

Queensland



# **REVENUE LEGISLATION AMENDMENT ACT 2002**

**Act No. 65 of 2002**



# Queensland



## REVENUE LEGISLATION AMENDMENT ACT 2002

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Queensland



## **Revenue Legislation Amendment Act 2002**

**Act No. 65 of 2002**

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**An Act to amend Acts administered by the Treasurer**

*[Assented to 28 November 2002]*

The Parliament of Queensland enacts—

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Revenue Legislation Amendment Act 2002*.

### **2 Commencement**

(1) The following provisions are taken to have commenced on 1 March 2002—

(a) sections 3, 13, 14, 24(1) and (2), 27, 33, 39 and 40;

(b) amendments 8, 9, 14, 15, 16 and 20 of the schedule.

(2) Section 29 commences on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF DUTIES ACT 2001**

### **3 Act amended in pt 2 and schedule**

(1) This part amends the *Duties Act 2001*.

(2) The schedule also includes amendments of the *Duties Act 2001*.

### **4 Insertion of new s 7A**

Chapter 1—

*insert—*



## **7A Declaration of excluded matter for Corporations Act**

‘An interest of a person in a registered managed investment scheme is declared to be an excluded matter for the Corporations Act, section 5F,<sup>1</sup> in relation to section 1070A(1)(a), (3) and (4)<sup>2</sup> of that Act.’

## **5 Amendment of s 9 (What is a “dutiabale transaction”)**

Section 9—

*insert—*

‘(4) Without limiting subsection (1)(e), property is vested under statute law if the law vests property in an entity that the law states is the successor in law of, continuation of or same entity as, the entity in which the property was previously vested.

‘(5) However, property is not vested under statute law, on the registration of a company under the Corporations Act, chapter 5B, part 5B.1.’.

## **6 Amendment of s 23 (When credit to be allowed for lease duty paid)**

Section 23—

*insert—*

‘(2) Subsection (3) applies if—

- (a) transfer duty is paid on a dutiabale transaction that is an option to acquire dutiabale property (the “**first transaction**”); and
- (b) on the exercise of the option, transfer duty is payable on the dutiabale transaction for the acquisition of the dutiabale property (the “**later transaction**”); and
- (c) under the option, the consideration paid for the option is part of the consideration for the later transaction.

‘(3) In assessing the transfer duty on the later transaction, a credit must be allowed for the transfer duty paid for the first transaction.’.

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1 Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter)

2 Corporations Act, section 1070A (Nature of shares and certain other interests in a company or registered scheme)

**7 Amendment of s 24 (Rates of transfer duty)**

Section 24(1)(d)—

*omit, insert—*

‘(d) a vesting of the security—

- (i) by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia; or
- (ii) by a court order, of this or another jurisdiction, whether inside or outside Australia;’.

**8 Replacement of s 25 (Payment of transfer duty for deeds of grant)**

Section 25—

*omit, insert—***‘25 Payment of transfer duty for deeds of grant and particular freeholding leases**

‘(1) This section applies if transfer duty is imposed on a dutiable transaction that is—

- (a) a grant of land in fee simple under the *Land Act 1994*; or
- (b) an acquisition of a new right that is a post-Wolfe freeholding lease under the *Land Act 1994*.

‘(2) Within 30 days after the liability for the duty arises, the grantee or lessee must pay the duty to the chief executive of the department in which the *Land Act 1994* is administered.’.**9 Amendment of s 46 (What is the value of a partnership acquisition—general)**

(1) Section 46(5), ‘partner’s partnership acquisition’—

*omit insert—*

‘new partner’s partnership acquisition on formation of a partnership’.

(2) Section 46—

*insert—*

‘(5A) For subsection (5), a person is a new partner only if—

- (a) the person was not in partnership with any partners of the partnership immediately before its formation; or
- (b) on the person's partnership acquisition, the person becomes a partner in an additional partnership to a partnership in which the person is a partner with any partners of the additional partnership immediately before its formation.

‘**(5B)** However, subsection (5A)(b) does not apply to a person who makes a partnership acquisition in a partnership that was formed because of a change in the membership of the partners of another partnership (the “**old partnership**”) if the person had a partnership interest in the old partnership.’.

## 10 Amendment of s 61 (Who is a “related person”)

Section 61(3)—

*omit, insert—*

‘**(3)** However, a person is not a “**related person**” of another person under subsection (1), other than subsection (1)(d), if the commissioner is satisfied the trust interests of the persons in a land holding trust—

- (a) were acquired, and will be used, independently; and
- (b) were not acquired, and will not be used, for a common purpose.’.

## 11 Insertion of new s 81A

After section 81—

*insert—*

### ‘**81A Particular trust interests disregarded for majority trust acquisitions**

‘**(1)** This section applies if—

- (a) under section 80, a person would have made a majority trust acquisition in a wholesale unit trust; and
- (b) all the persons who held or acquired the trust interests comprising the majority trust acquisition are group companies of a corporate group; and
- (c) the funds manager of the wholesale unit trust is a group company of the corporate group; and

(d) there is no arrangement to avoid the imposition of transfer duty.

‘(2) For section 80, the trust interest of a person mentioned in subsection (1)(b) who is a qualified holder must be disregarded.

‘(3) To remove any doubt, it is declared that section 80 applies to other trust interests, including trust interests held through the qualified holder.’.

## **12 Amendment of s 93 (Concession for transfer duty—mixed and multiple claims for homes and first homes for individuals)**

Section 93—

*insert—*

‘(6A) For working out the concessional duty under subsection (6)(a) for a relevant transferee under subsection (2), the residential land mentioned in section 91(3) or (5), and section 92(2), is the part of the residential land relating to the transferee’s home or first home.’.

## **13 Omission of s 122 (Exemption—mortgage-backed securities)**

Section 122—

*omit.*

## **14 Insertion of new ch 2, pt 13, divs 3B and 3C**

After section 130—

*insert—*

***‘Division 3B—Exemptions for asset-backed securities***

***‘Subdivision 1—Some basic concepts for asset-backed securities***

### **‘130C What is an “asset-backed security”**

‘(1) An “asset-backed security” is—

(a) an entitlement or interest of a person in—

(i) an entitlement of a financier for a financial asset or pool of financial assets; or

- (ii) amounts payable to a financier under a financial asset or pool of financial assets whether or not on the same conditions applying under the asset and whether or not the person is entitled to a transfer of the asset or pool of assets;  
or
- (b) a debenture, promissory note, bill of exchange, stock, bond, note or other security creating, evidencing or acknowledging indebtedness issued or made by a corporation if the payments under the security are received by the corporation—
  - (i) substantially from the receipts, whether of capital or income, from a financial asset or pool of financial assets; or
  - (ii) if another extent is prescribed under a regulation—to the extent prescribed, from the receipts, whether of capital or income, from a financial asset or pool of financial assets; or
- (c) a security by which an interest in, or mortgage or charge over, an entitlement, interest or security mentioned in paragraph (a) or (b) is created.

‘(2) However, the term does not include—

- (a) a mortgage, other than a mortgage mentioned in subsection (1)(c); or
- (b) a transfer of a mortgage or financial asset.

‘(3) It does not matter whether an asset-backed security is effected by an instrument or another way.

### ‘130D Who is a “financier”

A “**financier**” is a lender or bailor who provides financial accommodation under a financial asset.

### ‘130E What is a “financial asset”

‘A “**financial asset**” is any of the following—

- (a) a loan, including any security for the loan;
- (b) a credit card account;
- (c) a hire purchase agreement;
- (d) a chattel lease, whether finance or operating;

- (e) a vehicle dealer floor plan agreement;
- (f) the rights of a financier that are—
  - (i) usually conferred in relation to an asset mentioned in paragraphs (a) to (e); and
  - (ii) incidental to the asset.

### **‘130F What is a “pool of financial assets”**

‘(1) A **“pool of financial assets”** is a pool or collection of assets that consists solely of financial assets.

‘(2) Also, a **“pool of financial assets”** is a pool or collection of assets that consists substantially or, if another extent is prescribed under a regulation, to the extent prescribed, of financial assets or amounts paid under financial assets, or a combination of them, if the other assets in the pool or collection are cash or an authorised investment.

### **‘130G What is an “authorised investment”**

An **“authorised investment”**, for a pool of financial assets, is any of the following—

- (a) a bond, debenture, stock or Treasury bill of the Commonwealth or a State;
- (b) a debenture or stock of a public statutory body established under an Act of the Commonwealth or a State;
- (c) a note or other security of the Commonwealth or a State;
- (d) a deposit with, or a certificate of deposit or another security issued by, a financial institution;
- (e) a bill of exchange, promissory note or other negotiable instrument accepted, drawn or endorsed by a financial institution;
- (f) an asset-backed security or mortgage-backed security.

***‘Subdivision 2—Exemptions*****‘130H Exemption—particular transactions for asset-backed securities**

‘(1) Transfer duty is not imposed on a dutiable transaction that is a transfer, or agreement for the transfer, of—

- (a) an asset-backed security; or
- (b) a financial asset or pool of financial assets for creating, issuing, marketing or securing an asset-backed security.

‘(2) Also, transfer duty is not imposed on a dutiable transaction that—

- (a) is the creation of a trust of dutiable property or a trust acquisition; and
- (b) is required for creating, issuing, marketing, acquiring or securing an asset-backed security.

‘(3) In addition, transfer duty is not imposed on a dutiable transaction that is a trust surrender required to give effect to a redemption of an asset-backed security.

***‘Division 3C—Exemptions for mortgage-backed securities*****‘130I Exemption—mortgage-backed securities**

‘(1) Transfer duty is not imposed on a dutiable transaction that—

- (a) is the creation of a trust of dutiable property or a trust acquisition; and
- (b) is required for creating, issuing, marketing, acquiring or securing a mortgage-backed security.

‘(2) Also, transfer duty is not imposed on a dutiable transaction that is a trust surrender required to give effect to a redemption of a mortgage-backed security.’.

**15 Insertion of new ch 2, pt 13, div 3A**

After section 130—

*insert—*

***‘Division 3A—Exemptions for public superannuation entities*****‘130A Exemption—transfer by direction to custodian for a superannuation entity**

‘(1) Transfer duty is not imposed on a transfer of dutiable property from a person as vendor to another person as custodian for the approved trustee of a public superannuation entity.

‘(2) However, subsection (1) applies only if—

- (a) the transfer is made under a dutiable transaction that is the agreement for the transfer of the property entered into between the person as vendor and the approved trustee as purchaser; and
- (b) the property is acquired by the approved trustee as fund property; and
- (c) transfer duty imposed on the transaction has been paid.

**‘130B Exemption—other transfers of fund property of public superannuation entities**

‘(1) Transfer duty is not imposed on a transfer, or agreement for the transfer, of fund property of a public superannuation entity from—

- (a) the approved trustee of the entity to a person as custodian for the approved trustee; or
- (b) a person as custodian for the approved trustee of the entity to the approved trustee.

‘(2) However, subsection (1) does not apply if the transfer or agreement is part of an arrangement under which—

- (a) the fund property, or an interest in the fund property, ceases to be fund property; or
- (b) the persons who are members of the public superannuation entity do not have the same trust interest in the fund property after the property is transferred or agreement is made as they had immediately before the arrangement was entered into.’

**16 Amendment of s 130I (Exemption—mortgage-backed securities)**

(1) Section 130I, before subsection (1)—



*insert—*

‘**(1AA)** Transfer duty is not imposed on a dutiable transaction that is a transfer, or agreement for the transfer, of a mortgage or pool of mortgages for creating, issuing, marketing or securing a mortgage-backed security.’.

**(2)** Section 130I(1), ‘Transfer’—

*omit, insert—*

‘Also, transfer’.

**(3)** Section 130I(2), ‘Also, transfer’—

*omit, insert—*

‘In addition, transfer’.

**(4)** Section 130I(1AA) to (2)—

*renumber* as section 130I(1) to (3).

## **17 Amendment of s 136 (Exemption—dealings under Land Act)**

**(1)** Section 136(b)—

*omit, insert—*

‘(b) a grant under the *Land Act 1994*, in fee simple, of land comprised in a freeholding lease, grazing homestead perpetual lease, or perpetual lease for pastoral purposes, under that Act, to the lessee;’.

**(2)** Section 136(h)—

*omit, insert—*

‘(h) the acquisition of a new right that is a lease, licence or permit issued under the *Land Act 1994*, other than a post-Wolfe freeholding lease under that Act.’.

## **18 Replacement of s 146 (Exemption—lease duty)**

Section 146—

*omit, insert—*

**‘146 Exemption—lease duty**

‘Transfer duty is not imposed on an acquisition of a new right that is a lease of land in Queensland that, under section 244,<sup>3</sup> is exempt from lease duty if a premium, fine or other consideration is not payable for the grant of the lease.’.

**19 Amendment of s 153 (Reassessment—noncompliance with occupancy requirements after occupation date for residence)**

(1) Section 153—

*insert—*

‘(1A) For subsection (1)(b), a transferee does not dispose of land if—

- (a) the transferee transfers part of the land to the transferee’s spouse; and
- (b) the transfer is exempt from duty under section 151.’.

(2) Section 153—

*insert—*

‘(3) If—

- (a) under subsection (1A) or section 154(2A), this section or section 154 does not apply to a transferee’s transfer of part of the land to the transferee’s spouse; and
- (b) under subsection (1)(b), the transferee later disposes of the land or part of it;

this section applies to the later disposal as if the transferee had not transferred the part of the land to the transferee’s spouse.’.

**20 Amendment of s 154 (Reassessment—other noncompliance with occupancy requirements)**

(1) Section 154—

*insert—*

‘(2A) Also, for subsection (1)(b), a transferee does not dispose of land if—

---

3 Section 244 (Exemption—particular residences)

- (a) the transferee transfers part of the land to the transferee's spouse; and
- (b) the transfer is exempt from duty under section 151.'.

**(2) Section 154—**

*insert—*

**'(4) If—**

- (a) under subsection (2A), this section does not apply to a transferee's transfer of part of the land to the transferee's spouse; and
- (b) under subsection (1)(b), the transferee later disposes of the land or part of it;

this section applies to the later disposal as if the transferee had not transferred the part of the land to the transferee's spouse.'

**21 Replacement of s 156 (Reassessment—noncomplying superannuation fund)**

Section 156—

*omit, insert—*

**'156 Reassessment—noncomplying superannuation fund or public superannuation entity**

**'(1) This section applies if—**

- (a) transfer duty has been assessed on a dutiable transaction on the basis of—
  - (i) a concession under part 11; or
  - (ii) an exemption under part 13, division 3A, for a fund or trust mentioned in the definition "public superannuation entity", paragraph (e); and
- (b) at the first anniversary of the transaction—
  - (i) if paragraph (a)(i) applies—the superannuation funds created by the split, merger, variation or reconstitution are not complying superannuation funds; or
  - (ii) if paragraph (a)(ii) applies—the fund or trust is not a public superannuation entity.

‘(2) Within 28 days after the first anniversary, the trustees of the funds mentioned in subsection (1)(b)(i) or trustees of the fund or trust mentioned in subsection (1)(b)(ii) must—

- (a) give notice in the approved form to the commissioner; and
- (b) ensure the instruments required for the assessment of duty for the transaction are lodged for a reassessment of transfer duty on the transaction.

*Note—*

Failure to give the notice is an offence under the Administration Act, section 120.

‘(3) The commissioner must make a reassessment to impose transfer duty on the transaction as if the concession or exemption had never applied.’.

## 22 Amendment of s 164 (Who is a “related person”)

Section 164(3)—

*omit, insert—*

‘(3) However, for an acquisition that is a relevant acquisition because of the aggregation of an interest mentioned in section 158(1)(b)(iii), a person is not a **“related person”** of another person under subsection (1), other than subsection (1)(d), if the commissioner is satisfied the interests of the persons will be used independently and will not be used for a common purpose.

‘(4) In addition, for another acquisition, a person is not a **“related person”** of another person under subsection (1), other than subsection (1)(d), if the commissioner is satisfied the interests of the persons—

- (a) were acquired, and will be used, independently; and
- (b) were not acquired, and will not be used, for a common purpose.’.

## 23 Amendment of s 232 (What is an “occupancy right”)

Section 232(1)—

*omit, insert—*

‘(1) An **“occupancy right”**, is an agreement granting, or an offer for the grant of, a right to occupy premises in Queensland if—

- (a) the occupier intends to use the premises for conducting a business; and
- (b) the occupier does not obtain a right to exclusive possession but the occupier's use and enjoyment of the premises as a place of business is not adversely affected by the absence of the right to exclusive possession; and
- (c) one of the following subparagraphs applies—
  - (i) the right is for a term of less than 1 month and there is an arrangement for extension or renewal of the right beyond 1 month and the cost of the right is more than \$10 000 on an annual basis;
  - (ii) the right is for a term of at least 1 month but less than 1 year and the cost of the right is more than \$10 000 on an annual basis;
  - (iii) the right is for a term of at least 1 year and the consideration for the term of the right is more than \$10 000 annually.'

## 24 Amendment of s 243 (Credit for lease duty paid)

(1) Section 243(1), 'This section'—

*omit, insert—*

'Subsection (2)'.  
'

(2) Section 243—

*insert—*

'(3) Subsection (4) applies if—

- (a) a liability for lease duty arises because of the exercise of an option for a further period contained in a lease or occupancy right (the "**option period**");<sup>4</sup> and
- (b) a new lease or occupancy right in substantial conformity with the option is entered into or granted, the term of which includes the option period.

'(4) In assessing the lease duty on the new lease or occupancy right, a credit must be allowed for the amount of lease duty paid for the option.'

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4 See section 241(7) (Lodging statements and payment of lease duty)

(3) Section 243—

*insert—*

‘(5) Subsection (6) applies if—

- (a) a liability for lease duty arises because, at the end of a lease or occupancy right, the lessee or grantee continues in possession of the leased premises;<sup>5</sup> and
- (b) a new lease or occupancy right is entered into or granted, the term of which includes the period the lessee or grantee continued in possession of the leased premises after the end of the lease or occupancy right (the “**holding over period**”).

‘(6) In assessing the lease duty on the new lease or occupancy right, a credit must be allowed for the amount of lease duty paid for the holding over period.’.

## 25 Amendment of s 251 (Location of property)

(1) Section 251—

*insert—*

- ‘(d) an insured person’s interest in, or right to receive amounts payable under, a policy of insurance that is security for a premium funding agreement—the place of residence of the insured person.’.

(2) Section 251—

*insert—*

‘(2) Subsection (1)(a) is declared to be a Corporations legislation displacement provision for the Corporations Act, section 5G,<sup>6</sup> in relation to section 1070A(4)<sup>7</sup> of that Act.’.

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5 See section 237(2) (When liability for lease duty arises)

6 Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws)

7 Corporations Act, section 1070A (Nature of shares and certain other interests in a company or registered scheme)

**26 Amendment of s 286 (What is a “mortgage-backed security”)**

Section 286—

*insert—*

‘(3) It does not matter whether a mortgage-backed security is effected by an instrument or another way.’.

**27 Insertion of new s 289A**

Chapter 5, part 7, division 2, subdivision 2—

*insert—***‘289A Exemption—asset-backed security**

‘Mortgage duty is not imposed on the following—

- (a) a mortgage of an asset-backed security or release of mortgage of an asset-backed security;
- (b) a mortgage of a financial asset or pool of financial assets or part of a pool of financial assets for creating, issuing, marketing or securing an asset-backed security—
  - (i) to a person entitled to an asset-backed security or a trustee or agent for a person entitled to an asset-backed security; or
  - (ii) by or to a person who issues, makes or endorses an asset-backed security; or
  - (iii) to a person who provides security, whether as guarantor, surety or otherwise, to a person entitled to an asset-backed security or a trustee or agent for a person entitled to an asset-backed security;
- (c) a mortgage of an instrument—
  - (i) issued or made for creating, issuing, marketing or securing payments under an asset-backed security; and
  - (ii) that is of a class prescribed under a regulation.’.

**28 Amendment of s 291 (Reassessment—concession under pt 6)**

(1) Section 291—

*insert—*

‘(1A) For subsection (1)(a) or (c), a home borrower does not dispose of land if—

- (a) the home borrower transfers part of the land to the home borrower’s spouse; and
- (b) the transfer is exempt from duty under section 151.’.

(2) Section 291—

*insert—*

‘(5) If—

- (a) under subsection (1A), this section does not apply to a home borrower’s transfer of part of the land to the home borrower’s spouse; and
- (b) under subsection (1)(a) or (c), the home borrower later disposes of the land or part of it;

this section applies to the later disposal as if the home borrower had not transferred the part of the land to the home borrower’s spouse.’.

## **29 Amendment of s 333 (What is an “exempt payment”)**

(1) Section 333(2)(b)—

*omit.*

(2) Section 333(2)(c)—

*renumber* as section 333(2)(b).

(3) Section 333—

*insert—*

‘(3) In addition, an interest payment is an “**exempt payment**” for a hire of goods that is—

- (a) a credit purchase agreement; or
- (b) a hire purchase agreement made before the commencement of this subsection.’.

## **30 Amendment of s 406 (Exemption—*intra*-group transfers of property)**

Section 406(2)(c)(ii)—



*omit, insert—*

- ‘(ii) a group company is to be enabled to provide any of the consideration by a person other than as mentioned in subsection (3); or
- (iii) a group company is to dispose of any of the consideration through a payment or other disposition—
  - (A) to a person other than a group company; or
  - (B) to a person other than by way of loan on ordinary commercial terms;’.

### **31 Amendment of s 412 (Reassessment—exemption for intra-group transfers of property, trustees and land rich duty)**

(1) Section 412(4)(a), ‘has been deregistered under the Corporations Act’—

*omit, insert—*

‘ceases to exist’.

(2) Section 412(4)(c), ‘of the company’—

*omit, insert—*

‘held, directly or indirectly, by the company’.

(3) Section 412—

*insert—*

‘(5) Without limiting subsection (4)(a), a company registered under the Corporations Act ceases to exist if it is deregistered under that Act.’.

### **32 Amendment of s 415 (Use requirement)**

Section 415(2), ‘a salary’—

*omit, insert—*

‘an employment or salary’.

### **33 Amendment of s 422 (What is a “de facto relationship instrument”)**

Section 422, ‘that provide for the transfer of’—

*omit, insert—*

‘to the extent it deals with’.

### **34 Insertion of new s 446A**

After section 446—

*insert—*

#### **‘446A Registration to defer endorsement for particular mortgages**

‘(1) This section applies to a financial institution that—

- (a) applies to be registered as a self assessor under this part; or
- (b) is registered as a self assessor under this part.

‘(2) The financial institution may apply to be registered under this section to defer the endorsement, under section 455(1)(c), of mortgages for further advances under those mortgages.

‘(3) The application may be made, and the financial institution registered, only for mortgages under which the institution is mortgagee and for which mortgage duty has been paid on the original advance.

‘(4) Sections 441 to 443 and 446 apply, with necessary changes, to the application as if it were an application for registration as a self assessor.

‘(5) If the commissioner approves the application, the commissioner must—

- (a) for an institution mentioned in subsection (1)(a)—state in the notice of registration given to the institution on its registration as a self assessor when the mortgages to which the registration under this section relates must be endorsed; or
- (b) for an institution mentioned in subsection (1)(b)—amend the institution’s registration by notice given to it, stating when the mortgages to which the registration under this section relates must be endorsed.’.

### **35 Amendment of s 455 (Lodging returns)**

(1) Section 455(1)(c) after ‘(2)’—

*insert—*

‘not later than when the duty, assessed interest and penalty tax on the instruments has been paid to the commissioner’.

(2) Section 455—

*insert—*

‘(4) Also, a self assessor registered under section 446A may defer the endorsement of mortgages under subsection (1)(c) as provided by the self assessor’s notice of registration.’.

### 36 Replacement of s 480 (Offences about self assessments)

Section 480—

*omit, insert—*

#### ‘480 Offences about self assessments

‘(1) A self assessor registered under chapter 12, part 2, must not endorse an instrument under section 455 unless the amount of duty and any assessed interest and penalty tax has—

- (a) if paragraph (b) does not apply—been paid to the commissioner; or
- (b) if the self assessor is a financial institution and the instrument is a mortgage under which the self assessor is the mortgagee—been received by the self assessor.

Maximum penalty—200 penalty units.

‘(2) A self assessor registered under chapter 12, part 3, must not endorse an instrument under section 455 unless the amount of duty and any assessed interest and penalty tax has been received by the self assessor.

Maximum penalty—200 penalty units.’.

### 37 Amendment of s 491 (When is an instrument “properly stamped”)

Section 491—

*insert—*

‘(3) Also, a mortgage, security instrument or mortgage package is taken to be “**properly stamped**” for the following provisions if a self assessor has deferred the endorsement of the instrument under section 455(4)—

- section 252(2)

- 258(2)(a) or (c)
- 262(1)(a) or (b)
- schedule, definition “collateral mortgage”.

### 38 Insertion of new s 506A

After section 506—

*insert—*

#### **‘506A Refunding stamp duty**

‘(1) This section applies to a stamp duty refund that, on or after the commencement of this section, the State is required to, or may, make to a person.

‘(2) The State must not make the refund unless the commissioner is satisfied—

- (a) the person has not received, and will not receive, an amount from another person for all or part of the stamp duty paid; or
- (b) if the person has received an amount (the “**amount received**”) from another person for all or part of the stamp duty paid—the person will reimburse the other person for the amount received.

‘(3) Subsection (2) has effect despite the terms of a court order relating to the refund.

‘(4) If subsection (2)(b) applies, the person must—

- (a) within 90 days after receiving the refund (the “**relevant period**”), reimburse the other person for the amount received; and
- (b) within 7 days after the relevant period, give the commissioner written notice that the other person has been reimbursed for the amount received.

‘(5) Also, if subsection (2)(b) applies and the person does not, within the relevant period, reimburse the other person for the amount received, the person must, within 7 days after the relevant period—

- (a) give the commissioner written notice that the other person was not reimbursed for the amount received; and

- (b) pay the commissioner the amount received plus interest at the rate of 10% a year calculated from the date the refund was made to the date the amount received is paid to the commissioner.

Maximum penalty—50 penalty units.

‘(6) An amount payable under subsection (5)(b) is a debt payable by the person to the State.

‘(7) In this section—

“**stamp duty**” means stamp duty paid, or purportedly paid, under the repealed Act, whether or not under a mistake of law or fact.’.

### **39 Amendment of s 530 (Repealed Act applies to particular leases)**

(1) Section 530, heading, after ‘leases’—

*insert—*

**‘and agreements for leases’.**

(2) Section 530(1)(a), after ‘was’—

*insert—*

‘chargeable or’.

(3) Section 530—

*insert—*

‘(3) Subsection (4) applies if—

- (a) before the commencement day, stamp duty under the repealed Act was chargeable or paid on—
- (i) a written offer for a lease; or
  - (ii) a written offer for a lease and an agreement for lease that is in substantial conformity with the offer; and
- (b) on or after the commencement day—
- (i) if paragraph (a)(i) applies—a lease or agreement for lease that is in substantial conformity with the offer is entered into; or
  - (ii) if paragraph (a)(ii) applies—a lease that is in substantial conformity with the agreement for lease is entered into.

‘(4) The repealed Act applies to the lease or agreement for lease mentioned in subsection (3)(b).

‘(5) Also, the repealed Act applies to a lease entered into in substantial conformity with an agreement for lease to which the repealed Act applies under subsection (4).’.

#### **40 Amendment of s 531 (Credit allowed for particular leases)**

Section 531(1)(a) and (3)(a), after ‘was’—

*insert—*

‘chargeable or’.

#### **41 Amendment of sch 2 (When liability for transfer duty on dutiable transaction arises)**

(1) Schedule 2, column 1, ‘Vesting under an Act or Commonwealth Act of dutiable property’—

*omit, insert—*

‘Vesting of dutiable property by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia’.

(2) Schedule 2, column 1, ‘Vesting under a court order of dutiable property’—

*omit, insert—*

‘Vesting of dutiable property by a court order, of this or another jurisdiction, whether inside or outside Australia’.

#### **42 Amendment of sch 6 (Dictionary)**

(1) Schedule 6, definition “**custodian**”—

*omit.*

(2) Schedule 6—

*insert—*

‘ “**approved trustee**” see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10.

“**custodian**” means—

- (a) for chapter 2, part 12 and part 13, division 3—the corporation that has been or will be appointed under the Corporations Act, section 601FB, to hold the property of a registered managed investment scheme as agent for the responsible entity of the scheme; or
- (b) for a public superannuation entity for chapter 2, part 13, division 3A—a custodian under the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10, that—
  - (i) itself performs custodial functions for assets of the entity; and
  - (ii) satisfies the eligibility requirements for a custodian under part 15 of that Act.

**“eligible rollover fund”** see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 242.

**“fund property”** means dutiable property of a public superannuation entity held by a person as—

- (a) the approved trustee of the entity; or
- (b) a custodian for the approved trustee of the entity.

**“insured person”** includes the holder of a policy of insurance.

**“premium funding agreement”** means an agreement under which—

- (a) a person agrees to make a loan, to the insured person under a policy of insurance of any kind, of an amount payable for premiums under the policy; and
- (b) the person obtains from the insured person an assignment of either or both of the following as security for payment of the loan—
  - (i) the insured person’s interest in the policy;
  - (ii) all amounts payable under the policy.

**“public offer superannuation fund”** see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 18.

**“public superannuation entity”** means—

- (a) a complying approved deposit fund, other than an excluded approved deposit fund under the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10; or

- (b) an eligible rollover fund; or
  - (c) a pooled superannuation trust; or
  - (d) a public offer superannuation fund; or
  - (e) a fund or trust the approved trustee of which declares will be a fund or trust mentioned in paragraphs (a) to (d) within 1 year after the creation of the fund or trust.’.
- (3) Schedule 6, definition “**existing right**”, paragraph (e)—  
*omit.*
- (4) Schedule 6, definition “**existing right**”, paragraphs (f) to (n)—  
*renumber* as paragraphs (e) to (m).

## **PART 3—AMENDMENT OF FUEL SUBSIDY ACT 1997**

### **43 Act amended in pt 3**

This part amends the *Fuel Subsidy Act 1997*.

### **44 Replacement of ch 3, pt 2, div 1, sdiv 6, heading**

Chapter 3, part 2, division 1, subdivision 6, heading—  
*omit, insert—*

*‘Subdivision 6—Notices about ceasing to use bulk end user fuel and ceasing and starting to use storage sites’.*

### **45 Insertion of new s 34J**

Chapter 3, part 2, division 1, subdivision 6—  
*insert—*

#### **‘34J Notice of starting to use a storage site**

‘(1) A licensed bulk end user who starts using a storage site not stated in the user’s licence, must give the commissioner written notice, under this section, stating when the user started using the site.



Maximum penalty—40 penalty units.

‘(2) The notice must be in the approved form and given at the earlier of the following—

- (a) the user’s next lodgment of an annual return under section 38;
- (b) the user’s lodgment of a claim under division 2.<sup>8</sup>.

#### **46 Insertion of new ss 138A and 138B**

After section 138—

*insert—*

##### **‘138A Commissioner’s power to require information or documents**

‘(1) The commissioner, by written notice given to a person, may require the person to give to the commissioner, in the reasonable time and reasonable way stated in the notice—

- (a) either orally or in writing, information in the person’s knowledge about a matter stated in the notice; or
- (b) a document about a matter stated in the notice that is in the person’s possession or control.

‘(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘(3) It is not a reasonable excuse for the person to fail to comply with the requirement because complying with the requirement might tend to incriminate the person.

‘(4) However, evidence of, or evidence directly or indirectly derived from, information or a document given in compliance with the requirement, by the person that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding in which the falsity or misleading nature of the information or document is relevant.

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8 See section 34G(1)(d) (Commissioner may decide subsidy payments to be made in arrears).

**‘138B False or misleading statements**

‘(1) A person must not state anything to the commissioner that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

‘(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was ‘false or misleading’ to the person’s knowledge, without specifying which.

‘(3) In this section—

“**false or misleading**” includes false or misleading because of the omission of a statement.’.

**SCHEDULE****MINOR AND CONSEQUENTIAL AMENDMENTS OF  
DUTIES ACT 2001**

section 3(2)

**1 Section 23, heading, ‘lease’—***omit.***2 Sections 26(1)(a), 27(1)(a), 218(1)(a) and 219(1)(a), ‘or provision of services’—***omit, insert—*

‘of land, money, credit or goods or any interest in them, or provision of services.’.

**3 Section 46(6), ‘the acquisition’—***omit, insert—*

‘the partner’s partnership interest’.

**4 Section 52(3), from ‘the sale’ to ‘rescinded’—***omit, insert—*

‘afterwards, the sale agreement for the property is completed or the purchase agreement for the property is not completed’.

**5 Chapter 2, part 14, division 2, heading—***omit, insert—*

*‘Division 2—Reassessments for concessions and exemptions for superannuation’.*

## SCHEDULE (continued)

**6 Section 194—***insert—*

- sections 130A and 130B’.

**7 Section 274(6), ‘subsection (4)’—***omit, insert—*

‘subsection (5)’.

**8 Chapter 5, part 7, division 2, heading—***omit, insert—**‘Division 2—Asset-backed and mortgage-backed securities’.***9 Section 289(f)—***omit, insert—*

- ‘(f) an asset-backed security or mortgage-backed security.’.

**10 Section 290(a), after ‘release of’—***insert—*

‘mortgage of’.

**11 Section 406(3), ‘subsection (2)(c)(ii)(A)’—***omit, insert—*

‘subsection (2)(c)(ii)’.

**12 Section 412(1)(b)(ii), after ‘section 406(2)(c)(ii)’—***insert—*

‘or (iii)’.

## SCHEDULE (continued)

- 13 Section 455(1) and (3), ‘chapter 12,’—**  
*omit.*
- 14 Section 532(4), ‘Section 243’—**  
*omit, insert—*  
‘Section 243(2)’.
- 15 Schedule 6, definition “authorised investment”—**  
*omit.*
- 16 Schedule 6—**  
*insert—*  
‘**“asset-backed security”** see section 130C.  
**“authorised investment”** for—  
(a) a pool of financial assets—see section 130G; or  
(b) a pool of mortgages—see section 289.  
**“financier”** see section 130D.  
**“financial asset”** see section 130E.  
**“pool of financial assets”** see section 130F.’.
- 17 Schedule 6, definition “exempt payments”—**  
*omit, insert—*  
‘**“exempt payment”** see section 333.’.
- 18 Schedule 6, definition “dissatisfied person”, paragraph (b), after ‘to’—**  
*insert—*  
‘amend.’.

## SCHEDULE (continued)

**19 Schedule 6, definition “dissatisfied person”, paragraph (c)—***omit, insert—*

- ‘(c) for a decision of the commissioner to refuse to register a financial institution under section 446A—the applicant; or
- (d) for a decision of the commissioner to require a person to pay a penalty amount—the person.’.

**20 Schedule 6, definition “mortgage”, paragraph (b)—***omit, insert—*

- ‘(b) for chapter 2, part 13, division 3C and chapter 5, part 7, division 2—section 287; or’.

**21 Schedule 6, definition “notice of registration”, ‘section 464’—***omit, insert—*

‘section 446A(5)(b) or 464(1)’.

**22 Schedule 6, definition “original decision”, paragraph (c)—***omit, insert—*

- ‘(c) refuse to register a financial institution under section 446A; or
- (d) require a person to pay a penalty amount.’.

**23 Schedule 6, definition “premium”, after ‘insurance’—***insert—*

‘or life insurance’.