

Explanatory note

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

This Bill is cognate with the *Appropriation Bill 2007*.

Overview of Bill

The objects of this Bill are as follows:

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

(i) to bring forward the date for the abolition of mortgage duty from 1 January 2011 to 1 July 2009, and

(ii) to provide for an exemption from mortgage duty for mortgages that secure loans made for the purpose of owner occupied housing, effective 1 September 2007, and

(iii) to provide for an exemption from mortgage duty for mortgages that secure loans made for the purpose of investment housing, effective 1 July 2008,

(b) to amend the *Gaming Machines Act 2001*:

(i) to extend the deadline on which large-scale clubs will automatically forfeit any remaining poker machine entitlements that they were required to transfer in order to reach the reduced number of entitlements for the club as required under section 15A of the Act, and

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(ii) to provide that large-scale clubs that have not, by 31 July 2007, reduced their allocated number of poker machine entitlements will be able to retain, on payment of a levy and for a limited period only, those entitlements that the club would otherwise be required to forfeit,

(c) to amend the *Land Tax Act 1956* to reduce the land tax rate from 1.7% to 1.6%,

(d) to amend the *Transport Administration Act 1988* to change the name of the State Rail Authority to the State Rail Authority Residual Holding Corporation (***the SRA Residual Holding Corporation***), and to make it clear that the change of name does not affect the identity of that body.

The Bill also makes amendments to other Acts that are consequent on the amendments to the *Transport Administration Act 1988*.

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.

Clause 3 is a formal provision that gives effect to the amendments to the Acts specified in Schedules 1–5.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Duties Act 1997

At present, under the *Duties Act 1997* mortgage duty will be abolished on and from 1 January 2011. **Schedule 1 [2]** brings forward the abolition date to 1 July 2009.

Schedule 1 [3]–[5] are consequential amendments.

Schedule 1 [7] provides for 2 new exemptions from mortgage duty for mortgages that are associated with housing.

Both exemptions will be available only if the borrower under the mortgage or, if there is more than one borrower, each of the borrowers, is a natural person.

The first exemption, which takes effect on and from 1 September 2007, is an exemption for mortgages that are made in connection with owner occupied housing.

Mortgage duty will not be chargeable in respect of a mortgage if the mortgage secures an advance or advances made for the purpose of owner occupied housing and

no other advances. If the mortgage does secure an advance made for another purpose, mortgage duty will not be chargeable in respect of the advance made for the purpose of owner occupied housing.

An advance is made for the purpose of owner occupied housing if it is to be applied wholly or predominantly for one or more of the following purposes:

- (a) financing the acquisition of a residence,
- (b) financing the construction of a residence,
- (c) financing alterations or additions to a residence,
- (d) financing the acquisition of residential land,
- (e) repaying another advance, if the advance to be repaid was made for the purpose of owner occupied housing.

A **residence** is defined as a private dwelling house that is used and occupied or intended to be used and occupied by the borrower, or by any of the borrowers, as a place of residence.

The second exemption, which takes effect on and from 1 July 2008, is an exemption for mortgages that are made in connection with investment housing. Mortgage duty will not be chargeable in respect of a mortgage if the mortgage secures an advance or advances made for the purpose of investment housing and no other advances. If the mortgage does secure an advance made for another purpose, mortgage duty will not be chargeable in respect of the advance made for the purpose of investment housing.

An advance is made for the purpose of investment housing if it is to be applied wholly or predominantly for one or more of the following purposes:

- (a) financing the acquisition of investment housing,
- (b) financing the construction of investment housing,
- (c) financing alterations or additions to investment housing,
- (d) repaying another advance, if the advance to be repaid was made for the purpose of investment housing.

Investment housing is defined as any private dwelling house that is used, or is intended to be used or sold, for business or investment purposes (or both) by the borrower or by any of the borrowers.

Under both exemptions the Chief Commissioner of State Revenue will be permitted to make determinations as to the criteria that may be applied by lenders for the purpose of establishing whether an advance made under a mortgage falls within the exemption.

Schedule 1 [1], [6] and [8]–[11] are consequential amendments.

Schedule 1 [12] and [13] make provision for savings and transitional matters.

Schedule 2 Amendment of Gaming Machines Act 2001

Under section 15A of the *Gaming Machines Act 2001*, a large-scale club (ie a registered club that had more than 450 gaming machines on its main premises as at 2 April 2007) is required to reduce the allocated number of poker machine entitlements for those premises by 10% (or by such number as would result in the premises having no more than 450 entitlements). If the club has not, by 2 July 2007, reduced its entitlements to the number required by section 15A, the remaining number of entitlements that the club is required to transfer in order to reach the reduced number will be automatically forfeited.

Schedule 2 [1] extends the deadline for the forfeiture of any such remaining entitlements from 2 July to 31 July 2007. **Schedule 2 [2]** provides that the forfeiture of the club's remaining entitlements on 31 July 2007 is subject to the exception provided by proposed section 15B.

Schedule 2 [3] inserts proposed section 15B into the Act. Under the proposed section, a large-scale club that has not, by the new deadline of 31 July 2007, reached the reduced number of poker machine entitlements as required by section 15A may

apply to retain any or all of the remaining entitlements that it would otherwise be required to forfeit on that date. If the club pays a levy of \$3,390 for each such entitlement that it intends to retain and satisfies the other requirements of the proposed section (such as removing a corresponding number of poker machines from its premises), the entitlements will not be forfeited under section 15A. The club will have until 1 December 2008 to transfer all of the remaining number of entitlements that it needs to transfer to reach the reduced number under section 15A. If the club still has not reached its reduced number by that date, the remaining entitlements will be forfeited.

Proposed section 15B also provides that any levy paid under the proposed section is to be paid into a Community Development Fund administered by the Department of the Arts, Sport and Recreation. Money in that Fund may be applied for such community benefits as the Director-General of that Department considers appropriate or as may be authorised or permitted by law. **Schedule 2 [5]** enables the regulations under the Act to provide for the purposes for which money in the Fund may be applied.

Schedule 2 [4] provides that a large-scale club, when transferring entitlements to another set of its premises, will be subject to the same social impact assessment requirements as apply to smaller clubs when they transfer entitlements.

Schedule 2 [6] enables regulations of a savings or transitional nature to be made as a consequence of the proposed amendments to the *Gaming Machines Act 2001*.

Schedule 3 Amendment of Land Tax Act 1956

At present, under the *Land Tax Act 1956* land tax is charged at a rate of 1.7% of the taxable value of land (to the extent that the taxable value of the land exceeds any tax-free threshold that is applicable in respect of the taxpayer). **Schedule 3 [2] and [3]** reduce the land tax rate to 1.6%, with effect from the 2008 land tax year.

Schedule 3 [1] is a consequential amendment.

Schedule 4 Amendment of Transport Administration Act 1988

Change of name of State Rail Authority

Schedule 4 [11] amends clause 1 of Schedule 8 to the *Transport Administration Act 1988* to change the name of the State Rail Authority to the State Rail Authority Residual Holding Corporation. The body will continue in existence despite its name change so that its identity is not affected.

Schedule 4 [1], [4], [10], [12], [14], [16], [18], [25], [28], [30] and [34]–[36] contain consequential amendments.

Schedule 4 [8] and [9] contain savings and transitional provisions.

Management and staff of State Rail Authority

Schedule 4 [20] omits clause 8 of Schedule 8 to the Act which provides that the Chief Executive of the State Rail Authority is to manage and control the affairs of the State Rail Authority. The affairs of the SRA Residual Holding Corporation will be managed and controlled by the Treasurer. **Schedule 4 [5], [19], [21], [22], [26] and [31]–[33]** make consequential amendments.

Schedule 4 [23] substitutes clause 11 of Schedule 8 to the Act to provide that the SRA Residual Holding Corporation may make arrangements for the use of the services of the staff or facilities of government departments and public authorities, including Rail Corporation, Rail Infrastructure Corporation and the New South Wales Treasury Corporation. Most of the staff of the State Rail Authority have already been transferred to other rail authorities. **Schedule 4 [6]** makes a consequential amendment.

Functions of SRA Residual Holding Corporation

Schedule 4 [15] amends clause 3 of Schedule 8 to the Act to replace the list of functions currently applying to the State Rail Authority with new functions that will apply to the SRA Residual Holding Corporation. The new functions recognise the

main role of the Corporation of holding and managing certain residual property that has not been transferred to other rail authorities such as Rail Corporation and Rail Infrastructure Corporation.

The property held by the SRA Residual Holding Corporation includes certain leases (***special leases***) that, because of their terms, will need to continue to be held by that body until other arrangements can be made that will not involve a breach of those terms. **Schedule 4 [13]** inserts proposed clause 1A into Schedule 8 to the Act which contains definitions of certain terms used in the Schedule. In particular, the definition of ***special lease*** means any lease or sublease, or any associated contract or arrangement, under which the SRA Residual Holding Corporation has rights or liabilities and which is declared by the Treasurer, by order, to be a special lease for the purposes of the Schedule.

Schedule 4 [17] substitutes clause 4 of Schedule 8 to the Act to make it clear that, although the SRA Residual Holding Corporation may sell, lease or otherwise dispose of its property, it may not dispose of its rights or liabilities under any special lease unless the Treasurer has determined that the disposal will not breach any term of any special lease.

Schedule 4 [29] inserts proposed clause 19 (1A) into Schedule 8 to the Act to provide that a proclamation may not be made under existing clause 19 to dissolve the SRA Residual Holding Corporation unless the Treasurer has certified that the dissolution of the Corporation will not result in a breach of any term of a special lease.

Schedule 4 [24] and [27] omit provisions of the Act relating to the State Rail Authority Fund and other provisions relating to the State Rail Authority which are no longer used or required.

Schedule 4 [2], [3] and [7] make amendments to the Act as a consequence of the change in the functions of the SRA Residual Holding Corporation.

Schedule 5 Amendment of other Acts

Schedule 5 makes amendments to various Acts that are consequent on the amendments made by Schedule 4.