

# State Taxation Acts (Amendment) Bill

## EXPLANATORY MEMORANDUM

### PART 1—PRELIMINARY

- Clause 1 outlines the purpose of the Bill.
- Clause 2 is the commencement provision.

### PART 2—FINANCIAL INSTITUTIONS DUTY ACT 1982

- Clause 3 amends section 28(4)(a) of the **Financial Institutions Duty Act 1982** to ensure that amounts paid under a continuing credit contract can be paid into a credit provider's exempt account. This provision will avoid duty also being paid by the credit provider's financial institution under section 18 on the same receipts.
- Clause 4 repeals Part X of the **Financial Institutions Duty Act 1987** which contains transitional and consequential provisions relating to periods before March 1983. The operation of these provisions is spent.

### PART 3—LAND TAX ACT 1958

- Clause 5 makes the following amendments the **Land Tax Act 1958**:
- Sub-clause (1) amends section 3(1) to include references in the general definitions section to the definitions in section 9(3) of "ex-servicemen" and "mine";
  - Sub-clause (2) amends section 3(1) to repeal paragraph (b) of the definition of "public statutory authority" which is no longer applicable with the substitution of section 9(1AD);
  - Sub-clause (3) makes a number of amendments to sub-sections (2), (2A), (4) and (6) of section 3 to ensure that the valuation in that provision may be used in the assessment of special land tax under section 10;
  - Sub-clause (4) amends section 9 to ensure that the definition of "mine" in section 9(3)(a) includes either persons holding a licence under the **Mineral Resources Act 1990** or persons operating a coal mine to generate electricity in the Latrobe Valley.

Clause 6 makes a number of amendments to section 9 of the **Land Tax Act 1958**:

- Sub-clause (1) amends section 9(1)(b) to clarify that a public statutory body that is exempted from land tax can become liable for land tax by Order of the Governor-in-Council. Land vested in a declared public statutory body used exclusively as public open space or parkland will remain exempt;
- Sub-clause (2) repeals section 9(1AC) which refers specifically to the Melbourne and Metropolitan Board of Works, a reference which is no longer applicable due to the amendment to section 9(1)(b), the substitution of section 9(1AD) and the repeal of section 9(2D);
- Sub-clause (3) substitutes a new section 9(1AD) to permit an Order by the Governor in Council to declare when a public statutory body, which includes a significant commercial government business enterprise (GBE), is to be liable for land tax;
- Sub-clause (4) repeals section 9(2D) which contains an obsolete reference.

Clause 7 amends section 93(1)(f) of the **Land Tax Act 1958** to increase the maximum penalty which may be imposed by a regulation made under the Act for breach of a regulation from \$100 to 20 penalty units (\$2000).

Clause 8 makes technical amendments to the Second Schedule to the **Land Tax Act 1958**:

- Sub-clause (1) removes unnecessary references in clauses 1 and 1A;
- Sub-clause (2) substitutes new clauses 1B(1), (2), (3) (4) and (5). The substituted sub-clauses clarify the operation of, and remove technical deficiencies from, the capping provisions by which the land tax payable in the years 1994, 1995, 1996 and 1997 was adjusted so as not to vary from a fixed percentage from the land tax payable on the same holdings in 1993.
- Sub-clause (3) deems any land tax payable in the years 1995, 1996 and 1997 to have been determined in accordance with the amendments to the Second Schedule introduced by this Bill.

#### **PART 4—PAY-ROLL TAX ACT 1971**

Clause 9 repeals a number of obsolete references and provisions in the **Pay-roll Tax Act 1971**:

- Sub-clause (1) repeals references to the "minimum amount" in section 9A(3A)(e) consequent upon the repeal of the definition of that expression.
  - Sub-clause (2) amends section 9B to repeal the definition of "minimum amount" which is spent and repeal other obsolete provisions.
- Clause 10 substitutes a new section 10(1)(d) of the **Pay-roll Tax Act 1971** to amend the exemption for schools. The exemption will now apply to a school registered under the **Education Act 1958** which is not carried on for the purpose of profit to the person or individual members of the person conducting the school. The exemption to tax extends only to wages payable in relation to the provision of education within that particular school.
- Clause 11 repeals further obsolete and spent provisions and references in sections 11C, 13(4) and (5), 18(9), Part VA and Schedule Six to the **Pay-roll Tax Act 1971**.
- Clause 12 contains statutory revision corrections to effect amendments to the **Pay-roll Tax Act 1971** which were ineffective when purportedly made by the **State Taxation (Amendment) Act 1992**.

#### **PART 5—STAMPS ACT 1958**

- Clause 13 inserts a new section 41 into the **Stamps Act 1958**. This section allows persons authorised under section 40A of the **Stamps Act 1958** to pay duty on a return system to set-off duty overpaid due to the miscalculation of duty on an instrument or an arithmetical error in calculating the total of a return against that person's liability to duty under a later return. The authorised person must make a statement to the Commissioner giving details of the set-off, re-endorse the incorrectly stamped instrument and reimburse any person to whom the set-off amount was charged.
- Clause 14 amends section 60F(1)(a)(ii) of the **Stamps Act 1958**. The amendment allows companies to register transfers of marketable securities which would be exempt from duty under Exemption 5 paragraphs (b),(g) and (j) of Heading IV of the Third Schedule to the **Stamps Act 1958**.
- Clause 15 amends the heading to sub-division (5) of Division 3 of Part II of the **Stamps Act 1958** to describe the contents of that sub-division correctly.
- Clause 16 amends section 67A of the **Stamps Act 1958** to include de facto spouses in the definition of relative so that the exemption for nominee transfers extends to transfers between de facto spouses.

Clause 17 makes a number of amendments to sections 131AA and 131AC of the **Stamps Act 1958**:

- Sub-clause (1) amends section 131AA to insert a definition of "rental agreement".
- Sub-clause (2) amends section 131AA to insert a new sub-section (3) which is the nexus provision, specifying the rental agreements to which the Act is to apply.
- Sub-clause (3) amends section 131AC to insert new sub-sections (1) and (2). The new sub-section (1) requires the monthly statement of registered persons as to amounts received in respect of rental business to specify the total amounts received from rental agreements before 1 January 1997 and the total amounts received from rental agreements on or after 1 January 1997. The new sub-section (2) requires the registered person to pay duty of 1.5% on amounts received in respect of rental agreements entered into before 1 January 1997. Duty of 0.75% must be paid on amounts received in respect of rental agreements entered into on or after 1 January 1997. The \$6,000 monthly threshold (under which duty is not payable) is first deducted from the amount received in respect of rental agreements entered into before 1 January 1997. If there is any balance remaining of the monthly threshold after that deduction, that amount is then deducted from amounts received in respect of rental agreements entered into on or after 1 January 1997 to calculate the duty payable in a particular month.
- Sub-clause (4) provides that the amount of duty payable by a registered person on a monthly statement relating to January 1997 and each subsequent month is determined by section 131AC as amended by this Bill.

Clause 18 amends section 137D of the **Stamps Act 1958** by inserting a new sub-section (5). The new sub-section enables an Order of the Governor in Council published in the Government Gazette to be made whereby a public statutory body that is exempted from stamp duty on mortgages, bonds, debentures or covenants becomes a declared public statutory body so that the exemption in respect of those instruments no longer applies.

Clause 19 makes amendments to section 137F of the **Stamps Act 1958**:

- removes the exclusion of mortgages of land from the credit contracts now regulated by the Consumer Credit (Victoria) Code which are to be exempt from duty. Where a credit contract is entered into for personal, domestic or household purposes, it is a loan to which the Consumer Credit (Victoria) Code applies and will be exempt from stamp duty

irrespective of the manner in which it is secured. Housing loans or loans secured by a mortgage over real property for the acquisition, erection or extension of a private dwelling house are not credit contracts to which the Code applies and will not benefit from the exemption.

- Sub-clause (2) provides that section 137F(2A) as amended by this Bill applies to all securities given on or after 1 November 1996.

Clause 20 inserts a new section 137MD in the **Stamps Act 1958**. This section extends the stamp duty exemption on mortgage documents entered into for the refinancing of a loan for business purposes in section 137MC to extend to loans from a solicitor's trust account funds. The exemption requires that the loan arrangements include the discharge of a former mortgage and that stamp duty was paid on that former mortgage. A person entering a mortgage to which the section applies may apply for exemption and the solicitor giving the mortgage must provide a statement verifying the criteria for the exemption. Penalties are provided for false or misleading statements on an application. The extent of the exemption is to the portion of the loan which is used to discharge the prior loan. The exemption will apply to any loan entered into on or after this Bill coming into force.

Clause 21 amends the Third Schedule to the **Stamps Act 1958** by substituting a new clause (4) of the Exemptions applying to Heading XXII. The new clause excludes a declared public statutory authority (being an authority which has been declared under the new section 137D(5) by an Order of the Governor in Council published in the Government Gazette) from the class of public statutory authorities which are exempt from stamp duty on mortgages, bonds, debentures and covenants.

## **PART 6—TAXATION (RECIPROCAL POWERS) ACT 1987**

Clause 22 inserts a new paragraph (h) in section 3(1) of the **Taxation (Reciprocal Powers) Act 1987** to include the **Liquor Control Act 1987** in the definition of "State Taxation Act".

Clause 23 inserts a new section 6A into the **Taxation (Reciprocal Powers) Act 1987**. This section creates offences relating to the giving of false or misleading statements to a State Commissioner or a Corresponding Commissioner (other than when given on oath or affirmation or by statutory declaration). A penalty of 10 units is provided for a breach of this section. A statutory defence provides that a person is not guilty of an offence under this section if that person believed on reasonable grounds that the statement was not false or misleading at the time it was made.

