

## EXPLANATORY MEMORANDUM

### REVENUE LAWS AMENDMENT AND REPEAL BILL 2010

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 lodgment 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 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.

#### Lodgment and payment arrangements

Part 2 of the Bill contains some eagerly awaited amendments to change the manner in which the lodgment 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 of time. Various attempts have been made to improve the provisions over the last six years. The current conditional agreement provisions in the Duties Act were carried over from the Stamp Act, and dealt with the varied requirements of industry groups and taxpayers, while adequately protecting the revenue.

However, in attempting to solve the problems of everyone concerned and classifying 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 participants of the conveyancing industry to administer.

There have also been concerns expressed over the timing of the payment of duty, which in many 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 the Parliament in November 2007 by the previous Government, the Australian Institute of Conveyancers WA (AICWA) 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 AICWA to design a solution that would meet the needs of industry and the Government.

The current lodgment and payment arrangements provide for a lodgment period of up to 12 months for general conditional agreements and extended payment periods of up to two years for other specified conditional agreements. The arrangements under the proposed model are multi-faceted, involving legislative change, significant computer system enhancements and the use of the Office of State Revenue's electronic assessment system by settlement agents, and will:

- include a single lodgment period for all instruments to be lodged, either with the Commissioner of State Revenue or using Revenue Online (ROL), within a period of two months from the date that the liability to duty arose;
- provide capacity for duty to be paid at settlement providing the instrument is assessed and endorsed by a responsible party (usually a conveyancer, lawyer or other party) under the ROL system;
- involve maximum periods for the payment of duty of either 12 months or three years (depending on the type of agreement involved), if the transaction has not settled before those time periods have expired;
- include an approval process that will allow substituted purchaser instruments, transfers under agency arrangement instruments and related party transfers to be approved by the Commissioner before being assessed and endorsed under the ROL system (subject to feasibility within system design parameters); and
- provide a simplified and computer assisted process to allow agreements that are terminated because a standard condition (an event listed in section 87(2) of the Duties Act) has not been satisfied to be cancelled by the responsible person.

As noted above, the option to pay duty at settlement will only be available if a document is lodged through the ROL system. The ROL system allows for a responsible party to self-assess and endorse the duty payable on certain dutiable transactions. The responsible party is then required, on a monthly basis, to forward to the Commissioner the duty collected and details of the transactions assessed. The ROL method of collecting and paying duty is a

“special tax return arrangement” that is provided for in Division 2 of Part 5 of the Taxation Administration Act. The arrangement is supported by a written agreement between the Commissioner and the responsible party.

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 the completion of extensive system changes at the Office of State Revenue.

#### Other Duties Act amendments

Part 2 of the Bill seeks to make two amendments that clarify the operation of the Duties Act provisions relating to partnerships.

The first amendment ensures that the dutiable value of a transfer of dutiable property to a partner on the dissolution of, or retirement from, a partnership is reduced according to the partner’s interest in the partnership immediately prior to the transfer. The provisions were intended to operate to reduce the duty payable on the dutiable transaction by taking into account 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 to the Duties Act 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 where taxpayers have been adversely affected by this anomaly. It is proposed that the amendment commence retrospectively from 1 July 2008 in the event that any transactions are subsequently identified to ensure that no taxpayers are disadvantaged.

The second amendment clarifies the operation of the partnership provisions in relation to the formation of a partnership. This amendment commences from the date of Royal Assent and makes it clear 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.

This Bill also proposes a minor amendment to operate from the date of Royal Assent 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.

#### First Home Owner Grant Act amendment

Part 3 of the Bill proposes an amendment to the First Home Owner Grant Act to strengthen the confidentiality provisions of the 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 [Zhen v Mo & Ors [2009] VSC 273 (30 June 2009)], 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. The amendments will correct the potential deficiencies in the confidentiality provisions of these Acts to ensure that the information relating to taxpayers and grant applicants cannot be accessed by unrelated third parties.

#### State Trading Concerns Act amendment

Part 4 of the Bill proposes an amendment to the State Trading Concerns Act, which will allow an administration fee to be charged to offset the cost of merchant fees associated with credit card payments to Government.

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 the cost to be offset, should the agency choose to do so.

The administration fee will be limited to cost recovery and the amount 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 \$5000 or less. However, with the introduction of the administration fee, that facility will now be able to be made available to all land tax payments. Furthermore, it is anticipated that payment by credit card may be progressively made available to 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.

#### Taxation Administration Act amendments

Part 5 of the Bill contains a number of minor amendments to the Taxation Administration Act which will all operate from the day after the Bill receives the Royal Assent.

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 later enacted in the Taxation Administration Act.

In 2004, a first home owner stamp duty concession was introduced into the Stamp Act and has continued in the Duties Act. Availability of the concession is linked to eligibility for the first home owner grant.

This link between the Acts has highlighted a number of small differences in the 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 under both Acts.

The Bill also proposes amendments to allow memorial lodgment 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 their home without complying with the residence requirement 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 a taxpayer in relation to the assessment of a taxpayer's tax liability in limited circumstances and 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 also cover the payment of interest either to, or by, the taxpayer, and to any other conditions that are considered appropriate.

#### Debits tax legislation repeals

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, the *Debits Tax Act 2002*, *Debits Tax Assessment Act 2002* and *Debits Tax Assessment Regulations 2003* are to be repealed.

This Bill also proposes minor amendments to other statutes to remove references to debits tax legislation.

### **Part 1 – Preliminary matters**

#### **Clause 1: Short title**

This clause provides that the short title of this Act is the *Revenue Laws Amendment and Repeal Act 2010*.

#### **Clause 2: Commencement**

This clause provides the commencement dates for the Act.

Paragraph (a) provides that Part 1, Part 2 Division 1, section 13 (relating to the partnership provisions) and section 16 (relating to the time in which an application for an entity restructuring exemption is to be made), come into operation on the day that the Act receives the Royal Assent.

Paragraph (b) provides that Parts 3, 4, 5 and 6 (relating to amendments to the First Home Owner Grant Act, State Trading Concerns Act, Taxation Administration Act and the repeal of the debits tax legislation) come into operation on the day after the Act receives the Royal Assent.

Paragraph (c) provides that section 12 comes into operation on 1 July 2008. Section 12 amends the partnership provisions of the Duties Act to ensure the assessment of a partnership acquisition is reduced to reflect the partner's interest in the partnership property.

Paragraph (d) provides that Part 2 Division 2 and sections 11, 14 and 15 come into operation on a date or dates to be fixed by proclamation. Part 2 Division 2 and sections 11,

14 and 15 relate to the new lodgment and payment arrangements under the Duties Act.

## **Part 2 – Duties Act 2008 amended**

### **Division 1 - Preliminary**

#### **Clause 3: Act amended**

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

### **Division 2 – Amendments about conditional agreements**

#### **Clause 4: Section 9 amended**

Section 9 of the Duties Act provides definitions of terms used in the transfer duty Chapter of the Act. This clause amends the definitions of certain terms used in the Chapter that relate to conditional agreements.

In particular, this clause deletes the definitions of ***off-the-plan conditional agreement*** and ***unconditional*** which are no longer relevant under the new lodgment and payment arrangements. It also inserts a new definition of ***issue of title conditional agreement***, amends the definition of ***general conditional agreement*** as a consequence, and updates a cross reference in the definition of ***terminated on relevant grounds***.

#### **Clause 5: Section 19 amended**

This clause amends section 19 of the Duties Act, which specifies when a liability for transfer duty arises.

Section 19(2) is amended so that it refers to an ***instrument*** that is required to be lodged under section 23 in respect of a general conditional agreement, rather than a ***transaction record***.

This is necessary as a transaction record includes both an instrument and a transfer duty statement. However, under section 23(3), a general conditional agreement must be effected or evidenced by an instrument in hard copy form. This means that a transfer duty statement cannot be a general conditional agreement.

**Clause 6:**

**Section 23 amended**

This clause amends section 23 of the Duties Act, which sets out the time periods in which transaction records for dutiable transactions must be lodged with the Commissioner.

Subclause (1) amends section 23(1) of the Duties Act so that a transaction record for all dutiable transactions must be lodged within two months of the date that a liability to duty on the transaction arises. The date that liability to duty arises is usually the date that an instrument evidencing the transaction is executed.

Currently, some instruments are required to be lodged within two months of the date a liability to duty on the transaction arises, while certain types of conditional agreements are not required to be lodged for up to 12 months from the date liability to duty arises. These differing lodgment requirements have caused confusion for some conveyancing industry participants and taxpayers.

This amendment will require some instruments to be lodged sooner than is currently required, however amendments to section 25 of the Duties Act proposed by this Bill ensure that only in very rare circumstances will duty be required to be paid any earlier than is currently the case, and in some circumstances, will allow a longer payment period.

Subclause (2) deletes section 23(3) of the Duties Act, which is no longer necessary given the single lodgment period for all transaction records proposed to be included in section 23(1).

**Clause 7:**

**Section 25 replaced**

This clause deletes section 25 of the Duties Act and proposes a replacement provision. Section 25 of the Duties Act provides the time periods in which transfer duty must be paid after an assessment notice has been issued.

Subsection (1) provides that unless a later time period is provided under subsection (2) or (3), transfer duty must be paid within one month of the date that an assessment notice is issued. This will apply to all dutiable transactions except those listed in subsection (2).

Accordingly, subsection (1) will apply to transfers and agreements to transfer dutiable property, declarations of

trust over dutiable property and vestings of dutiable property where the dutiable property is non-registrable as described in subclause (2). Subsection (1) will also apply to all dutiable transactions listed in section 11(1)(e) to (j) of the Duties Act.

Subsection (2) provides that unless subsection (3) applies, duty for a dutiable transaction that is either:

- (a) a conditional agreement; or
- (b) a transfer of dutiable property, an agreement to transfer dutiable property, a declaration of trust over dutiable property or a vesting of dutiable property,

that is required to be registered under:

- (i) the *Mining Act 1978*;
- (ii) the *Registration of Deeds Act 1856*; or
- (iii) the *Transfer of Land Act 1893*,

must be paid within 12 months after the day that liability to duty arises for the transaction. This is a maximum payment period for these dutiable transactions, however, it is expected that duty will be paid at an earlier date in cases where the transaction settles before the time period expires.

Subsection (3) provides that for a dutiable transaction that is:

- (a) a subdivision conditional agreement; or
- (b) an issue of title conditional agreement,

duty must be paid within three years after the day that liability to duty arises for the transaction. This provision extends the current arrangements, which allow a 12 month or two year period for the payment of duty for these types of transactions. However, it is expected that duty will be paid at an earlier date than the three year period if the transaction settles before the three year time period expires.

The definition of a **subdivision conditional agreement** is provided in section 91 of the Duties Act. The proposed definition of an **issue of title conditional agreement** is provided in clause 10 of this Bill.

## **Clause 8:**

### **Section 87 amended**

This clause amends section 87 of the Duties Act, which

describes the meaning of a conditional agreement, and explains certain concepts that are relevant to conditional agreements.

Subclause (1) deletes section 87(3) and (4). Section 87(3) explains when a conditional agreement is terminated on relevant grounds. This provision is being maintained in the Duties Act, but is to be included in proposed section 88A with other provisions relating to agreements terminated on relevant grounds, as it will have more relevance to the proposed new section.

Section 87(4) currently explains when a conditional agreement becomes unconditional. However, this concept is not used under the proposed lodgment and payment arrangements, as there is a single lodgment period for all transaction records and is therefore no longer required.

Subclause (2) removes the reference in section 87(5) to section 87(3)(a), as this provision has been moved to proposed section 88A with other related provisions.

**Clause 9:**

**Section 88A inserted**

This clause inserts proposed section 88A into the Duties Act. This section provides a description of when a general conditional agreement is terminated on relevant grounds and how such agreements are to be treated.

Subsection (1) provides that if a general conditional agreement is terminated on relevant grounds after an instrument in respect of the agreement has been lodged with the Commissioner, but before duty is paid or due to be paid, duty is not chargeable on that agreement if the Commissioner is notified in an approved form. The meaning of terminated on relevant grounds is set out in subsection (2).

It should be noted that section 19(2) of the Duties Act provides that where a general conditional agreement is terminated on relevant grounds before an instrument is required to be lodged under section 23, the agreement is not liable to duty and is not required to be lodged with the Commissioner.

If a general conditional agreement is cancelled, but does not fall within the provisions of proposed subsection (1) as an agreement that is terminated on relevant grounds, it may nevertheless still be cancelled if it meets the requirements of the cancelled transaction exemption in

section 107 of the Duties Act.

Subsection (2) provides that a general conditional agreement is terminated on relevant grounds if it does not proceed as a result of a condition that made it a conditional agreement not being fulfilled and duty is not chargeable on the agreement because it is a cancelled transaction under section 107.

For example, if an offer and acceptance to purchase a residence has a condition stating that the sale is subject to the purchasers obtaining finance, which is one of the events that can make an agreement conditional listed in section 87(2) of the Duties Act, and the matter does not proceed as a result of finance not being approved, that transaction would be “terminated on relevant grounds” (assuming that a replacement transaction or subsale transaction within the meaning of section 107 has not taken place).

**Clause 10: Section 90 replaced**

This clause inserts proposed section 90 which provides a definition of the new term “issue of title conditional agreement”. This type of agreement incorporates agreements previously known as ***off-the-plan conditional agreements*** as well as certain other conditional agreements that were previously classified as ***general conditional agreements***.

An ***issue of title conditional agreement*** is an agreement for the transfer of dutiable property that is conditional upon:

- (a) the obtaining by the vendor of the approval under the *Planning and Development Act 2005* section 135 for subdivision, or the obtaining by the vendor of the registration of a strata/survey-strata plan (as set out in section 87(2)(j)); or
- (b) the issue of a certificate of title (as set out in section 87(2)(m)).

Proposed section 90(b) also specifies that an ***issue of title conditional agreement*** may be a conditional agreement for the sale of a strata lot upon which will be constructed (at some point after liability for duty on the agreement arises) a building for commercial, residential or mixed use purposes.

Section 25(3) of the Duties Act will provide a maximum of

three years from the date that liability to duty arose for the payment of duty on an issue of title conditional agreement.

### **Division 3 – Other amendments to the *Duties Act 2008***

#### **Clause 11: Section 3 amended**

This clause amends section 3 of the Duties Act, which sets out definitions of terms that are used throughout the Act.

This clause amends the definition of **lodge** to clarify that it includes the lodgment of transaction records electronically.

This will ensure that agreements processed under the ROL system, rather than physically lodged with the Commissioner, will still be considered to be lodged for the purposes of the two month lodgment requirement.

#### **Clause 12: Section 70 amended**

This clause amends section 70 of the Duties Act, which defines the meaning of **dutiable property** that is relevant for the partnership provisions. The effect of this current definition is that **dutiable property** is limited to only land and chattels for the purposes of the partnership provisions, rather than extending to rights and business assets as it does when the term is used elsewhere in the Act.

The amendment ensures that the narrowed definition of dutiable property does not apply to section 78 of the Duties Act.

Section 78 of the Duties Act provides for the calculation of the dutiable value of a transaction arising from a dissolution of, or retirement from, a partnership.

The section currently operates to reduce the duty payable on a transfer of dutiable property to a partner to reflect the interest the partner already has in the partnership property they are receiving. However, due to the narrow definition of dutiable property in section 70 of the Act, this reduction only applies to a transfer of land and chattels, and the dutiable value of a transfer of a business asset or right cannot be reduced to reflect the partner's interest in those assets.

The proposed amendment to section 70 to exclude section 78, will mean 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 former interest in

the partnership.

This amendment commences from 1 July 2008 in accordance with clause 2(c) to ensure that a taxpayer who has entered into a transaction since that date is not adversely affected by this anomaly.

**Clause 13:**      **Section 72 amended**

This clause amends section 72 of the Duties Act, which provides the meaning of the term ***partnership acquisition***.

The effect of this amendment is to make it clear that a partnership acquisition occurs on the formation of a partnership and land that is contributed to a partnership on its formation is taken into account when calculating the dutiable value of a partnership acquisition associated with the formation of the partnership.

**Clause 14:**      **Section 147E amended**

This clause amends section 147E of the Duties Act, which provides that a concessional rate of transfer duty applies to certain transactions involving residential property.

Section 147E requires the Commissioner to assess the concessional transaction with the applicable concessional rate of duty on the application of the taxpayer. This clause amends section 147E to remove the requirement that the application be made by the taxpayer and instead provides that an application can be made in a manner approved by the Commissioner.

This will allow the Commissioner to alter the manner in which an application for the concession is made so that, for example, a settlement agent can apply on behalf of a taxpayer.

**Clause 15:**      **Section 147F amended**

This clause amends section 147F of the Duties Act, which provides that certain transactions will be reassessed with transfer duty at the concessional rate where an eligible transaction involving land has been assessed with duty at the general rate and construction of a residence subsequently begins, or a contract for construction of a residence is subsequently entered into.

Subclause (1) amends section 147F(2) to remove the

requirement that the application be made by the taxpayer and instead provides that an application can be made in a manner approved by the Commissioner.

This will allow the Commissioner to alter the manner in which an application for the concession is made so that, for example, a settlement agent can apply on behalf of a taxpayer.

Subclause (2) similarly amends section 147F(4) to remove the requirement that the application be made by the taxpayer and instead provides that an application can be made in a manner approved by the Commissioner.

**Clause 16: Section 262 amended**

This clause amends section 262(3)(a) to clarify the time period that an application for an exemption under the entity restructuring provisions of the Duties Act can be made.

The effect of this amendment is to clarify that an application for exemption can be made prior to the transaction taking place, but must be made within 12 months after the date of the transaction. This is necessary to ensure that applications for transfers of motor vehicles can be dealt with prior to a licence actually being transferred.

**Part 3 – *First Home Owner Grant Act 2000* amended**

**Clause 17: Act amended**

This clause provides that the amendments in this Part are to the *First Home Owner Grant Act 2000*.

**Clause 18: Section 3 amended**

This clause inserts a definition of a ***corresponding Commissioner***. This term is used in the amendment to section 65 of the *First Home Owner Grant Act* contained in clause 19.

**Clause 19: Section 65 amended**

This clause deletes section 65(2)(c) of the *First Home Owner Grant Act*, which deals with confidentiality.

The proposed replacement section 65(2)(c) provides that an officer may disclose confidential information for the purposes of legal proceedings, or a report of proceedings

if the person to whom the confidential information relates is a party to the legal proceedings. It also provides that the Commissioner or a corresponding Commissioner must be a party to the proceedings in order for the information to be disclosed.

**Part 4 – State Trading Concerns Act 1916 amended**

**Clause 20: Act amended**

This clause provides that the amendments in this Part are to the *State Trading Concerns Act 1916*.

**Clause 21: Section 5A inserted**

This clause inserts proposed section 5A in the State Trading Concerns Act. The provision allows the Government to charge fees in respect of payments made by credit cards.

Subsection (1) provides definitions relevant to proposed section 5A.

Subsection (2) allows the Government to impose an administration fee in respect of a payment made to the Government by way of a credit card.

The fee is not limited to payments made to the Commissioner of State Revenue and will apply to all payments that are made to the Government should an agency choose to recover the associated fees. However, it is not mandatory for an administration fee to be charged in respect of payments made to the Government.

Currently land tax assessments are the only payments that can be made to the Commissioner by credit card.

Payments made by:

- Bpay from a savings or cheque account;
- by cheque through the post;
- by cash or cheque at any Australia Post Office or Agency; and
- by cash or cheque at the Office of State Revenue,

will continue to be free of an administration fee.

Subsection (3) provides that a statutory corporation can impose a credit card administration fee. Section 4B(1) of the State Trading Concerns Act provides that a statutory corporation is:

- (a) a Minister or chief executive officer who is constituted as a body corporate under an Act; or
- (b) any other body corporate that is constituted for a public purpose under an Act and is an agency of the Crown in the right of the State.

Subsection (4) provides that a credit card fee cannot exceed an amount approved by the Treasurer.

Subsection (5) provides that different amounts can be approved for different brands of credit cards. This is necessary as the fees that are associated with credit card payments differ between different brands of cards.

Subsection (6) provides that a credit card administration fee that is determined in a manner approved by the Treasurer is deemed to be approved by the Treasurer.

Agencies in addition to the Department of Treasury and Finance will also be able to charge an administration fee in respect of payments made by credit card without seeking the approval of the Treasurer as to the amount of the fee to be charged, providing that amount is determined in the manner that has been approved by the Treasurer.

#### **Part 5 – *Taxation Administration Act 2003* amended**

##### **Clause 22: Act amended**

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

##### **Clause 23: Section 20A amended**

This clause amends section 20A of the *Taxation Administration Act*, which allows the Commissioner to enter into a compromise agreement to settle a dispute in relation to the assessment of a taxpayer's tax liability. The provision as it currently stands does not specifically allow for an agreement to be made in respect of the payment of interest to a taxpayer on a refund, or the payment of interest by a taxpayer in accordance with a tax payment arrangement. While it is arguable that these amounts could be included, it is considered appropriate to amend the Act to ensure that interest payments are specifically

addressed.

This clause amends section 20A of the Taxation Administration Act to insert new subsection (3A) which allows a compromise agreement to extend to the payment of interest either to, or by, the taxpayer, and to any other conditions that are considered appropriate.

This would allow a compromise agreement to be made in respect of other matters, such as the fees associated with the lodgment or withdrawal of memorials over land.

It should be noted, however, that section 20A(1) of the Taxation Administration Act requires that the agreement is made with the taxpayer. Accordingly, the taxpayer must agree to the terms of the compromise agreement and the Commissioner cannot act unilaterally to include any conditions in the agreement unless the taxpayer agrees.

**Clause 24:**

**Section 39 amended**

This clause amends section 39 of the Taxation Administration Act, which requires the Commissioner to make a reassessment of tax when an objection is allowed wholly or in part. Where the reassessment results in a refund of tax, the Commissioner must also pay interest on the amount refunded, calculated from the date that the tax was paid to the date that the objection is determined.

This is not consistent with the manner in which interest is calculated under the First Home Owner Grant Act. Further, the current calculation method may disadvantage the taxpayer if there is a delay in the Commissioner processing the refund, as interest is calculated to the date that the objection is determined. In other limited circumstances, the taxpayer may receive interest on an amount of tax that has been correctly paid to the Commissioner.

Further, when a reassessment is made under section 39, the Commissioner is not required to refund any memorial fee that may have been paid by the taxpayer if a memorial has been lodged to secure the payment of the tax.

This clause amends section 39 of the Taxation Administration Act to insert new subsections (2) and (3) to achieve alignment of the provisions between the two acts.

Subsection (2) requires that if an amount is to be refunded or credited to a taxpayer as a result of a reassessment

arising from an objection decision, the Commissioner is to also refund to the taxpayer any amount paid by the taxpayer for a memorial to be lodged (if the Commissioner is withdrawing the memorial as part of the reassessment), and interest on the amount to be refunded or credited. Subsection (3) provides further information in relation to how the interest is calculated.

Subsection (3) specifies the period in respect of which interest on an amount to be refunded or credited to the taxpayer is calculated. This is referred to as the **reassessment period**. The reassessment period begins on the later of the date that the taxpayer paid the amount to be credited or refunded or the date on which the decision the subject of the objection was made, and ends on the date that the Commissioner approves the refunding or crediting of the amount.

It should be noted that subsection (3)(a)(ii) has been included to cover circumstances where duty is paid on an instrument, and subsequent events (up to five years later) cause the instrument to be cancelled. If the Commissioner made a decision not to cancel the contract, and the taxpayer's objection to that decision was subsequently allowed, the interest payable would be calculated from the date the objection was made, rather than the date the duty was paid. This ensures the taxpayer does not benefit from receiving interest for a period where the tax was properly payable.

The date that the Commissioner approves the refunding or crediting of an amount is the date the Commissioner processes the payment in the Department's financial system and instructs the relevant area to make the payment. This commonly occurs by an instruction to make the payment by electronic funds transfer or by cheque.

**Clause 25:**

**Section 43 amended**

This clause amends section 43 of the Taxation Administration Act, which deals with proceedings before the State Administrative Tribunal.

Section 43(3) applies where the final assessment made as directed in the course of the review proceedings results in tax having been overpaid. It requires the overpaid amount to be refunded or credited to the taxpayer, along with interest on the overpaid amount calculated from the date the tax was paid to the date the overpaid amount is refunded or credited to the taxpayer.

Further, when a reassessment is made under section 43, the Commissioner is not required to refund any memorial fee that may have been paid by the taxpayer if a memorial has been lodged to secure the payment of the tax.

Subclause (1) amends section 43(3) to provide that the taxpayer is entitled to a refund or credit of the overpaid amount, any amount paid by the taxpayer for a memorial to be lodged (if the Commissioner is withdrawing the memorial as part of the reassessment), and interest on the amount to be refunded or credited. Subsection (4A) provides further information in relation to how the interest is calculated.

Subsection (4A) specifies the period in respect of which interest on an amount to be refunded or credited to the taxpayer is calculated. This is referred to as the **reassessment period**. The reassessment period begins on the later of the date that the taxpayer paid the amount to be credited or refunded or the date on which the decision the subject of the review proceedings was made, and ends on the date that the Commissioner approves the refunding or crediting of the amount.

The date that the Commissioner approves the refunding or crediting of an amount is the date the Commissioner processes the payment in the Department's financial system and instructs the relevant area to make the payment. This commonly occurs by an instruction to make the payment by electronic funds transfer or by cheque.

Subclause (2) amends section 43(4)(b) to refer to the amount determined in accordance with section 43(3).

**Clause 26:**            **Section 62 amended**

Section 62 of the Taxation Administration Act provides a meaning of tax for the purposes of recovery action.

This clause amends section 62(b) to include costs associated with memorials lodged under section 77A to secure either transfer duty or landholder duty payable under the Duties Act. This reference was omitted when section 77A of the Taxation Administration Act was inserted by the *Duties Legislation Amendment Act 2008*.

**Clause 27:**            **Section 77A amended**

This clause amends section 77A of the Taxation

Administration Act, which deals with charges on land to secure unpaid transfer duty or landholder duty that has been charged under the Duties Act.

To be eligible for a transaction to be assessed under the first home owner rate of duty in the Duties Act, generally, the homebuyer must be eligible to receive a first home owner grant under the First Home Owner Grant Act.

If a person has received a first home owner grant and is then required to repay the grant, then the transaction to which the grant relates is no longer eligible to be assessed at the first home owner rate of duty and the Commissioner of State Revenue must reassess the duty payable on the transaction.

Currently, the Commissioner does not have the power to lodge a memorial over a property the subject of a first home owner grant in circumstances where the grant has been paid in anticipation of compliance with the residence requirements provided in section 21(1) of the First Home Owner Grant Act, unless a reassessment has been made of the outstanding duty.

The Commissioner of State Revenue often becomes aware that a property the subject of a first home owner grant is being sold prior to the required six month residency period being met. However, the time currently taken to process the grant recovery and duty reassessment may result in the property being sold before the memorial can be lodged.

This clause amends section 77A 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 their home without complying with the residence requirement of the First Home Owner Grant Act.

**Clause 28:**

**Section 114 amended**

This clause amends section 114 of the Taxation Administration Act, which deals with confidentiality.

Section 114(2)(d) provides that an officer may disclose confidential information for the purposes of legal proceedings.

The new section 114(2)(d) provides that an officer may only disclose confidential information for the purposes of

legal proceedings, or a report of proceedings if the person to whom the confidential information relates is a party to the legal proceedings. It also provides that the Commissioner must be a party to the proceedings in order for the information to be disclosed.

## **Part 6 – Debits Tax legislation**

### **Division 1 – Repeals**

#### **Clause 29: Repeals**

This clause provides for the repeals of the:

- *Debits Tax Act 2002*;
- *Debits Tax Assessment Act 2002*; and
- *Debits Tax Assessment Regulations 2003*.

### **Division 2 – Consequential amendments**

#### **Clause 30: *Taxation Administration Act 2003* amended**

This clause amends the Taxation Administration Act to delete various references to debits tax and the debits tax legislation.

#### **Clause 31: *Taxation Administration Regulations 2003* amended**

This clause amends the Taxation Administration Regulations to remove the reference to the debits tax legislation.