

Revenue and Other Legislation Amendment Bill 2009

Explanatory Notes

Objectives of the Bill

To amend the:

- *Land Tax Act 1915* to remove the prohibition on landlords passing on land tax directly to tenants;
- *Land Tax Act 2001* and *Land Tax Regulation 1999* the *Pay-roll Tax Act 1971* and the *Pay-roll Tax Regulation 1999*, the *Duties Act 2001*, the *First Home Owner Grant Act 2000* and the *Taxation Administration Act 2001* and the *Taxation Administration Regulation 2001* to support improved revenue administration, including by applying the *Taxation Administration Act 2001* to land tax administration and facilitating the implementation of Release 3 of the Revenue Management System being developed by the Office of State Revenue;
- *Consumer Credit Code* (Credit Code) to ensure the mandatory comparison rate scheme contained in the Credit Code does not expire; and
- *Housing (Freeholding of Land) Act 1957* to address potential issues associated with cancellation of State Housing and Workers' Home Perpetual Town Leases.

Reasons for the Bill

Revenue Legislation Amendments

The current restriction in the *Land Tax Act 1915* on landlords passing on land tax directly to tenants is to be removed. However, similar restrictions contained in the *Residential Tenancies Act 1994* and the *Retail Shop Leases Act 1994* will remain in place.

The *Taxation Administration Act 2001* contains provisions about the administration of revenue laws including assessment, collection and payment, refunds, objections and appeals, unpaid tax interest and penalty tax,

confidentiality, investigations and enforcement. It was developed to provide modern standard administrative provisions for revenue legislation administered by the Office of State Revenue relating to duties (from 1 March 2002), pay-roll tax (from 1 July 2005) and land tax and has also been applied to the *Community Ambulance Cover Act 2003* (from 1 July 2003). The Bill will apply the *Taxation Administration Act 2001* to the *Land Tax Act 1915* from 2009-10 onwards, completing its implementation.

The Revenue Management System being developed by the Office of State Revenue will deliver a single integrated system to replace existing systems for major revenue streams administered by the Office. This will provide a secure e-business interface to allow on-line access to information, e-lodgement, self assessment, e-payment, enhanced revenue reporting and estimation and revenue base management capability. Release 1 was launched on 4 July 2005 and covered pay-roll tax and generic functionality. Release 2 for duties was launched by March 2008. Release 3 is scheduled for go-live in July 2009 and will cover land tax and Community Ambulance Cover as well as adopt the latest 'off the shelf' tax and revenue management and grants management solutions. As for Releases 1 and 2, amendments are required to support the implementation of Release 3.

Other revenue administration amendments proposed by the Bill will amend the-

- *Pay-roll Tax Act 1971* to adjust the pay-roll tax deduction calculations to cater for leap years, to remove the hyphen from "pay-roll" and to require employers who lodge periodic returns less frequently than monthly to notify the Commissioner of a relevant increase in their estimated wages for the financial year.
- *Taxation Administration Act 2001* to change the accrual of unpaid tax interest from daily to weekly and extend the application of penalty tax to remove an anomaly;
- *Land Tax Regulation 1999* to authorize persons in addition to purchasers to obtain land tax clearance certificates, empower the Commissioner of State Revenue to recover costs associated with registering and releasing a charge over land registered for unpaid land tax and allow a range of electronic service providers to provide land tax clearances.

The revenue amendments in the Bill make no changes to tax rates, exemptions or concessions.

Consumer Credit Code

Under the Australian Uniform Credit Laws Agreement 1993, the governments of each state and territory agreed to establish a uniform scheme to regulate consumer credit. The Credit Code applies to most consumer credit products, including personal loans and housing loans. Queensland holds the template legislation for the Credit Code, which is appended to the *Consumer Credit (Queensland) Act 1994*. Changes made by Queensland to the template will automatically apply in most of the other States and Territories.

On 1 July 2003, comparison rates became mandatory for all fixed term consumer credit. Mandatory Comparison Rates combine the interest rate and fees and charges of a loan, into a single percentage figure. The purpose of the Mandatory Comparison Rate disclosure was to help consumers understand the true cost of a fixed term loan and compare various loan products in order to select a product that best suited their budget and other borrowing needs.

In implementing Mandatory Comparison Rates, the Ministerial Council on Consumer Affairs committed to a sunset period, with an independent review prior to the legislated sunset date of 30 June 2009. In May 2008, the Ministerial Council on Consumer Affairs decided to maintain comparison rates for advertisements after considering the recommendations of an independent review and national Regulatory Impact Statement. Consequently, the sunset date was to be removed from the Credit Code.

Last year, the Council of Australian Governments (COAG) agreed to transfer regulatory responsibility for credit from the States and Territories to the Commonwealth by 1 July 2009. The proposed national credit laws will maintain comparison rates for advertisements and therefore will not include a sunset date. However, until those laws commence, the current sunset date in the State and Territory Credit Code remains in force.

The referral of power for credit to the Commonwealth has recently been delayed by a matter of months and the new national credit laws will no longer commence on 1 July 2009. As the current sunset date is 30 June 2009, the sunset date contained in section 146D of the Credit Code urgently needs to be removed prior to 30 June 2009, when the provision expires. This will avoid any possibility of the comparison rate scheme expiring prior to the Commonwealth laws commencing.

Amendments to the Housing (Freeholding of Land) Act 1957

Under the provisions of the *Housing (Freeholding of Land) Act 1957*, from 1 July 2009 there is a process for automatic conversion of residential leases to a freehold grant. As the *Housing (Freeholding of Land) Act 1957* presently stands, the relevant provisions operate so that upon registration of a prescribed change of ownership of an unconverted lease the lease will automatically be cancelled and then at some stage thereafter the Governor in Council must issue a deed of grant for the land the subject of the cancelled lease. The risk with this process is that there is a period of time or delay between the cancellation of the lease and the issue of the deed of grant. During this period the land would become unallocated State land which in turn could be made subject to a native title claim.

The objective of the proposed amendments is to make it clear that the land does not revert to unallocated State land for the period between the registration of the prescribed change of ownership and the issue of the deed of grant to the new owner for the land. Under the proposed amendments the relevant lease will now be cancelled upon the registration of a deed of grant for the land contained in the lease. Further some consequential amendments are required to be made to the *Housing (Freeholding of Land) Act 1957* as a result of the proposed amendments.

How objectives are achieved

Removal of the restriction in the Land Tax Act 1915 on landlords passing on land tax directly to tenants

The *Land Tax Act 1915* provides that any provision in a lease requiring a lessee to pay land tax or to reimburse a landlord for land tax is unenforceable. Landlords of commercial premises can recover land tax by taking estimated future land tax costs into account in setting rentals.

Similar prohibitions on landlords passing on land tax to tenants are contained in the *Residential Tenancies Act 1994* and the *Retail Shop Leases Act 1994*.

Other Australian jurisdictions only restrict the passing on of land tax to tenants under residential leases or retail shop leases. Consistent with that position, it is proposed to remove the general prohibition in the *Land Tax Act 1915* for new leases entered into after the amendment is made. The existing prohibitions in respect of residential premises and retail shops will be maintained as they are outside the scope of the Bill.

Application of the Taxation Administration Act 2001 to land tax administration

The Bill provides that the *Land Tax Act 1915* will be a revenue law for the purposes of the *Taxation Administration Act 2001* so that the two Acts must then be read together as a single Act. Consequential amendments are also being made to the *Land Tax Act 1915* to remove administrative provisions no longer required.

The Commissioner of State Revenue is responsible for the administration of the revenue laws to which the *Taxation Administration Act 2001* applies and will replace the Commissioner of Land Tax as the person responsible for administration of the *Land Tax Act 1915*. This is a change in title only as, under the *Land Tax Act 1915*, the Commissioner of Land Tax is the person holding office as the Commissioner of State Revenue appointed under the *Taxation Administration Act 2001*.

The following summary outlines the main administration components of the *Taxation Administration Act 2001* in their application to land tax.

Assessments of tax

The *Taxation Administration Act 2001* establishes a standard regime for the assessment of tax liability arising under a revenue law. The making of an assessment underpins tax liability and is the basis on which rights under the *Taxation Administration Act 2001* flow such as rights of review and refund.

Payments of tax

The current provisions of the *Land Tax Act 1915* provide little guidance about the allocation of payments to different liabilities. Payment methods, timeframes for making payment, the allocation of payments and the Commissioner's power to recover debts will all now be specified under the *Taxation Administration Act 2001*.

Refunds of tax and other amounts

The *Taxation Administration Act 2001* establishes a standard regime for refunds under a revenue law, linking entitlement to a refund to a reassessment of tax decreasing liability or where an assessment of tax is simply overpaid. Refunds of land tax under the *Taxation Administration Act 2001* will therefore be limited to these circumstances. The period within which a refund may be made corresponds to the five year period for making a reassessment or, in the case of simple overpayments, five years from the date of the overpayment.

The *Taxation Administration Act 2001* will also enable a refund amount to be applied by the Commissioner of State Revenue to a current liability of the taxpayer for land tax or under another revenue law, or to hold the amount to be applied against a liability expected to arise within 60 days.

Unpaid tax interest

The *Taxation Administration Act 2001* provides for the imposition of unpaid tax interest to encourage payment of tax on time and to compensate the State for periods during which tax is unpaid. Unpaid tax interest is imposed from the time when the tax was initially due until the tax is paid. The Commissioner of State Revenue may fully or partially remit unpaid tax interest.

The rate of unpaid tax interest is set annually as the sum of the bank bill yield rate and 8 per cent. The next rate review is due in July 2009.

Penalty tax

The *Taxation Administration Act 2001* establishes a standard penalty tax regime as an administrative sanction where taxpayers have failed to comply with their tax obligations. Penalty tax may be imposed in the following cases.

- A default assessment is issued because a self assessment has not been made or the taxpayer has not complied with an information or lodgement requirement issued by the Commissioner of State Revenue.
- There is a reassessment of a default assessment.
- On a reassessment, the primary tax assessed increases.

The maximum rate of penalty tax is 75% of the amount of primary tax assessed or reassessed, or of the increase in primary tax reassessed. Penalty tax may be increased by up to 20% if the taxpayer has hindered or prevented the Commissioner from becoming aware of the nature and extent of the tax liability or a taxpayer becomes aware that an assessment was made for a lower amount than it should have been and the taxpayer fails to notify the Commissioner. (Some minor amendments to interest and penalty tax are being made by this Bill, as explained elsewhere in these Notes).

The Commissioner may also fully or partially remit penalty tax.

Objections and appeals against assessments

The uniform review provisions of the *Taxation Administration Act 2001* will provide a two tiered review process involving objection and appeal. A

taxpayer can object to an assessment and the objection is decided by the Commissioner of State Revenue. Appeal to the Supreme Court is then available if the taxpayer is dissatisfied with the Commissioner of State Revenue's decision on objection.

The *Land Tax Act 1915* includes an objection process and an appeal avenue to the Land Court. However, there is currently an anomaly in the *Land Tax Act 1915* allowing a taxpayer to appeal to the Land Court before an internal objection is heard. This has proven confusing for taxpayers who will often lodge an appeal in the Land Court in relation to a simple matter that could be resolved through consideration of an objection.

The *Taxation Administration Act 2001* does not provide any separate rights of review under the *Judicial Review Act 1991* where the *Taxation Administration Act 2001* provides review rights. However, where there are no rights of objection or appeal provided by the *Taxation Administration Act 2001*, the *Judicial Review Act 1991* continues to apply except for limited classes of decisions declared in the *Taxation Administration Act 2001* to be non-reviewable.

Investigations

The standard powers of investigation in the *Taxation Administration Act 2001* will apply to land tax. These powers of the Commissioner of State Revenue or an investigator include the power to require the provision of information or documents, require a person to attend and provide information or documents, enter places and exercise various information gathering powers, seize or retain documents or other things and authorise, conduct, or assist interstate investigations.

Confidentiality

The *Taxation Administration Act 2001* establishes an obligation of confidentiality for officials in certain circumstances while specifying the circumstances in which confidential information may be disclosed, as well as the consequences for disclosing information in breach of the provisions.

Record keeping

Under the *Taxation Administration Act 2001*, taxpayers are generally required to keep records that enable liability to tax to be determined until the later of 5 years after the record was made or obtained or 5 years after completion of the transaction or matter to which the record relates.

Enforcement and legal proceedings

The *Taxation Administration Act 2001* establishes a number of offences of general application to the revenue laws to which it applies. In addition, where the *Taxation Administration Act 2001* or those revenue laws impose obligations, specific offences are created for failure to comply. The *Taxation Administration Act 2001* also specifies the arrangements for the institution and conduct of proceedings, prosecution actions, evidentiary matters, the time within which actions may be brought, how actions may be instituted and the orders which may be made by a court.

Application of the *Taxation Administration Act 2001* to land tax will generally result in an increase in the penalty for commission of an offence to 100 penalty units, reflecting current standards relating to penalties under revenue laws.

An additional penalty for second-time offences will also apply.

The period for commencing prosecution actions will be standardised to 5 years after commission of an offence. This standard period accords with the record retention period.

The *Taxation Administration Act 2001* imposes an obligation on executive officers of a corporation to ensure compliance with the tax laws. This encourages officers who can influence a corporation's conduct to ensure that all reasonable steps are taken to ensure compliance by the corporation. Also, partners or members will be taken to have committed any offence committed by a partnership or unincorporated association, subject to certain defences.

Giving and lodging documents

The *Taxation Administration Act 2001* clarifies how and when documents must be given to or by the Commissioner of State Revenue. Additional methods of service can also be prescribed by regulation.

Transitional arrangements

Provisions of the *Taxation Administration Act 2001* of an administrative nature will apply to land tax from the commencement of the Act regardless of whether or not the relevant liability for land tax arose, or the relevant act or omission occurred, before or after that date. This will enable the new, more efficient, administrative arrangements to apply as broadly as possible. For example, provisions in the *Taxation Administration Act 2001* governing refunds will apply to all refunds paid after commencement of the Act,

whether or not the refund relates to a liability arising before or after commencement.

However, the *Taxation Administration Act 2001* will not apply to liability for land tax arising, or acts or omissions occurring, before the commencement date of the Bill where that would affect the substantive rights, liabilities or obligations of a taxpayer. The provisions of the *Land Tax Act 1915* as in force at the relevant time will continue to apply in these cases. Examples include provisions governing the calculation of tax liability, assessments made or issued before the commencement date and provisions imposing penalties or giving rise to an entitlement to a refund in relation to events occurring before that date. An exception to this is the availability of appeal rights.

All appeal rights exercised after commencement of the Act will be under the *Taxation Administration Act 2001*. Appeals relating to pre-commencement liabilities may still be lodged up to 5 years after commencement of the Act for instance where a reassessment may issue within that 5 year period. In the past, the existence of different avenues of appeal for the same tax stream has brought some criticism from the courts. For this reason, and to provide greater clarity for taxpayers, all appeal rights exercised after commencement will be under the *Taxation Administration Act 2001*. Appeal rights under that Act are currently to the Supreme Court.

Revenue amendments to support Release 3 of the Revenue Management System

Pay-roll tax - incorporating the last periodic return in the annual return

Under the *Pay-roll Tax Act 1971*, employers are required to lodge periodic returns and an annual return, as well as a final return in certain circumstances. However, no actual periodic return need be lodged. Instead, upon payment of their periodic liability by either an e-payment or by a manual payment with a payment slip, employers are taken to have complied with their obligation to lodge the periodic return for that return period. The annual return is due 21 days after the end of the financial year and is an actual return with a detailed breakdown of wages paid during the year.

A number of employers continue to incorrectly assume that the pay-roll tax payable for the last periodic return period for the year (that is, the periodic return period ending on 30 June) can be included in the annual return. As a result, these employers make one less periodic payment than required.

Also, many employers incorrectly use the annual return payment reference code for their June payment which creates significant administrative work.

The Bill amends the *Pay-roll Tax Act 1971* to remove the obligation to lodge the last periodic return for a year (that is, to make a separate payment for the periodic return period ending 30 June) and to incorporate the periodic liability for that period in the annual return. This change will first apply to the last periodic returns due for 2008-09 which would otherwise be due by 7 July 2009.

The last periodic return period will continue to be a periodic return period for other purposes in the *Pay-roll Tax Act 1971*.

Pay-roll tax - payment information for periodic returns

Presently, the Office of State Revenue receives pay-roll tax payments (usually monthly) from employers during the financial year without any details about composition of the payment. Detailed information is provided only in the annual return. The Bill amends the *Pay-roll Tax Act 1971* to require all employers to provide the Commissioner of State Revenue with a breakdown of their periodic pay-roll tax payments for each period into tax and assessed interest. For an employer who makes a manual payment, the breakdown will need to accompany the payment. For an employer who pays electronically, the employer will need to electronically provide the breakdown.

Pay-roll tax - remove the requirement to notify the fixed periodic deduction

In calculating an employer's taxable wages, employers are entitled to claim a reducing statutory deduction of up to \$1 million. No pay-roll tax is payable where an employer's taxable wages do not exceed that amount. The deduction reduces by \$1 for every \$4 by which the wages exceed the \$1 million threshold and cuts out at \$5 million. Employers self assess their pay-roll tax liability including their entitlement to the deduction which is apportioned over the various periodic return periods (usually monthly) during the year. The part of the deduction claimed each period is called a periodic deduction.

For employers who pay wages solely in Queensland and are not members of a group for pay-roll tax purposes, calculating the periodic deduction is straightforward as it is based on Queensland wages for the period. The calculation is more complex for employers who also operate outside Queensland and/or are the designated group employer of a group for pay-roll tax purposes. The calculation in these cases involves taking into

account the total Australian wages, group wages or both. To simplify matters, the *Pay-roll Tax Act 1971* allows these employers to self assess a fixed periodic deduction which they will claim for each period during the year. Employers must give notice to the Commissioner of State Revenue of the amount of their fixed periodic deduction applicable from time to time and the Commissioner has power to nominate another amount by notice in writing to the employer.

The Bill amends the *Pay-roll Tax Act 1971* to remove the requirement for the giving of the notification of fixed periodic deduction. The Commissioner of State Revenue will rely on the annual return process to make any necessary adjustments.

Duties – change to self assessment process for party and agent self assessors

Most duty payable under the *Duties Act 2001* is assessed and paid under the self assessment system. The *Duties Act 2001* makes provision for registration with the Office of State Revenue as a self assessor. In particular, parties to transactions and agents for parties to property transactions (mainly solicitors) may be registered.

Self assessors who are agents (mainly solicitors) lodge periodic (mainly weekly) returns of transactions (mainly conveyances) in which they act for clients.

The Bill amends the *Duties Act 2001* to provide for lodgement by party and agent self assessors of a separate transaction statement for each transaction. That is, instead of lodging periodic returns of multiple transactions, self assessors may be required to lodge a separate statement for each transaction within 30 days of the transaction being entered into. Substantially the same information will be required to be provided to the Office of State Revenue in a transaction statement as under the present returns system. The lodgement will be taken to be an assessment of the duty. Payment of the duty will be due within 14 days after lodgement.

There is no change to insurance duty return arrangements.

Taxation Administration Act 2001 and Taxation Administration Regulation 2001 – power of the Commissioner of State Revenue to require a person to lodge documents or pay amounts electronically

The Bill amends the *Taxation Administration Act 2001* to confer on the Commissioner of State Revenue the power to require a person to lodge a document or documents or pay an amount or amounts electronically. For

example, the Commissioner may require a duties self assessor to lodge with the Commissioner electronically all returns or transaction statements which the person may, in future, be required to lodge under the *Duties Act 2001*. Also for example, the Commissioner may require a person to pay to the Commissioner by one or more stated electronic ways all duty, types of duty or other amounts which the person may, in future, be liable to pay under the *Duties Act 2001* or the *Taxation Administration Act 2001*.

The person may apply to the Commissioner to withdraw the notice on the following grounds only.

- The standard of the technological infrastructure servicing the area in which the person would ordinarily comply with the notice makes it impracticable for the person to comply. This may apply to a person in a rural or remote area where reliability and speed of electronic access is a significant issue.
- The number of documents or payments the notice is likely to apply to in a year is so small as not to justify the costs the person would have to incur to install or modify an information system to enable compliance with the notice. This applies where the person has only small volumes of lodgements or payments which do not justify the costs of acquiring the basic computer hardware, software and Internet access to enable connection to the Commissioner of State Revenue's computer system. For example, a sole practitioner who is registered as a self assessor under the *Duties Act 2001* may act for clients in only a few conveyances each month because the practice focuses mainly in other areas of law. If the practitioner would need to incur costs in acquiring a computer or modifying an existing computer to access the Commissioner's computer, consideration would need to be given to whether volumes of lodgement or payment are so low as not to justify those costs.

The Bill makes provision for other grounds of application for withdrawal of a notice to be prescribed by regulation.

If the Commissioner refuses to approve an application to withdraw a notice, the person may appeal against the decision.

The Commissioner may impose a penalty of \$100 for each occasion of non-compliance, with the right to remit the penalty in whole or part.

Compliance with the notice is not required on an occasion when the person to whom the notice was given is unable to comply due to circumstances

beyond their control. This may arise, for example, where the person's computer malfunctions or access to the Internet or to the Commissioner's computer system is unavailable.

Taxation Administration Act 2001 and First Home Owner Grant Act 2000 – automated decision-making using an approved information system

Revenue authorities systems routinely use information systems in administration of the revenues, including for issue of assessments or making payments automatically, based on their general power of administration of revenue laws.

Amendments to the *Taxation Administration Act 2001* and *First Home Owner Grant Act 2000* in the Bill will confirm the power of the Commissioner of State Revenue in this regard by empowering the Commissioner to arrange for use of an approved information system for any purposes for which the Commissioner may make a relevant decision under the revenue legislation. Decisions made by the information system are taken to be decisions of the Commissioner. However, this will not apply to decisions which involve the exercise of a discretion.

The amendments do not affect the usual rights which a person may have under the revenue legislation in relation to the decision, in particular, rights to seek a review of the decision.

Other revenue administration amendments

Pay-roll Tax Act 1971

- The statutory deduction formulae do not make provision for leap years. The current formulae are based on 365 day years and therefore increase deductions in a leap year. Amendments in the Bill will ensure that the formulae work correctly for a leap year.
- Employers who are authorised by the Commissioner of State Revenue to lodge periodic returns less frequently than monthly will be required to notify the Commissioner of a relevant wage change, that is, if their wages for the year are estimated to be more than 30 per cent more than the actual wages paid or payable for the previous year. This will enable the Commissioner to decide if the employer ought to pay pay-roll tax more frequently than originally authorised. A similar notification requirement already applies for employers whom the Commissioner has exempted from lodging periodic returns.
- The Bill will remove the hyphen from “pay-roll” to align with most other states and territories and common usage.

Taxation Administration Act 2001

- Unpaid tax interest accrues on tax liabilities which are paid late or underpaid, including due to late lodgement of information necessary to assess liability. The Bill will change the way that unpaid tax interest accrues from daily to weekly to eliminate small amounts. It will also assist administration and provide more certainty to taxpayers by ensuring that the unpaid tax interest payable remains stable for up to one week.
- Penalty tax applies where the Commissioner makes certain default assessments, reassessments of default assessments and reassessments increasing tax liability. Penalty tax is a sanction for non-compliance with the tax laws and is an alternative to prosecution. The Commissioner may issue a default assessment in three cases, namely, where the taxpayer has not complied with an information or lodgement requirement or has provided information that is inaccurate or incomplete or where the Commissioner does not have enough information to properly assess liability. Currently, penalty tax applies for a default assessment only in the first case. The inability to impose penalty tax in cases where taxpayers provide inaccurate or incomplete information, despite the taxpayer's culpability, is anomalous and inequitable. The Bill extends the application of penalty tax also to that circumstance. A related amendment in the Bill clarifies that the late lodgement of information or documents will not prevent the Commissioner from issuing a default assessment, thereby enabling the Commissioner to impose penalty tax. A further amendment cures an existing anomaly in the penalty tax regime.

Land Tax Act 1915

- Because land tax is a first charge on land, a purchaser may apply to the Commissioner for a land tax clearance certificate. In practice, applications are accepted from other persons, especially mortgagees. An amendment in the Bill will support this practice.
- Also, the Commissioner may register a charge over land to secure amounts of outstanding land tax. The costs of registration and release of the charge are recovered by the Commissioner when releasing the charge. An amendment in the Bill will support this practice.

Land Tax Regulation 1999

Currently, land tax clearance certificates may be obtained by lodging a paper application with the Office of State Revenue or applying electronically through the information broker, CITEC Confirm, which charges clients an additional delivery fee. An amendment in the Bill expands on-line land tax clearance functionality by including other information brokers approved by the Commissioner of State Revenue.

Consumer Credit Code

Objectives are achieved through the urgent removal of the sunset date contained in section 146D of the Credit Code. The amendment is necessary to ensure the requirement to provide comparison rates is retained until credit laws are referred to the Commonwealth in approximately November 2009. The amendment needs to take effect before the sunset date of 30 June 2009. If section 146D is not repealed, Part 9A of the Credit Code will expire and the scheme will lapse prior to the commencement of the new national credit laws, which maintains the comparison rate scheme.

Alternative method of achieving policy objectives

The policy objectives can only be achieved by legislative enactment.

Estimated cost for Government implementation

Revenue Legislation Amendments

Implementation costs are not expected to be significant. These costs relate to client education activities, changes in publications, documents, website and systems, staff training and managing enquiries through the implementation period.

Consumer Credit Code

There are no implementation costs associated with the amendment as it maintains the status quo.

Consistency with Fundamental Legislative Principles

Revenue Legislation Amendments

The proposed amendment conferring power on the Commissioner of State Revenue to require a person by notice in writing to lodge a document or documents or pay an amount or amounts electronically may raise the

fundamental legislative principle that the provision is an excessive and arbitrary delegation of legislative power to the Commissioner of State Revenue and that it would impose substantial costs on taxpayers and self assessors.

A fully mature e-business functionality for State revenue is in line with modern revenue administration and the trend for the community to transact business electronically. E-business functionality also significantly enhances the ability of the revenue office to manage the revenue base.

All state and territory revenue offices facilitate clients dealing electronically. New South Wales, South Australia, Western Australia, Tasmania and the Northern Territory also confer a power on the relevant revenue authority to require clients to transact with the revenue office by electronic means.

The Bill confers rights to apply to the Commissioner to withdraw a notice in certain circumstances and to appeal against the Commissioner's refusal of an application. Additional grounds of application may be prescribed by regulation. While a penalty may be imposed for non-compliance, the Commissioner also has power to remit the penalty in whole or part and there is a right of appeal against the penalty. There is no obligation to comply in cases where circumstances beyond the person's control prevent compliance. These provisions are considered to strike the appropriate balance between potential hardships in complying with a notice to conduct business electronically and the objective of a fully mature e-business functionality for State revenue.

There has been a high take-up by Office of State Revenue clients of e-business options as they have become available under previous Revenue Management System releases. Also, the power would be exercised after the Office of State Revenue had worked with relevant clients to encourage voluntary use of e-business and having regard to the circumstances.

A proposed amendment excluding the application of the *Judicial Review Act 1991* to the decision of the Commissioner to issue a notice requiring lodgement of a document or payment of an amount electronically or to refuse an application to withdraw such a notice raises the fundamental legislative principle issue of whether the legislation has sufficient regard to the rights and liberties of individuals. Exclusion of the application of the *Judicial Review Act 1997* is consistent with the existing approach under the *Taxation Administration Act 2001* precluding judicial review of decisions for which a right of review already exists. This approach accords with that

taken for income tax purposes. Failure by the Commissioner to make a decision on the application to withdraw a notice will continue to be subject to judicial review.

The Bill extends the application of penalty tax under the *Taxation Administration Act 2001* to situations where primary tax on a reassessment is less than that originally assessed but greater than that subsequently reassessed by the Commissioner. This amendment cures an existing anomaly in the penalty tax regime, thus ensuring equity between taxpayers. However, in the individual case this may infringe the fundamental legislative principle that the legislation have regard to the rights and liberties of individuals. This is because there may be a liability for penalty tax even though the reassessments are due to an administrative error by the Commissioner rather than any wrongdoing by the taxpayer.

The proposed approach is consistent with the existing penalty tax provisions of the *Taxation Administration Act 2001* which impose penalty tax wherever the primary tax on reassessment is greater than the primary tax originally assessed. The Commissioner has power to remit penalty tax and has issued a Public Ruling that provides for full remission where the need for the reassessment was outside of the taxpayer's control, or where the taxpayer has taken reasonable care to determine their liability and meet their obligations. See Public Ruling TAA060.2.1 – Penalty Tax on the Office of State Revenue's website at: www.osr.qld.gov.au Taxpayers also have standard objection and appeal rights against the imposition of penalty tax.

The other amendments do not raise any Fundamental Legislative Principles.

Consumer Credit Code

The amendment does not have any adverse impact on fundamental legislative principles.

Consultation

Revenue Legislation Amendments

Public consultation was undertaken in relation to the proposed land tax amendments to remove the restriction against passing on land tax directly to tenants, the application of the *Taxation Administration Act 2001* to land tax administration and changes to the interest and penalty tax regime under that Act. Consultation involved posting the draft provisions for these

amendments on the Office of State Revenue's website and specifically notifying relevant stakeholders.

Stakeholders specifically notified were the Association of Pay-roll tax Specialists, Australian Bankers Association, Australian Property Institute (Queensland Division), Chamber of Commerce and Industry Queensland, Devine Homes Pty Ltd, Institute of Chartered Accountants, National Institute of Accountants (Queensland Division), National Retail Association, Property Council of Australia, Property Owners Association of Queensland Inc., Queensland Bar Association, Queensland Law Society, Real Estate Institute of Queensland, Taxation Institute of Australia and the Urban Development Institute of Australia (Queensland). Members of the Commissioner of State Revenue's Taxation Consultative Committee were also consulted. This Committee consists of members of the major legal and accounting bodies. Some of the bodies listed above, were consulted through that Committee.

Consultation on the proposed amendments to support Release 3 of the Revenue Management System was undertaken with all relevant Departments. Key stakeholders were also consulted comprising the top ten pay-roll tax and duties clients of the Office of State Revenue, members of the Office's Taxation Consultative Committee consisting of the major legal and accounting bodies including the Queensland Law Society and the Taxation Institute of Australia. Other selected associations were also consulted.

Consultation on other revenue amendments was not considered necessary due to their technical nature.

Consumer Credit Code

Extensive national consultation was undertaken during an independent review and Regulatory Impact Statement of the comparison rate scheme and stakeholders are aware that the comparison rates scheme will be maintained. All jurisdictions (including the Commonwealth) agree to the need to urgently omit the expiry date for comparison rates.

Notes on Provisions

Clause 1 cites the short title of the Bill.

Clause 2 provides when various provisions of the Bill commence.

Part 2 Amendment of Consumer Credit Code

Clause 3 provides that Part 2 amends the Consumer Credit Code set out in the appendix to the *Consumer Credit (Queensland) Act 1994*.

Clause 4 removes section 146D of the Credit Code to ensure the comparison rate scheme contained Part 9A does not expire on 30 June 2009. This amendment is required as the comparison rate scheme is to be maintained.

Part 3 Amendment of *Duties Act 2001*

Clause 5 provides that the Act amended in Part 3 is the *Duties Act 2001*. The amendments in this Part extend the operation of the duties self assessment system for parties to instruments and transactions registered under Part 2 of Chapter 12 and for agents for parties to instruments and transactions registered under Part 3 of Chapter 12.

The *Duties Act 2001* is a revenue law for the *Taxation Administration Act 2001* and the two Acts are required to be read together. Under the self assessment system established by those Acts, self assessments of duty on certain instruments and transactions are made by registered self assessors by lodgement of returns of multiple transactions. Under proposed amendments in the Bill, a self assessment may also be made by lodgement of a transaction statement. A self assessment made by return will be a return self assessment. A self assessment made by lodgement of a transaction statement will be a standard self assessment.

The self assessor's notice of registration issued by the Commissioner of State Revenue will state the instruments and transactions for which either a return or transaction statement is required to be lodged.

Clause 6 amends section 445(2)(b) and (c) of the *Duties Act 2001* so that a notice of registration of a self assessor under Part 2 of Chapter 12 may apply also in relation to transaction statements.

Clause 7 amends section 447 of the *Duties Act 2001* to extend the restriction on lodgement by a self assessor of certain instruments for assessment by the Commissioner to instruments or transactions for which the self assessor, under their notice of registration, is required to lodge a transaction statement.

Clause 8 amends section 452 of the *Duties Act 2001* so that a notice of registration of a self assessor under Part 3 of Chapter 12 may apply also in relation to transaction statements.

Clause 9 amends section 454 of the *Duties Act 2001* to extend the restriction on lodgement by a self assessor of certain instruments for assessment by the Commissioner to instruments or transactions for which the self assessor, under their notice of registration, is required to lodge a transaction statement.

Clause 10 amends the heading to Part 4 of Chapter 12 of the *Duties Act 2001*.

Clause 11 amends section 455 of the *Duties Act 2001* so that it will apply for return self assessments only.

Clause 12 inserts a new section 455A in the *Duties Act 2001* which sets out the obligations of a self assessor for a standard self assessment in relation to lodgement of a transaction statement and other documents as required by the self assessor's notice of registration and stamping of the instrument to which the transaction statement relates.

Clause 13 amends section 470 of the *Duties Act 2001* to correct a drafting error in subsection (3). The clause also omits subsection (4) so that the effective date of cancellation of a self assessor's registration will be the date stated in the notice given by the Commissioner under subsection (3).

Clause 14 amends section 471B(2) of the *Duties Act 2001* to apply also for a transaction statement.

Clause 15 amends section 471C(1)(b) of the *Duties Act 2001* to apply also for transaction statements.

Clause 16 amends section 471E(1)(b) of the *Duties Act 2001* so that the liable party's obligation to pay to the self assessor the amount of duty, assessed interest and penalty tax on the instrument or transaction applies only for a return self assessment. That obligation will not apply for a standard self assessment.

For a standard self assessment (that is, a self assessment for which a transaction statement is required to be lodged), the party to the instrument or transaction to which the statement relates must pay the duty, assessed interest and penalty tax to the Commissioner. This obligation arises under the general provisions of the *Duties Act 2001*, such as section 17(2) in the case of transfer duty. Of course, the party may decide to pay the amount to the self assessor who acts for them in the transaction for payment to the Commissioner on their behalf. In that case, section 35 of the *Taxation Administration Act 2001*, as amended by the Bill, will require the self assessor to pay the amount to the Commissioner.

Section 471E(2) is amended by clause 16(2) to specify for subsection (1) the date by which the liable party must comply with subsection (1) for both a return self assessment and a standard self assessment. For a standard self assessment, the date by which the liable party must provide the self assessor the relevant instruments and other documents is 30 days after the date liability for duty for the instrument or transaction arises.

Clause 17 amends section 471I(1) of the *Duties Act 2001* so that Part 3 of Chapter 12A applies also for an instrument or transaction for which a self assessor registered under Part 2 of Chapter 12 is required or permitted under a notice of registration to lodge a transaction statement.

Clause 18 amends section 471J of the *Duties Act 2001* so that a relevant lodgement requirement does not apply for an instrument or transaction for which a self assessor registered under Part 2 of Chapter 12 either is required to lodge a transaction statement, or is permitted to lodge a transaction statement and does so.

Clause 19 amends section 480 of the *Duties Act 2001* so that the offences created under subsections (1) and (2) in relation to endorsement of an instrument under section 455 for return self assessments apply also to endorsement under new section 455A for standard self assessments. The amendment to subsection (2) recognises that, in the case of a standard self assessment, duty may be paid either directly to the Commissioner by the person liable to pay the duty or paid to the self assessor for payment to the Commissioner.

Clause 20 amends section 481 of the *Duties Act 2001* so that the offence created under that section in relation to endorsement of an instrument by a person who is not a self assessor applies also to endorsement in a way mentioned in new section 455A(1)(b) for standard self assessments.

Clause 21 amends section 488 of the *Duties Act 2001* which enables the Commissioner to impose an administrative penalty in relation to certain acts relating to self assessment. The amendments extend the application of the section so that it applies also for transaction statements.

Clause 22 amends section 491(1) of the *Duties Act 2001* which provides when an instrument is properly stamped. The amendment will ensure that an instrument is properly stamped if it is stamped under new section 455A in relation to standards self assessments.

Clause 23 amends the Dictionary in Schedule 6 of the *Duties Act 2001* by inserting definitions of *return self assessment* and *standard self assessment* which are linked to the definitions of those terms inserted by the Bill in the *Taxation Administration Act 2001*. The clause also inserts a definition of *transaction statement*.

Part 4 Amendment of *First Home Owner Grant Act 2000*

Clause 24 provides that the Act amended in Part 4 is the *First Home Owner Grant Act 2000*

Clause 25 inserts new section 70A in the *First Home Owner Grant Act 2000* which provides that the Commissioner may approve, and arrange for the use of, an information system to make a decision under that Act if the decision does not involve the exercise of the Commissioner's discretion. The decision is taken to be a decision made by the Commissioner.

Part 5 Amendment of *Housing (Freeholding of Land) Act 1957*

Clause 26 provides that the Act amended in Part 5 is the *Housing (Freeholding of Land) Act 1957*.

Clause 27 amends section 4C to provide that, if the lessee of a residential lease accepts an offer to convert, the Governor in Council must issue a deed of grant to the lessee for the land contained in the lease. On the registration of the deed of grant, the lease is cancelled.

Clause 28 omits section 5B(5) as it becomes redundant as a result of the amendments to section 4C. The clause also renumbers sections 5B(6) to (8) as sections 5B(5) to (7).

Clause 29 amends subsections 6B(2) and (3) so that on registration of the change of ownership, the Governor in Council must issue a deed of grant for the land contained in the lease to the transferee recorded under the converting change of ownership. On the registration of the deed of grant, the lease is cancelled.

Clause 30 amends section 9A to ensure that it is consistent with the amendments made to sections 6B and 4C.

Clause 31 makes consequential amendments to section 9B as a result of amendments made to section 6B.

Clause 32 amends section 10(2)(a) to provide that a contract for sale of an unconverted lease must include a clause stating that under the *Housing (Freeholding of Land) Act 1957*, the lease will be cancelled on registration of a deed of grant for the land contained in the lease. This amendment is consequential to the amendments being made to sections 6B, 9A and 9B.

Part 6 Amendment of *Land Tax Act 1915*

Clause 33 provides that Part 6 and schedule 2 amend the *Land Tax Act 1915*.

Clause 34 omits certain definitions from the *Land Tax Act 1915*, renumbers section 3 and inserts new definitions needed to make the *Land Tax Act 1915* a revenue law under the *Taxation Administration Act 2001*.

Clause 35 inserts a new section 3, setting out the relationship of the *Land Tax Act 1915* with the *Taxation Administration Act 2001*.

Clause 36 omits Part 2 of the *Land Tax Act 1915* which deals with administration.

Clause 37 omits sections 9B and 10A of the *Land Tax Act 1915*.

Clause 38 omits sections 11EB and 12 of the *Land Tax Act 1915* and inserts a new section 12 stating when liability for land tax arises.

Clause 39 replaces the heading for Part 4 of the *Land Tax Act 1915*.

Clause 40 omits sections 15, 16, 17A to 20B and 22 of the *Land Tax Act 1915* which include administrative provisions relating to tax returns, assessments, payments and the Commissioner's access powers.

Clause 41 omits a reference to section 48 *Land Tax Act 1915* because that section is being repealed.

Clause 42 omits Parts 4A and 5 of the *Land Tax Act 1915* which govern rights of and processes for taxpayer objections and appeals. It inserts a new section 27 which restates the provisions of the repealed section 27(1A), providing that there is no objection or appeal against an assessment on the grounds that the value provided by the chief executive under the *Valuation of Land Act 1944* is incorrect.

Clause 43 replaces the heading for Part 7 of the *Land Tax Act 1915*.

Clause 44 omits sections 32 to 33A of the *Land Tax Act 1915* which set out rules for payment of tax. These administrative matters are dealt with by the *Taxation Administration Act 2001*.

Clause 45 omits subsections 34(1) to (5) of the *Land Tax Act 1915* which set out processes for recovery of unpaid tax. These administrative matters are dealt with by the *Taxation Administration Act 2001*.

Clause 46 omits sections 35 and 36 of the *Land Tax Act 1915* which set out certain rules for substituted service and assessment. These administrative matters are dealt with by the *Taxation Administration Act 2001*.

Clause 47 amends section 37 of the *Land Tax Act 1915* to provide that an owner, purchaser or mortgagee can apply for a certificate from the Commissioner. It also provides that the Commissioner may recover from

the land owner, fees payable to the registrar of titles for registering and releasing a charge.

Clause 48 omits section 38 of the *Land Tax Act 1915* which deals with recovery of land tax. This administrative matter is dealt with by the *Taxation Administration Act 2001*.

Clause 49 omits section 39 of the *Land Tax Act 1915* which sets out the obligations of public officers of companies. It inserts new sections 38 and 39 which provide that if the exempt status of land or a taxpayer's right to a deduction changes from one financial year to the next, the owner of the land must notify the Commissioner of that fact.

The clause also inserts new sections 39A to 39D. New section 39A provides that a person must inform the Commissioner when they acquire or dispose of land, but that if the person notifies the registrar of titles instead, such notification will suffice. New section 39B provides that a taxpayer must notify the Commissioner of a change of address. New section 39C provides that the registrar of titles must allow the Commissioner free access to the land registry. New section 39D provides for an exception to the confidentiality provisions of the *Taxation Administration Act 2001*, effectively retaining the provisions of the existing section 4A(9) *Land Tax Act 1915*.

Clause 50 omits sections 43, 43A, 44A and 45 to 59 of the *Land Tax Act 1915* which include: a prohibition against lessors requiring lessees to pay land tax or reimburse the lessor for land tax and various administrative provisions including those relating to: payments, hardship, evidentiary requirements, penalties and offences. These administrative matters are dealt with by the *Taxation Administration Act 2001*.

Clause 51 amends section 61 of the *Land Tax Act 1915* to omit the references to self assessment and land tax returns as land tax will be assessed by the Commissioner under the *Taxation Administration Act 2001*.

Clause 52 inserts a new Part 9 division 5 - *Transitional Provisions* – into the *Land Tax Act 1915*. A new section 67 defines significant terms used in Part 9 division 5. A new section 68 provides for the application of the *Land Tax Act 1915* as amended by the Bill. The amended Act applies to liabilities arising, or acts or omissions done or omitted to be done, on or after commencement of the Bill.

A new section 69 provides for application of the *Land Tax Act 1915* as in force before the commencement of the Bill. Subject to section 72, the

provisions of the *Land Tax Act 1915* as in force before commencement continue to apply in relation to pre-commencement liabilities and pre-commencement acts or omissions.

A new section 70 clarifies the arrangements applying to appeals.

A new section 71 provides that delegations in force immediately before commencement continue to apply.

A new section 72 provides for how the provisions of the *Taxation Administration Act 2001* apply for land tax. Upon commencement of the Bill, the *Land Tax Act 1915* is taken to be a revenue law for the purposes of the *Taxation Administration Act 2001*.. The two Acts must be read together as a single Act. However from commencement, the provisions of the *Taxation Administration Act 2001* set out in subsection 72(3) will not apply to pre-commencement liabilities, as they would retrospectively affect the substantive rights, liabilities or obligations of taxpayers. The provisions of the *Land Tax Act 1915* as in force at the relevant time will continue to apply in these cases. Section 72(4) clarifies that the *Taxation Administration Act 2001* applies to acts or omissions after commencement, even where the act or omission relates to a pre-commencement liability.

Example

The commencement is on 30 June 2009.

Upon audit in July 2009, a taxpayer provides false information in relation to his or her liability for the 2007 to 2008 tax year.

Provision of the false information is an act or omission done or omitted to be done after commencement.

Even though this act or omission relates to a pre-commencement liability, the taxpayer may be prosecuted for the offence of giving false or misleading information under Part 10 Taxation Administration Act 2001.

Section 72(4) ensures that provisions in the *Taxation Administration Act 2001* that affect the right against self-incrimination do not apply retrospectively.

Section 72(5) explains how section 37 *Taxation Administration Act 2001*, which relates to refunds, applies to a pre-commencement liability.

Section 72(6) provides that , other than the exceptions contained in section 72(2), where there are provisions in both the *Land Tax Act 1915* as amended by the Bill and the *Taxation Administration Act 2001* in respect of

the same matter, the provisions of the *Taxation Administration Act 2001* prevail.

Example

The commencement is on 30 June 2009.

A person falsely claimed an exemption for a principal place of residence in the 2007 to 2008 tax year. On or after 30 June 2009, the powers of investigation contained in the Taxation Administration Act 2001 would apply. Although the Land Tax Act 1915 as in force before commencement contains investigation powers, the provisions of the Taxation Administration Act 2001 prevail and so those provisions will not apply.

Section 72(7) provides that, despite section 72(6), in relation to a pre-commencement liability, the Commissioner may exercise either the “Declaration of Agent” powers under the previous section 43A, or the garnishee powers under the *Taxation Administration Act 2001* until 30 September 2009. After that date, only section 50 of the *Taxation Administration Act 2001* will be available.

A new section 73 clarifies that the power in section 38 of the *Taxation Administration Act 2001* to offset an entitlement to a refund against current or future tax liabilities extends to liabilities for land tax arising before the commencement.

A new section 74 ensures that the increase in the maximum penalty under section 138 *Taxation Administration Act 2001* for a further offence, where the first offence was under the provisions of the *Land Tax Act 1915* as in force before commencement, applies only where the further offence is committed on or after commencement. It also ensures that the maximum penalty under section 138 may be increased where the first offence was committed against a provision of the *Land Tax 1915* as in force before commencement and a subsequent offence is committed against a corresponding provision of the *Land Tax Act 1915* as amended by the Bill, or the *Taxation Administration Act 2001*.

A new section 75 clarifies that references to an assessment notice in the *Taxation Administration Act 2001* includes a notice of assessment issued under the *Land Tax Act 1915* as in force before commencement.

A new section 76 confirms that the prohibition on landlords passing land tax onto tenants continues to apply to leases in existence immediately

before commencement, and to renewals and assignments and transfers of these leases.

A new section 77 provides that amendment of a regulation in the schedule does not affect the power of the Governor in Council to further amend or repeal it.

A new section 78 provides that amendment of the *Charitable and Non-Profit Gaming Rule 1999* does not affect the power of the Minister to further amend or repeal it.

Part 7 Amendment of *Pay-roll Tax Act 1971*

Clause 53 provides that Part 7 and Schedule 1 amend the *Pay-roll Tax Act 1971*.

Clause 54 amends section 1 of the *Pay-roll Tax Act 1971* which states the short title of the Act. The clause replaces *Pay-roll* with *Payroll* to update the spelling.

Clause 55 inserts a new section 6A in the *Pay-roll Tax Act 1971* which ensures that references in the Act, other than section 59(1), to a *periodic return period* or *return period* include the last periodic return period of a financial year. Consequently, while other provisions of Part 7 of the Bill remove the obligation for employers to lodge a periodic return for the last periodic return period of a financial year, the period remains a periodic return period and a return period for other provisions of the Act. For example, provisions of the *Pay-roll Tax Act 1971* relating to record keeping for motor vehicle allowances refer to return periods.

Clause 56 amends section 13LA(6) of the *Pay-roll Tax Act 1971* to provide that the term *return period* for that section in the case of an employment agent who is required to lodge periodic returns includes a financial year as well as a periodic return period. This ensures that the application of this anti-avoidance provision will not be affected by the removal of the requirement to lodge the last periodic return for a financial year.

Clause 57 amends section 18 of the *Pay-roll Tax Act 1971* by removing the note to the section. The note refers to the obligation in section 86 for an

employer to notify the Commissioner of the amount of the employer's fixed periodic deduction. Section 86 is omitted by the Bill.

Clauses 58 and 59 amend sections 20 and 21 of the *Pay-roll Tax Act 1971* to exclude the operation of those provisions to the last periodic return period of a financial year for the employer. These amendments have the result that an employer does not have a periodic liability for the last periodic return period for a financial year, that is, the periodic return period ending 30 June. Any pay-roll tax payable for this period will be assessed and payable as part of the annual return process.

Clause 60 amends section 24 of the *Pay-roll Tax Act 1971* by removing the note to the section. The note refers to the obligation in section 86 for an employer to notify the Commissioner of the amount of the employer's fixed periodic deduction. Section 86 is omitted by the Bill.

Clauses 61 and 62 amend sections 26 and 27 of the *Pay-roll Tax Act 1971* to exclude the operation of those provisions to the last periodic return period of a financial year for the employer. These amendments have the result that an employer does not have a periodic liability for the last periodic return period for a year, that is, the periodic return period ending 30 June. Any pay-roll tax payable for this period will be assessed and payable as part of the annual return process.

Clauses 63 and 64 amend the formulae in the definitions of *annual deduction* in sections 29(1) and 33 of the *Pay-roll Tax Act 1971* to provide for leap years.

Clauses 65 and 66 amend the formulae in the definitions of *final deduction* in sections 37 and 41 of the *Pay-roll Tax Act 1971* to provide for leap years.

Clause 67 amends section 59(1) of the *Pay-roll Tax Act 1971* by inserting a new subsection (1A) which removes the obligation to lodge a periodic return for the last periodic return period of a financial year, namely, the period ending 30 June.

Clause 68 amends section 61 of the *Pay-roll Tax Act 1971*. Subclause (1) amends section 61(1) by inserting a cross reference to section 29A of the *Taxation Administration Act 2001* which is inserted in that Act by clause 80 of the Bill. Subclause (2) inserts a new paragraph (c) in section 61(1) which imposes on an employer who makes a payment by electronic transfer of funds to also provide the Commissioner with a breakdown of the payment into primary tax and assessed interest. The breakdown must be provided using an approved information system of the Commissioner.

Subclause (3) inserts a new subsection (5) which defines *primary tax* by reference to the definition in the *Taxation Administration Act 2001*.

Clause 69 amends section 82 of the *Pay-roll Tax Act 1971* by inserting a cross reference to section 87A of that Act which is inserted by clause 71 of the Bill.

Clause 70 omits section 86 of the *Pay-roll Tax Act 1971*, removing the obligation of an employer to give the Commissioner written notice of the employer's fixed periodic deduction.

Clause 71 inserts a new section 87A in the *Pay-roll Tax Act 1971* which applies to an employer whom the Commissioner has authorised under section 60(2) of the Act to lodge periodic returns, other than monthly, for all or part of a financial year. If there is a relevant wage change during a periodic return period, the employer must notify the Commissioner within 28 days after the last day of the periodic return period. *Relevant wage change* and its components are defined in subsections 87A(2) and (4).

Clause 72 amends the Dictionary in the Schedule to the *Pay-roll Tax Act 1971* by inserting a definition of *approved information system* by reference to the definition in the *Taxation Administration Act 2001*.

Clause 73 amends the *Pay-roll Tax Act 1971* by changing the spelling of *pay-roll* to *payroll*.

Part 8 Amendment of *Taxation Administration Act 2001*

Clause 74 provides that the Act amended in Part 8 is the *Taxation Administration Act 2001*.

Clause 75 amends section 6 to provide that the *Land Tax Act 1915* is a revenue law.

Clause 76 amends section 13(1)(a) to confirm that the Commissioner may make a default assessment if a self assessment is not made, in accordance with the original intention of the *Taxation Administration Act 2001*.

Clause 77 amends section 14 of the *Taxation Administration Act 2001* so that it will apply for a return self assessment only.

Clause 78 inserts a new section 14A of the *Taxation Administration Act 2001* which details the effect of lodging a transaction statement under a revenue law. On lodgement, an assessment of tax is deemed to be made by the Commissioner, the liability for tax is taken to be the amount stated in the transaction statement, and the statement is taken to be the notice of assessment which the taxpayer is deemed to have been given.

Clause 79 amends section 29 of the *Taxation Administration Act 2001* by inserting new subsection (2) to provide that the section applies subject to new section 29A inserted in the Bill by clause 80 of the Bill.

Clause 80 inserts new sections 29A and 29B in the Bill. Section 29A(1) enables the Commissioner, by notice in writing to a person, to require that the person pay an amount or type of amount payable under a tax law to the Commissioner by prescribed electronic way. Subsection (4) defines *prescribed electronic* way as an electronic way prescribed under a regulation. The *Taxation Administration Regulation 2001* as amended by Schedule 2 of the Bill prescribes the electronic ways.

A notice under section 29A(1) may specify any or a particular way. For example, the notice could require the person to pay in a particular electronic way such as direct debit.

A notice may also apply to one amount or a type of amount. For example, a notice may refer to transfer duty and assessed interest payable by a person as a self assessor registered under Part 2 of Chapter 12 of the *Duties Act 2001*.

The amount or stated type of amount referred to in the notice need not be immediately payable. That is, a notice may apply to a particular amount for which a liability has arisen or to an amount for which a liability is likely to arise in future. For example, a notice may apply to all amounts of transfer duty payable by a self assessor to the Commissioner while the person is registered under the *Duties Act 2001* as a self assessor or for a period stated in the notice.

Section 29A(2) requires the person to comply with the notice after 30 days of being given the notice. The notice therefore cannot apply to any amount payable during the 30 day period. However, this does not affect the person's liability to pay that amount under the tax laws. The person must therefore pay the amount in accordance with their obligations and in a way permitted by the tax laws.

New subsection 29A(3) provides that compliance is not required on any occasion where the person is unable to comply due to circumstances beyond their control. For example, the person's computer may malfunction or their Internet service or the Commissioner's system may be unavailable. Alternatively, a staff member with the relevant computer knowledge to make the electronic payment may be unavailable due to illness.

New section 29B(1) confers a right on a person to apply to the Commissioner to withdraw an electronic payment notice. Subsection (2) provides that the way in which an application is made. The grounds upon which an application may be made are limited to those set out in section 29B(3)(a) and (b), with provision being made for further grounds to be prescribed by regulation.

The ground of application in section 29B(3)(a) refers to cases where, for example, communication services such as those in rural or remote parts of the State make compliance with the notice impracticable. This could be because the Internet connection is unreasonably slow or unreliable.

The ground of application in section 29B(3)(b) applies in cases where the person would need to incur costs in acquiring a computer or in modifying an existing computer (for example, to connect to the Internet) to comply with the notice and the number of payments to which the notice is likely to apply is so small as to not justify those costs. This ground of application focuses on persons with low volumes of payments.

New section 29A(4) and (6) to (8) require the Commissioner to consider the application, grant or refuse it and notify the applicant of the decision. Subsection (9) confers on the applicant a right of appeal in the event that the application is refused.

Under new section 29B(5) and (10), a person is not required to comply with an electronic payment notice pending notification of the outcome of their application for withdrawal of the notice, or during the appeal period or until 14 days after an unsuccessful appeal. This does not affect the person's liability to pay the amount under the tax laws. The person must therefore pay the amount in accordance with their obligations and in a way permitted by the tax laws.

Clause 81 amends section 30(1) of the *Taxation Administration Act 2001* to provide the time for payment of a standard self assessment.

Clause 82 makes a consequential amendment to section 32(2) of the *Taxation Administration Act 2001* to update a cross reference.

Clause 83 amends section 35 of the *Taxation Administration Act 2001* so that the existing provisions apply for return self assessments and by inserting new provisions for standard self assessments.

Clause 84 amends section 54 of the *Taxation Administration Act 2001* dealing with the imposition and calculation of late payment interest. Subclause (1) amends subsection 54(2) so that daily accrual of unpaid tax interest does not apply for late payment interest. Late payment interest is unpaid tax interest which accrues after an assessment is issued. Subclause (2) inserts a new subsection 54(2A) to provide that late payment interest accrues weekly on the day of each week prescribed by a regulation. Subclause (3) amends a cross-reference in subsection 54(4) to refer also to new subsection (2A).

Subclause (4) amends section 54A(4)(a) to apply for return self assessments. Subclause (5) inserts a new subparagraph (aa) in section 54(4) for standard self assessments. Subclauses (6), (7) and (8) make consequential cross reference amendments to subsections 54(4) and (5).

Clause 85 amends section 58 to provide for penalty tax of 75% to apply where the Commissioner makes a default assessment under section 13(1)(b) because a taxpayer has provided false information. This ensures that taxpayers are penalised consistently in cases of high culpability.

Clause 86 amends section 77 of the *Taxation Administration Act 2001* to apply also to the giving of an electronic payment notice or electronic communication notice and decisions of the Commissioner to refuse applications for withdrawal of those notices.

Clause 87 amends section 143 of the *Taxation Administration Act 2001* by inserting new subsection (2) to provide that the section applies subject to new section 143A inserted in the Bill by clause 88.

Clause 88 inserts new sections 143A and 143B in the Bill. Section 143A(1) enables the Commissioner, by notice in writing to a person, to require that the person give a document or a stated type of document to the Commissioner by an electronic communication using an approved information system in complying with a lodgement requirement.

A notice may apply to one document or a type of document. For example, a notice may apply to all transaction statements to be given by a self assessor to the Commissioner while the person is registered as a self assessor or for a period stated in the notice.

Section 143A(2) requires the person to comply with the notice after 30 days of being given the notice. The notice cannot therefore apply to any document required to be lodged in the 30 day period. However, this does not affect the person's liability to lodge the document under the tax laws. The person must therefore lodge the document in accordance with their obligations and in a way permitted by the tax laws.

New section 143A(3) provides that compliance is not required on any occasion where the person is unable to comply due to circumstances beyond their control. For example, the person's computer may malfunction or their Internet service or the Commissioner's system may be unavailable. Alternatively, a staff member with the relevant computer knowledge to lodge the document electronically may be unavailable due to illness.

New section 143B(1) confers a right on a person to apply to the Commissioner to withdraw an electronic communication notice. Subsection (2) provides that the way in which an application is made. The grounds upon which an application may be made are limited to those set out in section 143B(3)(a) and (b), with provision being made for further grounds to be prescribed by regulation.

The ground of application in section 143B(3)(a) refers to cases where, for example, communication services such as those in rural or remote parts of the State make compliance with the notice impracticable. This could be because the Internet connection is unreasonably slow or unreliable.

The ground of application in section 143B(3)(b) applies in cases where the person would need to incur costs in acquiring a computer or in modifying an existing computer (for example, to connect to the Internet) to comply with the notice and the number of documents to which the notice is likely to apply is so small as to not justify those costs. This ground of application focuses on persons with low volumes of lodgements.

New section 143A(4) and (6) to (8) require the Commissioner to consider the application, grant or refuse it and notify the applicant of the decision. Subsection (9) confers on the applicant a right of appeal in the event that the application is refused.

Under new section 143B(5) and (10), a person is not required to comply with an electronic communication notice pending notification of the outcome of their application for withdrawal of the notice, or during the appeal period or until 14 days after an unsuccessful appeal. However, this does not affect the person's obligation to comply with the lodgement requirement under the tax laws. The person must therefore lodge the

document with the Commissioner in accordance with their obligations and in a way permitted by the tax laws.

Clause 89 amends section 144 of the *Taxation Administration Act 2001* to insert a new paragraph (e) prescribing when a document which is given to the Commissioner in compliance with an electronic communication notice is taken to be given to the Commissioner.

Clause 90 amends section 145 to clarify that a lodgement requirement is not complied with unless it is complied with on time.

Clause 91 inserts a new section 150A in the Act to clarify that an information requirement is not complied with unless it is complied with on time.

Clause 92 inserts new sections 153A to 153C in the *Taxation Administration Act 2001*. New section 153A provides that the Commissioner may approve an information system for a tax law. Section 153B provides that the Commissioner may arrange for the use of an approved information system to make a decision under a tax law if the decision does not involve the exercise of the Commissioner's discretion. The decision is taken to be a decision made by the Commissioner.

New section 153C enables the Commissioner to impose an administrative penalty of \$100 for each occasion of non-compliance with an electronic payment notice or electronic communication notice. The Commissioner also has power to remit the penalty in whole or part and the person may appeal against the imposition of the penalty. Non-compliance may also be a ground for suspension or cancellation of a person's registration as a self assessor under section 465 of the *Duties Act 2001*.

Clause 93 amends the Dictionary in Schedule 2 of the *Taxation Administration Act 2001* by inserting new definitions of terms used in the amendments in Parts 3 and 8 of the Bill.

Part 9 Consequential and minor amendments

Clause 94 amends the references to the *Pay-roll Tax Act 1971* in the Acts and regulations in schedule 1 to the Bill by changing the spelling to *Payroll*.

Clause 95 amends the legislation mentioned in Schedule 2. However, subclause (2) provides that the amendment does not apply to a particular Act if another provision of the Bill states that the Schedule amends the particular Act.

Schedule 1 References to *Pay-roll Tax Act 1971*

Schedule 1 lists a number of Acts and regulations which are amended by clauses 53 and 94 of the Bill. These amendments update the spelling of *Pay-roll* to *Payroll*.

Schedule 2 Consequential and minor amendments

Schedule 2 makes the following amendments consequential upon the *Land Tax Act 1915* becoming a revenue law for the *Taxation Administration Act 2001*.

- Replacement of references to Commissioner of Land Tax with the Commissioner of State Revenue in section 47(3)(c) of the *Body Corporate and Community Management Act 1997*, section 14 of the *Building Units and Group Titles Act 1980*, section 17(1)(d) of the *Charitable and Non-profit Gaming Rule 1999*, section 36(1), 73(1)(e) and (2) and 79 of the *Valuation of Land Act 1944* and section 7(2) of the *Valuation of Land Regulation 2003*.
- Omission from the *Land Tax Regulation 1999* of Part 2, Part 3 division 1, Part 4 and sections 20, 23 to 25 and certain definitions in the Schedule to the Regulation which are no longer required.
- Amendment of section 3A(1) of the *Taxation Administration Regulation 1999* to include amounts payable under the tax laws relating to land tax in the amounts which may be paid by electronic payment method.

Schedule 2 also -

- amends section 21(a) of the *Land Tax Regulation 1999* to expand the range of service providers for issuing land tax clearance certificates under section 37A(1A) of the *Land Tax Act 1915* to an entity engaged by the Commissioner or chief executive for the purpose;
- amends section 1 of the *Pay-roll Tax Regulation 1999* by changing the spelling of *Pay-roll* to *Payroll*;
- amends the *Taxation Administration Regulation 1999*:
 - to insert a new subsection (2) in section 6 to provide, for section 54(2A)(a) of the *Taxation Administration Act 2001*, that late payment interest will accrue on Sunday each week; and
 - to prescribe electronic ways for new section 29A inserted in the *Taxation Administration Act 2001* by clause 80 of the Bill.
- makes other minor technical amendments to the *Land Tax Act 1915* and *Taxation Administration Regulation 2001*.