

State Revenue Legislation Further Amendment Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

(a) to amend the *Duties Act 1997*:

(i) to extend an exemption from duty for transfers that occur in connection with persons changing superannuation funds, and

(ii) to exempt from duty certain transfers that occur in connection with approved home equity release schemes, and

(iii) to increase the eligibility age for the First Home Plus scheme from 16 years to 18 years, and

(iv) to confer a further exemption from duty on the assignment of a call option, and

(v) to make further provision for the imposition of land rich duty, and

(vi) to prevent a mortgage that is secured by property both within and outside this jurisdiction from being stamped before an advance is made for more than the value of the property secured, and

(vii) to close off an existing concession from mortgage duty that applies in respect of mortgages associated with old debenture issues, and

(viii) to exempt certain mortgage transfers from provisions of the Act that deem a transferred mortgage to be liable for duty as if it were a new mortgage, and

(ix) to extend an insurance duty concession, and

(b) to amend the *First Home Owner Grant Act 2000* to make it more consistent with legislation of other States and the Territories, and

(c) to amend the *Insurance Protection Tax Act 2001* to extend an exemption to certain policies of insurance under which the policyholders are liable, as a class, to meet the cost of claims made under insurance policies issued to members of that class, and

(d) to amend the *Land Tax Management Act 1956*:

(i) to change the exemptions for land used for primary production and unoccupied land, and

(ii) to remove the retrospective liability for land tax in a case where a person who vacates his or her principal place of residence does not resume residence within 6 years, and

(iii) to clarify the land tax exemption for land the subject of certain conservation agreements and trust agreements, and

(iv) to remove redundant provisions and make other amendments by way of statute law revision, and

(e) to amend the *Pay-roll Tax Act 1971*:

(i) to ensure that employer contributions to redundancy benefit schemes and long service leave funds are treated as wages for the purposes of that Act, and

(ii) to make further provision with respect to the valuation of shares and options granted by employers, and

(f) to amend the *Petroleum Products Subsidy Act 1997*:

(i) to authorise the Chief Commissioner of State Revenue (the **Chief Commissioner**) to recover subsidy amounts wrongfully paid, and to impose penalties in appropriate cases, and to provide for an appeal process against such actions, and

- (ii) to change invoice requirements with respect to subsidised petroleum products, and
- (iii) to make other changes to the subsidy scheme under that Act, and
- (g) to amend the *Taxation Administration Act 1996*:
 - (i) to make further provision with respect to agreements and arrangements with other Australian jurisdictions for the investigation of contravention of revenue laws, and
 - (ii) to ensure that statutory State owned corporations are not treated as members of the same group because they are controlled by the same shareholders.

The Bill also makes consequential amendments (including to the *Administrative Decisions Tribunal Act 1997*) and provides for savings and transitional matters.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act. Some provisions commence before the date of assent to the proposed Act. These provisions are explained further below.

Clause 3 is a formal provision that gives effect to the amendments to the Acts set out in Schedules 1–8.

Schedule 1 Amendment of Duties Act 1997 No 123

Duty on transfers made in connection with changing superannuation funds

At present, section 61 of the *Duties Act 1997* exempts from transfer duty certain transfers made between the trustees of superannuation funds where the transfer is made in connection with a member of the fund ceasing to be a member of, or entitled to benefits in respect of, one fund and becoming a member of, or entitled to benefits in respect of, another fund.

Schedule 1 [1] extends this exemption to transfers that are made between custodians of the trustee of such funds, or between a custodian and the trustee, for the same purpose. It also extends the exemption to a transfer of marketable securities that is made from a trustee of a pooled superannuation trust, in exchange for a redemption of units in the trust, to the trustee or a custodian of the trustee of a superannuation fund.

Schedule 1 [2] and [3] are consequential amendments.

Home equity release schemes

Schedule 1 [4] provides for an exemption from duty on certain transfers that are made in connection with a home equity release scheme. These are schemes that enable an owner of residential property to obtain money from a person in exchange for an agreement that a proportion of the value of the residential property will be paid to the person on the owner's death or some other specified event. In order for the exemption to apply the scheme must be a scheme of a kind approved by the Chief Commissioner.

Eligibility for First Home Plus

The First Home Plus scheme provides for an exemption from, or reduction in, duty on the purchase of a first home. **Schedule 1 [5]** increases the minimum age for persons making applications under the First Home Plus scheme from 16 years to 18 years. **Schedule 1 [18]** includes a transitional provision.

Exemption from call option assignment duty

At present, the *Duties Act 1997* treats an assignment of a call option over property as a transfer of the property in certain circumstances. **Schedule 1 [6]** exempts from the duty an assignment that is made to a body established solely for the purpose of raising funds in relation to an investment scheme promoted by the person who makes the assignment.

Land rich duty

At present, the *Duties Act 1997* imposes duty on the acquisition of an interest in a “land rich” landholder (unit trust schemes and companies that have a high proportion of land-related assets) as if it were a transfer of land. The threshold at which duty becomes payable is lower for private unit trust schemes than it is for wholesale unit trust schemes or private companies.

Schedule 1 [8] and [9] extend the criteria for registration as a wholesale unit trust scheme to include unit trust schemes in which certain foreign entities invest, if they invest in those schemes in a similar capacity to other qualifying investors in a wholesale unit trust scheme. It also makes it clear that certain unit trust schemes in which responsible entities for managed investment schemes invest (and which are not already covered by the registration criteria) may also be eligible for registration as a wholesale unit trust scheme. **Schedule 1 [20]** is a consequential amendment.

Schedule 1 [7] limits the definition of *associated person* for the purposes of the land rich duty provisions, so that responsible entities of managed investment schemes will only be considered to be associated if they share a member who has a significant interest in both schemes. **Schedule 1 [19]** is a consequential amendment.

Stamping of mortgages secured on interstate property

The *Duties Act 1997* provides for the apportionment of the mortgage duty payable in cases where the property secured by the mortgage is partly within this State and partly within another jurisdiction, to prevent persons from being charged with double duty. If the mortgage is stamped before an advance is made, the duty is assessed on the basis of the value of the property secured by the mortgage at the date of stamping.

Schedule 1 [10] provides that, where a mortgage is stamped before an advance is made, it may be stamped only for an amount that does not exceed the value of the property affected by the mortgage at the stamping date. The provision prevents an avoidance practice by which the proportion of New South Wales property secured by a mortgage is artificially reduced by omitting New South Wales property from the mortgage until after the date on which liability for duty is assessed. The provision will be taken to have commenced on the date on which this Bill is introduced into the Legislative Assembly (see **clause 2 (2)**).

Schedule 1 [18] includes a transitional provision relating to the amendments.

Closure of concession for mortgages associated with debenture issues

Section 226 of the *Duties Act 1997* provides for a concession in respect of mortgage duty on advances in connection with debenture issues. The concession was limited, by amendments made to the Act in 2003, to mortgages executed before 24 June 2003.

Schedule 1 [11]–[14] close off the concession entirely. As a consequence of the amendments if an advance or further advance is made, on or after the commencement of the amendments, in respect of mortgage to which the concession would previously have applied, duty, or additional duty, is payable in respect of the advance or further advance. The purpose of the amendments is to prevent a practice under which old debenture issues are reused to facilitate the avoidance of mortgage duty.

The amendments will be taken to have commenced on the date this Bill is introduced into the Legislative Assembly (see **clause 2 (2)**).

Schedule 1 [18] includes a transitional provision relating to the closure of the concession, including a provision that ensures the amendments will not affect any existing liability for mortgage duty.

Exemption for transferred mortgages

Section 227A of the *Duties Act 1997* treats a mortgage that is transferred, in certain circumstances, as if it were a new mortgage on which no duty has been paid. The new mortgage is liable to mortgage duty accordingly.

Schedule 1 [15] extends an existing exemption from those provisions to the following transfers:

(a) a transfer of a mortgage between corporations who are members of the same group,

(b) a transfer of a mortgage in connection with, or in preparation for creating, issuing, marketing or securing, a mortgage-backed security,
(c) a transfer of a mortgage from a person who holds the mortgage as trustee for another person to a new trustee appointed in substitution for the former trustee.
The new exemptions will be taken to have commenced on 1 August 2005, which is when section 227A commenced (see **clause 2 (2)**).

Insurance duty concession

Schedule 1 [16] extends, until 31 January 2010, a duty concession for insurance policies issued under the Debtor Insurance Scheme of the Stock and Station Agents Association. The existing concession expired on 1 February 2005. The amendment will be taken to have commenced on 31 January 2005 (see **clause 2 (2)**).

Regulations

Schedule 1 [17] provides for the making of savings and transitional regulations as a consequence of the amendments.

Schedule 2 Amendment of First Home Owner Grant

Act 2000 No 21

The changes to the *First Home Owner Grant Act 2000* make the legislation generally more consistent with the corresponding legislation of other jurisdictions.

Minimum age applicants

Schedule 2 [2] increases the minimum age for persons making an application under the first home owner grant scheme from 16 years to 18 years. The Chief Commissioner will retain a discretion to waive that requirement.

Schedule 2 [8] applies the new criteria to applications made on or after the commencement of the amendment.

Eligibility following repayment

Schedule 2 [3] allows an applicant who has previously received a first home owner grant to be eligible for a further grant, provided that the earlier grant was repaid.

Schedule 2 [8] applies the new criteria to applications made on or after the commencement of the amendment.

Eligibility following prior ownership of residential property

Schedule 2 [4] removes a provision that renders an applicant for the grant ineligible for the grant if the applicant has previously held an interest in residential property, being a property that was used at any time as the residence of the applicant. The provision is replaced with a requirement that the applicant must not have previously held an interest in residential property that the applicant used as a residence for a continuous period of at least 6 months. (This corresponds with the residence requirement, as it relates to the grant of the first home owner grant.)

Schedule 2 [8] applies the new criteria to applications made on or after the commencement of the amendment.

Residence requirement

Schedule 2 [5] amends the residence requirement relating to the first home owner grant so that the Chief Commissioner may vary the requirement, or exempt a person from the requirement, in any particular case at any time (including following a failure by a person to satisfy the residence requirement). **Schedule 2 [1]** is a consequential amendment.

Schedule 2 [8] applies the new criteria to applications made on or after the commencement of the amendment.

Objections

Schedule 2 [6] extends the provisions of the Act that allow an applicant who is dissatisfied with a decision of the Chief Commissioner on an application to object to the decision. The amended provisions will also allow objections to be lodged in respect of the following decisions:

(a) a decision of the Chief Commissioner to require repayment of a first home owner grant by the grant recipient,

(b) a decision of the Chief Commissioner to require a person to pay a penalty for making a dishonest application,

(c) a decision of the Chief Commissioner to require a third party, instead of a grant recipient, to repay a first home owner grant.

Schedule 2 [8] applies the new objection provisions to decisions made by the Chief Commissioner of which he or she gives notice on or after the commencement of the relevant amendment.

Regulations

Schedule 2 [7] provides for the making of savings and transitional regulations as a consequence of the amendments.

Schedule 3 Amendment of Insurance Protection Tax

Act 2001 No 40

The *Insurance Protection Tax Act 2001* provides for the imposition of a tax on the total annual amount of all premiums received by insurers for general insurance. The tax is paid into a Policyholders Protection Fund. Among other purposes, the Fund is used to meet expenditure from the Building Insurers' Guarantee Fund, and the Nominal Defendant's Fund, in connection with policies issued by insurers declared to be insolvent.

Schedule 3 [1] extends an exemption to insurance, or insurance of a class, approved by the Treasurer under which the class of persons who take out the insurance are liable, or may become liable, under a contract of insurance or by or under an Act, to meet the cost of claims made under policies of insurance issued to members of that class in the event that the insurer is unable to meet the cost of those claims (due to the insolvency of the insurer, a shortfall in the funds available to the insurer to meet the cost of the claims or for any other reason). As a result, tax will not be imposed on the premiums payable in respect of such insurance.

Schedule 3 [2] provides that the amendment applies in respect of assessments made for the year commencing 1 July 2006 or any subsequent year.

Schedule 4 Amendment of Land Tax Management

Act 1956 No 26

Exemption for land used for primary production

At present, land used for primary production is exempt from land tax if:

(a) the land is used for primary production in the course of the carrying on of a business of primary production, or

(b) the land is rural land, that is, it is within a "rural" or "non-urban" zone under a planning instrument or, if the land is not zoned, the Chief Commissioner is satisfied the land is rural land.

The amendment in **Schedule 4 [8]** limits the exemption by requiring the use of the land for primary production to be the dominant use of the land.

The amendments also deem land zoned "rural residential" to be rural land.

Under the amendments, if land is not rural land, the land will be exempt from taxation only if the use of the land for primary production:

(a) has a significant and substantial commercial purpose or character, and

(b) is engaged in for the purpose of profit on a continuous or repetitive basis (whether or not a profit is actually made).

This is similar to the requirements relating to the designation of land as farmland under the *Local Government Act 1993*.

Schedule 4 [1] and [5] are consequential amendments.

Land tax exemption for land the subject of a conservation agreement

Schedule 4 [6] and [7] restrict the land tax exemption for land the subject of a conservation agreement or trust agreement to cases in which the conservation agreement or trust agreement remains in force in perpetuity.

Principal place of residence exemption

At present, the *Land Tax Management Act 1956* allows the principal place of

residence exemption to be claimed, in certain circumstances, when an owner of land intends to occupy the land as his or her principal place of residence. **Schedule 4 [12] and [13]** remove the requirement that, for the exemption to apply, the Chief Commissioner must be satisfied that the owner intends to occupy the land as his or her principal place of residence. The exemption will apply if the owner claims he or she intends to occupy the residence as his or her principal place of residence.

At present, the exemption for a person who intends to occupy land as a principal place of residence is revoked if the person fails to occupy the residence as his or her principal place of residence within a particular period. **Schedule 4 [14]** requires an owner of land to demonstrate why any extension to the time period should be given.

Schedule 4 [15] removes a provision that prevents a person claiming the principal place of residence exemption in respect of land the person intends to occupy as a principal place of residence if the person is a joint owner of land outside New South Wales that is the principal place of residence of another joint owner. The amended provision will prevent a person from claiming the exemption if the person owns land outside New South Wales that is the principal place of residence of the person or a member of the person's family.

Schedule 4 [16] and [17] remove the retrospective liability for land tax in cases where a person remains absent from his or her principal place of residence for a period that exceeds the maximum period of absence during which the principal place of residence exemption can be claimed (that is, 6 years).

Miscellaneous

Schedule 4 [2]–[4] make statute law revision amendments for the purpose of updating cross-references.

Schedule 4 [9]–[11] remove redundant provisions of the Act.

Schedule 4 [19] provides for the application of the amendments. Some of the amendments relating to the principal place of residence exemption are applied to previous taxation years.

Schedule 4 [18] provides for the making of savings and transitional regulations as a consequence of the amendments.

Schedule 5 Amendment of Pay-roll Tax Act 1971

No 22

Inclusion of redundancy and long service contributions as wages

Schedule 5 [2] and [4] provide that contributions by employers to portable long service leave funds (which are industry based long service leave funds) and redundancy benefit schemes are considered to be wages for the purposes of the *Pay-roll Tax Act 1971*. Accordingly, they are taxable under the Act. The amount paid or payable as wages is taken to be the amount of the contribution, less the amount (if any) that the employer is entitled to recover from the scheme or fund.

Schedule 5 [1] makes it clear that such contributions are considered to be wages even if they would otherwise be fringe benefits that are exempt from taxation under the Act because they are exempt benefits for the purposes of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.

Valuation of shares and options

At present, the grant of a share or option by an employer is treated as wages under the Act. **Schedule 5 [3]** makes it clear that, in valuing the grant, a deduction is to be made for the consideration (if any) paid or given by the employee for the grant of the share or option. The amendment will be taken to have commenced on 1 July 2005 (see **clause 2 (2)**).

Regulations

Schedule 5 [5] provides for the making of savings and transitional regulations as a consequence of the amendments.

Schedule 6 Amendment of Petroleum Products

Subsidy Act 1997 No 112

The *Petroleum Products Subsidy Act 1997* provides for a scheme under which certain sales of petroleum products in geographical zones close to the Queensland border are made the subject of a subsidy. The scheme is intended to counterbalance subsidies payable to Queensland sellers of petroleum products. The rate of the subsidy depends on how close the zone is to the Queensland border.

Recovery of amounts wrongfully paid

Schedule 6 [14] provides for the recovery of amounts wrongfully paid as subsidies under the *Petroleum Products Subsidy Act 1997*.

At present, the Act provides for various offences for selling petroleum products, or consuming petroleum products, in respect of which a subsidy is payable in a manner contrary to the parameters under which the scheme is intended to operate. For instance, a subsidy is not payable in respect of petroleum products that are sold at petrol stations outside a zone, so a person who sells petroleum products in respect of which a subsidy has been paid at a petrol station outside the relevant zones commits an offence.

The new provisions will allow the Chief Commissioner to recover from a person who sells, delivers in connection with a sale or consumes subsidised petroleum products, or obtains a subsidy in respect of petroleum products, in contravention of the Act (**the wrongdoer**) an amount that is equivalent to the amount of subsidy paid or payable (or, if the subsidy has merely been overpaid as a result of the contravention, the amount of the overpayment). The provisions apply whether or not the wrongdoer is the person to whom the subsidy was paid, and whether or not proceedings for an offence against the Act have been taken or are pending against the person.

The provisions will also allow the Chief Commissioner to recover a penalty from the wrongdoer, if satisfied that the contravention of the Act occurred as a consequence of the wrongdoer's dishonesty. The Chief Commissioner may also charge interest for a failure to pay the amount as required.

Provision is made for the making of objections to the Chief Commissioner against a decision to launch recovery action, and for the review of such a decision by the Administrative Decisions Tribunal. These provisions are similar to the objection and review provisions currently found in the *First Home Owner Grant Act 2000*.

Schedule 6 [4], [5] and [15] are consequential amendments.

Invoice requirements

At present, when a subsidy has been paid or claimed in respect of petroleum products, or is intended to be claimed, the seller is required to give the purchaser an invoice that advises the purchaser that the subsidy is payable. The invoice must also either advise the rate of the relevant subsidy or the zone by reference to which the subsidy has been calculated (or both).

Schedule 6 [6] requires the invoice to include the rate of subsidy.

Schedule 6 [7] removes the requirement for the invoice to be provided in cases where the subsidised petroleum products are delivered into the running tank of a road vehicle.

Other changes to scheme

Schedule 6 [1] clarifies the circumstances in which a subsidy is payable under the Act. In particular, it makes it clear that it is not required, in order to claim the subsidy in respect of a sale of petroleum products by a service station within a zone (referred to in the Act as an **ordinary retail sale**), that the petroleum products be delivered into the running tank of a road vehicle. It also makes it clear that the subsidy applies to sales of petroleum products to persons who use the petroleum products in connection with a business conducted within a zone, if the petroleum products are delivered, in connection with that sale, to premises within a zone. **Schedule 6 [3], [8] and [11]** are consequential amendments.

At present, it is an offence under the Act to purchase diesel fuel, knowing that it is subsidised diesel fuel, and consume that diesel fuel for off-road purposes. **Schedule**

6 [12] modifies this offence, so that it applies only if a person makes a bulk purchase of diesel fuel (that is, a purchase of more than 100 litres of diesel fuel that is delivered into a tank or container that is not the running tank of a road vehicle) and then consumes the diesel fuel for off-road purposes. **Schedule 6 [2]** is a consequential amendment. **Schedule 6 [13]** provides for the method of proving the offence when subsidised and unsubsidised diesel fuel are stored in the same tank or container. **Schedule 6 [9] and [10]** make statute law revision amendments, to make it clear that repayment of a subsidy wrongfully claimed by a seller of petroleum products negates liability for an offence against the Act in respect of the sale of the petroleum products.

Regulations

Schedule 6 [16] provides for the making of savings and transitional regulations as a consequence of the amendments.

Schedule 7 Amendment of Taxation Administration

Act 1996 No 97

Interstate investigations of contraventions of revenue laws

Schedule 7 [1] removes a requirement of reciprocity in relation to investigations of contraventions of revenue laws of other Australian jurisdictions. It will no longer be a requirement that, in order for the Chief Commissioner to authorise a taxation officer of another Australian jurisdiction to exercise powers conferred by revenue laws of this State in connection with the taxation law of that jurisdiction, there must be provisions in the law of the other jurisdiction that enable investigations by or on behalf of the Chief Commissioner in that jurisdiction. **Schedule 7 [2]** is a consequential amendment.

Schedule 7 [3] makes it clear that the Chief Commissioner may:

(a) enter into an agreement or arrangement with the corresponding office holder of another Australian jurisdiction to enable the exercise, by or on behalf of the Chief Commissioner, of investigative functions conferred under a revenue law of another jurisdiction for the purposes of a taxation law of this jurisdiction, and

(b) authorise State taxation officers to exercise investigative functions conferred on them by a revenue law of another Australian jurisdiction for the purposes of a taxation law of this jurisdiction.

By expressly conferring these functions on the Chief Commissioner, the amendment ensures that the Chief Commissioner has power to delegate those functions under section 67 of the *Taxation Administration Act 1996*.

Grouping of State owned corporations

The *Taxation Administration Act 1996* provides for the grouping of certain entities for taxation purposes, for instance, entities that are commonly controlled. At present, the provisions apply only in respect of liability for pay-roll tax. The grouping provisions operate to prevent the pay-roll tax free threshold from being claimed separately by members of the same group.

Shares in a statutory State owned corporation are held solely by the Treasurer and another Minister. **Schedule 7 [4]** provides that such State owned corporations are not to be treated as members of the same group merely because of this shareholding arrangement.

Regulations

Schedule 7 [5] provides for the making of savings and transitional regulations as a consequence of the amendments.

Schedule 8 Consequential amendment of Administrative Decisions Tribunal Act

1997 No 76

Schedule 8 is consequential to the amendments to the *Petroleum Products Subsidy Act 1997* set out in **Schedule 6 [14]**. It allocates to the Revenue Division of the

Administrative Decisions Tribunal the function of reviewing a decision of the Chief Commissioner to recover an amount from a person.