (including sections 156A and 204F as applied by section 205ZE(1)) do not apply in relation to acquisitions that together form, evidence, give effect to or arise from what is, substantially one arrangement unless each of those acquisitions occurs on or after commencement day.
- (3) Section 91C(3) does not apply in relation to transactions that together form, evidence, give effect to, or arise from what is, substantially one arrangement unless each of those transactions occurs on or after commencement day.
- (4) Sections 14(3) and 91C(4) do not apply in relation to a transaction and an acquisition or agreement that together form, evidence, give effect to, or arise from what is, substantially one arrangement unless each of the transaction and the acquisition or agreement occurs on or after commencement day.
- (5) This clause has effect subject to the other provisions of this Division.

48. Definition of *land* taken always to have included pastoral leases

- (1) In this clause —
pre-commencement period means the period beginning on 1 July 2008 and ending immediately before commencement day.
- (2) This Act is taken, for all purposes, to have applied during the pre-commencement period as if the definition of *land* in force for the purposes of this Act had, at all times during the pre-commencement period, included an express statement that *land* includes a pastoral lease and an interest of a pastoral lessee under a pastoral lease.
- (3) Without limiting subclause (2), an assessment of duty chargeable under this Act made, or purported to be made, in the pre-commencement period is, and is taken to have always been, as valid and effective as it would have been if, when the liability for duty arose, the definition of *land* in

force for the purposes of this Act had included the statement referred to in subclause (2).

- (4) Without limiting subclause (2), if a transaction occurred during the pre-commencement period, but an assessment of duty in relation to the transaction was not made before commencement day, an assessment of duty made on or after commencement day in relation to the transaction is to be made as if, when the transaction occurred, the definition of ***land*** in force for the purposes of this Act had included the statement referred to in subclause (2).

49. Validation of administration agreements entered into before commencement day

- (1) In this clause —
previous administration agreement means an administration agreement entered into under the *First Home Owner Grant Act 2000* section 37 on or after 3 October 2015 and before commencement day.
- (2) A previous administration agreement entered into, or purported to be entered into, is, and is taken to have always been, as valid and effective as it would have been if the amendment made by the *Revenue Laws Amendment Act 2019* section 52 had been in force when the agreement was entered into.

50. Transfers of vehicle licences between spouses between 1 July 2014 and commencement day

- (1) In this clause —
amended section 244A means section 244A as in force immediately after the coming into operation of the *Revenue Laws Amendment Act 2019* section 117;
relevant vehicle licence transfer means the transfer of a licence for a vehicle if —
- (a) the transfer occurred during the period beginning on 1 July 2014 and ending immediately before commencement day; and
 - (b) the person from whom, and the person to whom, the licence was transferred were married to each other or de facto partners of 2 years when the transfer occurred.
- (2) When this clause uses a term that is used in Chapter 5, the term has the same meaning in this clause as it has in that Chapter.
- (3) An assessment made, or purported to be made, before commencement day that no duty was chargeable on a relevant vehicle licence transfer is, and is taken to have

always been, as valid and effective as it would have been if amended section 244A had been in force when the transfer occurred.

- (4) If no assessment of vehicle licence duty on a relevant vehicle licence transfer was made before commencement day, an assessment of vehicle licence duty on the transfer made after commencement day must be made as if amended section 244A had been in force when the transfer occurred.
- (5) If an assessment that vehicle licence duty was chargeable on a relevant vehicle licence transfer was made before commencement day, and vehicle licence duty would not have been chargeable on the transfer if amended section 244A had been in force when the transfer occurred, the Commissioner must, on application by the transferee, make a reassessment of the liability for vehicle licence duty as if amended section 244A had been in force at that time.
- (6) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subclause (5), but an application for reassessment under that subclause must be made on or before the later of —
 - (a) the day that is 5 years after the day on which the original assessment was made; or
 - (b) the day that is 12 months after commencement day.

51. Provisions relating to exemptions for connected entities

- (1) The amendments to Chapter 6 made by the *Revenue Laws Amendment Act 2019* sections 118 to 128 apply in relation to an exemption if the application for the exemption is made on or after commencement day, whether the transaction occurred before or after commencement day.
- (2) Despite subclause (1), section 263(4)(a) and (b) (as in force on commencement day), section 264A and sections 266A to 266D do not apply in relation to a relevant transaction that occurred before commencement day.

- (3) Subclause (4) applies if —
 - (a) before commencement day, the Commissioner makes a decision under section 261 on a pre-transaction decision request made under section 261(2) or (3) (as in force immediately before commencement day) in relation to a proposed relevant transaction; and
 - (b) the decision is —
 - (i) in relation to a request made under section 261(2) — that if the transaction were entered into it would be exempted; or
 - (ii) in relation to a request made under section 261(3) — that if the transaction were entered into and exempted, the exemption would not be revoked under section 265;and
 - (c) the transaction is not entered into before commencement day.
- (4) Despite section 261(10), the Commissioner is not bound by the pre-transaction decision request if the Commissioner would have made a different decision on the request if the amendments made by the *Revenue Laws Amendment Act 2019* sections 123 to 126 had been in force when the decision was made.
 - (5) Section 261(7)(b) does not apply to a pre-transaction decision request if the pre-transaction decision request that was made previously referred to in that section was made before commencement day.

52. Provisions about validated assessments

- (1) In this clause —
previous assessment means an assessment to which clause 48(3) or 50(3) applies.

- (2) The rights, obligations and liabilities of all persons are taken to be, and to have always been, the same as if a previous assessment had been validly made.
- (3) Anything done, or purportedly done, before commencement day is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if a previous assessment had been validly made.

53. Application of s. 195B and 195 to acquisitions before commencement day

Section 195B applies in relation to a main acquisition referred to in section 195B(1) or (3) that occurred before commencement day, and section 195 applies in relation to a relevant acquisition referred to in section 195(1) or (3) that occurred before commencement day, as if —

- (a) a reference to section 154B(a) included a reference to section 156(8)(a) as in force immediately before commencement day; and
- (b) a reference to section 154B(b) included a reference to section 156(8)(b) as in force immediately before commencement day.

Part 3 — *Land Tax Assessment Act 2002* amended

Division 1 — Act amended

133. Act amended

This Part amends the *Land Tax Assessment Act 2002*.

Division 2 — Amendments commencing on day after Royal Assent

134. Section 18A inserted

After section 18 insert:

18A. Taxable value of land subject to partial exemption

(1) In this section —

exemption provision means a provision of this part referred to in section 17(1)(b);

relevant requirements, in relation to an exemption provision, has the meaning given in section 18(1).

(2) This section applies if, under section 18, an exemption for an assessment year applies to a lot or parcel of land only to a particular extent because —

(a) the relevant requirements of the exemption provision do not apply to any extent in respect of a part of the area of the lot or parcel; and

(b) the relevant requirements of the exemption apply, or apply to some extent, in respect of the remainder of the area of the lot or parcel (the ***exempt area***).

(3) For the purposes of determining the taxable value of the lot or parcel for the assessment year, the unimproved value of the lot or parcel for the

assessment year is the unimproved value of the whole of the lot or parcel reduced by the unimproved value of the exempt area, but only to the extent to which the relevant requirements of the exemption provision apply in respect of the exempt area.

- (4) The unimproved value of the exempt area for the purposes of subsection (3) is the amount that bears the same proportion to the unimproved value, as determined by the Valuer-General, of the whole of the lot or parcel as the exempt area bears to the whole area of the lot or parcel.
- (5) If there is a multi-storey building on the lot or parcel, the Commissioner may determine —
 - (a) an area that is to be treated as the exempt area for the purposes of this section; and
 - (b) an area that is to be treated as the whole area of the lot or parcel for the purposes of subsection (4).
- (6) A determination under subsection (5) —
 - (a) may be made on any basis that the Commissioner decides is appropriate, taking into account the areas of the lot or parcel and parts of the building to which the relevant requirements apply or apply to some extent; and
 - (b) has effect according to its terms.

135. Section 26A amended

After section 26A(3)(a)(ii) insert:

- (iii) a child of the disabled person;

136. Section 29 amended

In section 29 in the definition of *beneficiary* delete “an individual” and insert:

a person

137. Section 46 amended

After section 46(3) insert:

- (4) Regulations may be expressed to apply to or in relation to an assessment year that began before the day on which the regulations came into operation if the application of the regulations to or in relation to that assessment year would not adversely affect a person who is or may become liable to pay land tax for the assessment year.

138. Schedule 1 Division 6 inserted

At the end of Schedule 1 insert:

Division 6 — Provisions for *Revenue Laws Amendment Act 2019*

20. Application of section 30D to land held in trust for assessment year 2019/20

- (1) In this clause —
compliant trustee, in relation to land, means a trustee of a discretionary or other trust (other than a unit trust scheme) that is —
 - (a) a family owner of the land under section 30H(c); or

- (b) a person related to a family owner of the land described in section 30I(1)(d), 30J(d), 30K(d) or 30(d).
- (2) Land is exempt under section 30D for the assessment year ending 30 June 2020 if —
 - (a) it would not be so exempt, but for this clause, solely because a trustee was not a compliant trustee at midnight on 30 June 2019; and
 - (b) the trustee would have been a compliant trustee at midnight on 30 June 2019 but for the amendment to the definition of *beneficiary* in section 29 made by the *Revenue Laws Amendment Act 2019* section 136; and
 - (c) on or before midnight on 30 June 2020 the trustee is a compliant trustee.

Division 3 — Amendments commencing on 1 July 2019

139. Part 3 Division 2 Subdivision 1 heading inserted

At the beginning of Part 3 Division 2 insert:

Subdivision 1 — Exemptions and rebates for private residential property

140. Part 3 Division 2 Subdivision 2 inserted:

At the end of Part 3 Division 2 insert:

Subdivision 2 — Application of private residential exemptions to subdivided land

28A. Terms used

In this Subdivision —

exemption period means —

- (a) in relation to section 24, 25 or 27 — an assessment year;
- (b) in relation to section 24A, 25A or 27A — a period of 2 consecutive assessment years;

exemption provision means section 24, 24A, 25, 25A, 27 or 27A;

new lot, in relation to a subdivision of land, means a lot that comes into existence as a result of the subdivision;

parent lot, in relation to a subdivision of land, means a lot that ceases to be a lot for the purposes of this Act under the Glossary clause 2(2) as a result of the subdivision.

28B. Application of certain private residential exemptions to property subdivided during exemption period

- (1) This section applies if —
 - (a) land is subdivided during an exemption period for an exemption provision; and
 - (b) because of the subdivision, there are 1 or more requirements (the ***unsatisfied requirements***) of the exemption provision that —
 - (i) are not satisfied in relation to private residential property that is a parent lot in relation to the subdivision; but
 - (ii) would be satisfied if the private residential property the subject of the exemption provision were 1 or more of the new lots in relation to the subdivision.
- (2) For the purposes of the application of the exemption provision to private residential property that is a parent

lot referred to in subsection (1)(b)(i) for the exemption period —

- (a) the unsatisfied requirements are taken to be satisfied; and
 - (b) if an exemption applies to the parent lot because of paragraph (a), the exemption applies only to the part or parts of the parent lot that, after the subdivision, constitute the new lot or lots referred to in subsection (1)(b)(ii); and
 - (c) if there is any area of the parent lot to which the exemption does not apply because of paragraph (b), the taxable value of the parent lot is to be determined under section 18A as if the area of each new lot referred to in subsection (1)(b)(ii) were an exempt area referred to in section 18A(2).
- (3) For the purposes of determining under subsection (1)(b)(ii) whether a relevant requirement would be satisfied in relation to a new lot —
- (a) a requirement that relates to the ownership of the private residential property at midnight on 30 June immediately before the exemption period is taken to be satisfied in relation to a new lot if each person who is an owner of that new lot after the subdivision (a ***new lot owner***) was also an owner of the parent lot at that time; and
 - (b) if, at that time, the new lot owners owned the parent lot jointly with 1 or more other persons — the new lot is taken to have been owned at that time by the new lot owners only.
- (4) A reference in subsection (3) to an owner of a new lot after a subdivision is to a person who is an owner of

the new lot after the certificate of title for the new lot is registered under the *Transfer of Land Act 1893*.

28C. Application of requirements relating to sale or disposal of subdivided property

- (1) For the purposes of the application of section 27 or 27A to private residential property, a requirement in section 27(1)(f) or 27A(1)(j) that relates to the property acquired first referred to in that section is taken to be satisfied if —
 - (a) the property acquired first is subdivided during the exemption period for section 27 or 27A (whichever is relevant); and
 - (b) the requirement is satisfied in relation to each of the new lots in relation to the subdivision.
- (2) Subsection (1) applies in relation to the requirement in section 27(1)(f) whether the property acquired first is property A or property B referred to in section 27.
- (3) Despite section 28B(2)(a), a requirement in section 27(1)(f) or 27A(1)(j) is not taken to be satisfied under that section unless subsection (1)(b) of this section applies.

28D. Application of 2-year private residential exemptions if property subdivided during first year

If private residential property that is a parent lot is exempt under section 24A, 25A or 27A (the *relevant 2-year exemption provision*) because of the application of section 28B(2), and the subdivision occurs in the first assessment year of the exemption period for the relevant 2-year exemption provision, the exemption applies for the second year of the exemption period to the private residential property that is each new lot

referred to in section 28B(2)(b) rather than to the parent lot.

28E. Ownership of land during period when land subdivided but certificates of title not issued

- (1) This section applies if —
 - (a) a parent lot that is owned jointly by 2 or more persons (the *joint owners*) is subdivided; and
 - (b) there is a period of time (the *relevant period*) between the subdivision occurring and a certificate of title for any new lot being registered under the *Transfer of Land Act 1893*; and
 - (c) either —
 - (i) after the certificate of title is registered, each new lot is owned by some, but not all, of the joint owners (the *relevant owners*); or
 - (ii) the Commissioner is satisfied that after the certificate of title is registered, each new lot will be owned by some, but not all, of the joint owners (the *relevant owners*).
- (2) For the purposes of this Division, the Commissioner may treat each new lot as being owned during the relevant period by the relevant owners only rather than by all of the joint owners.

141. Schedule 1 amended

At the end of Schedule 1 Division 6 insert:

21. Application of amendments relating to subdivision of land

- (1) Part 3 Division 2 Subdivision 2 (other than section 28E) applies in relation to exemption periods (as defined in section 28A) that begin on or after 1 July 2019.
- (2) Section 28E and the Glossary clause 2(2) apply in relation to assessment years that begin on or after 1 July 2019, whether the subdivision referred to in whichever of those provisions is relevant occurs before or after 1 July 2019.
- (3) Despite subclauses (1) and (2), Part 3 Division 2 Subdivision 2 and the Glossary clause 2(2) do not apply for the purposes of determining whether private residential property is exempt under section 24, 24A, 25, 25A or 27A (the *relevant exemption provision*) if the commencement date for the construction or refurbishment referred to in the relevant exemption provision is before 1 July 2019.

142. Glossary clause 2 amended

After the Glossary clause 2(1) insert:

- (2) Despite subclause (1), if —
 - (a) land that constitutes a lot (the *parent lot*) is subdivided resulting in 2 or more new lots referred to in paragraph (a)(vii) or (c) of the definition of *lot* in subclause (1) coming into existence, the parent lot ceases to be a lot for the purposes of this Act when the new lots come into existence; or
 - (b) land that constitutes 2 or more lots (the *parent lots*) is subdivided resulting in a single new lot referred to in paragraph (a)(vii) or (c) of the definition of *lot*

in subclause (1) coming into existence, the parent lots cease to be lots for the purposes of this Act when the new lot comes into existence.

- (2A) Subclause (2) does not prevent land tax from being payable on a parent lot, or an exemption, concession or rebate from applying in relation to the parent lot, for the financial year in which the land is subdivided or any earlier financial year.
- (2B) Subclause (2) does not apply to a subdivision of land in circumstances prescribed by the regulations.

Division 4 — Amendment commencing when *Community Titles Act 2018* s. 219(3) commences

143. Glossary clause 2 amended

In the Glossary clause 2(2)(a) and (b) delete “paragraph (a)(vii)” and insert:

paragraph (a)(via), (vii)

Part 4 — *Pay-roll Tax Assessment Act 2002* amended

144. Act amended

This Part amends the *Pay-roll Tax Assessment Act 2002*.

145. Section 9FA amended

Delete section 9FA(3)(a) and (b) and insert:

- (a) the rate determined by the Commissioner of Taxation of the Commonwealth under the ITA Act section 28-25(4) as the rate of cents per kilometre for cars for the income year corresponding to the financial year immediately preceding the financial year in which the allowance is paid or payable; or
- (b) if no determination referred to in paragraph (a) is in force — the rate prescribed in the regulations.

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