

TREASURY LEGISLATION AMENDMENT BILL (No. 2) 1994

EXPLANATORY NOTE

GENERAL OUTLINE

Objectives of the Legislation

The objectives of the legislation are to:

- achieve the repeal of the *Mortgages (Secondary Market) Act 1984*, subject to providing for the orderly winding down of any secondary mortgage market schemes currently operating under that Act;
- overcome an impediment imposed on the issue of new guarantees under the terms of the *Co-operative Housing Societies Act 1958* because of the limit presently imposed by that Act as well as validating guarantees issued under Part 7 of the Act; and
- remove a legal doubt that a rezoning of part of the Townsville Casino site which occurred in 1987 was valid.

Also, amendments to the *Land Tax Act 1915*, the *Motor Accident Insurance Act 1994* and the *Financial Administration and Audit Act 1977* which would otherwise have been attended to in the *Statute Law (Miscellaneous Provisions) Bill (No. 2) 1994*, are also included in this Bill.

Reasons for the Bill

The repeal of the *Mortgages (Secondary Market) Act 1984* is consistent with the recommendation of the Report of the Committee of Inquiry into Financial Institutions and Related Processes in the State of Queensland (“Brady Committee Report”), and subsequent proposals of the Special Premiers’ Conference Working Group on Non-Bank Financial Institutions.

In support of its recommendation, the Brady Committee argued that the inherent complexity of secondary mortgage market schemes makes it very difficult to legislate adequately for a prescriptive framework to govern the creditworthiness of issuers and securities in the market. It was the view of the Committee that the Act creates an administrative burden on the Government and a regulatory burden on market participants. Further, the Committee saw no reason why the State Government should legislate to protect the interests of investors in secondary mortgage market securities, but not those of investors in other types of securities.

The Committee also recommended that there should be transitional arrangements in order not to disadvantage existing and proposed issues of securities as a result of the repeal of the Act. Therefore, to effect these recommendations, the proposed legislation repeals immediately those provisions which are deemed to be unnecessary and retains only those provisions which enable the various secondary mortgage market schemes, currently operating under the Act, to wind down or move outside the Act. The Bill provides for the continued registration of only those organisations which need to be registered during the transitional period.

The Bill also provides for the final repeal of the remaining provisions of the Act at the end of the three year transitional period or earlier if the Act is no longer relevant to the schemes.

The Bill overcomes an impediment to the granting of further guarantees under the terms of the *Co-operative Housing Societies Act 1958* by removing a limit imposed in 1958, which is no longer relevant to today's terms and also does not address the reality of the actual liability which may subsist should any guarantee ever be called upon. No guarantee has been called upon in the course of the Act's history from 1958 to the present day.

The Bill also validates particular guarantees issued under Part 7 of the Act.

In addition, the Bill removes a legal doubt about the validity of a rezoning of part of the Townsville Casino site which was approved by the Governor in Council in 1987. This is because the Breakwater Island Casino Agreement, which was ratified and given the force of law by the *Breakwater Island Casino Agreement Act 1984*, included the land in a particular zone during the currency of the Agreement. Therefore, it was

doubtful that the land was capable of being rezoned under the *Local Government Act 1936* contrary to the Agreement. The Bill puts the matter beyond doubt.

Also, amendments to the *Land Tax Act 1915*, the *Motor Accident Insurance Act 1994* and the *Financial Administration and Audit Act 1977* which would otherwise have been attended to in the *Statute Law (Miscellaneous Provisions) Bill (No. 2) 1994*, are also included in this Bill.

Estimated Cost for Government Implementation

There will be no cost for Government arising from this Bill.

Consultation

Matters concerning the repeal of the *Mortgages (Secondary Market) Act 1984* have been the subject of consultation involving the industry and the members of the Mortgage Secondary Market Board.

Consultation has occurred with the Crown Solicitor concerning the impediment to the granting of new guarantees issued under the terms of the *Co-operative Housing Societies Act 1958* and the validation of particular guarantees issued under the terms of the Act.

The Council of the City of Townsville, the Department of Housing, Local Government and Planning and the Townsville Casino operators have been consulted on the rezoning of part of the Townsville Casino site.

PART 1—PRELIMINARY

Clause 1 specifies the short title.

Clause 2 provides for the commencement of the various sections and Parts of the Act.

PART 2—AMENDMENT OF MORTGAGES (SECONDARY MARKET) ACT 1984

Clause 3 provides for the amendment of the *Mortgages (Secondary Market) Act 1984*.

Clause 4 omits certain existing definitions as these are obsolete and not required in the transitional period and inserts a new definition for “banking corporation”.

Clause 5 replaces the Part 2 heading “Mortgage Secondary Market Board” with the “Functions and Powers of Commissioner”. The role of the Board in the transitional period is largely obsolete and therefore those functions and powers which are still relevant are being transferred to the Commissioner. A number of consequential amendments flow from this change.

Clause 6 omits provisions relating to the Mortgage Secondary Market Board. This clause is linked to clause 5 of this Bill.

Clause 7 replaces section 13 by omitting the existing provisions which deal with the functions of the Board (see clause 5) and inserts new provisions dealing with the functions of the Commissioner.

Clause 8 amends section 14 which deals with powers under the Act by replacing the word “Board’s” with “Commissioner’s” in support of the position explained in clause 5.

Clause 9 omits sections 15 and 16 which refer to the secretary of the Board and the Annual report which are now obsolete.

Clause 10 omits sections 17 to 21 which provide for the registration of persons to operate in Secondary Mortgage Market as no new registrations will be permitted during the transitional period.

Clause 11 amends section 23 by replacing references to the “Board” with the “Commissioner” in support of clause 5.

Clause 12 amends section 24 to reflect current Queensland drafting practices on penalties.

Clause 13 amends section 25 by replacing references to the “Board” with the “Commissioner” and omitting a reference to the “secretary” in support of clauses 5 and 9.

Clause 14 omits the existing sections 26 to 28 and inserts a new section 26 which deals with the term of registration for holders of a certificate of registration on 31 December 1994.

Clause 15 amends section 36 (Interpretation) by renumbering it and relocating it in Part 4 as section 28.

Clause 16 omits section 38 as this section is no longer necessary as no new registrations will be approved during the transitional period.

Clause 17 omits the existing sections 40 and 41 and inserts a new section 40 which deals with certain reporting requirements for a registered trustee. Section 41 has been omitted as the *Money Lenders Act 1916* has been repealed and the section no longer has any relevance.

Clause 18 amends section 42 by omitting the words “within the meaning of section 4” as these qualifying words are redundant, given that the definition of “Commissioner” in this Act is already clear.

Clause 19 amends section 43 for the same reason as in clause 18.

Clause 20 amends section 45 to reflect current Queensland drafting practices on penalties.

Clause 21 amends section 47 to reflect current Queensland drafting practices on penalties.

Clause 22 omits Part 6 which deals with the charging of procuration fees. Part 6 had been included in the Act to overcome a provision under the *Money Lenders Act 1916* excluding the charging of fees. With the repeal of the *Money Lenders Act 1916*, this Part no longer has any relevance.

Clause 23 replaces sections 54-56 with new provisions dealing with evidentiary provisions, regulations, numbering of Act and expiry of Act. Amendments to section 55 omits those provisions where regulations are not necessary because of the repeal of various parts of the Act. Section 57 provides for the expiry of the Act on 1 January 1998 or on an earlier date prescribed by regulation.

PART 3—AMENDMENT OF CO-OPERATIVE HOUSING SOCIETIES ACT 1958

Clause 24 provides for the amendment of the *Co-operative Housing Societies Act 1958*.

Clause 25 omits section 60(1) as the section contains an outdated impediment to the issue of new guarantees. It concentrates on the total potential liability in respect of guarantees issued under the Act without taking into consideration the actual liability which may subsist should any guarantee ever be called upon at the termination of a society's life.

Clause 26 inserts Part 9—Validation to overcome the possible effects of the impediment referred to in clause 25 of the Bill, even though no guarantee has ever been enforced under the terms of the Act.

PART 4—AMENDMENT OF FINANCIAL ADMINISTRATION AND AUDIT ACT 1977

Clause 27 provides for the amendment of the *Financial Administration and Audit Act 1977*.

Clause 28 inserts a provision to deal with references to earlier repealed Acts that provided for substantially the same matters as the *Financial Administration and Audit Act 1977*.

PART 5—AMENDMENT OF LAND TAX ACT 1915

Clause 29 provides for the amendment of the *Land Tax Act 1915*.

Clause 30 amends section 11 to extend the deduction under section 11(5) to exempt charitable institutions within the meaning given by section 13(5).

PART 6—AMENDMENT OF MOTOR ACCIDENT INSURANCE ACT 1994

Clause 31 provides for the amendment of the *Motor Accident Insurance Act 1994*.

Clause 32 inserts a power for the Governor in Council to make regulations creating offences and to prescribe penalties for the offences.

Clause 33 confirms the validity and commencement date of the *Motor Accident Insurance Regulation 1994*.

PART 7—AMENDMENT OF BREAKWATER ISLAND CASINO AGREEMENT ACT 1984

Clause 34 provides for the amendment of the *Breakwater Island Casino Agreement Act 1984*.

Clause 35 inserts a new section 9 which declares that the rezoning of part of the Townsville Casino site which occurred on 22 August 1987 under the *Local Government Act 1936* was valid for the land described as Lot 2 on Registered Plan 859206. The clause also provides that any town planning approvals given by the Townsville City Council in reliance on the 1987 rezoning, and the subsequent development of the land are valid even though they may conflict with parts of the Breakwater Island Casino Agreement. Once the clause has taken effect, it is removed and will continue to apply under section 20A of the *Acts Interpretation Act 1954*.