

EXPLANATORY MEMORANDUM
REVENUE LAWS AMENDMENT BILL (NO. 2) 2008

The Revenue Laws Amendment Bill (No. 2) 2008 includes the amendments necessary to implement the taxation administration measures that were announced on 8 May 2008 as part of the 2008-09 Budget.

Complementary amendments to effect changes to the land tax, metropolitan region improvement tax, duties and rates and charges legislation are contained in the Revenue Laws Amendment Bill 2008.

The amendments arising from the major multilateral project with other States and Territories to make eight areas of pay-roll administration more consistent announced in the Budget are included in the Pay-roll Tax Assessment Amendment Bill 2008.

State Tax Review recommendations

The amendments proposed in this Bill are principally to the *Taxation Administration Act 2003* and seek the legislative changes necessary to implement four recommendations of the State Tax Review.

The amendments in Part 2 of the Bill deal with recommendation 2.8.4 of the State Tax Review and will enable the Commissioner of State Revenue to place a memorial on mining tenements to secure an amount of unpaid stamp duty. Consequential amendments to the *Mining Act 1978* are also proposed.

The Bill also seeks to ensure that the existing Taxation Administration Act memorial provisions that apply in relation to outstanding land tax can be applied to secure land tax liabilities that arise and remain unpaid for assessment years subsequent to that in which the memorial was lodged.

Part 3 of the Bill seeks to implement three State Tax Review recommendations.

The Bill seeks to give effect to recommendation 2.8.2 of the State Tax Review, which proposed that the Commissioner of State Revenue be provided with a power to make a compromise assessment in certain circumstances. This power is supported by amendments that ensure the Commissioner has the general administration of the taxation Acts and First Home Owner Grant Act.

Recommendation 2.8.5 of the State Tax Review seeks to ensure that verbal approval for extensions of time of one month or less to pay land tax are supported.

Recommendation 2.8.6 of the State Tax Review concerns the introduction of a mechanism to improve the administration of small tax credits.

A discussion paper detailing the background behind the compromise assessment power was prepared and published in the May 2006 State Tax Review Technical Appendices document at pages 279 to 292. The remaining State Tax Review issues are discussed in the paper at pages 355 to 361.

Early operation of certain amendments

Part 3 of the Bill includes an amendment to the Taxation Administration Act to introduce a power that will allow the Commissioner of State Revenue to administer legislative changes that are advantageous to taxpayers in the period between announcement of an initiative and the passage of amending legislation by the Parliament, where it is intended that the relief be provided from the date of the announcement.

Amendments to taxation statutes to give tax relief often commence from 1 July to coincide with the commencement of a financial year.

However, in recent years, adjustments to increase first home owner stamp duty thresholds and to reduce conveyance duty rates have commenced from either the date of the Budget announcement or another specified date.

Commencing relief from a date of announcement is beneficial to taxpayers, as they do not have to delay entering into transactions until a future date to obtain the benefit of lower rates, higher thresholds or simple exemptions.

However, many taxpayers do not realise that despite the relief being backdated to the announcement date, the Commissioner of State Revenue is not empowered to administer the State's laws on the basis of a Government announcement and as a result, must charge tax at the higher amount until amending legislation is passed.

In the past few years, stamp duty budget announcements have translated into a belief by the majority of taxpayers that as long as they enter into a transaction after the specified date, the requirement to pay a lesser amount, or in some cases, nothing, is immediately effective.

As many Members are aware from representations made to them by their own constituents, taxpayers became upset because they have to seek short-term finance to pay their stamp duty, only to have the amount refunded to them once the legislation has been passed by the Parliament.

This situation can be overcome by the introduction of appropriate legislation, thereby ensuring that taxpayers do not shoulder the cost of an inefficient Government process.

The proposed amendments to the Taxation Administration Act seek to provide the Minister with the power to determine, by notice published in the *Gazette*, that certain specified provisions in a Bill are operative as if they were enacted at the date of the notice.

In introducing these provisions, it is appreciated that such a power needs to be subject to restrictions to ensure that it is appropriately used.

These restrictions include that the notice would cease to have effect from the earlier of when:

- the Bill receives the Royal Assent;

- the notice is revoked by the Minister by notice published in the *Gazette*;
- six months expires from the date the notice came into force;
- the amending Bill is defeated in either House of Parliament; or
- the Legislative Assembly expires or is dissolved before the amending Bill has been passed by both Houses of Parliament.

It is also recognised that during the time a notice is in operation, the amended rates or thresholds of tax may be difficult to locate and require notices to be searched for in the *Gazette* to determine the correct tax rates or thresholds.

To provide for these circumstances, the Office of State Revenue would do everything possible to ensure the rates and thresholds are clearly published on the departmental website, incorporated into tax calculators and on-line systems and otherwise disseminated as widely as possible.

The Bill also includes powers that set out what occurs in the event that the provisions specified as pre-enactment provisions are amended in the Legislative Assembly.

This process is designed on the basis that the pre-enactment provisions are, by their very nature, likely to be in a Bill that section 46 of the *Constitution Acts Amendment Act 1899* applies to.

These powers, if enacted, will ensure that taxpayers in this State receive the full benefit of intended reduced taxes as soon as possible.

Other amendments

Part 4 of the Bill contains a number of amendments to other Acts.

The *Duties Act 2008* and the *Petroleum and Geothermal Energy Resources Act 1967* have been updated to correct references to superseded or updated legislation.

The final amendment is to the *Rates and Charges (Rebates and Deferments) Act 1992*.

This Act authorises local governments and other administrative authorities such as the Water Corporation to provide rebates to eligible customers. It then claims the relevant amounts from the Government as part of the community services obligation arrangements.

Under the Act, administrative authorities are required to pay compensation to a person who has suffered damage, loss or injustice in certain circumstances.

The Act sets out processes to be followed in these situations by an administrative authority who is a local government or accountable authority as defined in the *Financial Management Act 2006*.

However, as the Water Corporation is neither a local government nor an accountable authority as defined, it is not clear what processes it should follow.

A minor amendment has been made to ensure that provision is made for any other type of administrative authority, which would include the Water Corporation, to make the necessary adjustment by way of payment, waiver or deferral.

Part 1 – Preliminary

Clause 1: Short title

This clause provides that this Act may be cited as the *Revenue Laws Amendment Act (No. 2) 2008*.

Clause 2: Commencement

This clause sets out the relevant commencement provisions for various Parts, Divisions and sections of the Act.

Paragraph (a) specifies 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) specifies that Part 2 Divisions 1 and 2, Part 3 Divisions 1 and 2 and sections 32 to 35 come into operation on the day after the Act receives the Royal Assent.

Part 2 Division 1 amends the *Taxation Administration Act 2003* to enable a memorial that is lodged against land for unpaid tax to include land tax liabilities that arise after the memorial is lodged. This Division also amends the *Taxation Administration Act 2003* to enable memorials to be lodged against mining tenements for unpaid tax.

Part 2 Division 2 amends the *Mining Act 1978* to enable memorials to be lodged against mining tenements for unpaid tax.

Part 3 Divisions 1 and 2 amend the *Taxation Administration Act 2003* to provide the Commissioner of State Revenue with the general administration of taxation Acts, ensure that verbal approval for extensions of time of one month or less to pay land tax are supported, set out treatment of unused tax credits and allow the early operation of certain amendments to taxation Acts. A minor amendment to the land tax memorial provisions is also made to clarify the liable party when a disposition of the land occurs.

Sections 32 to 35 amend the *Duties Act 2008* to update a reference to the *Financial Sector (Business Transfer and Group Restructure) Act 1999*, the *First Home Owner Grant Act 2000* to give the Commissioner general administration of that Act, the *Petroleum and Geothermal Energy Resources Act 1967* to correct

references to superseded legislation and the *Rates and Charges (Rebates and Deferments) Act 1992* to ensure that reimbursement processes exist for an administrative authority that is not a local government or accountable authority as defined in the *Financial Management Act 2006* who is required to pay compensation to a person who has suffered damage, loss or injustice in certain circumstances.

Paragraph (c) specifies that Part 2 Division 3 comes into operation on the day after this Act receives the Royal Assent, or if the day the *Duties Legislation Amendment Act 2008* Part 2 Division 1 comes into operation is later than the date after this Act receives the Royal Assent, when that Division comes into operation. Part 2 Division 3 amends the memorial provisions of the *Duties Act 2008* as a consequence of the amendments to the memorial provisions set out in Part 2 Division 1 of this Act.

Paragraph (d) specifies that Part 3 Division 3 comes into operation on a day fixed by proclamation. It also provides that different dates may be fixed for different provisions. Part 3 Division 3 includes the provisions introducing a compromise assessment power into the *Taxation Administration Act 2003*.

Part 2 – Amendments relating to charges on land

The amendments in this Part implement recommendation 2.8.4 of the State Tax Review.

Division 1 – *Taxation Administration Act 2003* amended

Clause 3: The Act amended

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

Clause 4: Section 76A inserted

This clause inserts a new section into Part 6 Division 2, which sets out the provisions dealing with charges on land.

76A. Meaning of terms used in this Division

Subsection (1) defines terms used in the Division. These definitions are self-explanatory.

Subsection (2) specifies that a reference in the Division to particular kinds of tax is to include relevant amounts of penalty tax, interest or specific costs. This ensures that any memorials lodged under this Part can also secure these specified additional amounts, which are generally incurred as a result of the non-payment of

relevant tax.

Clause 5: Section 76 amended

This clause amends section 76 to make changes as a consequence of the amendments to sections 78, 81, 82, 83 and 85.

Subclause (1) amends section 76(1)(b) to remove a redundant reference to section 83.

Subclause (2) amends section 76(2) by replacing the reference to lodgement with the “Registrar of Titles”.

Clause 6: Section 77 amended

This clause amends section 77 to make consequential amendments to support the ability of the Commissioner to lodge a memorial over a mining tenement to secure a duty debt.

Various references to “with the Registrar of Titles” are removed, ensuring the Commissioner can lodge a memorial over a mining tenement with a mining registrar. Redundant cross-references to other sections of the Act are also removed.

Clause 7: Section 78 replaced

This clause repeals and replaces section 78.

Section 78. Charge on subsequent mining tenement

Section 78 ensures that a charge is created under the Taxation Administration Act on a replacement tenement in circumstances where a mining tenement which has a memorial registered against it undergoes a change of status (e.g. it is converted from an exploration licence to a mining lease). Under the *Mining Act 1978*, this “later tenement” is also considered to have the same memorial registered against it as was registered against the original tenement.

Clause 8: Section 79 amended

This clause amends section 79 by clarifying that it is the charge that has priority, rather than memorial, which is merely notice of the charge.

Clause 9: Sections 81, 82 and 83 replaced

This clause repeals the existing sections 81, 82 and 83 and inserts new sections 81, 82 and 83.

Section 81. Withdrawal of memorial to be given when tax paid

Subsection (1) provides that when the Commissioner has lodged a memorial under section 76 (in relation to land tax), the Commissioner must provide a withdrawal of the memorial to the taxpayer upon payment of the land tax that was unpaid at the time of lodgement and any land tax liabilities that have subsequently accrued. By virtue of section 76A(2), the amount that would have to be paid includes any associated amount of penalty tax, interest or other costs.

Subsection (2) ensures that there is no obligation on the Commissioner to give a withdrawal of memorial in relation to land tax that is assessed for a number of lots or parcels unless all of the land tax (which relates to every lot or parcel) is paid. This situation commonly arises in land developments where one lot in the development is sold and the taxpayer wants the memorial removed from only that lot in order to settle the sale. This provision ensures that the Commissioner is not obliged to withdraw the memorial on a particular lot or parcel if the land tax is only paid in relation to that one lot or parcel.

Subsection (3) provides that when a memorial is lodged under section 77 (in relation to duty), the Commissioner must provide a withdrawal of the memorial to the taxpayer upon payment of the duty that was unpaid at the time of lodgement. By virtue of section 76A(2), the amount that would have to be paid includes any associated amount of penalty tax, interest or other costs.

Subsection (4) provides that a taxpayer who has been given a withdrawal of memorial may lodge it for registration. The taxpayer would be required to pay any Landgate costs associated with the lodgement of the memorial.

Subsection (5) provides a discretionary power to the Commissioner to lodge a withdrawal of memorial at any time, whether the tax has been paid or not. Paragraph (b) requires the Commissioner to lodge a withdrawal of memorial when the land is sold in accordance with an order under section 85.

Section 82. Memorials affecting TLA land or real property

Subsection (1) provides definitions of “instrument and “register” that are used in this section. The definitions are self-explanatory.

Subsection (2) requires memorials and withdrawals of memorials that affect land under the operation of the *Transfer of Land Act 1893* to be in an approved form.

Subsection (3) requires the Registrar to register memorials or withdrawals of memorials against TLA land or real property that are lodged with the Registrar. TLA land and real property are both defined terms in section 76A.

Subsection (4) provides that a memorial affecting TLA land or real property, and withdrawal of such a memorial, take effect or cease to have effect upon registration.

Subsection (5) prevents the registration of instruments affecting TLA land or real property without the consent of the Commissioner while a memorial is registered against the land.

Subsection (6) clarifies that subsection (5) does not prevent a person lodging an instrument for registration, nor does it prevent the Registrar accepting an instrument for registration. This distinguishes the processes of lodging or accepting the lodgement of a memorial from the actual registration.

Subsection (7) provides that when an instrument has been accepted for registration but has not been registered because a memorial is in effect, withdrawal of the memorial enables the instrument to take effect as if the memorial had not been registered. Once the memorial is withdrawn, the instrument is taken to have been in effect from the time it was lodged for registration.

Section 83. Memorials affecting mining tenements

Section 83 provides that a memorial or withdrawal of memorial that affects a mining tenement is to be lodged and registered, and has effect, in accordance with the *Mining Act 1978* Part IVA. This ensures the processes and other matters set out in the Mining Act are complied with. Proposed amendments to the *Mining Act 1978* are contained in Part 2 Division 2 of this Bill.

Clause 10: Section 84 amended

This clause broadens section 84 to require the Commissioner to notify mortgagees of mining tenements, in addition to mortgagees of land, when a memorial is registered.

Clause 11: Section 85 amended

This clause accommodates different arrangements for land tax and duty in relation to the application for an order to the Supreme Court for the sale of land.

Subclause (1) repeals section 85(1) and inserts new sections 85(1) and (2A).

Subsection (1) addresses land tax liabilities. It provides that if all or part of the land tax remains unpaid after 18 months after the due date for payment, the Commissioner may apply for an order for sale.

The provision is now more clearly linked to the date the charge arises under section 76(1) of the *Taxation Administration Act 2003*, on the basis that unpaid land tax is a first charge over land whether or not the tax has fallen due for payment or a memorial has been registered over that land.

Subsection (2A) provides for the Commissioner to be entitled to apply for an order for sale if any tax is unpaid 18 months after the registration of a memorial with respect to stamp duty. Under section 77(1) of the *Taxation Administration Act 2003*, registration of a memorial with respect to unpaid stamp duty creates a charge over the land for that unpaid stamp duty.

Subclause (2) amends section 85(4), which lists orders that the Supreme Court may make which are incidental to an order for the sale of land.

Subclause (2)(a) deletes section 85(4)(c) and replaces it with a new paragraph.

Paragraph (c) refers to a person responsible for registering documents under a relevant land Act. "Relevant land Act" is defined in the new section 76A.

This paragraph also clarifies that the Supreme Court may direct, rather than merely authorise, the appropriate person to do anything else necessary to give effect to the sale.

Subclause (2)(b) makes minor grammatical changes.

Subclause (3) amends section 85(6), which provides for the application of the proceeds of a sale under an order of the Supreme Court, and the order in which the proceeds are to be disbursed.

Subclause (3)(a) deletes and replaces section 85(6)(c).

Both the current and replacement paragraphs require the proceeds to be used to discharge the outstanding tax liability secured by the charge over the land.

The replacement paragraph is written to separately address memorials with respect to land tax and memorials with respect to stamp duty. In the case of land tax, it provides for the proceeds to

be used to discharge any land tax liability on the land that occurred after the memorial was registered, even if the due date for the subsequent liability (as set out in section 81(1)(b)) has not arrived.

Subclause (3)(b) makes minor grammatical changes.

Clause 12: Section 86 amended

This clause updates section 86 to distinguish between a charge that arises without the registration of a memorial under section 76 in relation to land tax without the registration of a memorial and those that arise upon registration of a charge under other provisions of the Act.

Division 2 – *Mining Act 1978* amended

Clause 13: The Act amended

This clause provides that the amendments in this Division are to the *Mining Act 1978*.

Clause 14: Section 103A amended

This clause inserts definitions of “tax memorial” and “withdrawal of memorial” into section 103A, which contains existing defined terms, used in Part IVA of the Act.

Clause 15: Section 103C amended

Subclause (1) amends section 103C(1) to include tax memorials and withdrawals of memorials in the list of instruments that are to be prescribed for the purposes of registration under the *Mining Act 1978*.

Subclause (2) inserts a new section 103C(6A).

Subsection (6A) provides that a holder of a mining tenement must be notified by certified mail when a tax memorial is registered against that mining tenement.

Clause 16: Section 103EA inserted

This clause inserts a new section 103EA.

Section 103EA. Memorial for unpaid tax

Subsection (1) provides that a tax memorial takes effect when it is registered and ceases to have effect when a withdrawal of the memorial is registered.

Subsection (2) provides that the consent of the Commissioner of State Revenue is required for a dealing to be lodged or registered against a mining tenement, while a tax memorial is registered against it.

Subsection (3) ensures that where the holder of a mining tenement, against which a tax memorial is registered, is granted another lease or licence over the same or part of the same land under the *Mining Act 1978*, any tax memorial that is registered and in effect is deemed to also have been lodged and registered against the other tenement.

Paragraph (a) applies the subsection to later tenements that are mining leases and general purpose leases granted under the *Mining Act 1978*.

Paragraph (b) applies the subsection to later tenements that are retention licences granted under the *Mining Act 1978*.

Paragraph (c) applies the subsection to later tenements that are mining leases for gold granted under the *Mining Act 1978*, provided that the original tenement is a special prospecting licence.

Subsection (4) clarifies that when a tax memorial is registered over a later tenement in accordance with subsection (3), it is taken to have been registered against that later tenement immediately after the later tenement was granted.

Division 3 – *Taxation Administration Act 2003* further amended

Clause 17: The Act amended

This clause provides that the amendments in this Division are to the *Taxation Administration Act 2003*, after that Act is amended by section 45 of the *Duties Legislation Amendment Act 2008*.

Clause 18: Section 76A amended

This clause inserts an additional definition into section 76A to define land with respect to landholder duty and transfer duty. These duties will be introduced from 1 July 2008 by the *Duties Act 2008*.

Clause 19: Section 77A amended

Subclause (1) amends section 77A(1), which contains a list of definitions, by deleting the definition for “lodge”. A definition of “lodge” is now included in section 76A(1).

Subclause (2) amends section 77A(2) by deleting the words “as

defined in the *Duties Act 2008* section 3”, which are unnecessary as the amendments in clause 18 of this Bill define land within the required context.

Subclause (3) amends section 77A(5) by deleting the words “under section 83” which are no longer required.

Clause 20: Section 81 amended

This clause amends section 81(3) to accommodate the insertion of section 77A.

Clause 21: Section 85 amended

This clause amends section 85(2A), which entitles the Commissioner of State Revenue to apply to the Supreme Court for an order for sale when tax secured by a charge under section 77 is unpaid 18 months after the charge arose. This clause expands the coverage of section 85(2A), from tax secured by a charge under section 77 to also encompass tax secured by a charge under section 77A.

Part 3 – Other amendments to *Taxation Administration Act 2003*

Division 1 – Preliminary

Clause 22: The Act amended

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

Division 2 – Amendments to commence on day after assent day

Clause 23: Section 7 replaced

This clause introduces amendments to support the implementation of recommendation 2.8.2 of the State Tax Review.

Section 7 of the *Taxation Administration Act* currently sets out the relationship between the Commissioner and the Minister in regard to the administration of taxation matters.

This clause replaces section 7 to provide the Commissioner with the general administration of the taxation Acts and is consistent with the responsibility for taxation administration provided to Commissioners in all other jurisdictions, including the Commonwealth.

The vesting in the Commissioner of the general administration of the various revenue laws is used across Australia as a guarantee of the Commissioner's independence. This general power provides a legal framework for the administration of the revenue laws.

In addition, the general administration power is the legal basis from which the common law "good management" rule has emerged. This rule came from the English law, most particularly *Inland Revenue Commissioners v National Federation of Self-employed and Small Business Limited* (1982) AC 617. It has since been developed in Australia, primarily in the Federal tax arena, in cases such as *Groffam Pty Ltd v FCT* (1997) 36 ATR 493, *Pantral Pty Ltd v Commissioner of Taxation* (2002) 120 FCR 371 and *Precision Pools Pty Ltd v Commissioner of Taxation* (1992) 37 FCR 554.

It is worth noting that the power inserted by this Bill encapsulates the powers previously set out in section 7 that ensured the Commissioner was not subject to Ministerial control or direction in relation to the interpretation of a taxation Act or the exercise of a power under a taxation Act.

When combined with the confidentiality provisions in section 114 of the Taxation Administration Act, there are clear, statutory responsibilities that separate the conduct of the Commissioner and Minister in relation to taxpayer specific matters.

Section 7. Administration of taxation Acts

Subsection (1) provides that the Commissioner has the general administration of the taxation Acts and may do anything necessary or convenient for that purpose. The taxation Acts are specified in section 3 of the Taxation Administration Act.

Subsection (2) sets out that the Commissioner can deal with taxation matters and exercise discretions in relation to taxation matters in a manner that he considers appropriate in the interests of good management. This power will ensure the Commissioner has regard to the principles set out in the cases mentioned above.

Subsection (3) defines "taxation matter" for the purposes of subsection (2).

Clause 24: Section 34 amended

The amendment in this section implements recommendation 2.8.5 of the State Tax Review. This amendment will enable current practices relating to certain verbal extensions of time to pay land tax to be recognised when sections 34(4), 47, 48, 56, 57 and 59 of the Taxation Administration Act are proclaimed, subject to a regulation being made under section 20(2)(b) of the *State*

Clause 25: Section 55A inserted

The amendments in this clause introduce section 55A into the Act to implement recommendation 2.8.6 of the State Tax Review.

Section 55A. Unused credit

Subsection (1) provides that if an amount credited against a taxpayer's future tax liabilities is not utilised against tax liabilities within 2 years after the credit arose, the Commissioner may write off the credit (if it is less than the prescribed amount) or otherwise pay the amount to the Treasurer to be dealt with as prescribed retained money under section 9(1)(r)(ii) of the *Unclaimed Money Act 1990*.

The State Tax Review recommendation specified that the amount written off would be less than \$5. It is intended to prescribe the amount under section 55(A)(1)(a) as \$5 or less.

Subsection (2) provides that if an amount is written off under section 55A(1)(a), the amount is to be credited to the consolidated account and that the *Unclaimed Money Act 1990* does not apply to or in relation to that amount.

Subsection (3) provides that if the taxpayer requests payment of any amount that is written off under section 55A(1)(a) within 5 years after the date the credit arose, the Commissioner must pay that amount to the taxpayer. This amount would be funded from the existing Department of Treasury and Finance appropriation account relating to refunds of past years' revenue. The time limit of 5 years is consistent with the reassessment and refund limit that is generally applied under the Taxation Administration Act and other taxation Acts.

Clause 26: Section 76 amended

Under the operation of section 76 of the Act, land tax is a first charge on the land for which the land tax is payable, regardless of a change in ownership. For this reason, when a person purchases property, it is common practice for settlement agents to apply for a certificate under section 80 of the Act to ensure that no outstanding land tax liability exists on the land. If the certificate reveals that land tax is payable, the settlement disbursements commonly take into account an adjustment between the vendor and purchaser for the amount of any estimated or actual land tax payable.

However, there are occasions where this may not occur and an outstanding charge is not settled between the parties at the time of

sale. In these cases, section 76(5) provides that the taxpayer's liability continues despite any disposition of the land. Section 76(6) provides that if there is a disposition of the land before the outstanding tax is paid, the new owner becomes liable to pay the tax.

In practice, the Commissioner will generally pursue the original owner for the outstanding land tax, however, a memorial of the charge is also often lodged over the land to secure the outstanding amount.

Section 76(6) has been amended to clarify that where a disposition of the land occurs and the outstanding land tax is not paid, the new owner becomes jointly liable with the previous owner to pay the land tax. This amendment removes any uncertainty that might suggest that only the new owner is liable for the outstanding land tax where there is a disposition of the land.

Clause 27: Section 114 amended

This section amends section 114 as a consequence of the amendments in clause 25 to ensure that where taxpayer details are provided to the Treasurer under the *Unclaimed Money Act 1990*, no breach of the confidentiality provisions arises. It has been suggested that there could otherwise be a conflict between these provisions and those of the *Unclaimed Money Act 1990*.

Clause 28: Part 10 Division 6 inserted

This clause inserts a new Division 6 into Part 10 of the Act to introduce provisions that will allow future amendments to taxation Acts that are beneficial to the taxpayer to commence prior to being passed by the Parliament.

Division 6 – Early operation of certain amendments to taxation Acts

Section 129. Meaning of terms in this Division

Subsection (1) inserts defined terms into the Act that are relevant for the purposes of Division 6. The definitions are generally self-explanatory, however it should be noted that a taxation Act is defined to include the *First Home Owner Grant Act 2000*.

The inclusion of the First Home Owner Grant Act in the definition of “taxation Act” ensures that consequential amendments to that Act can be administered prior to enactment where they are required due to the link between the First Home Owner Grant Act and the first home owner rate of transfer duty under the *Duties Act 2008*. However, amendments to increase the grant amount of the First

Home Owner Grant Act would not be possible using the mechanism inserted under Division 6.

Subsection (2) clarifies the meaning of “before” a House of Parliament for the purposes of the Division.

Section 130. Determination of pre-enactment provisions

Subsection (1) authorises the Minister to determine that specified provisions of a Bill before the Legislative Assembly or Legislative Council may be “pre-enactment provisions” for the purposes of section 133. Such a determination is made by notice published in the *Gazette*.

Subsection (2) specifies the type of provisions in a Bill that can be determined to be pre-enactment provisions using the mechanism specified in subsection (1).

Paragraph (a) limits the types of substantive provisions that can be determined to be pre-enactment provisions to those that:

- (i) reduce an amount or rate of tax (including reducing the amount or rate of tax to zero). The reduction of the amount or rate to zero would accommodate, for example, a circumstance where a tax rate is levied at a value beginning at zero, and the amendment introduces a tax free threshold that may charge a zero rate up to a specified value threshold;
- (ii) change or remove a tax threshold. This ensures rates which have existing threshold amounts to which a rate or amount of tax is applied, can be adjusted. Examples include value thresholds up to which concessions or exemptions apply (such as the first home owner rate of transfer duty) or over which an amount of tax is payable (such as the \$2 million land value threshold in the landholder provisions for duties purposes or the \$750,000 wages threshold for pay-roll tax purposes);
- (iii) expand the class of persons, acts, matters or things in respect of whom or which a concession or exemption applies. This would allow existing exemptions or concessions to be expanded to a wider subset than that which existed previously;
- (iv) introduce a concession or exemption. This allows new concessions or exemptions to be introduced;
- (v) effect a change that has the same effect as an amendment specified in subparagraphs (i) to (iv). An example of when this provision could be used is where an exemption from tax is provided based on other legislation (eg. disabled persons defined by reference to the *Social Security Act 1991* of the

Commonwealth). Should the other legislation be amended in a way that narrows the definition and denies some taxpayers the exemption, amendments may be made using this provision to enable the exemption provisions to continue to apply as originally intended.

Paragraph (b) ensures that the pre-enactment provisions can operate effectively by allowing consequential amendments to taxation Acts to be made that support the changes specified in paragraph (a).

Paragraph (c) ensures that the pre-enactment provisions can include transitional or commencement arrangements to properly support the substantive amendments covered by paragraph (a).

In relation to the commencement provisions covered by this paragraph, it should be noted that despite the fact that a notice will not be made until after a Bill is introduced into the Parliament, it will still be possible for the pre-enactment provisions to be administered by the Commissioner to have regard to a date prior to the notice being published if the commencement provisions contained in the Bill include a date that is before the date of the notice. However, until the notice is published, the Commissioner cannot administer the pre-enactment provisions as envisaged by section 133(1).

Subsection (3) requires the Minister to lay a determination notice, or a notice amending or revoking a determination, before each House of Parliament within 3 sitting days (of that particular House) following the date of publication of the notice in the *Gazette*.

Section 131. Duration of determination notice

Subsection (1) provides that a notice comes into force on the day on which it is published in the *Gazette*. As the notice, as subsidiary legislation, is written law, section 21 of the *Interpretation Act 1984* applies to the notice to provide that it is effective from the beginning of that day.

Subsection (2) sets out the circumstances when a notice ceases to be in force, providing that such period ends at the end of the day on which the first of the following occurs:

- (a) the amending Bill in which the pre-enactment provisions are located receives the Royal Assent (whether or not the Bill was amended by the Parliament). This ensures that the legislation takes precedence over the notice as soon as the legislation becomes operative;
- (b) the notice is revoked by the Minister by notice published in the

Gazette;

- (c) the period of 6 months from the day on which the notice came into force expires. This ensures that there is a maximum period over which a notice can operate. If the benefits to the taxpayer are to stay in place for any period after the 6 months has expired, the legislation is required to have been passed by the Parliament and become operative;
- (d) the amending Bill is defeated in either House of Parliament. This provision applies where the whole Bill is defeated. If the Bill is amended, the provisions of section 132 will be applicable.
- (e) the Legislative Assembly expires or is dissolved before the amending Bill has been passed by both Houses of Parliament. This provision has been inserted to ensure that if the Parliament is prorogued and the Bill upon which the pre-enactment provisions have been determined lapses, then the notice also ceases to operate.

Subsection (3) provides that when a determination notice ceases to be in force, section 37 of the *Interpretation Act 1984* applies as if the cessation of the notice were the repeal of a written law.

This provision ensures that equity amongst taxpayers prevails for the period during which the notice operated and recognises that the liability for tax is based on how the law at a particular time applies to a given situation. It also recognises that the tax that may be assessed or collected is not always simultaneous with the time at which a liability arose.

For example, a liability to duty under the Duties Act may arise on the basis of the tax rates that applied at the date a transaction occurred, say 29 May. Suppose a determination had been made on 17 May to apply to certain pre-enactment provisions that specified a lower transfer duty rate from the date of an announcement on 10 May. However, for whatever reason, the notice was revoked on 31 July.

Also suppose during this period that two taxpayers entered into separate transactions on 29 May. One transaction was subject to extensive conditions and did not become unconditional until 25 August. The taxpayer was required to lodge the contract with the Commissioner by 25 October. The other taxpayer's transaction was only subject to conditions about obtaining finance and became unconditional on 17 June. This taxpayer wanted a quick settlement, which took place on 1 July.

In the absence of this provision to preserve the operation of the

lower tax rates for the period the notice is in operation, the two taxpayers, despite entering into their transactions on the same date, would have different duty outcomes only because of the nature of the conditions on their individual contracts. This provision has therefore been inserted to ensure the outcome is equitable for all taxpayers based on the law that is operational at the time the tax liability arises.

Section 132: Amendment and replacement of determination notice

Subsection (1) provides the circumstances in which the Minister may amend a notice that has been published in the *Gazette*. These are limited to correcting a clerical mistake, an accidental slip or omission, or an error in the way in which the amending Bill or a provision of the amending Bill is referred to.

Subsection (2) specifies that a provision of a Bill cannot be determined to be a pre-enactment provision more than once. This means that if the notice cannot be amended or replaced under the specific provisions of this section, and it ceases to operate, the mechanism in this Division cannot be used again to extend the period over which such a notice may operate.

Subsection (3) specifies circumstances where the Minister may make a replacement notice. This provision is necessary in the event that a provision that has been determined to be a pre-enactment provision is amended by the Parliament.

In order for a notice to be revoked and replaced, the determination notice must have been made in respect of provisions while the Bill was before the Legislative Assembly, those provisions of the Bill were amended by the Legislative Assembly, and the Bill must be before the Legislative Council. Where that has occurred, the Minister may revoke the original notice (that was made while the Bill was before the Legislative Assembly) and declare specified provisions that are before the Legislative Council to be pre-enactment provisions for the purposes of section 133.

This subsection limits the circumstances in which a notice can be amended, while still accommodating situations that could arise where amendments are required to be made to this type of Bill by the Legislative Assembly.

Subsection (4) ensures that the 6 month period that operates before a replacement notice ceases to have effect is calculated by reference to the date of the original notice, not the replacement notice.

Section 133: Effect of pre-enactment provisions

Subsection (1) applies to authorise the pre-enactment provisions specified in a notice to be taken account of as if it had been passed by the Parliament and come into operation. This provision would allow the Commissioner, once a determination notice had come into force, to administer the relevant taxation Act as if the amendment that benefits the taxpayer had commenced.

Subsection (2) provides additional authorisation, over and above that contained in section 131(2), to ensure that if a pre-enactment provision does not result in a taxpayer paying a lesser amount of tax, the amount of tax payable is reduced to the amount that would have been payable had the notice not been in force. This provision operates for the period the notice is in force.

In that regard, should the situation arise where the amendment results in a taxpayer having to pay more tax, the liability is not assessed under the pre-enactment provisions. Rather, the assessment is made under the taxation law as it would have applied had the pre-enactment notice not been made. As a result, when the amending legislation is passed by the Parliament and becomes operational, a reassessment of the taxpayer's liability would be made so that the correct amount of duty is paid.

Division 3 – Amendments to commence on proclamation

Clause 29: Section 20A inserted

This clause inserts new section 20A into the Act to give effect to recommendation 2.8.2 of the State Tax Review, which proposed that the Commissioner of State Revenue be provided with a power to make a compromise assessment in certain circumstances.

The Commissioner's power to settle taxation disputes, especially in relation to matters before the State Administrative Tribunal, have been somewhat hampered due to the lack of the general administration power and a compromise assessment power. These types of provisions are important features of a properly functioning taxation administration system and will be governed by tightly controlled approval processes and guidelines to ensure taxpayer equity is maintained.

A comprehensive Commissioner's Practice will be issued in accordance with section 127 of the Act that will be available to taxpayers and their advisors to ensure the process for using compromise assessments is transparent.

Section 20A. Compromise assessments

Subsection (1) authorises the Commissioner to make a written

agreement with a taxpayer in relation to a taxpayer's tax liability and make a compromise assessment in accordance with that agreement, if the Commissioner considers it appropriate to do so in order to avoid undue delay or expense, to settle a dispute or for any other reason.

The agreement entered into under section 20A(1)(a) can only be entered into with the agreement of the taxpayer and both parties will be bound by the terms of the agreement, with the usual remedies available under contract law for non-performance or breach.

Subsection (2) provides that a compromise assessment (as defined in the Glossary via clause 31) cannot be reassessed by the Commissioner unless the reassessment has been agreed by the taxpayer, or the Commissioner is satisfied that the compromise assessment was procured by fraud or made in consequence of the taxpayer knowingly failing to disclose material information or providing information knowing that it was incorrect, incomplete or misleading.

Subsection (3) provides that a decision to make or not make a compromise agreement, a decision on the terms of a compromise agreement or a compromise assessment is final and is not subject to review under Part 4 or any other form of appeal or review.

This power ensures that the compromise assessment power is a true form of settlement, and recognises that it will more than likely be the type of agreement that gives rise to an agreed settlement of matters that may already be part of a review process under Part 4 of the Act.

In addition, it is also recognised that taxpayers may seek to pressure the Commissioner to enter into a compromise agreement and the consequential compromise assessment with a view to reducing a tax liability that is properly payable and which can be readily and efficiently assessed and made. For this reason, it is appropriate that a decision by the Commissioner to refuse to entertain a compromise agreement or compromise assessment should not be subject to review under Part 4. The assessment of the taxpayer's agreed liability (the compromise assessment) will be part of the compromise agreement and, as the taxpayer has agreed to the assessment, no review of that assessment will be available to the taxpayer.

However, where a reassessment has been made under Part 3 of the Act in the circumstances as outlined in subsection (2) of this section, that reassessment would be subject to review under Part 4.

Subsection (4) provides that no action can be brought in a court or tribunal to compel the Commissioner to make a compromise agreement. The need for this restriction is consistent with the reasons outlined for the inclusion of the provisions in subsection (3).

Subsection (5) provides that the ability to enter into a compromise agreement and assessment does not limit the powers of the Commissioner in relation to estimate assessments issued under section 19 of the Act.

Clause 30: Section 34 amended

This section inserts consequential amendments to support those contained in clause 29.

Clause 31: Glossary amended

This clause amends the Glossary to amend the definition of “assessment” and insert a definition of “compromise assessment”.

Part 4 – Amendments to other Acts

Clause 32: *Duties Act 2008* amended

This clause updates a reference in the Duties Act to the Commonwealth’s *Financial Sector (Business Transfer and Group Restructure) Act 1999*, which has been recently amended.

Clause 33: *First Home Owner Grant Act 2000* amended

This clause inserts a general administration power into the *First Home Owner Grant Act 2000* which is consistent with the power inserted into the *Taxation Administration Act 2003*.

It is considered that the same good management principles apply to the administration of this legislation as those that are relevant to the administration of the taxation Acts.

Clause 34: *Petroleum and Geothermal Energy Resources Act 1967* amended

This clause amends a reference to the *Stamp Act 1921* that appears in the *Petroleum and Geothermal Energy Resources Act 1967* and updates it to refer to the *Duties Act 2008*.

Clause 35: *Rates and Charges (Rebates and Deferments) Act 1992* amended

This clause amends section 15 of the *Rates and Charges (Rebates*

and Deferments) Act 1992 to ensure that processes are in place under the Act for administrative authorities, other than local government or accountable authorities as defined in the *Financial Management Act 2006*, who are required to pay compensation to a person who has suffered damage, loss or injustice in certain circumstances.

The amendment ensures that provision is made for any other type of administrative authority, which would include the Water Corporation, to make the necessary adjustment by way of payment, waiver or deferral.