

Revenue and Other Legislation Amendment Bill 2008

Explanatory Notes

General Outline

Policy Objectives

To amend the *Duties Act 2001*, *Land Tax Act 1915* and *Pay-roll Tax Act 1971* to implement measures announced in the 2008-09 State Budget.

To amend the *Petroleum and Gas (Production and Safety) Act 2004* to change the obligations for petroleum producers with regard to submitting a royalty returns.

Reasons for the Bill

The Bill implements revenue measures announced in the 2008-09 State Budget namely the abolition of mortgage duty, changes to transfer duty rates, increases in the transfer duty home concession and first home concessions, changes to land tax rates and extension of the phasing-out formula for the pay-roll tax statutory deduction.

The Bill also includes amendments to the *Petroleum and Gas (Production and Safety) Act 2004* to change the obligations for petroleum producers to submit a royalty return about petroleum production, as required under the *Petroleum and Gas (Production and Safety) Act 2004*, from “monthly” to “quarterly”. These amendments are not related to the State Budget.

Achievement of Objectives

Duties Act 2001

Abolition of mortgage duty

Under the *Duties Act 2001*, mortgage duty is imposed on instruments that are mortgages, particular caveats claiming an interest under a mortgage, and particular releases of mortgage. The duty is assessed on the amount secured.

Following a 2005 review by all States and Territories under the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations, the 2005-06 State Budget announced that a number of duties imposed under the *Duties Act 2001* would progressively be abolished. Mortgage duty was to be abolished in two stages, with an initial 50% reduction from 1 January 2008 and full abolition on 1 January 2009.

The initial 50% reduction in mortgage duty was implemented on schedule. The final stage of the abolition is being brought forward and the Bill amends the *Duties Act 2001* to abolish mortgage duty from 1 July 2008.

Changes to transfer duty rates

Transfer duty is imposed under the *Duties Act 2001* on the dutiable value of dutiable transactions such as transfers and agreements for the transfer of dutiable property, at progressive rates of up to 4.50%. These progressive rates also determine the duty payable on transactions for which land rich duty and corporate trustee duty apply. The transfer duty rates are contained in Schedule 3 of the *Duties Act 2001*.

As announced in the 2008-09 State Budget, the transfer duty rates are being revised and simplified and the Bill amends the *Duties Act 2001* by inserting a new rate schedule with effect from 1 July 2008.

Increases in transfer duty home concession and first home concession thresholds

Persons acquiring their home as their principal place of residence are entitled to a concessional rate of transfer duty of 1% on the first \$320,000 of the value of the home being acquired. Where the value of the person's home exceeds the \$320,000 threshold, the general rate of duty applies to the value exceeding \$320,000.

In addition, for buyers purchasing their first home valued at \$320,000 or less, a first home transfer duty concession of \$3,200 applies so that no transfer duty is payable. This concession reduces where the value of the home exceeds \$320,000 and cuts out completely for first homes with a dutiable value of \$500,000 or more.

As announced in the 2008-09 State Budget, the following changes to the home and first home concessions are being made:

- an increase in the home concession and first home concession thresholds from \$320,000 to \$350,000 from 1 July 2008;

- a further increase in the first home concession threshold to \$500,000 from 1 September 2008; and
- an increase in the amount at which the first home concession phases out from \$500,000 to \$550,000 from 1 September 2008.

To address the situation where taxpayers seek to structure transactions to gain the benefit of these changes by schemes to defer transactions to a date after the new concessions take effect, the *Duties Act 2001* is to be amended to include an anti-avoidance provision to address these schemes. Similar provisions were inserted in the *Duties Act 2001* for previous similar changes to the home concessions. The provision will ensure that the new home concessions will not apply in these cases.

The Bill amends the *Duties Act 2001* to effect these changes.

Land Tax Act 1915

Under the *Land Tax Act 1915* (the Act), land tax for a financial year is levied on the relevant unimproved value of freehold land owned in Queensland by a taxpayer as at midnight on 30 June immediately preceding the year. Land tax is calculated by applying the relevant rate of tax to the aggregate taxable value of the landowner's land. Different rates apply for resident individuals on the one hand, and companies, trustees and absentees on the other hand.

As announced in the 2008-09 State Budget, new rates of land tax will apply from 1 July 2008 for both resident individuals and companies, trustees and absentees. The Bill amends the *Land Tax Act 1915* to give effect to these changes.

Pay-roll Tax Act 1971

Under the *Pay-roll Tax Act 1971*, pay-roll tax is imposed on Queensland taxable wages paid or payable in a financial year. Pay-roll tax is chargeable when the total yearly Australian taxable wages of an employer, or those of a group of employers, exceed the exemption threshold of \$1 million. Once total yearly Australian wages exceeds the exemption threshold, the employer, or designated group employer of a group of employers, may claim a deduction from their Queensland taxable wages. The maximum deduction is \$1 million, reducing by \$1 for every \$3 by which the wages exceed \$1 million. The deduction phases out once the wages reach \$4 million.

As announced in the 2008-09 State Budget the phasing-out formula for the deduction is to be extended. The reduction rate for the deduction will

change from \$1 in every \$3 of wages above the \$1 million exemption threshold to \$1 in every \$4 of wages above the threshold. The amount at which the deduction reduces to zero will therefore increase from \$4 million to \$5 million.

The Bill amends the *Pay-roll Tax Act 1971* to give effect to these changes.

Petroleum and Gas (Production and Safety) Act 2004

The Bill will amend the *Petroleum and Gas (Production and Safety) Act 2004* to align the lodgement requirements for royalty returns for petroleum producers, with the lodgement requirements for royalty returns for certain miners under the *Mineral Resources Regulation 2003*. These amendments will ratify the policy objectives by providing that for any quarter in which a petroleum producer produces petroleum that is disposed of, supplied to a person, flared, vented or otherwise, or stored, a petroleum royalty return is required to be lodged.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Implementation costs of amendments to the *Duties Act 2001*, *Land Tax Act 1915* and *Pay-roll Tax Act 1971* are not expected to be significant.

There are no administrative costs to the Government in relation to the amendments to the *Petroleum and Gas (Production and Safety) Act 2004* but minor administrative savings will accrue.

Consistency with Fundamental Legislative Principles

This Bill raises no fundamental legislative principle issues.

Consultation

Consultation on amendments to implement the 2008-09 State Budget initiatives was not appropriate as the measures are Budget initiatives.

Regarding the *Petroleum and Gas (Production and Safety) Act 2004*, the proposed change from monthly to quarterly lodgement of royalty returns confers an administrative benefit to both industry and the Government by reducing the number of returns (including an annual return) required in the year from thirteen to five. Given this, consultation with industry was not considered necessary.

Notes On Provisions

Clause 1 cites the short title of the Act.

Clause 2 states the dates on which various provisions of the Bill are taken to commence.

Clause 3 states that part 2 amends the *Duties Act 2001*.

Clause 4 amends section 91 of the *Duties Act 2001*, which prescribes how transfer duty is calculated for a dutiable transaction that is the transfer, or agreement for the transfer of, residential land that will be the home of the transferee. The dutiable value of the land to which the concessional rate of duty applies is increased to \$350,000. The prescribed method for calculating transfer duty where the dutiable value of the residential land exceeds \$350,000 is also adjusted to take into account the increase in dutiable value of the land to which the concessional rate applies.

Clause 5 amends section 92 of the *Duties Act 2001*, which prescribes how transfer duty is calculated for a dutiable transaction that is the transfer, or agreement for the transfer, of residential or vacant land that will be the first home of the transferee. The circumstances to which the section applies are amended so that, for a transfer, or agreement for the transfer, of residential land, the unencumbered value of the residential land is increased \$350,000.

Clause 6 amends section 93 of the *Duties Act 2001*, which prescribes how transfer duty is calculated for dutiable transactions involving particular circumstances in which the home or first concessions is claimed, including where there is more than 1 transferee and at least 1 transferee is claiming the home or first home concession or where there is more than one residence constructed on the residential land. The methods for calculating transfer duty are amended to take into account the fact that the dutiable value of the residential land to which the concessional rate of duty applies is increased to \$350,000.

Clause 7 amends section 188 of the *Duties Act 2001* consequent on the abolition of mortgage duty from 1 July 2008. Amended section 188(4) provides that land rich duty imposed on a relevant acquisition which is a transfer, or agreement for the transfer, of shares by way of security must be reduced by any mortgage duty paid on the transfer, or agreement to transfer.

Clause 8 inserts a new section 247A into the *Duties Act 2001* to abolish mortgage duty from 1 July 2008. The section sets out the instruments and advances to which mortgage duty will not apply on or after the date of abolition.

Clauses 9 to 18 make further consequential amendments of the *Duties Act 2001* in relation to the abolition of mortgage duty.

- Clause 9 amends section 414 of the *Duties Act 2001*, which lists the dutiable transactions to which the exemption for exempt institutions applies, to remove the reference to a mortgage given to secure an advance to an exempt institution.
- Clause 10 amends section 415 of the *Duties Act 2001*, which provides how property or an advance is to be used by an exempt institution as a condition of duty exemption, to remove references to an advance to an exempt institution.
- Clause 11 amends s.416 of the *Duties Act 2001*, which prescribes when property or an advance must be used for an exempt purpose as a condition of duty exemption, to remove references to an advance to an exempt institution.
- Clause 12 amends s.417 of the *Duties Act 2001*, which provides a power for the Commissioner to extend the the start date and duration of use by an exempt institution of property for a qualifying exempt purpose, to remove references to an advance to an exempt institution.
- Clause 13 amends section 418 of the *Duties Act 2001*, which deals with the reassessment of duty on a dutiable transaction involving an exempt institution under certain circumstances, to remove reference to an advance.
- Clause 14 amends section 419 of the *Duties Act 2001* which deals with the reassessment of duty on a dutiable transaction involving an exempt institution under certain circumstances, to remove reference to an advance.
- Clause 15 omits section 446A of the *Duties Act 2001*, which provides for a financial institution to apply to be registered to defer the endorsement of mortgages or further advances under those mortgages.

- Clause 16 omits section 455(4) of the *Duties Act 2001*, which provides that a self assessor registered under s.446A may defer the endorsement of mortgages under subsection (1)(c).
- Clause 17 inserts a new section 470(A) in the *Duties Act 2001* which authorises the Commissioner to cancel a self assessor's registration where the type of duty to which the registration relates is no longer imposed. The Commissioner must give notice to the self assessor that registration is cancelled from the date stated in the notice.
- Clause 18 amends section 491(3) of the *Duties Act 2001*, which provides that a mortgage, security instrument or mortgage package is properly stamped for certain provisions of the *Duties Act 2001* if a self assessor has deferred the endorsement of the instrument under s.455(4). The amended subsection applies where endorsement was deferred under section section 455(4) as in force before 1 July 2008.

Clause 19 inserts transitional provisions in a new part 9 into Chapter 17 of the *Duties Act 2001*. Division 1 makes a number of transitional provisions for the abolition of mortgage duty. Division 2 contains transitional provisions for amendments to the transfer duty rates and the home and first home concessions.

- New section 590 defines the term “previous” for Division 1 of new Part 9 to mean the provision as in force immediately before 1 July 2008.
- New section 591 provides that the requirement in section 255 of the *Duties Act 2001* for a mortgage to be lodged within 30 days after liability for mortgage duty arises continues to apply on or after 1 July 2008 if the liability for mortgage duty arose before 1 July 2008.
- New section 592 applies where where a mortgage package consists of 2 or more security instruments signed before 1 July 2008 and the Commissioner is satisfied that a mortgage signed on or after that date was intended to be part of the package. The section provides how mortgage duty is to be assessed on the mortgage package.
- New section 593 provides that, where a mortgage first signed before 1 July 2008 has been properly stamped for advances

which were not all made before 1 July 2008, the mortgagor may apply to the Commissioner by 31 December 2008 for a reassessment of mortgage duty in respect of advances not made before 1 July 2008.

- New section 594 provides that where mortgage duty has been imposed on a mortgage prior to 1 July 2008 and was not paid and, on or after 1 July 2008, a caveat claimed an interest in land or a water allocation under the mortgage, section 268 continues to apply on or after 1 July 2008 to impose mortgage duty on the caveat.
- New section 595 provides that section 269 continues to apply on and from 1 July 2008 to impose mortgage duty on a release of a mortgage effected on or after that date if mortgage duty was imposed on the mortgage before that date but was not paid.
- New section 596 ensures that if, before 1 July 2008, the Commissioner was required under sections 290A or 290B, to make a reassessment to impose mortgage duty on a mortgage, those sections continue to apply to require a reassessment to impose duty based on the dutiable proportion at the liability date.
- New section 597 provides that, where mortgage duty has been assessed before 1 July 2008 on the basis of a home mortgage concession, first home mortgage concession or home refinance concession and an event mentioned in section 291(1) happens on or after that date, sections 291(2) to (4) enable the Commissioner to make a reassessment. Section 291(1) specifies circumstances that trigger a reassessment of the concessions.
- New section 598 provides that, where mortgage duty was not imposed on a mortgage given before 1 July 2008 to secure an advance to a co-operative under the *Co-operatives Act 1997* and the advance or part of the advance is used for a non-complying use, section 292(2) to (4) apply to enable the Commissioner to reassess to impose the duty.
- New section 599 ensures that sections 417 to 419 continue to apply on and after 1 July 2008 for assessing mortgage duty on a mortgage given to secure an advance made to an exempt institution on the basis of an exemption under chapter 10, part 2, division 1 and before 1 July 2008.

- New section 600 provides that any self assessor registration under section 446A to defer endorsement is cancelled on 1 July 2008. Further, the self assessor must, by 1 January 2009, endorse, in accordance with section 455(1)(c), any instrument for which endorsement has been deferred.
- New section 601 provides that any application for registration under section 446A made before 1 July 2008 lapses on 1 July 2008.
- New section 602 ensures that, on and from 1 July 2008, section 455 continues to apply to a self assessor in relation to mortgage duty return periods that started before 1 July 2008.
- New section 603 ensures that the section 499(5) to (8) continue to apply in relation to the reassessment of duty paid before 1 July on a mortgage where, on or after that date, an event mentioned in section 499(2)(f) happens.
- New section 604 removes any doubt that the inclusion of a provision affecting the application of a provision under chapter 5 or chapter 10 following the abolition of mortgage duty on 1 July 2008, does not limit the continuing application of another provision of the chapter.
- New section 605 provides that Schedule 3 as in force on 1 July 2008, applies to dutiable transactions and relevant acquisitions if liability for transfer duty, land rich duty or corporate trustee duty arises on or after 1 July 2008.
- New section 606 makes transitional provisions for amendments concerning the home concession and first home concession. Subsection (1) provides that certain home concession and first home concession provisions and provisions relating to reassessments involving home concessions and first home concessions (the relevant provisions), as in force on 1 July 2008, apply to dutiable transactions only if liability for transfer duty arises on or after 1 July 2008. Subsection (2) is an anti-avoidance provision which provides that the relevant provisions in force immediately before 1 July 2008 continue to apply to certain transfers, or agreements for the transfer, of residential land made on or after 1 July 2008.

Clause 20 amends Schedule 3 of the *Duties Act 2001*, which prescribes rates of duty on dutiable transactions and relevant acquisitions for land rich and corporate trustee duty, to replace existing rates of duty with new rates of duty.

Clause 21 amends Schedules 4A and 4B of the *Duties Act 2001*, which prescribe the amount of the first home concession and first home vacant land concession for transfer duty, to:

- replace existing first home concession amounts with new first home concession amounts in Schedule 4A commencing 1 July 2008; and
- correct minor technical errors in Schedules 4A and 4B to cover a \$1 gap in each value band.

Clause 22 amends the dictionary in Schedule 6 of the *Duties Act 2001* to:

- replace the definition of “previous” to include the definition in new section 590;
- amend the definition of “dissatisfied person” to omit reference to a decision of the commissioner to refuse to register a financial institution under section 446A;
- amend the definition of “notice of registration” to omit reference to a notice of registration given under section 446A(5)(b);
- amend the definition of “original decision” to ensure that a decision of the Commissioner to cancel a self assessor’s registration due to the abolition of a type of duty or to refuse to register a financial institution under section 446A is not a reviewable decision; and

Clause 23 inserts a new, part 10 into chapter 17 of the *Duties Act 2001*. New section 606 is a transitional provision for home concession provisions. Subsection (1) provides that certain home concession and first home concession provisions and provisions relating to reassessments involving home concessions and first home concessions (the relevant provisions), as in force on 1 September 2008, apply to dutiable transactions only if liability for transfer duty arises on or after 1 September 2008. Subsection (2) is an anti-avoidance provision which provides that the relevant provisions in force immediately before 1 September 2008 continue to apply to certain transfers, or agreements for the transfer, of residential land made on or after 1 September 2008

Clause 24 amends Schedule 4A of the *Duties Act 2001*, which prescribes the amount of the first home concession for transfer duty, to replace the first home concession amounts with new amounts commencing 1 September 2008.

Clause 25 provides that part 3 amends the *Land Tax Act 1915*.

Clause 26 replaces 62 of the *Land Tax Act 1915* with a new provision which provides that the *Land Tax Act 1915* as amended by Part 3 of this Bill applies to land tax levied for a financial year starting on or after 1 July 2008.

Clause 27 amends Schedules 1 and 2 of the *Land Tax Act 1915*, which prescribe rates of land tax for particular individuals and for companies, absentees or trustees, to replace existing rates with new rates.

Clause 28 provides that part 4 amends the *Pay-roll Tax Act 1971*.

Clauses 29 to 34 amend the formulas in sections 17, 23, 29, 33, 37 and 41 of the *Pay-roll Tax Act 1971* to extend the rate of reduction of the statutory deduction to \$1 for every \$4 of wages above the \$1 million threshold.

Clause 35 replaces section 97A of the *Pay-roll Tax Act 1971* with a new provision which provides that the *Pay-roll Tax Act 1971* as amended by Part 4 of this Bill applies for pay-roll tax levied on taxable wages paid or payable in the financial year starting on 1 July 2008 and each later financial year.

Clause 36 states that part 5 amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Clause 37 inserts a new section 592A into the *Petroleum and Gas (Production and Safety) Act 2004* which provides for the definition of “quarter” which is to apply to chapter 6, part 2 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Clause 38 amends section 593 of the *Petroleum and Gas (Production and Safety) Act 2004* and provides that for any quarter in which a petroleum producer produces petroleum that is disposed of, supplied to a person, flared, vented or otherwise, or stored, a petroleum royalty return is required to be lodged.

Clause 39 amends section 594 of the *Petroleum and Gas (Production and Safety) Act 2004* and provides that a written royalty return is to be lodged one month after a quarter in which petroleum is produced. This clause also provides for the insertion of a note that states that the first quarterly royalty

return, required to be lodged, is for the quarter ending 30 September 2008, given the transitional provisions provided for under section 940.

Clause 40 inserts a new chapter 15 part 7 into the *Petroleum and Gas (Production and Safety) Act 2004* providing for the insertion of chapter 15, part 7 as transitional provisions for the *Petroleum and Gas (Production and Safety) Act 2004*. The transitional provisions provide that monthly royalty returns are to continue to be provided by petroleum producers on a monthly basis for each month, ending before 1 July 2008, in which petroleum was produced, disposed of, or stored. After the monthly return has been submitted for the month of June 2008, the next royalty return will need to be submitted for the quarter ending 30 September 2008, and for each quarter thereafter.

Clause 41 amends schedule 2 (Dictionary) of the *Petroleum and Gas (Production and Safety) Act 2004* and provides for the insertion of the definition of “quarter” for chapter 6, part 2 of the *Petroleum and Gas (Production and Safety) Act 2004*.