

EXPLANATORY MEMORANDUM

TAXATION ADMINISTRATION AMENDMENT BILL 2018

The Taxation Administration Amendment Bill 2018 rounds out the measures in the Revenue Laws Amendment Bill 2018 and contains amendments to the *Taxation Administration Act 2003* that improve the administrative and enforcement arrangements for State taxes.

The key amendments in this Bill strengthen the Commissioner's powers to recover unpaid tax. Clauses 9 – 14 contain the following changes:

- The recovery provisions for dishonoured payments are expanded to include electronic payments such as by BPay and BPoint.
- With the taxpayer's consent, the Commissioner can lodge a memorial against land or mining tenements transferred to a taxpayer after payment of an interim transfer duty assessment. The memorial will remain in place until the final assessment is paid.
- The Commissioner can lodge a memorial against land or mining tenements owned by a taxpayer to secure unpaid duty that results from a reassessment of the taxpayer's liability on the purchase of that property.
- The Commissioner can recover from a taxpayer the costs of withdrawing a memorial after the payment of outstanding tax.
- The Commissioner can lodge a memorial to create a charge on land for any unpaid foreign transfer duty or foreign landholder duty.

The Bill also contains the following amendments to correct minor technical issues and remove red tape:

- The costs of lodging or withdrawing a memorial, together with legal costs associated with recovery action, can be included in a tax payment arrangement.
- The service of documents by fax is removed.
- The timeframes by which a document or notice is taken to be served by post are amended to reflect changes to Australia Post's service delivery times. A regulation-making power will allow the changes to be prescribed.
- The Minister was required to report to Parliament on the operation and effectiveness of the interim assessment provisions after the third anniversary of their introduction. This provision is deleted because the Minister tabled the required report in November 2016.
- The *Metropolitan Region Town Planning Scheme Act 1959* was repealed in 2006 and is removed as a taxation Act.
- The requirement to give notice of new and amended Commissioner's practices in the *Government Gazette* is replaced by a requirement to publish them on the State Revenue website.
- Interest will be payable on a refund of tax as the result of a successful objection under the *Valuation of Land Act 1978* to a value used in a land tax assessment. A transitional validation provision will support interest payments made from 1 July 2003 in these circumstances. The Commissioner must also refund any incurred memorial costs to the taxpayer where such an objection is successful.

Part 1 – Preliminary

Clause 1: Short title

This clause provides that the short title of this Act is the *Taxation Administration Amendment Act 2018*.

Clause 2: Commencement

This clause provides the commencement dates for the Bill.

Paragraph (a) provides that Part 1 comes into operation on the day Royal Assent is received.

Paragraph (b) provides the rest of the Act comes into operation when Part 2 of the *Revenue Laws Amendment Act 2018* comes into operation.

Part 2 – Taxation Administration Act 2003 amended

Clause 3: Act amended

This clause provides that this Part amends the *Taxation Administration Act 2003* (TAA).

Clause 4: Section 3 amended

Section 3 lists the Acts that are taxation Acts for the purposes of the TAA.

The *Metropolitan Region Town Planning Scheme Act 1959* is currently included as a taxation Act. As this Act was repealed in 2006, this clause deletes section 3(1)(g) to remove it as a taxation Act.

Clause 5: Section 23 amended

Section 23 sets out a number of requirements relating to the issue of assessment notices.

This clause corrects a minor grammatical error in subsection (2)(d) by adding the word 'if' at the start of the paragraph.

Clause 6: Section 30 replaced

Section 30 provides that the Commissioner must publish the policy followed when deciding whether or not to remit penalty tax under section 29. Section 127 requires the Commissioner to publish all practices relating to the assessment of tax.

The Glossary defines ***publish*** for the purposes of sections 30 and 127. It means to arrange for a summary of a new policy or a change in policy to be advertised in the *Government Gazette* and for the current policy to be made available for free on an internet site or from the Office of State Revenue (OSR).

Currently, following the publication of a notice in the *Government Gazette*, the OSR publishes new and amended Commissioner's practices on its website.

This clause replaces section 30 to provide that the Commissioner must publish on the OSR website the practice followed when deciding whether or not to remit penalty tax under section 29. Clause 20 of this Bill deletes the definition of 'publish' from the Glossary and inserts a definition of 'OSR website'.

These amendments reduce red tape by allowing Commissioner's practices about the remission of penalty tax to be published on the OSR website without the need for gazettal. This will also reduce the time and costs associated with gazettal of notices.

Clause 7: Section 47 amended

Under section 47, the Commissioner can approve a tax payment arrangement to allow a taxpayer extra time to pay their tax, including any penalties, or to pay it by instalments.

Currently, legal costs associated with recovery proceedings and the costs of lodging a memorial can be recovered from taxpayers (section 62). However, these amounts cannot be included in a tax payment arrangement under section 47.

Clause 9 of this Bill amends section 62 to allow the costs of withdrawing a memorial to be recovered from the taxpayer.

This clause amends section 47 to ensure that legal costs for recovery proceedings and the costs of lodging or withdrawing a memorial can be included in a tax payment arrangement. This aligns the provisions in the TAA with the equivalent provisions in the *First Home Owner Grant Act 2000* (FHOG Act).

Clause 8: Section 54A inserted

This clause inserts new section 54A to provide for interest to be paid when land tax is refunded, or credited to the taxpayer's account, as the result of a successful objection or review under the *Valuation of Land Act 1978* to a value used in a land tax assessment.

Section 37B of the former *Land Tax Assessment Act 1976* provided for the refund of land tax and payment of interest in these circumstances. The provisions relating to refunds and payment of interest were incorporated into the TAA when it came into effect on 1 July 2003.

Sections 39 and 43 provide for the payment of interest following a successful objection or appeal. Section 54 sets out when tax is to be refunded and also allows the amount to be credited to the taxpayer's account instead of being refunded.

However, section 32 provides that the accuracy of a valuation made under the *Valuation of Land Act* can only be challenged in proceedings under that Act and not through the objection or appeal provisions in the TAA. This means there is no authority to pay interest on the refund amount where a taxpayer successfully objects to, or appeals, a value used in a land tax assessment.

The Commissioner has paid interest on these refunds since the TAA was introduced. New section 54A provides legislative support for this practice.

Clause 19 of this Bill inserts a provision to validate interest paid on these refunds since 1 July 2003.

54A. Interest on refunds resulting from proceedings under Valuation of Land Act 1978

Subsection (1) provides that the section applies if a reassessment is made and an amount is to be refunded or credited under section 54(1)(a) or (2), as a result of:

- (a) an objection under the Valuation of Land Act being allowed wholly or in part; or
- (b) a review by the State Administrative Tribunal under the Valuation of Land Act. Under section 33 of the Valuation of Land Act, a person who is not satisfied with the outcome of an objection can serve a notice on the Valuer-General requiring that the valuation be referred to the Tribunal for review.

Subsection (2) provides that the following amounts must also be refunded to the taxpayer:

- (a) any amount paid by the taxpayer for lodging a memorial under section 76 if the Commissioner has withdrawn the memorial as a result of the reassessment. This is consistent with sections 39 and 43, which require the Commissioner to refund memorial costs as a result of a successful objection or appeal.
- (b) interest during the reassessment period calculated at the prescribed rate on the refund amount (including any amount referred to in paragraph (a)).

Subsection (3) defines **reassessment period** to mean the period:

- (a) beginning on the later of the date the tax was paid by the taxpayer or the date on which the original assessment was made; and
- (b) ending on the date on which the Commissioner approves the refund.

This is consistent with sections 39 and 43.

Clause 9: Section 62 amended

Section 62 provides, for the purposes of the recovery provisions in Part 6, that a reference to 'tax' includes:

- (a) legal costs incurred by the Commissioner in relation to recovery proceedings;
- (b) costs incurred for lodging a memorial under section 76 (unpaid land tax), 77 (unpaid stamp duty) or 77A (unpaid transfer duty and landholder duty);
- (c) interest payable under a tax payment arrangement; and
- (d) prescribed costs. Currently, there are no costs prescribed for this section.

Any of these amounts that remain unpaid is a debt due to the State under section 60.

Paragraph (a) of this clause amends section 62(b) to refer to the specific subsections of section 77A which set out when a memorial may be registered against land to secure unpaid duty.

Amended section 62(b) does not refer to new subsection 77A(2A) inserted by clause 13. This section allows the Commissioner, with the consent of the taxpayer, to lodge a memorial against land or mining tenements transferred to a taxpayer after payment of an interim transfer duty assessment. Excluding the costs of lodging memorials in these circumstances from section 62 means that these costs cannot be passed onto the taxpayer.

Paragraph (b) inserts new paragraph (ba) to provide for costs incurred for lodging a withdrawal of memorial. This will allow the Commissioner to recover these costs from the taxpayer. This will align the costs that can be recovered under the TAA with the costs that can be recovered under the FHOG Act.

Clause 10: Section 76A amended

Section 76A defines the terms used in Division 2 relating to charges on land.

Subclause (1) amends section 76A(2)(c) to ensure that a reference to 'tax' in Division 2 is to be read as including the costs incurred for lodging a withdrawal of memorial. This is a consequential amendment as a result of the amendments to section 62.

Subclause (2) inserts section 76A(3) to provide that a purported payment is **dishonoured** if:

- (a) for cheques – the cheque is dishonoured or cancelled;
- (b) for credit card payments – the payment is not authorised by the card issuer; or
- (c) for direct debit payments – the person fails to authorise the payment.

A regulation-making power is also included to prescribe any new forms of payment.

This amendment is relevant to the amendments to sections 76, 77 and 77A to provide that a dishonoured payment by electronic means (and not just by cheque) also causes the relevant tax to not be paid by the due date (see clauses 11 – 13).

Clause 11: Section 76 amended

Section 76(3) provides that if a cheque for payment of land tax is dishonoured on first presentation, the land tax is taken not to be paid by the due date, even though the due date may not have arrived when the payment was dishonoured.

As land tax can now be paid using electronic payment methods such as BPay and BPoint, a dishonoured electronic payment should also cause the relevant tax to not be paid by the due date.

This clause replaces section 76(3) to provide that if a purported payment of land tax is dishonoured, the tax is taken not to be paid by the due date, even though the due date may not have arrived when the purported payment is dishonoured. This ensures recovery proceedings can commence with appropriate actions taken to secure the debt.

New section 76A(3), inserted by clause 10, sets out when a purported payment by means of a cheque, credit card and direct debit is dishonoured.

Clause 12: Section 77 amended

Section 77(5) provides that if a cheque for payment of stamp duty is dishonoured on first presentation, the stamp duty is taken not to be paid by the due date, even though the due date may not have arrived when the payment was dishonoured. This ensures recovery proceedings can commence with appropriate action taken to recover the duty. This is particularly necessary in circumstances where registration of property ownership has occurred without the appropriate duty being paid.

New section 76A(3), inserted by clause 10, expands the methods of payment that may be dishonoured to include electronic payments such as credit card and direct debit.

This clause replaces section 77(5) to provide that if a purported payment of stamp duty is dishonoured, the tax is taken not to be paid by the due date, even though the due date may not have arrived when the purported payment is dishonoured.

Clause 13: Section 77A amended

Section 77A sets out the Commissioner's powers to lodge a memorial to create a charge on land for unpaid transfer duty and landholder duty. This power is currently limited to circumstances where:

- transfer duty or landholder duty is taken not to be paid by the due date as a consequence of a dishonoured cheque (sections 77A(2) and (6));
- a person is required to repay a first home owner grant resulting in additional duty payable on the purchase of the home, with that payment not made by the due date (section 77A(3));
- the Commissioner has lodged a memorial under section 55(2A) of the FHO Act, in which case the Commissioner may also lodge a memorial under section 77A(3) as if the requirements of that subsection had been satisfied (section 77A(4A)); or
- landholder duty for a landholder acquisition is not paid by the due date (section 77A(4)).

This clause amends section 77A to extend the Commissioner's powers to lodge a memorial to create a charge on land for:

- unpaid foreign transfer duty or foreign landholder duty under Chapter 3A Part 2 and Part 3 respectively of the *Duties Act 2008* (Duties Act). Chapter 3A was inserted by the *Duties Amendment (Additional Duty for Foreign Persons) Act 2018* and imposes additional duty of seven per cent on acquisitions of residential property by foreign persons from 1 January 2019;
- the unassessed portion of transfer duty payable on the transfer of land or a mining tenement to the taxpayer after payment of an interim transfer duty assessment; and
- all reassessments of transfer duty in relation to transfers of land where the duty is not paid by the due date (and not just reassessments giving effect to section 145 of the Duties Act).

Other amendments provide that a dishonoured electronic payment of duty can also cause the relevant tax to not be paid by the due date.

Subclause (1) inserts the following definitions for the purposes of the section:

landholder has the meaning given in section 148(1) of the Duties Act;

landholder duty means duty under Chapter 3 or Chapter 3A Part 3 of the Duties Act. Chapter 3A Part 3 sets out the provisions relating to foreign landholder duty. The effect is that all references to 'landholder duty' in section 77A include foreign landholder duty;

linked entity has the meaning given in section 148(1) of the Duties Act;

transaction record has the meaning given in section 3 of the Duties Act;

transfer duty means duty under Chapter 2 or Chapter 3A Part 2 of the Duties Act. Chapter 3A Part 2 sets out the provisions relating to foreign transfer duty. The references to 'transfer duty' in section 77A include foreign transfer duty;

transfer duty interim assessment means an interim assessment for transfer duty or foreign transfer duty issued under section 44A or 205R of the Duties Act.

Memorials for interim transfer duty assessments

Under section 16A of the TAA and section 44A of the Duties Act, the Commissioner may make an interim assessment of a portion of the transfer duty payable on a transaction. A complete assessment is issued when the Commissioner is able to determine the total duty payable for the transaction.

With the exception of interim assessments, the Commissioner does not release duty endorsed transfer documents until all assessed duty is paid. Where an interim assessment is paid, the Commissioner has discretion to release duty endorsed transfer documents to allow property to be registered in the taxpayer's name.

However, the Commissioner has no ability to secure any unpaid duty from the complete assessment that follows an interim assessment. As a result, the Commissioner only releases endorsed transfer documents after payment of an interim assessment in exceptional circumstances.

Some industry participants have expressed concern that this limits a purchaser's ability to conduct their business operations. To address this, new section 77A(2A) will allow the Commissioner to lodge a memorial against property that is transferred after payment of an interim transfer duty assessment, with the memorial only withdrawn once the complete assessment is paid. The Commissioner will need the taxpayer's consent to register a memorial in these circumstances.

A decision to register a memorial for an interim transfer duty assessment will involve the Commissioner exercising a specific power under the TAA. Equally, the taxpayer's consent will be confined to the Commissioner's decision to lodge a memorial for an interim transfer duty assessment.

Any matters relating to the decision to lodge a memorial will not be taken into account when the Commissioner makes a decision about the complete assessment. On that basis, a taxpayer's consent to registration of a memorial does not prejudice them in the making of the complete assessment.

Subclause (2) inserts new subsection (2A) which provides that, if the Commissioner has made a transfer duty interim assessment, the Commissioner may lodge a memorial to create a charge for the transfer duty payable on the transaction for which the Commissioner has not made an assessment (the remaining transfer duty).

New subsection (2B) provides that a memorial under subsection (2A) cannot be lodged without the consent of the taxpayer and can be lodged even though an assessment of the remaining transfer duty has not been made.

Reassessments of transfer duty

Currently, the Commissioner's powers to lodge a memorial on land for unpaid transfer duty as the result of a reassessment is limited to reassessments of the first home owner rate of duty under section 145 of the Duties Act where the taxpayer is required to repay the first home owner grant.

In most cases there is no need to use a memorial to secure unpaid transfer duty because duty must be paid before the property is transferred to the purchaser by the Registrar of Titles. However, where the purchaser's liability is reassessed after the property is transferred, the Commissioner is unable to secure any unpaid duty resulting from the reassessment.

Subclause (3) amends section 77A(3) to allow the Commissioner to lodge a memorial to create a charge on land for unpaid transfer duty as a result of any reassessment and not just those giving effect to section 145 of the Duties Act. This includes any reassessment of foreign transfer duty that is not paid by the due date.

Charge on land to secure foreign landholder duty

Section 77A(4) provides that if landholder duty is not paid by the due date, the Commissioner may lodge a memorial to create a charge on any land of the landholder or a linked entity if that land was taken into account for the purposes of calculating landholder duty.

As 'landholder duty' is defined in subsection (1) to include foreign landholder duty, the provision will also allow the Commissioner to lodge a memorial for foreign landholder duty that is not paid by the due date.

Subclause (4) makes consequential amendments to section 77A(4) to reflect that the provision also applies to unpaid foreign landholder duty.

Dishonoured payments

Section 77A(6) provides that if a cheque for payment of transfer duty or landholder duty is dishonoured on first presentation, the duty is taken not to be paid by the due date, even though the due date may not have arrived when the dishonour occurred.

As duty can now be paid using electronic payment methods such as BPay and BPoint, a dishonoured electronic payment should also cause the relevant tax to not be paid by the due date.

Subclause (5) replaces section 77A(6) to provide that if a purported payment of transfer duty or landholder duty is dishonoured, the tax is taken not to be paid by the due date, even though the due date may not have arrived when the purported payment is dishonoured.

This includes dishonoured payments of foreign transfer duty or foreign landholder duty.

New section 76A(3), inserted by clause 10, sets out when a purported payment by means of a cheque, credit card and direct debit is dishonoured.

Section 77A(7) provides that a memorial creating a charge on land for transfer duty payable cannot be lodged under subsection (2) until the title to the land has been transferred to the taxpayer.

Subclause (6) makes a consequential amendment to section 77A(7) to include a reference to proposed subsections (2A) and (3) so that a memorial creating a charge on land under these provisions cannot be lodged until the title has been transferred.

Clause 14: Section 85 amended

Section 85 sets out the circumstances in which the Commissioner may apply to the Supreme Court for an order for the sale of land where tax remains unpaid. Section 85(2A) provides that the Commissioner may apply for an order for sale if any tax remains unpaid 18 months after the registration of a memorial for unpaid duty.

This clause amends section 85(2A) to exclude memorials lodged under new section 77A(2A). There will be no ability to apply for an order for sale if a memorial has been lodged for an interim transfer duty assessment because the charge registered in these cases is to secure duty that is not yet assessed.

Clause 15: Section 115 amended

Section 115 sets out the methods in which a document may be served on the Commissioner. Section 115(c) provides that a document may be served on the Commissioner by faxing a copy of the document to a fax number stated in the regulations.

Following the introduction of the electronic client web enquiry facility on the OSR website in December 2012, the Commissioner stopped using faxes as a form of communication. As facsimile is no longer used by the Commissioner, this clause deletes section 115(c).

Clause 16: Section 117 amended

Section 117 sets out the different methods of service by the Commissioner.

As explained in the notes for clause 15, the Commissioner stopped using faxes in December 2012. Subclause (1) amends section 117(1)(e) to delete the references to fax as a method of service by the Commissioner.

Subclause (2) makes a minor amendment to the drafting in section 117(2) by replacing the reference to 'section 117(1)' with 'subsection (1)'.

Section 117(4) sets out when a notice or document is taken to have been served on a person where that notice or document is not served personally. The provision uses service delivery times for posting a document within the State, to other jurisdictions within Australia, and overseas. The subsection needs updating to reflect Australia Post's changes to postal service delivery times.

Subclause (3) replaces section 117(4) and inserts new section 117(5). Section 117(4) now provides that if a notice or other document is not served personally, the notice or document is taken to be served on a day prescribed by the regulations. This will enable the Government to respond promptly to any future changes to the postal delivery times.

New section 117(5) provides that the regulations may prescribe different days for documents served by different methods and in different circumstances. Regulations will be prescribed to set out when a document that is not served personally is taken to be served for the purposes of section 117(4), taking into account Australia Post's service delivery times.

Clause 17: Section 127 amended

Section 127 provides that the Commissioner is to publish all existing practices relating to the assessment of tax, and that the Commissioner cannot establish or direct a practice to be observed unless it is published.

The definition of **publish** in the Glossary requires any new policy or change in policy to be advertised in the *Government Gazette* and made available on the OSR website. Subclause (1) amends section 127(1) to provide that the Commissioner is to publish all existing practices relating to the assessment of tax on the OSR website.

Subclause (2) amends section 127(2) to provide that the Commissioner cannot establish or direct a practice to be observed unless the Commissioner first publishes that practice on the OSR website.

Clause 20 of this Bill deletes the definition of 'publish' from the Glossary and inserts a definition of 'OSR website'.

These amendments reduce red tape by allowing Commissioner's practices to be published on the OSR website without the need for gazettal. This will also reduce the time and costs associated with gazettal of notices.

Clause 18: Part 10 Division 7 deleted

Part 10 Division 7 contains section 135, which requires the Minister to carry out a review of the operation and effectiveness of the interim assessment provisions of the TAA and the Duties Act after the third anniversary of their introduction, and prepare a report to be tabled before each House of Parliament.

The Minister tabled this report in November 2016. This clause deletes Part 10 Division 7 because it is now redundant.

Clause 19: Section 137 inserted

This clause inserts section 137 to validate the payment of interest on refunds of land tax as a result of a successful objection or review under the Valuation of Land Act.

137. Provisions for *Taxation Administration Amendment Act 2018*

Subsection (1) provides that ***commencement day*** means the day on which section 8 of this Act comes into operation.

Subsection (2) provides that section 54A applies to authorise the payment of interest on an amount refunded or credited to a taxpayer on or after commencement day, even if the successful objection or review that resulted in the refund occurred before commencement day.

Subsection (3) provides that a refund or credit of interest to a taxpayer made, or purported to be made, on or after 1 July 2003 and before commencement day, is taken to have always been as valid and effective as it would have been if proposed section 54A had been in force at the time and the prescribed rate for section 54A was the rate prescribed for the purposes of section 39.

Section 39 sets out the objection provisions. The rate prescribed for section 39 was the rate used to calculate the interest paid to a taxpayer for an amount refunded as a result of a successful objection or review under the Valuation of Land Act.

Clause 20: Glossary amended

This clause amends the following definitions in the Glossary:

Subclause (1) deletes the definition of ***publish***.

Subclause (2) inserts a new definition of ***OSR website*** to mean a website maintained by or on behalf of the Commissioner.

Together with the amendments to section 30 and 127 (see clauses 6 and 17), these amendments mean that Commissioner's practices relating to the assessment of tax and the remission of penalty tax will only need to be published on the OSR website without the need for gazettal.

The Glossary currently defines **penalty tax** to include penalty tax payable under section 239(3)(b), 249(4)(b) or 266(2)(b) of the Duties Act.

The Revenue Laws Amendment Bill 2018 inserts section 266(1A)(b) into the Duties Act to provide that penalty tax may apply where a connected entities exemption is automatically revoked under section 264A.

Subclause (3) amends the definition of penalty tax to include penalty tax payable under new section 266(1A)(b).

Part 3 – *Biosecurity and Agriculture Management Act 2007* amended

Clause 21: Act amended

This clause provides that Part 3 amends the *Biosecurity and Agriculture Management Act 2007* (BAM Act).

Part 6 Division 1 Subdivision 2 of the BAM Act, which deals with the imposition and collection of Declared Pest Rates, is listed under section 3(1) as a taxation Act for the purposes of the TAA.

Clause 22: Section 139 amended

The Commissioner is responsible for issuing assessment notices and collecting Declared Pest Rates on behalf of the Department of Primary Industries and Regional Development.

The Declared Pest Rate is charged on the unimproved value of land determined in accordance with the Valuation of Land Act. New section 54A, which will allow the Commissioner to pay interest on a refund as a result of proceedings under the Valuation of Land Act, will also apply to objections to valuations for the assessment of Declared Pest Rates.

Section 139(3) of the BAM Act provides that, if the Commissioner refunds an amount under section 54 of the TAA, the equivalent amount must be credited to the Consolidated Account from the Declared Pest Account.

This clause makes a consequential amendment to section 139(3) to include a reference to proposed section 54A. The result is that any interest paid on a refund amount as a result of a successful objection to a valuation must also be credited to the Consolidated Account from the Declared Pest Account.