

2001

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

DUTIES AMENDMENT BILL 2001

EXPLANATORY MEMORANDUM

**Circulated by the authority of the Treasurer
Gary Humphries MLA**

Duties Amendment Bill 2001

Summary

This Bill amends the *Duties Act 1999*. The amendments are consequent and contingent to the enactment of the Corporations Bill 2001 by the Commonwealth, which has an expected commencement date of 1 July 2001.

The Commonwealth Corporations Bill 2001 (the Corporations Bill) will replace the Commonwealth Corporations Act 1989 and the Corporations Law of the ACT, and the corresponding legislation of the Northern Territory and those States that elect to refer their corporations powers to the Commonwealth. The Corporations Bill will effectively re-enact the Corporations Law as Commonwealth legislation capable of operating throughout Australia.

Under the Corporations Bill, all companies will be incorporated under a single Commonwealth Corporations Act, instead of under one of the existing Corporations Laws. This will mean that the existing nexus for applying stamp duty on marketable securities ie. based on the jurisdiction in which the company that issued the shares is incorporated or registered, will no longer be valid.

In order to facilitate the continued operation of State and Territory legislation, the Corporations Bill provides for companies to be "taken to be registered" in a State or Territory. Existing companies will be "taken to be registered" in the State or Territory in which the company was registered immediately before commencement of the Corporations Bill 2001. New companies will be able to nominate a jurisdiction in which they will be "taken to be registered". This will maintain the status quo of existing arrangements where a company can nominate the jurisdiction in which it is incorporated.

The Bill -

- amends the definitions of "Company" and "Territory company", to pick up the new nexus for imposing duty on shares of a company, where the company is "taken to be registered" in the ACT; and
- replaces many references to the Corporations Law with new references to the Commonwealth Corporations Act.

The proposed changes to the Duties Act are dependent on the commencement of the Commonwealth legislation and therefore, the commencement date is made contingent upon the enactment of the new Commonwealth Corporations Act.

Revenue/Cost Implications

As part of the National tax reform changes from 1 July 2001, duty on quoted marketable securities is abolished. However, ongoing revenue from duty on unquoted marketable securities is estimated to be \$5.1 million. The proposed changes will ensure that revenue from unquoted marketable securities will be preserved from the date that the Commonwealth Corporations Act commences.

Details of the Bill are attached.

Details of the Duties Amendment Bill 2001

Clause 1 - Name of Act – States this Act is the *Duties Amendment Act 2001*.

Clause 2 – Commencement – states this Act commences immediately after the commencement of the *Corporations Act 2001* (Cwlth). The expression ‘immediately after’ is used rather than ‘on’ because if the *Corporations Act 2001* (Cwlth) is proclaimed to commence on 1 July 2001, it will commence simultaneously with amendments made to the Duties Act by the *Financial Relations Agreement Consequential Amendments Act 2001* (FRACAA). The FRACAA inserts the dictionary into the *Duties Act 1999* at the first moment of 1 July 2001.

If the Cwlth Act commences *later* than 1 July, the timetable would be:

- first moment of 1 July 2001—commencement of FRACAA (move of definitions in Duties Act section 4 to newly inserted dictionary; insertion of replacement definition of *company* in section 96 (1))
- sometime later—commencement of Corporations Act 2001 (Cwlth)
- immediately after commencement of Corporations Act 2001 (Cwlth)—commencement of this Act.

It is noted that the naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, section 75). In this case, there will be no need for a separate Ministerial notice of commencement for this Bill.

Clause 3 - Act amended – states this Act amends the *Duties Act 1999*.

Clause 4 – Interpretation - Section 6, definition of *transfer* – replaces the reference to “Division 2 of Part 2J.1 of the *Corporations Law*” with the reference to “the Corporations Act, part 2J.1, division 2”. This is a technical & consequential change.

Clause 5 - Change in trustees – omits section 54 (1), definition of *responsible entity*. There is no need to define this term for section 54 as it is already defined adequately in section 4. The definitions in section 4 will to be moved to the Dictionary at the back of the Duties Act by FRACAA on 1 July 2001. This is a technical & consequential change.

Clause 6 -Section 54 (3) – omits the words “necessary to enable an undertaking that existed before the commencement of Chapter 5C of the Corporations Law” and substitutes them with the words “is necessary to enable an undertaking that existed before 1 July 1998”. This change is required to avoid the reference to the Corporations Law and replace it with the commencement date of Chapter 5 of the Corporations Law, which is 1 July 1998. This change also corrects the omission of the word is, that is, ‘necessary’ should be ‘is necessary’. This is a technical & consequential change.

Clause 7 - Marketable securities

Section 75 (5)

This replaces the reference in section 75(5) to “Division 2 of Part 2J.1 of the *Corporations Law*” with the reference to “the Corporations Act, part 2J.1, division 2”. This is a technical & consequential change.

**Clause 8 - Constructive ownership of landholdings and other properties:
subsidiaries**

Section 81 (3)

This replaces the reference in section 81(3) to "*Corporations Law*" with the reference to "Corporations Act, section 9". This is a technical & consequential change.

Clause 9 - Interpretation

Section 96 (1), definition of *capital reduction*

This replaces the reference in section 96(1) to "Division 2 of Part 2J.1 of the *Corporations Law*" with the reference to "the Corporations Act, part 2J.1, division 2". This is a technical & consequential change.

Clause 10 - Interpretation - This clause substitutes the definition of company in Section 96 (1) with the following definition:

"*company* means a company incorporated (or taken to be incorporated), under the Corporations Act that is—

- (a) taken to be registered in the Territory; and
- (b) not listed on the stock exchange."

This is a technical & consequential change.

Clause 11 - Section 96 (1), definition of *voting shares* - This clause substitutes the definition of voting shares in section 96(1) with the following definition:

"*voting shares*—see the Corporations Act, section 9."

This is a technical & consequential change.

Clause 12 - Dictionary, definition of *associated person*, paragraph (e) - This clause amends the definition of associated person in the Dictionary by omitting the words "(within the meaning of the *Corporations Law*)". The definitions in section 4 will to be moved to the Dictionary at the back of the Duties Act by FRACAA on 1 July 2001. This is a technical & consequential change.

Clause 13 - Dictionary, definition of *Australian register* - This clause substitutes the definition of Australian register in the Dictionary with the following definition:

"*Australian register*—see the Corporations Act, section 9."

The definitions in section 4 will to be moved to the Dictionary at the back of the Duties Act by FRACAA on 1 July 2001. This is a technical & consequential change.

Clause 14 - Dictionary, new definition - inserts a new definition in the Dictionary:

"*Corporations Act* means the *Corporations Act 2001* (Cwlth)." A Dictionary will be inserted at the back of the Duties Act by FRACAA on 1 July 2001. This is a technical & consequential change. It is noted that a reference to a Commonwealth Act includes a reference to the Act as originally made and as amended (see *Legislation Act 2001*, section 102).

Clause 15 - Dictionary, definition of *managed investment scheme* - omits the words "Corporations Law that complies with chapter 5C of that Law" and substitutes it with the words "Corporations Act, section 9 that complies with that Act, chapter 5C". This is a technical & consequential change.

Clause 16 - Dictionary, definition of *public unit trust scheme*, paragraph (b) - substitutes paragraph (b) of the definition of 'public unit trust scheme' in the Dictionary with the following definition:

“(b) that was, immediately before 1 July 1998, the subject of an approved deed for the Corporations Law, part 7.12, division 5 (or a corresponding law), but only if—

- (i) some or all of its units have been offered to the public; and
- (ii) no fewer than 50 people hold units in it; or”

The provision for approved deeds under the Corporations Law, part 7.12, division 5 was repealed on 1 July 1998. It has therefore not been possible for a deed to be 'approved' under part 7.12 since 1 July 1998. The rest of part 7.12 was repealed with effect from 13 March 2000. The definitions in section 4 will to be moved to the Dictionary at the back of the Duties Act by FRACAA on 1 July 2001. This is a technical & consequential change, to preserve the validity of those deeds approved before 1 July 1998.

Clause 17 - Dictionary, definition of *public unit trust scheme*, paragraph (c) - omits the words “Corporations Law that complies with chapter 5C of that Law” and substitutes it with the words “Corporations Act, section 9 that complies with that Act, chapter 5C”. This is a technical & consequential change.

Clause 18 - Dictionary, definition of *public unit trust scheme*, paragraph (d) - substitutes paragraph (d) of the definition of ‘public unit trust scheme’ in the Dictionary with the following definition:

“(d) that was, immediately before 13 March 2000, exempted from the requirements of the Corporations Law, part 7.12, but only if—

- (i) some or all of its units have been offered to the public; and
- (ii) no fewer than 50 people hold units in it; or”

See Clause 16, this is a technical & consequential change.

Clause 19 - Dictionary, definition of *registered scheme* - This clause substitutes the definition of registered scheme in the Dictionary with the following definition:

“*registered scheme*—see the Corporations Act, section 9.”

A *registered scheme* under the Corporations Act is a managed investment scheme that is registered under that Act, chapter 5C. The definitions in section 4 will to be moved to the Dictionary at the back of the Duties Act by FRACAA on 1 July 2001. This is a technical & consequential change.

Clause 20 - Dictionary, definition of *related body corporate* - This clause substitutes the definition of “related body corporate” in the Dictionary with the following definition:

“*related body corporate*—see the Corporations Act, section 9.”

The definitions in section 4 will to be moved to the Dictionary at the back of the Duties Act by FRACAA on 1 July 2001. This is a technical & consequential change.

Clause 21 - Dictionary, definition of *related person*, paragraphs (b) and (c) - This clause amends paragraphs (b) and (c) of the definition of “related person” by omitting the words “within the meaning of the *Corporations Law*”. This is a technical & consequential change.

Clause 22 - Dictionary, definition of *responsible entity* - This clause replaces the definition of “responsible entity” in the Dictionary with the following new definition: “*responsible entity*—see the Corporations Act, section 9.” The definitions in section 4 will to be moved to the Dictionary at the back of the Duties Act by FRACAA on 1 July 2001. This is a technical & consequential change.

Clause 23 - Dictionary, definition of *Territory company* - substitutes the definition of "Territory company" in the dictionary with the following definition:

"Territory company means—

- (a) a company incorporated or taken to be incorporated under the Corporations Act that is taken to be registered in the Territory; or
- (b) a corporation that is incorporated under an Act of the Territory."

The definitions in section 4 will to be moved to the Dictionary at the back of the Duties Act by FRACAA on 1 July 2001. This is a technical & consequential change.