



Queensland

Revenue Legislation Amendment Act 2004

Act No. 18 of 2004

Queensland



REVENUE LEGISLATION AMENDMENT ACT 2004

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Revenue Legislation Amendment Act 2004

Act No. 18 of 2004

An Act to amend certain revenue legislation

[Assented to 24 August 2004]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Revenue Legislation Amendment Act 2004*.

2 Commencement

(1) Sections 7, 9 to 12, 14 to 17, 27, 32 and 33(1) and (4) commence on a date to be fixed by proclamation.

(2) Section 13¹ commences or is taken to have commenced on the day the *Second-hand Dealers and Pawnbrokers Act 2003*, section 116² commences.

PART 2—AMENDMENT OF DUTIES ACT 2001

3 Act amended in pt 2

This part amends the *Duties Act 2001*.

4 Amendment of s 24 (Rates of transfer duty)

Section 24(3)(b)—

omit, insert—

‘(b) another mortgage, including the debt secured by the mortgage, that is incidental to, and transferred in connection with, a mortgage mentioned in paragraph (a) (a “**primary mortgage**”)

1 Section 13 (Amendment of s 299 (Who is a “credit provider”))

2 *Second-hand Dealers and Pawnbrokers Act 2003*, section 116 (Repeals)

if the primary mortgage is the principal security held by the transferor.’.

4A Amendment of s 37 (When transaction for particular Queensland business assets not dutiable transaction)

Section 37(3), from ‘aggregated with’—

omit, insert—

‘aggregated with 1 or more of the following—

- (a) a dutiable transaction for a Queensland business asset, other than intellectual or personal property;
- (b) a dutiable transaction for land in Queensland.’.

5 Amendment of s 60 (Beneficiary’s trust interest is percentage of or proportionate to property held on trust)

Section 60(1)(b), from ‘proportion’ to ‘bears’—

omit, insert—

‘proportion that the value of the beneficiary’s entitlement bears’.

6 Amendment of s 137 (Exemption—mining and petroleum legislation)

(1) Section 137(1)—

omit, insert—

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

- (a) the grant of a mineral development licence, mining claim or mining lease under the *Mineral Resources Act 1989*; or
- (b) the transfer, or an agreement for the transfer, of a mining claim, or a share in a mining claim, under the *Mineral Resources Act 1989* if the consideration is not more than \$100.’.

(2) Section 137—

insert—

‘(5) Subsection (1) applies to a dutiable transaction if liability for transfer duty arose or arises on or after 1 March 2002.’.

7 Insertion of new s 251A

Chapter 5, part 2—

insert—

‘251A Treatment of mortgages affecting property in Victoria

‘For this chapter, a mortgage or mortgage package affecting property located in Victoria is taken to have been properly stamped, stamped with similar duty, duly stamped or exempt from duty under the *Duties Act 2000* (Vic) only to the extent the mortgage or mortgage package was properly stamped, stamped with similar duty, duly stamped or exempt from duty under that Act before 1 July 2004.’

8 Amendment of s 252 (When liability for mortgage duty arises)

Section 252(3)—

omit, insert—

‘(3) Subsection (4) applies to an instrument of security if—

- (a) the instrument does not affect property in Queensland when it is first signed; and
- (b) the instrument affects property in Queensland—
 - (i) for land, other than a security interest—within 1 year after the instrument is first signed; or
 - (ii) for other property—at any time after the instrument is first signed; and
- (c) for other property mentioned in paragraph (b)(ii)—
 - (i) the property is specifically identified, whether or not in the instrument, when the instrument is first signed; and
 - (ii) under an arrangement in place when the instrument is first signed, the property is intended to be secured by the security.’

9 Amendment of s 260 (Mortgage over property not wholly in Queensland)

Section 260(2), after ‘Territory’—

insert—

‘or in Victoria’.

10 Amendment of s 262 (Collateral mortgage)

Section 262—

insert—

‘**(1A)** However, a mortgage (a “**secondary mortgage**”) that secures all or part of the same amount as another mortgage, security instrument or mortgage package that affects property located in Victoria and has been properly stamped under this Act or a corresponding Act is taken not to be a collateral mortgage if the commissioner is satisfied there was an arrangement to avoid the imposition of mortgage duty on the secondary mortgage.’.

11 Amendment of s 263 (Extent mortgage is enforceable)

Section 263—

insert—

‘**(3)** For subsection (1), if an advance is made on or after 1 July 2004 under a mortgage or mortgage package that, before 1 July 2004, affected property located in Victoria and was properly stamped under the *Duties Act 2000* (Vic), the mortgage or mortgage package is taken to be a mortgage or mortgage package for which a similar duty is chargeable under a corresponding Act.’.

12 Insertion of new s 290A

Chapter 5, part 8—

insert—

‘290A Reassessment—stamping before advance

‘**(1)** This section applies in relation to a mortgage mentioned in section 260 or 261 if—

- (a) the mortgage was first signed before 1 July 2004 and partly affected property located in Victoria; and
- (b) the mortgage was properly stamped or exempt from duty, and mortgage duty was paid for the mortgage before 1 July 2004,

under the *Duties Act 2000* (Vic), section 161,³ in relation to an advance made under the mortgage on or after the commencement of this section; and

- (c) before 1 July 2004, the mortgage was stamped under section 257(1) and (2) in relation to the advance; and
- (d) after the commencement of this section, the duty mentioned in paragraph (b) (the “**Victorian duty**”) is refunded because the mortgage is no longer stamped before the advance.

‘(2) Section 257(1) and (2) are taken not to have authorised the stamping of the mortgage and the commissioner must make a reassessment to impose mortgage duty on the mortgage based on the dutiable proportion at the liability date.

‘(3) The mortgagor or mortgagee must, within 28 days of the Victorian duty being refunded—

- (a) give written notice to the commissioner stating that the Victorian duty has been refunded; and
- (b) ensure the mortgage is lodged for a reassessment of mortgage duty on the mortgage.

Note—

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

‘(4) Compliance with subsection (3) by the mortgagor or mortgagee relieves the other person from complying with the subsection.’

13 Amendment of s 299 (Who is a “credit provider”)

Section 299(2), from ‘licensed’—

omit, insert—

‘person carrying on business as a pawnbroker within the meaning of the *Second-hand Dealers and Pawnbrokers Act 2003*.⁴’

3 *Duties Act 2000* (Vic), section 161 (Stamping before advance)

4 Under the *Second-hand Dealers and Pawnbrokers Act 2003*, a “**pawnbroker**” is a person who—

- (a) carries on the business of advancing, on interest or in expectation of profit or reward, an amount on the principal or collateral security of property taken by the person as a pawn; and
- (b) holds a pawnbrokers licence.

14 Amendment of s 377 (Imposition of vehicle registration duty)

Section 377—

insert—

‘**(3)** However, the vehicle registration duty imposed on an application for a special vehicle is the amount stated in section 382(2)(a).’.

15 Amendment of s 382 (Assessment of vehicle registration duty)

Section 382(2), from ‘amount’—

omit, insert—

‘following amount—

- (a) if the application is for a special vehicle—\$25; or
- (b) if paragraph (a) does not apply—the amount worked out by applying the rate of vehicle registration duty to the dutiable value of the vehicle at the dutiable day.’.

16 Amendment of s 383 (Rate of vehicle registration duty)

(1) Section 383, heading, after ‘**duty**’—

insert—

‘, **other than for a special vehicle**’.

(2) Section 383, after ‘a vehicle’—

insert—

‘, other than a special vehicle,’.

(3) Section 383, ‘at the dutiable day’—

omit.

17 Amendment of s 384 (Reduction in vehicle registration duty payable)

(1) Section 384(1), from ‘Vehicle’ to ‘383’—

omit, insert—

‘The amount of vehicle registration duty assessed under section 382(2)’.

(2) Section 384(3), '383'—

omit, insert—

'382(2)'.

18 Amendment of s 386 (Exemption—registration of interstate registered vehicle)

Section 386(2)(b), second subparagraph (iv)—

renumber as section 386(2)(b)(v).

19 Amendment of s 405 (Exemption—interposing new company between existing companies and their shareholders)

Section 405(4), from 'subsection (2)'—

omit, insert—

'subsection (2) that, before the acquisition by the new parent company, the same shareholders—

- (a) owned, directly or indirectly, at least 90% of the issued shares in the existing companies; and
- (b) had voting control of the existing companies.'

20 Amendment of s 408 (Exemption—trustees)

(1) Section 408(1)(c)—

omit.

(2) Section 408(1)(d)—

renumber as section 408(1)(c).

(3) Section 408(2)—

omit, insert—

'(2) For subsection (1), section 406(2) and division 5 apply as if—

- (a) a reference to the transferor of the property were a reference to the unitholders or beneficiaries; and
- (b) the issued shares in the transferee held by the transferor were held other than as trustee.'

21 Amendment of s 411 (Application for exemption for dutiable transaction or relevant acquisition)

(1) Section 411(4)(b)—

omit, insert—

‘(b) the circumstances existing in relation to the transaction or acquisition at the time of the application for exemption are materially different from the circumstances existing at the time of the application for the ruling; or’.

(2) Section 411(4)—

insert—

‘(d) each of the following applies—

- (i) after the ruling is made but before the application for the exemption is decided, a legislative change takes effect or a judgment of a court is given;
- (ii) the change or judgment would, if it had taken effect or been given before the ruling was made, have materially affected the ruling made by the commissioner.’

22 Amendment of s 429 (Instruments and transactions under Housing Act 2003)

(1) Section 429(2)(a)—

omit, insert—

‘(a) the transfer, or agreement for the transfer, of land to a person who does not receive financial assistance from the housing chief executive on behalf of the State to enable the person to purchase the land;’.

(2) Section 429(2)(b), after ‘a transfer,’—

insert—

‘agreement for the transfer,’.

(3) Section 429(2)(c), after ‘a transfer’—

insert—

‘, or agreement for the transfer,’.

(4) Section 429(2)(c)(i), after ‘the transfer’—

insert—

‘, or agreement for the transfer, was entered into’.

(5) Section 429(2)(c)(i), ‘providing’—

omit, insert—

‘provide’.

(6) Section 429(4), definition “residence”—

omit.

23 Amendment of s 445 (Notice of registration)

(1) Section 445(2)—

insert—

‘(da)the documents required to accompany the returns;’.

(2) Section 445(2)(da) to (h)—

renumber as section 445(2)(e) to (i).

(3) Section 445—

insert—

‘(3) However, a matter mentioned in subsection (2) may, instead of being stated in the notice, be stated in a document issued by the commissioner and accompanying the notice.

‘(4) A matter mentioned in subsection (2) and stated in a document mentioned in subsection (3) is taken to have been stated in the notice.’.

24 Amendment of s 452 (Notice of registration)

(1) Section 452(2)—

insert—

‘(da)the documents required to accompany the returns;’.

(2) Section 452(2)(da) to (h)—

renumber as section 452(2)(e) to (i).

(3) Section 452—

insert—

‘(3) However, a matter mentioned in subsection (2) may, instead of being stated in the notice, be stated in a document issued by the commissioner and accompanying the notice.

‘(4) A matter mentioned in subsection (2) and stated in a document mentioned in subsection (3) is taken to have been stated in the notice.’.

25 Amendment of s 455 (Lodging returns)

Section 455(1)(a), after ‘lodge returns’—

insert—

‘, and documents required to accompany returns,’.

26 Insertion of new ch 12A

After chapter 12—

insert—

‘CHAPTER 12A—PROVISIONS FOR PARTIES TO SELF ASSESSABLE INSTRUMENTS OR TRANSACTIONS

‘PART 1—PRELIMINARY

‘471A Who is a “liable party”

‘A party to an instrument or transaction who is liable to pay duty on it is a “liable party” to the instrument or transaction.

‘471B What is a “relevant lodgment requirement”

‘(1) A “relevant lodgment requirement” for an instrument or transaction is a lodgment requirement, within the meaning of the Administration Act, that applies to the instrument or a document for the instrument or transaction.

‘(2) However, a requirement under this Act to lodge a return for a self assessment for the instrument or transaction is not a relevant lodgment requirement.

‘(3) For subsection (2), a return for a self assessment does not include another document that is, under a provision of this Act, taken to be a return for a self assessment.

Example of another document taken to be a return—

a statement under section 241(2) or (4)

‘PART 2—PROVISIONS APPLICABLE IF AGENT REGISTERED AS SELF ASSESSOR

‘471C Application of pt 2

‘(1) This part applies to an instrument or transaction for which a liable party engages a self assessor who is—

- (a) registered under chapter 12, part 3;⁵ and
- (b) required or permitted under the self assessor’s notice of registration to lodge returns for the instrument or transaction.

‘(2) However, if the self assessor is not permitted to make a reassessment of duty on the instrument or transaction, this part does not apply to the instrument or transaction for the making of the reassessment.

‘471D Effect of engagement of self assessor on relevant lodgment requirement

‘A relevant lodgment requirement for the instrument or transaction does not apply for the instrument or transaction.

‘471E Liable party must give documents, and pay duty, to self assessor

‘(1) A liable party to the instrument or transaction must, not later than the date mentioned in subsection (2)—

5 Chapter 12 (Registered persons), part 3 (Registration of agents as self assessors)

- (a) ensure that the self assessor is given all instruments and other documents relating to the instrument or transaction to which a relevant lodgment requirement for the instrument or transaction would apply if section 471D did not apply; and
- (b) pay to the self assessor the amount of the duty, assessed interest and penalty tax on the instrument or transaction.

Maximum penalty—100 penalty units.

‘(2) For subsection (1), the date is the return date for lodgment by the self assessor of a return, and any document required to accompany the return, for the instrument or transaction.

‘(3) The liable party complies with subsection (1)(a) only if—

- (a) all instruments or documents required to be given to the self assessor under the subsection have been given as required under section 471F; and
- (b) for a document required under the subsection to be given as an approved form—the form contains enough information for the purpose for which it is given.

‘(4) To remove doubt, it is declared that compliance with subsection (1)(b) does not limit the party’s liability to pay unpaid tax interest on the duty payable on the instrument or transaction.

‘471F Giving documents to self assessor

‘(1) A document is given by a liable party to a self assessor only if the document is—

- (a) left at an office of the self assessor; or
- (b) sent by post to the self assessor.

‘(2) A document given to the self assessor in the way mentioned in subsection (1)(a) is taken to be given to the self assessor when it is actually received by the self assessor.⁶

⁶ For the time of giving a document by post, see the *Acts Interpretation Act 1954*, section 39A(1)(b).

‘471G Prohibition on giving false or misleading documents to self assessor

‘(1) A liable party to the instrument or transaction must not give the instrument or a document relating to the instrument or transaction to the self assessor if the instrument or document contains information the party knows, or should reasonably know, is false or misleading in a material particular.

Maximum penalty—100 penalty units.

‘(2) Subsection (1) does not apply to a liable party who, when giving the instrument or document to the self assessor—

- (a) tells the self assessor of the extent to which the instrument or document is false or misleading; and
- (b) to the extent the party has, or can reasonably get, the correct information—gives the correct information to the self assessor.

‘(3) It is enough for a complaint against a person for an offence against subsection (1) to state the instrument or document was ‘false or misleading’, without specifying which.

‘471H Prohibition on giving false or misleading information to self assessor

‘(1) A liable party to the instrument or transaction must not state to the self assessor anything relating to the instrument or transaction that the party knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

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

‘PART 3—PROVISIONS APPLICABLE IF PARTY REGISTERED AS SELF ASSESSOR

‘471I Application of pt 3

‘(1) This part applies to an instrument or transaction for which there is a self assessor who is—

- (a) registered under chapter 12, part 2;⁷ and
- (b) required or permitted under the self assessor’s notice of registration to lodge returns for the instrument or transaction.

‘(2) However, if the self assessor is not permitted to make a reassessment of duty on the instrument or transaction, this part does not apply to the instrument or transaction for the making of the reassessment.

‘471J Effect of engagement of self assessor on relevant lodgment requirement

‘A relevant lodgment requirement for the instrument or transaction does not apply for the instrument or transaction if —

- (a) the self assessor is required to lodge a return for the instrument or transaction; or
- (b) the self assessor—
 - (i) is permitted to lodge a return for the instrument or transaction; and
 - (ii) includes the instrument or transaction in a return lodged as required under section 455.’.

27 Amendment of s 488 (Commissioner may require payment of penalty)

Section 488(1)(c), after ‘transfer a vehicle,’—

insert—

‘other than a special vehicle.’.

⁷ Chapter 12 (Registered persons), part 2 (Registration of parties to instruments and transactions as self assessors)

28 Amendment of s 496 (Lodging declaration stating facts and circumstances)

Section 496(2), note—

omit, insert—

Note—

Failure to lodge the declaration is an offence under the Administration Act, section 121.’.

29 Insertion of new s 508A

Chapter 16—

insert—

‘508A End of succession debts

‘(1) The purpose of this section is to end, from 31 January 2003, succession debts.

‘(2) Subsection (3) applies to a succession debt—

- (a) that was owed on or before the commencement of this section; or
- (b) that would otherwise arise after the commencement of this section.

‘(3) The succession debt is taken to have been extinguished on 31 January 2003.

‘(4) Subsection (3) applies despite the following provisions of the repealed *Statute Law Revision Act 1995*—

- (a) schedule 9, entries for the succession duties Acts;
- (b) schedule 10, section 3.

‘(5) To remove doubt, it is declared that a person is not entitled to a refund of a succession debt paid before 31 January 2003.

‘(6) If a succession duty charge affected land on the commencement of this section—

- (a) the charge is taken to have been discharged or satisfied; and
- (b) the relevant person must, as soon as practicable after this section commences, remove the charge from the land register in which the charge is recorded.

‘(7) No fee is payable for removing a succession duty charge from a land register under subsection (6)(b).

‘(8) A word or expression used in this section and defined in the repealed *Succession Duties Act 1892* has, if the context permits, the meaning given under that Act.

‘(9) In this section—

“**dutiable succession**” means a succession conferred on a successor if the entitlement or interest of the successor vested in the successor in possession before 1 January 1977.

“**land register**” means any of the following—

- (a) the freehold land register kept under the *Land Title Act 1994*;
- (b) a register kept under the *Property Law Act 1974*, part 18;⁸
- (c) a register kept under the *Land Act 1994*.

“**registrar**” means the registrar of titles under the *Land Title Act 1994*.

“**relevant person**” means the registrar or, for a land register kept under the *Land Act 1994*, the chief executive of the department administering that Act.

“**succession debt**” means—

- (a) a debt to the State for duty payable under the succession duties Acts in relation to a dutiable succession; or
- (b) an unpaid penalty, expense or other amount recoverable by the commissioner under the succession duties Acts in relation to a dutiable succession.

“**succession duties Acts**” means each of the following repealed Acts—

- (a) the *Succession Duties Act 1892*;
- (b) the *Succession Duties Act 1892 Amendment Act 1895*;
- (c) the *Succession Duties Act 1904*.

8 *Property Law Act 1974*, part 18 (Unregistered land)

“**succession duty charge**” means a charge created under the repealed *Succession Duties Act 1892*, section 43,⁹ including, for example, a ‘succession duty not paid’ recording in a land register.

‘(10) This section expires on 1 September 2005.’.

30 Amendment of s 511 (Application of this Act)

Section 511(2)(a), after ‘530’—

insert—

‘, 530A’.

31 Insertion of new s 530A

After section 530—

insert—

‘530A Repealed Act applies to instruments increasing rent in relation to particular leases etc.

‘(1) This section applies if—

- (a) before the commencement day, stamp duty under the repealed Act was chargeable or paid on any of the following (a “**prescribed lease**”)—
 - (i) a lease or agreement for lease;
 - (ii) a transaction mentioned in section 54AB(1)(b)¹⁰ of the repealed Act;
 - (iii) a contract or agreement for which a statement under section 64D(3)¹¹ of the repealed Act was or should have been made; and
- (b) the rent payable in relation to the prescribed lease is increased by an instrument effected on or after the day this section commences.

9 *Succession Duties Act 1892*, section 43 (Duty of Registrar of Titles)

10 Section 54AB (Duty payable where no dutiable instrument) of the repealed Act

11 Section 64D (Licence to occupy premises) of the repealed Act

‘(2) The repealed Act applies to the instrument mentioned in subsection (1)(b).’.

32 Amendment of s 537 (Reduction in vehicle registration duty)

Section 537(2), ‘worked out under section 383’—

omit, insert—

‘assessed under section 382(2)¹²’.

33 Amendment of sch 6 (Dictionary)

(1) Schedule 6—

insert—

‘**“special vehicle”** means any of the following—

- (a) a vehicle that is, or will be on its registration, registered under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*, section 10A(2);¹³
- (b) mobile machinery within the meaning of the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*, schedule 4, other than mobile machinery built on a truck chassis.’.

(2) Schedule 6—

insert—

‘**“liable party”**, for chapter 12A, see section 471A.

“relevant lodgment requirement”, for chapter 12A, see section 471B.’.

(3) Schedule 6, definition “existing right”, paragraph (h)—

omit, insert—

- ‘(h) an existing right of the holder of a mortgage, including the debt secured by the mortgage, other than the holder of a mortgage-backed security;’.

¹² Section 382 (Assessment of vehicle registration duty)

¹³ *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*, section 10A (Conditional registration)

- (4) Schedule 6, definition “vehicle”, paragraphs (b) to (d)—
omit, insert—
‘(b) a trailer.’.

PART 3—AMENDMENT OF FUEL SUBSIDY ACT 1997

34 Act amended in pt 3

This part amends the *Fuel Subsidy Act 1997*.

35 Amendment of s 8 (Meaning of “off-road purpose”)

Section 8(3)(b)—

omit, insert—

‘(b) either—

- (i) before 1 July 2003, a rebate applied in relation to the diesel under the Commonwealth diesel fuel rebate scheme established under the *Customs Act 1901* (Cwlth) and *Excise Act 1901* (Cwlth); or
- (ii) on or after the day the *Revenue Legislation Amendment Act 2004*, section 35,¹⁴ commences, the purchaser is entitled to an energy grant in relation to the diesel under the energy grants (credits) scheme established under the *Energy Grants (Credits) Scheme Act 2003* (Cwlth).’.

¹⁴ *Revenue Legislation Amendment Act 2004*, section 35 (Amendment of s 8 (Meaning of “off-road purpose”))

PART 4—AMENDMENT OF LAND TAX ACT 1915

36 Act amended in pt 4

This part amends the *Land Tax Act 1915*.

37 Amendment of s 3 (Definitions)

Section 3, definition “retirement village”—
omit, insert—

- ‘ **“retirement village”** has the meaning given under the *Retirement Villages Act 1999*, section 5.¹⁵’.

15 *Retirement Villages Act 1999*, section 5 (What is a “retirement village”)