EXPLANATORY MEMORANDUM

REVENUE LAWS AMENDMENT (TAXATION) BILL 2009

This Bill seeks to amend the *Land Tax Assessment Act 2002* to implement the following land tax measures announced as part of the 2009-10 Budget:

- a system of capping growth in individual land values by a prescribed percentage, which is intended to be 50% for the 2009-10 assessment year; and

- reintroducing the concession for land developers which allows land tax to be calculated on the lower undeveloped (or "en globo") value of land holdings, rather than the full subdivided value of lots, for one year after the creation of the lots.

The Bill also makes consequential amendments to the *Land Tax Act 2002* and *Metropolitan Region Improvement Tax Act 1959* to facilitate the capping arrangements.

Part 1 of the Bill contains the preliminary matters. It provides that the Bill comes into operation on 1 July 2009 to ensure that the amendments apply to the 2009-10 land tax assessment year.

Part 2 of the Bill proposes amendments to the Land Tax Assessment Act to implement the land tax Budget measures.

The first measure is the introduction of a cap on the annual growth in land values for the purposes of assessing land tax and metropolitan region improvement tax (MRIT).

The year-to-year volatility and unpredictability of growth in individual land tax and MRIT bills has been an ongoing cause of concern for many land owners. This cap is intended to help to address the problem by ensuring that assessed land values will not grow by more than a certain percentage each year.

To ensure that there is sufficient flexibility to deal with changes in the property market, this Bill proposes that the cap percentage be set out in the *Land Tax Assessment Regulations 2003*. It is intended that a regulation will be made to set the cap amount at 50% for the 2009-10 land tax assessment year. This regulation will be made once this Bill is passed.

The cap will apply to each individual lot of land that is owned by a land tax payer, which will then be aggregated (as appropriate) for multiple property owners for assessment purposes.

Based on preliminary data from the Valuer-General, it is estimated that around 2,600 land owners will benefit from the cap in 2009-10. While the impact of the progressive land tax scale will mean that some land tax bills will still increase by more than 50%, the increases will be significantly ameliorated.

The revenue foregone (including MRIT) from the 50% cap is estimated at $6.9 million in 2009-10 and $11.5 million over four years.

The second measure is the re-introduction of a concession for land developers so that land tax may be levied based on the 'en globo' (i.e. non-subdivided) value of lots owned by developers at 30 June for one assessment year after the creation of the lots. Currently, land tax is levied on the subdivided value of lots.

In the absence of this concession, it has been suggested that lot creation each year declines in the lead-up to the land tax liability being crystallised on 30 June, only to rebound through July and August. The re-introduction of the concession will help remove this perceived distortion as developers will no longer need to wind down their holdings of subdivided land around 30 June in order to minimise land tax.

It is anticipated that the re-introduction of this concession will contribute to a smoother pattern of lot creation, thus reducing property market volatility and bottlenecks in the approvals process for relevant State Government agencies and local government.

The revenue foregone from this measure is estimated to be $2.3 million per annum.

Parts 3 and 4 of the Bill propose consequential amendments to the Land Tax Act and the Metropolitan Region Improvement Tax Act that are necessary as a result of the introduction of the capping arrangements.

Part 1 – Preliminary matters

Clause 1: **Short title**

This clause provides that the short title of this Act is the *Revenue Laws Amendment (Taxation) Act 2009*.

Clause 2: **Commencement**

This clause provides the commencement dates for the Act.

Paragraph (a) provides that sections 1 and 2 come into operation on the day the Act receives the Royal Assent. Sections 1 and 2 include the short title and commencement provisions of the Act.

Paragraph (b) provides that the rest of the Act comes into operation on 1 July 2009 if the Royal Assent is received prior to that date. If the Royal Assent is received after 1 July 2009, the rest of the Act is deemed to have come into operation on 1 July 2009. This ensures that the amendments will apply to the 2009-10 land tax assessment year.

Part 2 – *Land Tax Assessment Act 2002* amended

Clause 3: **Act amended**

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

Clause 4: **Section 10 replaced**

This clause replaces the current section 10 of the Land Tax Assessment Act.

The replacement section provides that land tax is to be charged on the taxable value of land. Previously, land tax has been charged on the unimproved value of land.

Clause 12(4) of this Bill sets out how the taxable value of land is to be calculated. Generally, the taxable value of land is the lesser of the unimproved value of the land and the capped value of the land (which is a prescribed percentage of the value on which land tax was charged in the previous assessment year). More information in relation to the taxable value is set out in the explanation of clause 12.

Clause 5: **Section 13 amended**

Section 13 of the Land Tax Assessment Act provides how the unimproved value of certain Crown land is calculated.

This clause amends section 13 of the Land Tax Assessment Act by making consequential amendments to remove references to "unimproved value" and replace them with references to "taxable value".

This amendment ensures that from the 2009-10 assessment year land tax will be charged on the taxable value of this class of land.

Clause 6: **Section 14 amended**

Section 14 of the Land Tax Assessment Act provides that certain land that has been exempt from land tax as a result of it being used for residential purposes that is subsequently subdivided can be retrospectively assessed for land tax for five years.

Subclause (1) deletes the reference in section 14(2) of the Land Tax Assessment Act to “unimproved value” so that it refers to “value”. This provision, in conjunction with section 14(6), ensures that either the unimproved value or taxable value is used when making a retrospective assessment, depending on the assessment year.

Subclause (2) deletes and replaces section 14(6) of the Land Tax Assessment Act so that any assessments made in respect of financial years prior to 2009-10 are made on the unimproved value of land, and from 2009-10 onwards are made on the taxable value of land.

Clause 7: **Section 15 amended**

Section 15 of the Land Tax Assessment Act provides that certain land that has been exempt from land tax as a result of it being used for rural business purposes that is subsequently subdivided can be retrospectively assessed for land tax for five years.

Subclause (1) deletes the reference in section 15(2) of the Land Tax Assessment Act to “unimproved value” so that it refers to “value”. This provision, in conjunction with section 15(6), ensures that either the unimproved value or taxable value is used when making a retrospective assessment, depending on the year of assessment,

Subclause (2) deletes and replaces section 15(6) of the Land Tax Assessment Act so that any assessments made in respect of financial years prior to 2009-10 are made on the unimproved value of land, and from 2009-10 onwards are made on the taxable value of land.

Clause 8: **Section 15A amended**

Section 15A of the Land Tax Assessment Act provides that certain land that has been concessionally assessed for land tax as a result of it being used for dwelling park purposes that is subsequently subdivided can be retrospectively reassessed for land tax for five years.

Subclause (1) deletes the reference in section 15A(2) of the Land Tax Assessment Act to “unimproved value” so that it refers to “value”. This provision, in conjunction with section 15A(6), ensures that either the unimproved value or taxable value is used when making a retrospective reassessment, depending on the year of assessment.

Subclause (2) deletes and replaces section 15A(6) of the Land Tax Assessment Act so that any assessments made in respect of financial years prior to 2009-10 are made on the unimproved value of land, and from 2009-10 onwards are made on the taxable value of land.

Clause 9: **Section 28 amended**

Section 28 of the Land Tax Assessment Act provides a rebate of land tax for the owners of certain inner city residential land.

Subclause (1) deletes the references in section 28(2) of the Land Tax Assessment Act to "unimproved" so that it refers to "aggregated taxable value". A definition of this term has been inserted in the Glossary by clause 12(1) of this Bill.

Subclause (2) amends section 28(3) so that the formula by which the rebate is calculated will have reference to the taxable value of the land and the aggregated taxable value of the taxable land owned by a taxpayer.

Subclause (3) deletes section 28(7) of the Land Tax Assessment Act. This does not affect the operation of the rebate as the deleted subsection has been incorporated in the amendments in subclause (2).

Clause 10: **Section 43A inserted**

This clause inserts new section 43A into the Land Tax Assessment Act, which relates to the re-introduction of the land developers' concession.

Section 43A(1) outlines the criteria that must be met to enable a concessional land tax assessment of a new lot created by subdividing an old lot. These criteria are set out in paragraphs (a) to (g) and are as follows:

Paragraph (a) provides that the new lot created cannot be created under a strata plan as defined in clause 3(1)(d) of the Glossary to the Land Tax Assessment Act. This ensures that the concession can only be granted to vacant land and not land that has a dwelling upon it.

Paragraph (b) states that there must be no change in ownership of the lot. This means that the concession only applies if the original subdivider still owns the land at the time of assessment.

Paragraph (c) provides that the new lot has to be contained within the old lot. This encourages the subdivision of a large lot into smaller residential size lots.

Paragraph (d) provides that the new lot created must be used only for residential purposes. This ensures the concession only applies to residential land development.

Paragraph (e) provides that the newly created lot cannot have any building on it that is used, or suitable to be used, for residential purposes. This provision ensures the concession is targeted to vacant land development.

Paragraph (f) provides that the area of the new lot must be no more than 2,000sqm. However, a lot larger than 2,000sqm may still qualify for the concession if it is to be used for a building or buildings that will be used solely for residential purposes and will comprise a number of separate residential units. This is to ensure that the concession will not apply to lots in semi-rural subdivisions, but at the same time, larger lots for group housing development will qualify.

Paragraph (g) provides that the owner of the new lot must make an application to the Commissioner of State Revenue to have the concession apply for the assessment year. The conditions for applying are set out in section 43A(2).

Section 43A(2) provides that the concession will only apply if an application is made in writing in the approved form. The application must be received by 31 August in the current assessment year, but an extension to lodge the application can be granted as set out in section 43A(3).

Section 43A(3) provides for an extension of time for lodging an application from 31 August until any date before 1 July of the following year, providing the owner applies for the extension before the end of the assessment year and the Commissioner is satisfied that there are reasonable grounds for granting the extension.

Section 43A(4) sets out that a decision made by the Commissioner not to extend the time available for lodging an application under section 43A(3) in non-reviewable.

Section 43A(5) provides that land tax is to be paid on the lesser of the following two values:

(i) the concessional value of the newly created lot calculated in accordance with section 43A(6); or

(ii) the unimproved value of the new lot at 30 June immediately before the assessment year.

For example, if the concessional value of a new lot is $250,000, but the unimproved value of the same new lot at 30 June is $300,000, then land tax is charged on $250,000. However, if the unimproved value was $225,000, then land tax would be charged on this value, as it is lower than the concessional value.

Section 43A(6) provides that the concessional value for the new lot is a proportion of the old lot's unimproved value as at midnight on 30 June before the financial year in which the new lot was created. For example, if the old lot was valued at $1,000,000 on 30 June 2009 and was subdivided into two lots during 2009/10, then for the 2010/11 land tax assessment year the new lot's concessional value would be half of $1,000,000, being $500,000.

This differs from the current arrangements whereby land tax on the new lots for the 2010/11 assessment year would be assessed based on the unimproved value of the subdivided lots at 30 June 2010. The subdivided value of the new lots is likely to be higher than the unsubdivided or 'en globo' value of the old lot.

Section 43A(7) provides that a reference in a land tax Act, other than in clause 6 of the Glossary, to the taxable value of land is the value in respect of which land tax was assessed under subsection (5), being the lesser of the unimproved value or the concessional value.

Clause 11: Schedule 1 amended

This clause inserts a clause in the transitional provisions of the Land Tax Assessment Act for this Bill.

This clause provides for the regulation that prescribes the capping percentage to apply retrospectively from 1 July 2009. This is necessary as the Bill may not be passed before 1 July 2009, or if it is, there may not be sufficient time to have the regulation gazetted prior to 1 July 2009. It is therefore intended that once the Bill is passed, a regulation will be made to prescribe the cap to be 150% for the 2009-10 land tax assessment year.

Clause 12: **Glossary amended**

This clause makes various amendments to the Glossary of the Land Tax Assessment Act.

Subclause (1) provides for the deletion of the term "aggregated unimproved value" which is no longer relevant following these amendments. It also inserts a replacement definition of the term "unimproved value", and new definitions of the terms "aggregated taxable value", "strata plan', "survey-strata plan" and "taxable value". These definitions are necessary to support the amendments contained in this Bill.

Subclause (2) makes a minor punctuation amendment to the definition of "lot".

Subclause (3) inserts a new clause 6 in the Glossary that sets out the meaning of the term "taxable value" and how it is calculated.

Clause 6(1) specifies that unless otherwise provided for in the Act, the taxable value of land is to be determined by reference to new clause 6 of the Glossary.

Clause 6(2) sets out how the taxable value of land for a financial year is calculated. The method of calculation depends on whether the capped value of the land can be used to determine the taxable value. This is explained further in new clause 6(3). If the capped value can be used, then the taxable value of land for a financial year is the lesser of the following values at midnight on 30 June before that year:

(a) the capped value of the land (as calculated in accordance with new clause 6(4)); and

(b) the unimproved value of the land.

If the capped value of the land cannot be used to determine the taxable value, then the taxable value of the land is the unimproved value as at midnight on 30 June immediately prior to the financial year in which the assessment is being made.

Clause 6(3) provides that the capped value of land cannot be used to determine the taxable value for a financial year if the land was subdivided in the financial year prior to the year in which the assessment is being made. This is because newly subdivided land will have either received the benefit of the subdividers concession, contemplated by clause 10 of this Bill, or as it is new land it would not have had a taxable or unimproved value in the previous year of assessment.

For example, if lot 1 is subdivided into lots 2 and 3 during the 2009-10 financial year and assuming that the subdivided lots have been sold and therefore not eligible for the subdividers' concession, the taxable value for the 2010-11 assessment year of lots 2 and 3 will be the unimproved value of the land as at midnight on 30 June 2010 in accordance with clause 6(2)(b).

Clause 6(4) sets out how the capped value of land at midnight on 30 June immediately before an assessment year is calculated. The method of calculation depends on whether the land was assessed under section 43A on its concessional value in the previous financial year.

If the taxable value for the previous financial year was the concessional value determined under new section 43A, then paragraph (a) provides that the capped value is the prescribed percentage of the unimproved value of the land at midnight on 30 June immediately before the previous financial year. It is intended that the prescribed percentage for 2009-10 will be 150%.

This provision ensures that the lower concessional value under section 43A applies for only the one year that was intended by that concession. In the absence of this provision, the benefit of the lower concessional value would be perpetuated in some circumstances due to the manner in which the capped value arrangements operate.

The following table provides examples of the intended operation of this provision with a prescribed percentage of 150%.

Assessment year	Unimproved value at 30 June immediately before assessment year	Capped value at 30 June immediately before assessment year	Taxable value for assessment year
2008/09	$500,000	n/a	n/a
2009/10	$800,000	$750,000	$750,000
2010/11 subdivided lot 1	$500,000	n/a	$400,000
subdivided lot 2	$500,000	n/a	$400,000
2011/12 subdivided lot 1	$650,000	$750,000	$650,000
subdivided lot 2	$650,000	$750,000	$650,000

The above examples show an old lot with an unimproved value of $500,000 at midnight on 30 June 2008. The unimproved value of that lot increases to $800,000 at midnight on 30 June 2009. During 2009-10, the old lot is subdivided and new lots 1 and 2 are created. Land tax for the 2010-11 assessment year would be assessed on the concessional value of each lot in accordance with new section 43A, being $400,000.

For the 2011-12 assessment year, the capped value is calculated by applying 150% to the unimproved value of the lots at midnight on 30 June 2010. This is 50% of $500,000, being $750,000.

Paragraph (b) applies where the taxable value for the previous financial year was not the concessional value under new section 43A. This would be where the land developers' concession did not apply in the previous financial year, or where the unimproved value of the land was less than the concessional value as contemplated by new section 43A(5).

Subparagraph (i) provides that the capped value of land for the 2009-10 assessment year is the prescribed percentage of the unimproved value of the land at midnight on 30 June 2008. This is necessary as there were no taxable values in 2008-09.

For the 2010-11 assessment year and subsequent assessment years, the capped value of land is the prescribed percentage of the taxable value of the land for the previous assessment year. It is intended that the prescribed percentage for 2009-10 will be 150%.

The following table provides examples of the intended operation of this provision with a prescribed percentage of 150%.

Assessment year	**Unimproved value at 30 June immediately before assessment year**	**Capped value at 30 June immediately before assessment year**	**Taxable value for assessment year**
2008/09	$500,000	n/a	n/a
2009/10	$800,000	$750,000	$750,000
2010/11	$1,200,000	$1,125,000	$1,125,000
2011/12	$1,300,000	$1,687,500	$1,300,000

The above example shows an item of land with an unimproved value of $500,000 for the 2008-09 year of assessment. That unimproved value increases to $800,000 for the 2009-10 year of assessment. The capping rules contemplated by this Bill provide that the taxable value for the 2009-10 year of assessment is the lesser of the capped value of 150% of the 2008-09 value, being $750,000 ($500,000 x 150% = $750,000) and the unimproved value of $800,000.

Following on with this example, for the 2010-11 assessment year when the unimproved value of the land has increased to $1,200,000, the capped value of 150% of the 2009-10 taxable value, being $1,125,000, would be the taxable value for 2010/11.

Finally, in the 2011-12 assessment year, the unimproved value is less than the capped value and it is the unimproved value of $1,300,000 that would be the taxable value.

It should be noted that the capping of values does not result in the amount of land tax payable in respect of an item of land being capped at 150% of the previous year's assessment. This is because the rates on which land tax is charged are "progressive" in that the larger the value of the land, the greater the rate in the dollar on which land tax is charged. This is the same principle that applies to the PAYG income tax regime, where the rates on which tax is charged increases with a person's income.

In the examples shown in the table above, despite the capping of values at 150%, the land tax payable would increase by more than 150%. For example:

Assessment year	Taxable value	Land tax
2008/09	*$500,000	$180.00
2009/10	$750,000	$405.00
2010/11	$1,125,000	$1,217.50
2011/12	$1,300,000	$2,040.00

* The value for the 2008-09 year is the unimproved value of the land. Taxable values of land only apply from the 2009-10 assessment year onwards.

Further, the Land Tax Assessment Act requires that land tax is charged on the aggregated taxable value of all land held in the same ownership. This means that an owner who purchases additional land from one assessment year to the next may also receive an assessment of land tax with an increase in the tax payable of more than 50%.

Clause 13: **"Unimproved value" changed to "taxable value" in some places**

This clause amends the sections listed by changing references from "unimproved value" to "taxable value". This ensures that land tax will be charged on the taxable value of land from the 2009-10 assessment year onwards.

Part 3 – *Land Tax Act 2002* amended

Clause 14: **Act amended**

This clause provides that this Part of the Bill amends the *Land Tax Act 2002*.

Clause 15: **Section 5 amended**

This clause amends section 5 of the Land Tax Act to ensure that from the 2009-10 assessment year, land tax will be charged on the taxable value of land, as contemplated by the Land Tax Assessment Act.

Paragraph (a) removes the reference to unimproved value so that land tax will charged on the value referred to in the table for the relevant financial year. Prior to the 2009-10 assessment year, land tax is assessed on the basis of the unimproved value of land. However, from 2009-10 onwards, land tax will be assessed on the taxable value of land, which will take into account any applicable cap in land value.

Paragraph (b) amends Table 7 so that it applies for the 2008-09 financial year only.

Paragraph (c) inserts a new Table 8 that applies for 2009-10 and subsequent financial years.

The new Table 8 provides that land tax is charged on the taxable value of land. The taxable value of land is calculated by reference to the Land Tax Assessment Act.

The new Table 8 contains the same tax rates that applied for the 2008-09 financial year.

Part 4 - *Metropolitan Region Improvement Tax Act 1959* amended

Clause 16: Act amended

This clause provides that the amendments in this Part are to the *Metropolitan Region Improvement Tax Act 1959*.

Clause 17: Section 10 amended

This clause amends section 10 of the Metropolitan Region Improvement Tax Act to ensure that from the 2009-10 assessment year, metropolitan region improvement tax will be charged on the taxable value of land, as contemplated by the *Land Tax Assessment Act 2002*.

Paragraph (a) removes the reference to unimproved value so that metropolitan region improvement tax will charged on the value referred to in the table for the relevant financial year. Prior to the 2009-10 assessment year, metropolitan region improvement tax is assessed on the basis of the unimproved value of land. However, from 2009-10 onwards, metropolitan region improvement tax will be assessed on the taxable value of land, which will take into account any applicable cap in land value.

Paragraph (b) amends Table 2 so that it applies for the 2008-09 financial year only.

Paragraph (c) inserts a new Table 8 that applies for 2009-10 and subsequent financial years.

The new Table 3 provides that metropolitan region improvement tax is charged on the taxable value of land. The taxable value of land is calculated by reference to the *Land Tax Assessment Act 2002*.

The new Table 3 contains the same tax rates that applied for the 2008-09 financial year.