

TASMANIA

**TAXATION LEGISLATION
(MISCELLANEOUS AMENDMENTS AND
REPEAL) BILL 2002**

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**TAXATION LEGISLATION
(MISCELLANEOUS AMENDMENTS AND
REPEAL) BILL 2002**

*(Brought in by the Minister for Education, the Honourable
Paula Catherine Wriedt)*

A BILL FOR

An Act to amend the *Duties Act 2001*, the *Land Tax Act 2000*, the *Pay-roll Tax Act 1971* and the *Taxation Administration Act 1997* and to repeal the *Taxation (Reciprocal Powers) Act 1993*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the *Taxation Legislation (Miscellaneous Amendments and Repeal) Act 2002*.

Commencement

2. (1) Sections 3, 4(b) and 14 are taken to have commenced on 1 July 2001.

(2) Sections 4(a), 4(c), 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20 and 21 and Part 3 are taken to have commenced on 1 July 2002.

PART 2 – DUTIES ACT 2001 AMENDED**Principal Act**

3. In this Part, the *Duties Act 2001** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4. Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of “lease” and substituting the following definition:

“lease” means –

- (a) a lease of land in Tasmania or an agreement for a lease of land in Tasmania; or
- (b) an agreement (such as a licence) by which a right to use land in Tasmania at any time and for any purpose is conferred on or acquired by a person;
- (b) by omitting the definition of “mortgage” and substituting the following definition:

“mortgage” –

- (a) subject to paragraph (b), has the meaning given by section 139; and

*No. 15 of 2001

- (b) for the purposes of sections 227A and 227C and the definitions of “mortgage-backed security” and “pool of mortgages”, means a mortgage of any estate or interest in land, including a leasehold estate or interest in land, whether the land is situated in Tasmania or elsewhere, and includes a charge over any such land;
- (c) by inserting the following definition after the definition of “private corporation”:

“private hospital” means a privately owned institution the main object of which is to provide overnight accommodation for the treatment of –

- (a) persons suffering from any illness, injury or infirmity;
or
- (b) pregnant women or women immediately after childbirth;
or
- (c) persons who are visually, hearing or speech impaired or who are substantially and permanently handicapped by any illness, injury or congenital deformity or by any other prescribed disability; or

- (d) persons who are elderly and infirm;

Section 4 repealed

5. Section 4 of the Principal Act is repealed.

Section 6 amended (Imposition of duty on certain transactions concerning dutiable property)

6. Section 6(3) of the Principal Act is amended by omitting “, an exchange and a buy-back of shares in accordance with Division 2 of Part 2J.1 of the Corporations Act” from the definition of “transfer” and substituting “and an exchange”.

Section 18 amended (What is the dutiable value of dutiable property?)

7. Section 18(3) of the Principal Act is amended by omitting “that also has a relevant connection with the Commonwealth or another Australian jurisdiction is to be apportioned in accordance with section 24” and substituting “, to which section 24 applies, is to be determined in accordance with section 24”.

Section 33 amended (Cancelled agreements)

8. Section 33(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “annulled –” and substituting “annulled; or”;
- (b) by inserting the following paragraph after paragraph (b):

- (c) 3 years after the payment of duty pursuant to a special arrangement for the lodging of returns and payment of tax under Part 6 of the *Taxation Administration Act 1997* –

Section 40 amended (Transfers back from a nominee)

9. Section 40(3) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “transferor –” and substituting “transferor; or”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) 3 years after the payment of duty pursuant to a special arrangement for the lodging of returns and payment of tax under Part 6 of the *Taxation Administration Act 1997* –

Section 41 substituted

10. Section 41 of the Principal Act is repealed and the following section is substituted:

Property passing to beneficiaries

41. Duty of \$20 is chargeable under this Chapter in respect of a transfer of dutiable property that is subject to a trust (“the principal trust”) to a beneficiary of the principal trust if –

- (a) the beneficiary was a beneficiary when the property, or what was substantially the same property, was first vested in a trustee of the principal trust; and
- (b) the transfer is –
 - (i) to the beneficiary absolutely; or
 - (ii) to the beneficiary as trustee of another trust (“the second trust”) of which all the beneficiaries are natural persons who were beneficiaries of the second trust when the property, or what was substantially the same property, was first vested in a trustee of the principal trust; and
- (c) the duty charged by this Act in respect of the first vesting of the property, or what was substantially the same property, in a trustee of the principal trust has been paid.

Section 46 substituted

11. Section 46 of the Principal Act is repealed and the following section is substituted:

**Transfers between trustees and custodians of
superannuation funds or trusts**

46. (1) This section applies to the following dutiable transactions:

- (a) a transfer of, or an agreement to transfer, dutiable property from a trustee of –

- (i) a complying superannuation fund;
or
- (ii) a pooled superannuation trust; or
- (iii) a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund or a pooled superannuation trust within 12 months after the transfer takes effect –

to a custodian of the trustee of the fund or trust, where there is no change in the beneficial ownership of the property;

- (b) a transfer of, or an agreement to transfer, dutiable property from a custodian of a trustee of –
 - (i) a complying superannuation fund;
or
 - (ii) a pooled superannuation trust; or
 - (iii) a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund or a pooled superannuation trust within 12 months after the transfer takes effect –

to a trustee of the fund or trust, where there is no change in the beneficial ownership of the property;

- (c) a transfer of, or an agreement to transfer, dutiable property from a custodian of a trustee of –

- (i) a complying superannuation fund;
or
- (ii) a pooled superannuation trust; or
- (iii) a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund or a pooled superannuation trust within 12 months after the transfer takes effect –

to another custodian of the trustee of the fund or trust, where there is no change in the beneficial ownership of the property.

(2) The duty chargeable on a dutiable transaction to which this section applies is \$20.

(3) In this section, “**complying superannuation fund**” includes a complying approved deposit fund and an eligible rollover fund.

Section 53 amended (Exemptions relating to various transactions)

12. Section 53 of the Principal Act is amended as follows:

- (a) by inserting in paragraph (d) “, excluding premiums paid on the granting of a lease” after “lease”;
- (b) by omitting from paragraph (o) “section 59 of the *Crown Lands Act 1976*.” and substituting “section 59 of the *Crown Lands Act 1976*.”;
- (c) by inserting the following paragraph after paragraph (o):

- (p) a surrender of a forestry right, within the meaning of the *Forestry Rights Registration Act 1990*.

Section 55 amended (Exemptions – transfers to married couples or de facto couples)

13. Section 55 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “or a de facto couple” after “couple”;
- (b) by inserting in subsection (1)(b)(i) “or the de facto couple” after “couple”;
- (c) by inserting in subsection (1)(b)(ii) “or the de facto couple” after “couple”;
- (d) by inserting in subsection (1)(b)(iii) “or the de facto couple” after “couple”;
- (e) by inserting in subsection (1)(c) “or the de facto couple” after “couple”;
- (f) by omitting subsection (2) and substituting the following subsection:

(2) In this section –

“**de facto couple**” means persons who live in a de facto relationship, within the meaning of the *De Facto Relationship Act 1999*;

“**private dwelling house**” includes a lot, within the meaning of the *Strata Titles Act 1998*, used as a place of residence.

Section 142 amended (When does a liability arise?)

14. Section 142(3) of the Principal Act is amended as follows:

- (a) by inserting “, other than a security interest in land,” after “security”;
- (b) by inserting “exempt from duty or is” after “is”.

Section 157 amended (Refinancing of loans)

15. Section 157(1) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) the security or part of the security is the same as under the previous mortgage; and

Section 199 amended (Exemptions)

16. Section 199 of the Principal Act is amended as follows:

- (a) by omitting “Duty” and substituting “(1) Duty”;
- (b) by omitting from paragraph (e) “*Transport Act 1981.*” and substituting “*Transport Act 1981;*”;
- (c) by inserting after paragraph (e) the following paragraph:
 - (f) an application for transfer of registration of a motor vehicle made by a shareholder to register the motor vehicle in the name of the shareholder if –

- (i) the transfer is in the course of a distribution of assets of a company because of the winding-up of the company; and
 - (ii) the distribution is in accordance with the shareholder's entitlement in the undistributed assets of the company immediately before the application to transfer.
- (d) by inserting the following subsection:

(2) Subsection (1)(f) does not apply to a distribution to a shareholder who was not a shareholder for at least 12 months immediately prior to the notice of appointment of liquidator being lodged under section 537 of the Corporations Act.

Section 219 amended (Duplicates or counterparts)

17. Section 219(3) of the Principal Act is amended by omitting "it is proved to the Commissioner's satisfaction that".

Section 227 amended (Miscellaneous exemptions)

18. Section 227(1) of the Principal Act is amended by inserting after paragraph (i) the following paragraph:

- (ia) any agreement entered into under Part 5 of the *Land Use Planning and Approvals Act 1993*;

Section 236 amended (Reassessments – failed instruments)

19. Section 236(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “failed –” and substituting “failed; or”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) 3 years after the payment of duty pursuant to a special arrangement for the lodging of returns and payment of tax under Part 6 of the *Taxation Administration Act 1997* –

Section 243 substituted

20. Section 243 of the Principal Act is repealed and the following section is substituted:

Registration of instruments

243. A person must not register, record, enrol or accept for any purpose an instrument that effects in whole or in part a dutiable transaction or an instrument chargeable with duty unless –

- (a) notwithstanding a provision of any other Act, it is duly stamped; or
- (b) it is endorsed by the Commissioner or in a manner approved by the Commissioner.

Penalty: Fine not exceeding 100 penalty units.

s. 21

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2002

Section 251 amended (Application of Act)

21. Section 251(1) of the Principal Act is amended by omitting “stamp duty” and substituting “duty imposed under this Act”.

PART 3 – LAND TAX ACT 2000 AMENDED**Principal Act**

22. In this Part, the *Land Tax Act 2000** is referred to as the Principal Act.

Section 3 amended (Interpretation)

23. Section 3 of the Principal Act is amended as follows:

- (a) by omitting “in this State” from paragraph (a) of the definition of “agent”;
- (b) by omitting “outside this State” from paragraph (a) of the definition of “agent”;
- (c) by omitting “person; and” from paragraph (a)(iii) of the definition of “agent” and substituting “person; or”;
- (d) by omitting paragraph (b) from the definition of “agent” and substituting the following paragraph:
 - (b) directly or indirectly sells or otherwise disposes of any real property belonging to another person;

Section 6 amended (Principal residence land)

24. Section 6 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (1) “of” third occurring and substituting “interest in”;
- (b) by inserting in subsection (4)(a) “beneficially” after “is”.

Section 37 amended (Land tax rebate)

25. Section 37(1) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) during that financial year a dwelling was constructed on the land and occupied as principal residence –
 - (i) by the owner or a related person of the owner; or
 - (ii) by a person who owns 50 per cent or more of the shares in the company that owns the land; and

Section 39 amended (Recovery of unpaid land tax)

26. Section 39 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1)** The Commissioner may recover –
 - (a) from an agent any unpaid land tax in respect of land of which the agent is the representative of the owner; or
 - (b) from a mortgagee in possession of land any unpaid land tax in respect of that land.

PART 4 – PAY-ROLL TAX ACT 1971 AMENDED**Principal Act**

27. In this Part, the *Pay-roll Tax Act 1971** is referred to as the Principal Act.

Section 2 amended (Interpretation)

28. Section 2 of the Principal Act is amended as follows:

- (a) by omitting “collector; and” from paragraph (d) of the definition of “wages” in subsection (1) and substituting “collector;”;
- (b) by omitting “services –” from paragraph (e) of the definition of “wages” in subsection (1) and substituting “services; and”;
- (c) by inserting the following paragraph after paragraph (e) in the definition of “wages” in subsection (1):
 - (f) a payment made in consequence of the retirement from, or termination of, any office or employment of an employee, being –
 - (i) a lump sum payment paid before or after that retirement or termination in respect of unused annual leave, or unused annual leave and a bonus, loading

*No. 43 of 1971

- or other additional payment relating to that leave; or
- (ii) an amount paid in respect of unused long service leave; or
- (iii) so much of any eligible termination payment (within the meaning of section 27A of the *Income Tax Assessment Act 1936* of the Commonwealth) paid or payable by an employer, whether or not paid to the employee or to any other person or body, that would be included in the assessable income of an employee under Subdivision AA of Division 2 of Part III of that Act if the whole of the eligible termination payment had been paid to the employee –
- (d) by omitting subsection (2) and substituting the following subsection:

(2) For the purposes of this Act, the value of taxable wages, comprising a fringe benefit, is the value that would be the fringe benefits taxable amount for the purposes of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth as amended and in force for the time being.

Section 6 amended (Wages in respect of which liability to pay-roll tax is imposed)

29. Section 6 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (1) and substituting the following paragraph:
- (a) are wages that are paid or payable in this State, not being so paid or payable in respect of –
- (i) services performed or rendered wholly in one other State; or
- (ii) subject to subsection (1AA), services performed or rendered by a person wholly in another country for a continuous period of more than 6 months beginning on the day on which wages were first paid or payable to that person for services so performed or rendered; or
- (b) by inserting the following subsection after subsection (1):

(1AA) Wages referred to in subsection (1)(a)(ii) are liable to pay-roll tax under this Act during the period of 6 months beginning on the day on which wages were first paid or payable for the relevant services.

Section 7 amended (Imposition of pay-roll tax)

30. Section 7 of the Principal Act is amended by inserting after subsection (2B) the following subsection:

(2C) If the Australian wages paid or payable by an employer for a month after June 2003 are more than \$84 167 for that month, the rate of pay-

roll tax payable for that month in respect of taxable wages included in those Australian wages is 6.10%.

Section 11A amended (Annual adjustments)

31. Section 11A of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (3A):

(3B) For any employer the annual amount of pay-roll tax payable under subsection (1) for a financial year commencing on or after 1 July 2003 is –

- (a) if adjusted Australian wages for the year are \$1 010 000 or less, nil; or
- (b) if adjusted Australian wages for the year are more than \$1 010 000, an amount ascertained by applying the rate of 6.10% to the difference between the total of the taxable wages paid or payable by the employer during that financial year and an amount calculated in accordance with the following formula:

$$\frac{T}{A} \left(1\,010\,000 \times \frac{D}{365} \right)$$

- (b) by omitting from subsection (3C) “subsections (3) and (3A)” and substituting “subsections (3), (3A) and (3B)”.

**PART 5 – TAXATION ADMINISTRATION ACT 1997
AMENDED**

Principal Act

32. In this Part, the *Taxation Administration Act 1997** is referred to as the Principal Act.

Section 3 amended (Interpretation)

33. Section 3 of the Principal Act is amended by inserting “, unless the contrary intention appears” after “In this Act”.

Section 78 amended (Prohibition on secondary disclosures of information)

34. Section 78 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “revenue; and” and substituting “revenue and the Commissioner consents to the disclosure; or”;
- (b) by omitting paragraph (b) and substituting the following paragraph:
 - (b) the disclosure is made to enable the collection of outstanding debts imposed under a taxation law and the Commissioner consents to the disclosure.

*No. 74 of 1997

Part 9A inserted

35. After section 79 of the Principal Act, the following Part is inserted:

PART 9A – RECIPROCAL ARRANGEMENTS**Interpretation of Part 9A**

79A. In this Part –

“authorised person” means a corresponding authorised person and a State authorised person;

“Commissioner” means a corresponding Commissioner and a State Commissioner;

“corresponding authorised person” means a person authorised under section 79B;

“corresponding Commissioner” means the holder of an office under any corresponding law declared by the Minister by order to be a corresponding Commissioner;

“corresponding law” means a law of the Commonwealth or of another State or of a Territory declared by the Minister by order to be a corresponding law that –

- (a) corresponds to this Act; or
- (b) is a Commonwealth, State or Territory Taxation Act within the meaning of an Act of the Commonwealth, State or Territory;

“investigation power” means a power specified in Division 1 of Part 9;

“State authorised person” means a person authorised under section 79C;

“State Commissioner” means any of the following:

- (a) the Commissioner of State Revenue;
- (b) the holder of any other office declared by the Minister by order to be a State Commissioner;

“State Taxation Act” means –

- (a) a taxation law; or
- (b) any Act declared by the Minister by order to be a State Taxation Act.

Investigations by corresponding Commissioners

79B. (1) In relation to an investigation in this State to ascertain any person’s liability or entitlement under a corresponding law, a corresponding Commissioner may exercise any investigation power that the corresponding Commissioner may exercise under the corresponding law.

(2) A corresponding Commissioner may only exercise an investigation power –

- (a) with the written approval of the State Commissioner; and

- (b) while that approval is in force; and
- (c) in accordance with any conditions of that approval.

(3) The State Commissioner, by notice in writing, may –

- (a) give an approval subject to any condition; and
- (b) vary or revoke an approval; and
- (c) vary or revoke a condition of an approval.

(4) A corresponding Commissioner, by a certificate of authority, may authorise a person to exercise in accordance with this section any investigation power the corresponding Commissioner may exercise under this section.

Investigations on behalf of corresponding Commissioners

79C. (1) A corresponding Commissioner, by notice in writing, may request a State Commissioner to exercise on his or her behalf or on behalf of a corresponding authorised person any investigation power that he or she may exercise under the corresponding law.

(2) A State Commissioner may only exercise a power on behalf of a corresponding Commissioner in accordance with any –

- (a) conditions specified by the corresponding Commissioner at any time and approved by the State Commissioner; and

- (b) conditions specified by the State Commissioner.

(3) A State Commissioner, by a certificate of authority, may authorise a person to exercise in accordance with this section any power requested to be exercised by the State Commissioner under subsection (1).

Investigation powers

79D. (1) Subject to subsection (3), a Commissioner may exercise any power under Part 9 as if he or she were the Commissioner for the purposes of that Part.

(2) Subject to subsection (3), an authorised person may exercise any power under Part 9 as if he or she were an authorised officer.

(3) A Commissioner or an authorised person may not exercise any power referred to in subsection (1) or (2) unless he or she produces at the time of exercising the power a certificate of authority given under section 79B or 79C.

Disclosure of information

79E. (1) A State Commissioner and a State authorised person may disclose any information relating to the affairs of a person obtained under this Part to any of the following:

- (a) the Commissioner, Second Commissioner or a Deputy Commissioner under any law of the Commonwealth relating to taxation, or

to any person authorised by that Commissioner, Second Commissioner or Deputy Commissioner;

- (b) the Commissioner or any other officer of any State or Territory of the Commonwealth administering any law of the State or Territory relating to taxation, or to any person authorised by that Commissioner or other officer;
- (c) the National Crime Authority or a person authorised by that Authority;
- (d) the Australian Securities and Investments Commission or a person authorised by that Commission;
- (e) a police officer or a member of a police force of another State or a Territory of the Commonwealth;
- (f) the Australian Federal Police;
- (g) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of any State or Territory of the Commonwealth.

(2) If a State Commissioner consents to the disclosure of any information relating to the affairs of a person obtained under this Part by a corresponding Commissioner, the corresponding Commissioner and corresponding authorised person may, subject to any terms of the consent, disclose the information –

- (a) to any person referred to in subsection (1); and

- (b) to any person to whom he or she is permitted under the corresponding law to disclose information obtained under the corresponding law.

(3) If a corresponding Commissioner consents to the disclosure of any information relating to the affairs of a person obtained under a corresponding law by a State Commissioner, the State Commissioner and a State authorised person may, subject to any terms of the consent, disclose the information –

- (a) to any person referred to in subsection (1); and
- (b) to any person to whom he or she is permitted under a State Taxation Act to disclose information obtained under that State Taxation Act.

(4) This section prevails over any provision of any State Taxation Act relating to the disclosure of information.

Confidentiality

79F. Any records or information obtained under this Part or under a corresponding law are exempt from the provisions of the *Freedom of Information Act 1991*.

Evidence

79G. The production of a document purporting to be certified by a corresponding Commissioner as a copy of, or extract from, a document furnished to, or

issued by, the corresponding Commissioner is, for all purposes, sufficient evidence of the matter contained in the document, without production of the original.

Immunity from liability

79H. A Commissioner or an authorised person is not personally liable for an honest act or omission done or made in the exercise or purported exercise of a power under this Part or a corresponding law.

Section 94 amended (Refund of amount)

36. Section 94(2) of the Principal Act is amended by inserting “, the decision of the Commissioner is not affirmed on review” after “part”.

Section 95 amended (Payment of interest)

37. Section 95 of the Principal Act is amended by omitting “section 35(a)” and substituting “section 35(1)(a)”.

Section 96 amended (Payment of tax)

38. Section 96(1)(a) of the Principal Act is amended as follows:

- (a) by omitting “a cash payment made at, or”;
- (b) by omitting “to,” and substituting “to”.

