

EXPLANATORY MEMORANDUM
LAND TAX ASSESSMENT AMENDMENT BILL 2017

Part 1 – Preliminary

Clause 1: Short title

This clause provides that the short title of this Act is the *Land Tax Assessment Amendment Act 2017*.

Clause 2: Commencement

This clause provides the commencement dates for this Bill.

Paragraph (a) provides that Part 2 is deemed to have come into operation immediately after the *Land Tax Assessment Act 2002* came into operation, which is 1 July 2003.

Paragraph (b) provides that the rest of the Act is to come into operation on the day on which the Royal Assent is received.

Clause 3: Act amended

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

Part 2 – Amendments about liability for land tax

Clause 4: Section 7 amended

Section 7(1) provides that land tax is payable by the owner of the land.

However, section 7(2) provides that, if a person or taxable authority is taken under section 8 to be the owner, they are liable for the land tax.

Pursuant to section 8(1)(b), a person is taken to be the owner if they are entitled to use land under an agreement or arrangement with the Crown, an agency or instrumentality of the Crown, a local government or a public statutory authority. These entities can include a taxable authority.

Pursuant to section 8(2), a taxable authority is taken to be the owner of land if that land is vested in it otherwise than as owner.

Section 7(3) currently provides that if a person is taken to be the owner under section 8(1), and at the same time a taxable authority is taken to be the owner under section 8(2), the land tax is payable by the taxable authority.

The amendments being made to section 8 under clause 5 of this Bill will mean that section 8(1)(b) will no longer apply to an agreement or arrangement with a taxable authority.

The effect of this is that it will not be possible for both a person and a taxable authority to be taken as the owner at the same time.

On this basis, section 7(3) is redundant and is to be deleted.

Clause 5:

Section 8 amended

Pursuant to section 8(1)(b), a person is taken to be the owner of land if the person is entitled to use the land under an agreement or arrangement with certain Crown entities, including a public statutory authority. These entities do not exclude a taxable authority.

This means where a person uses land owned by a taxable authority, the person will be taken to be the owner rather than the taxable authority.

Under the former *Land Tax Assessment Act 1976* (1976 Act), the meaning of *public statutory authority* did not include prescribed entities that are now referred to as taxable authorities. The effect of this was that a person who used land under an agreement or arrangement with such bodies was not taken to be the owner.

This clause amends section 8 by including new subsection (1A) which excludes section 8(1)(b) from applying when the agreement or arrangement is between a person and a taxable authority.

The amendment will mean that a taxable authority will always remain the owner of land liable for land tax, regardless of whether there is an agreement or arrangement for another person to use the land. It restores the policy position that existed under the 1976 Act and which was inadvertently lost in the transition to the current Act.

Clause 6:

Section 31 amended

Section 31(1) provides an exemption for land owned by, or vested in, the Crown, an agency or instrumentality of the Crown, a local government or another public statutory authority (except a taxable authority).

The exemption does not currently apply where a person is taken to be the owner under section 8(1), or a taxable authority is taken to be the owner under section 8(2).

The amendments made by clause 6 clarify that an exemption in respect of land owned by or vested in a Crown entity is not available where:

- the entity is a taxable authority; or
- a person uses the land under a lease, licence, agreement or arrangement with the entity, and is taken to be the owner, as provided for in section 8(1); or
- a taxable authority that has the land vested in it other than as owner is taken to be the owner, as provided for in section 8(2).

Clause 7: Glossary amended

The Glossary provides the meaning of certain terms used in the Land Tax Assessment Act.

This clause deletes the current definition of *public statutory authority* and inserts a new one having a more restricted meaning.

The replacement definition qualifies the current meaning of a body established or continued in existence by an enactment, to also require the body to have a public purpose and to perform a statutory function on behalf of the State.

In addition to a body, whether incorporated or not, the definition has been extended to also apply to the holder of an office carrying out similar functions.

Part 3 – Transitional and validation provisions

Clause 8: Schedule 1 Division 5 inserted

This clause inserts a new Division 5 in Schedule 1 that provides the transitional arrangements for these amendments.

Division 5 – Provisions for *Land Tax Assessment Amendment Act 2017*

16. Terms used

This clause contains self-explanatory definitions of the terms *amended Act*, *commencement*, *former Act*, *non-public authority*, *previous assessment* and *validation period*, which are used in this Division.

17. Validation of previous assessments

The effect of this clause is that where the Commissioner, during the validation period, had:

- not exempted land under section 31(1) due to the interpretation of the term *public statutory authority*; or
- continued to treat a taxable authority as the owner of land, notwithstanding that another person was using the land under an agreement or arrangement with the taxable authority, due to the interpretation of section 8(1)(b);

then those previous assessments are validated as if the amendments contained in this Bill had been in force when the assessments were made.

However, clause 17 is made subject to clause 18.

18. Land tax decisions made or pending

This clause sets out certain circumstances where clause 17 will not apply.

Subclause (1) contains a self-explanatory definition of the term *decision*.

Pursuant to subclause (2), where a decision conflicts, or is inconsistent, with a previous assessment validated by clause 17, then the decision prevails.

Subclause (3) further provides that, despite the retrospective nature of these amendments, the validity of a decision cannot be questioned on the basis that it conflicts with the amendments.

For example, if before the passage of these amendments, an exemption under section 31(1) had been denied on the basis a body was not a public statutory authority, and the assessment was overturned on objection as a result of which an exemption was granted, that objection decision stands notwithstanding that it is now inconsistent with the effect of the amendments.

Subclause (4) provides that the validation provisions of clause 17 do not apply to a previous assessment made in relation to section 31(1) in respect of which an objection had been lodged or review proceedings commenced, but were not finally determined before 15 July 2015. This date is based on the Media Statement released by the previous Government on 14 July 2015 which highlighted the issue with public statutory authorities and indicated an intention for amendments to reinstate the original legislative intent.

Subclause (5) further provides that, despite the retrospective nature of the amendments, the legislation as it was before amendment will continue to apply to objections or proceedings referred to in subclause (4).

The effect of this is that, provided an objection or appeal was lodged before 15 July 2015, the taxpayer will be entitled to have the matter determined in accordance with the legislation as it stood before these amendments came into effect.

19. Reassessment

This clause provides that the Commissioner may make any reassessment necessary to give effect to these amendments, subject only to the reassessment time limits set out in section 17 of the *Taxation Administration Act 2003*.

This clarifies that, due to the retrospective nature of these amendments, in circumstances other than where clause 18 has application, the Commissioner may make a reassessment of an assessment made before commencement.

Where no assessment has been made before commencement, the Commissioner may make an original assessment in respect of any assessment year before commencement.