

## **REVENUE LAWS AMENDMENT BILL (NO. 3) 2005**

### **EXPLANATORY MEMORANDUM**

The purpose of this Bill is to introduce a new land tax scale for 2005-06 and subsequent financial years and provide a 50% land tax concession for land used for caravan park, park home park, or camping ground purposes.

These tax relief measures were announced as part of the 2005-06 State Budget.

From 1 July 2005, the land tax exemption threshold will increase by \$30,000 to \$130,000.

This will free around 24,000 or 20% of land tax payers from paying land tax in 2005-06.

In addition, the second tier threshold will be increased by \$70,000 to \$290,000 and the third tier threshold will be raised by \$180,000 to \$750,000.

The middle marginal tax rate will be cut from 1.76% to 1.62%.

These adjustments will help to reduce bracket creep, especially in the middle thresholds.

The combination of the increase in the land tax exemption threshold, and the fact that land tax is no longer levied on the value of land below the threshold, means that all tax payers will receive at least a \$195 reduction in their land tax liability compared to what it would have been if the scale and land values had remained unchanged.

The combined cost of the two recent land tax scale adjustment measures is estimated to be around \$73 million in 2005-06, and \$325 million over the four years to 2008-09.

In recent years, rapid growth in land values has led to large increases in land tax bills faced by some caravan park and camping ground owners, particularly in coastal areas and the south-west region.

In 2005-06, around a third of caravan parks are expected to experience land value increases of between 30% and 100% relative to the 2004-05 values.

The increases in land tax bills resulting from revaluations of this magnitude would have the potential to threaten the on-going viability of these facilities, despite adjustments to the land tax scale.

Many operators of these dwelling parks provide low cost family accommodation in the State's prime holiday destinations.

By providing a 50% concession for land used for caravan parks, park homes and camping grounds, the Government will be assisting the long-term viability of these businesses.

The concession will also apply to land used for closely related purposes such as washroom, laundry, and kitchen facilities where these are integral to the operation of the dwelling park.

However, the concession will not be extended to land that is used for activities that are deemed to be "value adding", such as hotels and restaurants.

In the event that the dwelling park land is subdivided, a clawback provision will require the repayment of the land tax concession claimed, for a period of up to five years prior to the subdivision.

A similar clawback arrangement already applies in respect of land that is subdivided where the land has previously been the subject of a primary producers exemption from land tax.

The estimated cost of the land tax concession is \$1 million in 2005-06 and \$4 million over the four years to 2008-09.

The current amendments are intended to apply from the assessment year commencing on 1 July 2005.

## **Part 1 – Preliminary**

### **Clause 1:     Short title**

This clause provides that this Act may be cited as the *Revenue Laws Amendment Act (No. 3) 2005*.

### **Clause 2:     Commencement**

This clause provides the commencement dates for this Act.

Subclause (1) provides that if this Act receives the Royal Assent before or on 1 July 2005, this Act comes into operation on

1 July 2005.

Subclause (2) provides that if this Act receives the Royal Assent after 1 July 2005, this Act is to be taken to have come into operation on 1 July 2005.

## **Part 2 – *Land Tax Act 2002* amended**

### **Clause 3:    The Act amended in this Part**

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

### **Clause 4:    Section 5 amended**

This clause amends section 5 by inserting a new Table 4 to specify the land tax rate scale for the 2005-06 assessment year and subsequent years.

The proposed table is set out below:

<b>Table 4: Land tax rates for 2005/06 and subsequent financial years</b>		
<b>Unimproved value of the land</b>		
<b>Exceeding (\$)</b>	<b>Not exceeding (\$)</b>	<b>Rate of land tax</b>
0	130 000	Nil
130 000	290 000	0.15 cent for each \$1 in excess of \$130 000
290 000	750 000	\$240.00 + 0.45 cent for each \$1 in excess of \$290 000
750 000	2 000 000	\$2 310.00 + 1.62 cents for each \$1 in excess of \$750 000
2 000 000	5 000 000	\$22 560.00 + 2.30 cents for each \$1 in excess of \$2 000 000
5 000 000		\$91 560.00 + 2.50 cents for each \$1 in excess of \$5 000 000

## **Part 3 – *Land Tax Assessment Act 2002* amended**

**Clause 5:    The Act amended in this Part**

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

**Clause 6:     Section 15A inserted**

This clause inserts a new section 15A after section 15 of the Act.

This section provides for the retrospective taxation of land that is subdivided after a concession on dwelling park land has been allowed in previous assessment years. This provision is similar in principle to those of sections 14 and 15 of the Act.

**15A. Land tax on newly subdivided dwelling park land**

Subsection (1) specifies the circumstances in which dwelling park land, which is subdivided, is to be retrospectively assessed. A definition of “subdivided” is provided in the Glossary of the Act. The application of the dwelling park concession is set out in Part 3 Division 4A (see clause 7).

Paragraph (a) provides that this section applies if the land that is subdivided was subject to a concession (under section 39B) for any of the five years prior to and including the financial year in which the subdivision takes place.

Paragraph (b) provides that this section applies if the subdivision was not carried out only in order to define land to be taken or resumed under a written law that relates to a compulsory acquisition. This would include, for example, land resumed for roads under the *Main Roads Act 1930*.

Subsection (2) provides that the “subdividing owner” (as defined in the Glossary of the Act) is liable to pay the land tax assessed under this section. It also provides that the land tax is to be assessed for each of the five years of assessment at the appropriate value of the taxable portions of the land. The meaning of “taxable portion of the land” is set out in subsection (3). This provision is consistent with that in sections 14(2) and 15(2).

Subsection (3) provides the meaning of the term “taxable portion of the land”. This is the portion of land that remains after deducting from the whole area of land, the area of land that, immediately after the subdivision is completed, is dwelling park land as defined in section 39A(2) and is concessionally taxed due to the use of the land by the subdividing owner. This provision

ensures that the retrospective assessment of land tax does not apply to the area of land that continues to be used as dwelling park land after the subdivision.

Subsection (4) specifies that the land to be taxed under this section is not to be aggregated with any other land for assessment purposes. This section applies the rate under the *Land Tax Act 2002* on that basis. Essentially, this means that land assessed under this section is treated as if it is the only land owned by the liable person and the rate scale applies accordingly.

Subsection (5) allows a deduction for any land tax already paid within the five year retrospective assessment period on the taxable portion of the land.

For example, if a 50% dwelling park land concession had been granted under section 39B in respect of a particular portion of land, the 50% tax paid on that land during the five year assessment period would be deducted from any assessment made under this section.

Subsection (6) provides for the determination of the proportionate unimproved value of the taxable portion of the land. This value is determined by an arithmetical calculation of the taxable portion of the land area over the whole of the previously concessionally taxed area as a proportion of the total unimproved value of the whole area of the land.

Subsection (7) specifies that an assessment made under this section does not affect the future tax liability of any person for the land tax on the taxable portion of the land. That is, an assessment under this section is raised in relation to past years and while payable in a particular assessment year after subdivision has occurred, will not affect the liability to tax in that year or subsequently.

Subsection (8) provides an assessment power allowing the Commissioner to make any reassessment necessary to apply the provisions of this section. This provision applies despite the time limits on reassessments set out in section 17 of the *Taxation Administration Act 2003*.

**Clause 7:     Part 3 Division 4A inserted**

This clause inserts a new Division in Part 3 of the Act which includes the new sections 39A and 39B. This Division provides a 50% concession of land tax where land is used for “dwelling park purposes”. In broad terms, land used for dwelling park purposes is land used for sites in a caravan park, camping ground, or park home park and for directly related purposes such as washrooms, laundry, and kitchen facilities provided for campers.

#### **Division 4A – Land used for non-permanent residences**

##### **39A. Land to which section 39B applies**

Subsection (1) provides the self-explanatory definitions of the following terms used in this section:

- “dwelling park land”;
- “dwelling park purposes”;
- “excluded purpose”; and
- “related purpose”.

The definition of “**related purpose**” provides for the Commissioner to determine other purposes ancillary to the purpose of use as sites on which caravans, caravans and camps, or park homes are or may be situated for habitation. It is intended that a Commissioner’s Practice be published under section 127 of the *Taxation Administration Act 2003* to further clarify such related purposes. The definition of “**related purpose**” further provides for the prescription by regulation of purposes ancillary to the purpose of use as sites on which caravans, caravans and camps, or park homes are or may be situated for habitation. It is not intended that any such purposes be prescribed to operate from the commencement of this Act.

This section further provides that if a term used in this section is also defined in section 5 of the *Caravan Parks and Camping Grounds Act 1995* it has the same meaning in this section. This applies to the terms:

- “caravan”;
- “caravan park”;
- “camp”;

- “camping ground”;
- “licence”;
- “local government”;
- “park home”; and
- “site”.

Subsection (2) provides a definition of dwelling park land for the purposes of this section. Land is taken to be dwelling park land if the land is, or is part of, a caravan park or camping ground as defined in the *Caravan Parks and Camping Grounds Act 1995* and the caravan park or camping ground is:

- operated, or required to be operated, under a licence issued under the *Caravan Parks and Camping Grounds Act 1995*; or
- operated by a local government on land that is not owned by, or vested in, the local government;

and the land is used solely for dwelling park purposes.

This means that the concessional rate under section 39B will only apply to land used for genuine caravan parks, camping grounds, and park home parks. The concession will not apply where an owner of land permits a person to park a caravan or pitch a tent under an arrangement which does not qualify for licensing under the *Caravan Parks and Camping Grounds Act 1995*.

Under the *Caravan Parks and Camping Grounds Act 1995* local governments issue licences to caravan parks and camping grounds. In certain circumstances, local governments themselves may run caravan parks and camping grounds, and in that situation the local government would not be required under the *Caravan Parks and Camping Grounds Act 1995* to issue a licence to itself. If a local government were operating a caravan park or camping ground on its own land, then that land would be exempt from land tax under section 31 of the Act, and the concession under this Division would not apply (see section 39A(8)). In the event that a local government were to operate a caravan park or camping ground on land that it did not own, this provision will operate to ensure that the land used for those purposes will be considered as dwelling park land for the purposes of this section.



Subsection (3) provides that when considering an application for a determination that land is dwelling park land under subsection (4), the Commissioner may regard land used for a related purpose as being used solely for dwelling park purposes even where the land is also used for another purpose in addition to the related purpose.

By way of example, this means that the Commissioner may consider that where a swimming pool provided for the amenity of caravan park patrons may also be used by motel guests, then the Commissioner may regard the land on which the pool is located as being used for a related purpose, even though the land is not used exclusively by the caravan park patrons. This provision allows the Commissioner to exercise his discretion in respect of land used for related purposes, where the land may additionally be used for another purpose. As subsection (2)(c) provides that for the concession to apply the land must be used solely for dwelling park purposes, were it not for this discretionary provision, land which is used for both a related purpose and another purpose could not be considered dwelling park land, and hence the concession could not apply to that land.

Subsection (4) provides that an owner of land may apply to the Commissioner in the approved form for a determination:

- that the land is dwelling park land and was dwelling park land as at midnight on 30 June preceding the application; or
- that the land is dwelling park land.

This means that the concession for dwelling park land under this Division is only available to an owner of land where that person makes an application to the Commissioner for a determination that the land is, or was, used as dwelling park land. If the application for the determination is made in respect of the current assessment year, then the land must have been dwelling park land as at midnight on 30 June preceding the lodgement of the application. An application for a determination may also be made where land is currently dwelling park land. Such an application will then allow for a concessional assessment to be made in respect of future assessment years (under subsection (7)).

Subsection (5) provides that an application may be made for a

determination as to land that constitutes a portion of a lot. This allows an owner of land to apply to the Commissioner for a determination that land is dwelling park land where only part of a lot of land is being used as a caravan park or camping ground. A "lot" is defined in the Glossary of the Act.

Subsection (6) provides that if, as a result of an application made by an owner of land under subsection (4)(a), the Commissioner determines that land is dwelling park land, and was such on 30 June preceding the lodgement of the application, then section 39B applies to that land to provide a 50% concession of the rate imposed under the *Land Tax Act 2002* in respect of the assessment year in which the application was made. The land will also qualify for an assessment under section 39B for each subsequent assessment year providing that the land continues to be dwelling park land and the ownership of the land does not change. This means that where the Commissioner, as a result of an application made by an owner of land, has made a determination that land is dwelling park land, then for the purposes of a concessional assessment under section 39B, that determination remains valid for future assessment years, unless the land (or part of it) is no longer dwelling park land, or is no longer owned by the same person. In the event that part, or all, of the dwelling park land ceases to be used as such, or its ownership changes during an assessment year, then a new application for a determination under subsection (4) must be made for subsequent assessment years. Where an application for a determination is made, and the land was dwelling park land as at midnight on 30 June preceding the application and continues to be dwelling park land, and an assessment of land tax has already been made, the Commissioner will reassess the land tax payable in accordance with section 39B(2).

Subsection (7) provides that if, as a result of an application made by an owner of land under subsection (4)(b), the Commissioner determines that land is dwelling park land, then section 39B applies to that land to provide a 50% concession of the rate imposed under the *Land Tax Act 2002* in respect of subsequent assessment years. The land will qualify for an assessment under section 39B for each subsequent assessment year providing that the land continues to be dwelling park land and the ownership of the land does not change. This means that where the Commissioner, as a result of an application made by an owner

of land, makes a determination that land is dwelling park land, then for the purposes of a concessional assessment under section 39B, that determination remains valid for future assessment years, unless the land (or part of it) is no longer dwelling park land, or is no longer owned by the same person. In the event that part, or all, of the dwelling park land ceases to be used as such during an assessment year, or its ownership changes, then a new application for a determination under subsection (4) must be made for subsequent assessment years.

Subsection (8) provides that, despite the application of subsections (6) and (7) which provide for a concessional assessment under section 39B, that section does not apply to land as to which a determination has been made if an exemption under another provision of this Act applies to the land. This provision ensures that the concession for dwelling park land is not available where that same land is subject to an exemption under the Act. In practice this will be to the benefit of the taxpayer as it provides that an exemption from land tax will take precedence over the concession.

Subsection (9) imposes an obligation on an owner to advise the Commissioner when the land ceases to be dwelling park land, or where the area of the dwelling park land is reduced. The owner must advise the Commissioner before the commencement of the next assessment year, or within 3 months of the day on which the change occurred, whichever is the later. Failure to make the required notification is an offence, for which penalties and penalty tax may be imposed under the *Taxation Administration Act 2003*.

Subsection (10) provides that a reference in subsections (6), (7), (8), or (9) to land as to which a determination is made includes a reference to any part of the land. This means that where any land is determined by the Commissioner to be dwelling park land, if any part of that land ceases to be dwelling park land, then the concession under section 39B does not apply to that land, and the owner of the land is required to notify the Commissioner of that fact. Similarly if part of the land is the subject of an exemption under the Act, then section 39B does not apply to the land.

### **39B. Concessional rates for land to which this section applies**

Subsection (1) provides that land tax is payable at 50% of the rate imposed for the assessment year by the *Land Tax Act 2002* if this section applies to the land. This provision operates to grant a 50% concession of land tax for land which is determined to be dwelling park land as defined in section 39A.

Subsection (2) requires the Commissioner to make any reassessment necessary to give effect to the concession where an assessment has already been made in respect of land as to which a determination is made under section 39A(6)(a). This will mean that an owner of dwelling park land can receive a concessional assessment for the assessment year provided that the application for the determination is made within the assessment year. This provision does not allow for a reassessment to occur in respect of an assessment year which is prior to the one in which the application for a determination under section 39A(4)(a) is made.

Subsection (3) specifies that the apportionment provisions under section 18 of the Act do not apply to the concession for dwelling park land.