

REVENUE LAWS AMENDMENT AND REPEAL BILL 2010

Introduction and First Reading

Bill introduced, on motion by **Mr T.R. Buswell (Treasurer)**, and read a first time.

Explanatory memorandum presented by the Treasurer.

Second Reading

MR T.R. BUSWELL (Vasse — Treasurer) [12.21 pm]: I move —

That the bill be now read a second time.

This bill seeks to make amendments to the Duties Act 2008, the First Home Owner Grant Act 2000, the State Trading Concerns Act 1916 and the Taxation Administration Act 2003 to put in place simplified arrangements for the lodgement of documents and payment of transfer duty under the Duties Act; improve the operation of the partnership provisions of the Duties Act; clarify the timing of lodging an application for an entity restructuring exemption under the Duties Act; allow a fee to be charged to offset the merchant fees incurred when payments are made to government by credit card; improve the operation of the confidentiality provisions of the Taxation Administration Act and the First Home Owner Grant Act; and make other minor amendments to the Taxation Administration Act to improve the administration of the revenue statutes. The bill also seeks to repeal the Debits Tax Act 2002 and the Debits Tax Assessment Act 2002 and make minor consequential amendments.

I will now provide some information in relation to each of these amendments and note that further detail is contained in the explanatory memorandum associated with this bill.

Part 2 of the bill contains some eagerly awaited amendments to change the manner in which the lodgement and payment provisions of the Duties Act operate. The arrangements for the payment of both stamp duty under the Stamp Act 1921 and transfer duty under the Duties Act 2008 in relation to conditional contracts and agreements have caused considerable angst in the conveyancing industry over a long period. Various attempts have been made to improve the provisions in recent years. The current conditional agreement provisions in the Duties Act, which were carried over from the Stamp Act, were designed to deal with the varied requirements of industry groups and taxpayers, while adequately protecting the revenue. In attempting to solve the problems of everyone concerned and to classify the various types of arrangements, the provisions require that certain types of contracts be distinguished from others. However, the provisions have proven to be too complicated for some industry participants to administer. There have also been concerns over the timing of the payment of duty, which in some cases requires purchasers to obtain funds to meet their duty obligations prior to funds being released from their financial institution as part of the settlement process.

When the Duties Bill was introduced into Parliament in November 2007 by the previous government, the Australian Institute of Conveyancers WA sought to have the bill amended so that a duty liability did not arise until the time of settlement of the transaction. This option was considered as part of the state tax review process, and was not supported at that time because of concerns that it would create avoidance opportunities. Nonetheless, the Commissioner of State Revenue gave a commitment to work with the Australian Institute of Conveyancers to design a solution that would meet the needs of industry and the government. This process has taken some time; however, with some innovative thinking and extensive consultation with industry participants, a suitable model has been designed, and I am pleased to be able to present that to Parliament today.

The most significant advantage of the new arrangements is that the majority of taxpayers will be able to pay duty at settlement, providing that the conveyancer appointed to act on their behalf is approved to assess and pay duty using Revenue Online, the Office of State Revenue's electronic assessment system. From the conveyancers' point of view, the proposed model removes the need to distinguish which type of transaction they are dealing with to ascertain when it should be lodged. Instead, the model has a single lodgement requirement for all transactions, which is within two months of the date the relevant document is executed. A simplified cancellation process has also been designed to apply to certain agreements that are terminated because a standard condition on the agreement, such as the provision of finance, has not been met.

In order to protect the revenue in the event that settlement is indefinitely deferred or avoided altogether, maximum payment time periods of 12 months or three years will apply if a transaction has not settled before the expiry of the relevant period. The three-year payment period has been extended from the current maximum two-year period that applies to certain off-the-plan agreements and subdivision agreements, to recognise the longer settlement time generally associated with these types of agreements. This extended payment period will also now apply to transactions that are conditional upon the issue of a title.

To ensure that the necessary system changes and customer education associated with this proposal are completed prior to its commencement, these amendments have been designed to commence on a date to be proclaimed. It is

anticipated that the commencement date will be during 2010–11; however, the actual date will be driven by completion of extensive system changes at the Office of State Revenue.

Part 2 of the bill also seeks to make two amendments that clarify the operation of the Duties Act provisions dealing with partnerships. The first amendment relates to a partner retiring from a partnership and receiving some of the dutiable property of the partnership. The provisions should operate to reduce the duty payable on the dutiable transaction by the dutiable value of the interest the partner already has in the partnership property they are receiving. However, this does not operate correctly where the partner is receiving property other than land and chattels. An amendment is proposed so that a partner retiring from a partnership who receives a right or business asset is given a reduction in their duty assessment that reflects their interest in the partnership which includes rights and business assets. At this point in time, no cases have been identified in which taxpayers have been adversely affected by this anomaly. It is proposed that the amendment commence retrospectively from 1 July 2008 to ensure that no taxpayers are disadvantaged in the event that any transactions that have occurred since 1 July 2008 are subsequently identified.

The second amendment relates to the application of the partnership provisions to the formation of a partnership. This amendment clarifies that a partnership acquisition occurs on the formation of a partnership and duty is charged in respect of land that is contributed to a partnership on its formation. The act has been administered on that basis since 1 July 2008; however, these amendments will ensure the provisions more clearly reflect the intended outcome.

This bill also proposes a minor amendment to clarify the time period in which an application for an entity restructuring exemption can be made. This is necessary to ensure that applications in relation to the transfer of a motor vehicle licence can be dealt with prior to the licence actually being transferred. This amendment will commence from the date of royal assent.

Part 3 of the bill proposes an amendment to the First Home Owner Grant Act to strengthen the confidentiality provisions of that act. A similar amendment to the confidentiality provisions of the Taxation Administration Act is also contained in part 5 of the bill. These amendments are necessary as a result of objection matters and a recent Victorian court case, which has highlighted the potential for confidential taxpayer information to be disclosed in legal proceedings not involving the grant recipient or taxpayer, or not involving the Commissioner of State Revenue. These amendments will correct the potential deficiencies in the confidentiality provisions of these acts to ensure the information of taxpayers and grant applicants cannot be accessed by unrelated third parties.

Part 4 of the bill proposes an amendment to the State Trading Concerns Act that will enable agencies to charge an administration fee to offset the cost of merchant fees when government charges are paid by credit card. At present, where a government agency offers credit card payment facilities, those using the facility enjoy the benefit of the loyalty points associated with a payment of this kind. However, the costs are borne by all taxpayers through the merchant fee incurred on the transaction by the agency involved. The proposed administration fee will allow that cost to be offset, should the agency choose to do so. The administration fee will be limited to cost recovery, and the amount will be calculated in accordance with guidelines approved by the Treasurer. Details of the fee will be presented on the invoice, enabling payees to make an informed choice as to their method of payment. It is anticipated that this facility will be employed in the first instance by the Department of Treasury and Finance to offset the merchant fees associated with payments of land tax by credit card. At present, due to the cost of the merchant fee, that facility is limited to land tax bills of \$5 000 or less. However, with the introduction of the administration fee, that facility will now be able to be made available for all land tax payments. Furthermore, it is anticipated that payment by credit card may be progressively made available for the payment of other tax types. There is an expectation that other government agencies may also avail themselves of this ability to improve credit card payment access in the future.

Part 5 of the bill contains a number of minor amendments to the Taxation Administration Act. The Taxation Administration Act contains the administrative provisions that apply to the majority of taxation statutes administered by the Commissioner of State Revenue. These provisions include standard assessment, review, recovery and investigation powers. The Taxation Administration Act does not, however, apply to the First Home Owner Grant Act. When the First Home Owner Grant Act was introduced, specific administrative provisions were included in that act. The First Home Owner Grant Act administrative provisions were largely consistent with the provisions Labor enacted in the Taxation Administration Act. In 2004, a first home owner stamp duty concession was introduced into the Stamp Act and has been continued in the Duties Act. Availability of the concession is linked to eligibility to the first home owner grant. This link between the acts has highlighted a number of small differences in manner in which interest is calculated when a taxpayer successfully challenges a decision of the commissioner in an objection or State Administrative Tribunal review. Amendments are proposed to align these provisions to ensure that interest is calculated consistently. The bill also proposes amendments to allow memorial lodgement fees to be refunded to a taxpayer where an objection or review

application is allowed. Further amendments are proposed to the memorial provisions of the Taxation Administration Act to enable the commissioner to lodge a memorial to secure a potential transfer duty debt when he first becomes aware that a person is intending to sell his or her home without complying with the residence requirements of the First Home Owner Grant Act.

Currently, a memorial can only be lodged when an assessment has been made for the outstanding duty. The time taken to process the grant recovery and duty assessment may result in the property being sold before a memorial can be lodged. The proposed power will allow a memorial to be lodged at the time the commissioner becomes aware of the intended sale, which is usually at the time the settlement agent seeks a land tax clearance certificate in the lead-up to settlement. Corresponding amendments were recently made to the interest and memorial provisions of the First Home Owner Grant Act. The Taxation Administration Act also currently provides the commissioner with the ability to reach agreement with the taxpayer in relation to the assessment of a taxpayer's tax liability in limited circumstances, and to make a compromise assessment in accordance with that agreement. However, that power only applies to the amount of tax payable and does not extend to any interest that may be payable either to or by the taxpayer in relation to the assessment. An amendment is proposed to allow a compromise agreement to extend to the payment of interest either to or by the taxpayer, and to other conditions that are considered appropriate.

Part 6 of the bill relates to the repeal of the debits tax legislation; the imposition and collection of debits tax ceased on 1 July 2005. The debits tax legislation is no longer required, as no new liabilities have been incurred and all follow-up activities have been completed. Accordingly, it is proposed to repeal the Debits Tax Act 2002, the Debits Tax Assessment Act 2002, and the Debits Tax Assessment Regulations 2003. This bill also proposes minor amendments to other statutes to remove references to debits tax legislation.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.