

2019

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

Revenue Legislation Amendment Bill 2019

EXPLANATORY STATEMENT

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REVENUE LEGISLATION AMENDMENT BILL 2019

Summary

The Revenue Legislation Amendment Bill 2019 ('the Bill') amends the following:

- *Betting Operations Tax Act 2018* (Betting Operations Tax Act);
- *Duties Act 1999* (Duties Act);
- *Land Rent Act 2008* (Land Rent Act);
- *Land Tax Act 2004* (Land Tax Act);
- *Planning and Development Act 2007* (Planning and Development Act);
- *Rates Act 2004* (Rates Act); and
- *Taxation Administration Act 1999* (TAA).

Overview

The Bill amends various taxation legislation to improve the administration and operation of the ACT tax system for the benefit of both taxpayers and administrators. The amendments in the Bill make provision for:

- The expansion of debt recovery powers that:
 - enable the notification of tax debts to mortgagees or credit providers,
 - the recovery of tax debts from mortgagees, and
 - the recovery of tax debts from the sales proceeds of land owned by a debtor;
- Realignment of the 25 per cent penalty tax rate as the base default rate;
- The disclosure of information obtained in the administration and enforcement of tax laws in situations where there are serious threats to life, health or safety;
- An exemption from land tax for land rented through a registered community housing provider;
- An exemption from duty for the surrender and re-grant of University of Canberra declared land subleases; and
- A number of minor and technical amendments to clarify and simplify tax administration.

Betting Operations Tax Act

This Bill amends the Betting Operations Tax Act to exclude bets placed under the *Pool Betting Act 1964* (to address a previous omission in drafting) and to correct incorrect references to section numbers.

Duties Act

In 2015, a provision was made in the Duties Act for University of Canberra declared land subleases to be treated in the same way as Crown leases. This Bill addresses an omission in the exemption for the surrender and regrant of Crown leases, as it does not extend to University of Canberra declared land subleases.

This Bill also amends the Duties Act to clarify the head of power for home buyer assistance schemes, updates an outdated reference to the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Cwlth), and restricts the ability to apply for a rates, land tax and other charges certificate to certain persons, such as the owner, the purchaser or mortgagee of a parcel of land to better protect the privacy of property owners.

Land Rent Act and Planning and Development Act

This Bill updates references to taxes recoverable in the sale of land provision in the Land Rent Act, and under the association rent payout lease variation provision of the Planning and Development Act.

It also amends both Acts to restrict the ability to apply for a rates, land tax and other charges certificate to certain persons to better protect the privacy of property owners.

Land Tax Act

The Bill amends the Land Tax Act to insert a limited exemption for properties rented through a registered community housing provider. This is in line with ACT Housing Strategy to provide affordable community housing for people who do not qualify for public housing but are not able to enter the private rental market.

The Minister may determine eligibility criteria that applies to participants of the scheme. This will provide for rent to be at a rate that is less than 75 per cent of market rent and for properties to be accessible to tenants in the bottom two income quintiles. A determination of the Minister will be by disallowable instrument.

Provision is made for the expiration of the initiative on 30 June 2021.

The Bill also amends the Land Tax Act to update an incorrect reference to a section number under the definitions of the foreign surcharge provisions, to align the remission of interest provisions with the TAA and the Rates Act changes, and to restrict the ability to apply for a rates, land tax and other charges certificate to certain persons to better protect the privacy of property owners.

Rates Act

The amendments to the Rates Act align the remission of interest provisions with the TAA and the Land Tax Act changes, and restrict the ability to apply for a rates, land tax and other charges certificate to certain persons to better protect the privacy of property owners

TAA

Debt recovery

These amendments support revenue protection and the integrity of the revenue collection system. They introduce new powers that enable more timely notification of tax debts, the recovery of tax debts from mortgagees, and will facilitate the recovery of unpaid debts from the sales proceeds or mortgagees of land owned by a tax debtor.

These new powers will be an alternative to existing garnishee and sale of land powers and the operation of existing provisions that deem tax payable to be a first statutory charge on land.

The ACT Revenue Office will be able to put certain parties who have a vested interest in the land or the debt of a defaulting taxpayer (that is, mortgagees or credit providers) on notice of the secured tax debt and impending debt action.

As a further recourse, where tax is unpaid, the ACT Revenue Office may register a charge against land owned by a tax debtor. This facilitates the potential recovery of unpaid tax debts from the sales proceeds of land, or from the mortgagee of that land.

Where the debt exceeds a certain threshold and remains in arrears for one year despite attempts made to obtain payment from the defaulting taxpayer, the ACT Revenue Office will, provided prior written notice is given to the taxpayer and the relevant mortgagee, be able to recover the debt from the mortgagee. The payment of the tax debt by the mortgagee will be taken to be secured against the mortgage.

Penalty tax rate

The Bill amends the penalty tax provisions to re-align the 25 per cent rate as the 'base default' penalty rate. Previously the 50 per cent rate was an additional rate for tax defaults where the Commissioner for ACT Revenue is satisfied that the default was caused wholly or partly by a failure to take reasonable care.

This amendment clarifies that the 25 per cent penalty tax rate will be applied for tax defaults. Under existing provisions where the Commissioner is satisfied that a taxpayer took reasonable care to comply with tax laws, no penalty tax is payable.

The Commissioner may apply the 50 per cent rate if satisfied that the tax default was caused by the taxpayer delaying the payment of tax, delaying the provision of information required for the assessment of tax, or providing information required under a tax law that is incorrect, incomplete or misleading. This rate is also applicable in instances of repeat tax defaults.

Other amendments

The 14-day period to pay penalty tax is removed. It is common practice for the ACT Revenue Office to allow a 28 day period for the payment of a tax assessment, any interest and penalty tax. There are no similar provisions in the TAA that require the assessment of tax and interest to be paid with 14 days.

The remission of interest and penalty tax provisions are not consistent across the TAA and other taxation legislation, and could lead to inconsistencies in application. A general remission power for interest and penalty tax is inserted for consistent application for all tax lines. Consequential amendments to the Land Tax Act and Rates Act that contain interest remission provisions are made to align with these TAA changes.

The Bill also amends the TAA to enable the disclosure of information obtained by tax officers in the administration and enforcement of tax laws, in situations where there are serious threats to life, health or safety. This amendment is in line with existing provisions in the *Information Privacy Act 2014* that provide for disclosure in similar situations, and allows tax officers the ability to address effectively situations where harm is threatened.

Human rights

This Bill has human rights implications.

Debt recovery

The amendments to the TAA to expand the ACT Revenue Office's debt recovery powers engages the rights under the *Human Rights Act 2004* (HR Act).

Section 28 of the HR Act states that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. In deciding whether a limit is reasonable, all relevant factors must be considered.

Nature of the right affected

The Bill enables the notification of tax debts to mortgagees or credit providers of tax debtors, the recovery of tax debts from mortgagees, and the recovery of tax debts from the sales proceeds or mortgagee of land owned by a debtor.

These amendments may affect a debtor's right to:

- recognition and equality before the law (section 8(3));
- protection of family and children (section 11(1));
- privacy and reputation (section 12); or
- fair trial (section 21(1)).

Section 8 HR Act – Recognition and equality before the law

Subsection 8 (3) of the HR Act states that:

Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

Section 8 (3) of the HR Act is modelled on Article 26 of the International Covenant on Civil and Political Rights (ICCPR). In interpreting a human right, section 31(1) of the HRA provides that '[i]nternational law, and the judgments of foreign and international courts and tribunals, relevant to [the] human right may be considered'.

In its *General Comment No. 18: Non-discrimination*,^[1] the United Nations Human Rights Committee (the **Committee**) stated that '[a]rticle 26...prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The object of article 26, ICCPR is to protect the 'recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, social, cultural or any other field of public life'.^[2] However, the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance.^[3] In fact, the Committee remarked that 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the [ICCPR]'.^[4]

In the context of ACT law, all human rights stipulated in the HR Act may be reasonably limited only if the reasonable limitation is provided by laws 'that can be demonstrably justified in a free and democratic society'.^[5]

Notifying mortgagee or credit providers of person's a tax debt, allows tax debts to be considered fully as part of financing decisions, however this may affect a taxpayer's financial reputation.

Section 11 HR Act – Protection of family and children

Section 11(1) of the HR Act provides that 'family is the natural and basic group unit of society and is entitled to be protected by society'.

^[1] Human Rights Committee, General Comment No 18: Non-discrimination. 37th sess (10 November 1989) 1[1].

^[2] Ibid 2[6].

^[3] Ibid 2[8].

^[4] Ibid 3[13].

^[5] *Human Rights Act 2004 (ACT)* Preamble para 6, s 28.

Justice Bell stated that ‘family’ should not be given a narrow construction in either s 13(a) or s 17(1) of the Victorian Charter of Human Rights (*Director of Housing v Sudi (Residential Tenancies)* [2010] VCAT 328 [33]). Section 17(1) of the Victorian Charter of Human Rights is in substantially similar terms to section 11(1) of the HR Act.

This interpretation accords with the Human Rights Committee’s views on the meaning of ‘family’ under art 17 of the ICCPR, the equivalent to the privacy right in s 13 of the Charter. The Committee has commented that family is to ‘be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned’ (UN Human Rights Committee, General Comment No.16: Article 17 (The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation), 32nd sess (8 April 1988), UN Doc HRI/GEN/1/Rev.9 (Vol. I) [5] (‘General Comment No. 16’)).

Committee decisions have affirmed that the meaning of ‘family’ is consistent across the ICCPR (see, eg, UN Human Rights Committee, Decision: Communication No. 1170/2003 (*Ngambi v France*), 81st sess, UN Doc CCPR/C/81/D/1179/2003 (9 July 2004) [6.4]; UN Human Rights Committee, Views: Communication No 549/1993 (*Hopu et al v France*), 60th sess, UN Doc CCPR/C/60/D/549/1993/Rev.1 (29 July 1997) [10.3]).

In relation to ‘family’ in art 23(1), the Human Rights Committee has said:

The protection of ... family is not necessarily obviated, in any particular case, by the absence of formal marriage bonds, especially where there is a local practice of customary or common law marriage. Nor is the right to protection of family life necessarily displaced by geographical separation, infidelity, or the absence of conjugal relations. (UN Human Rights Committee, Decision: Communication No 1170/2003 (*Ngambi v France*), 81st sess, UN Doc CCPR/C/81/D/1179/2003 (9 July 2004) [6.4].

Cultural traditions may be relevant when considering whether a group of persons constitute a ‘family’ in a given case (UN Human Rights Committee, Views: Communication No 549/1993 (*Hopu et al v France*), 60th sess, UN Doc CCPR/C/60/D/549/1993/Rev.1 (29 July 1997) [10.3]). This interpretation would particularly complement the cultural right provided by s 19(2)(c) of the Charter, which states that Aboriginal people may not be denied the right to maintain their kinship ties. For further information on s 19(2)(c), see [6.13.3. Aboriginal cultural rights \(s 19\(2\)\)](#).

While ‘family’ has a broad meaning in the ICCPR, the Human Rights Committee has indicated that there must be ‘[s]ome minimal requirements for the existence of a family ... such as life together, economic ties, a regular and intense relationship, etc.’ (UN Human Rights Committee, Views: Communication No 417/1990 (*Santacana v Spain*), UN Doc CCPR/C/51/D/417/1990(15 July 1994) [10.2]).

The Human Rights Committee has commented that the protection offered by art 23(1) extends to requiring State parties to adopt legislative, administrative or other measures that

would ensure the protection of families. It also envisages the State providing families with financial or other support (UN Human Rights Committee, General Comment No. 19: Article 23, 39th sess (27 July 1990), UN Doc HRI/GEN/1/Rev.1 (Vol. I) at 28 (1994) [3]).

Debt recovery actions incorporating debt into a taxpayer's mortgage may affect a person's ability to service their mortgage and management of their finances. Matters of substantial hardship are addressed in the operation of the provisions, along with substantive notice arrangements to provide taxpayers with the opportunity for alternative actions.

Section 12 HR Act – Right to privacy and reputation

The right to privacy and reputation is contained in section 12 of the HR Act and states that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily. However, the nature of the right is not absolute. The term 'arbitrary interference' is described as intending to guarantee that even interference provided by law should be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. Therefore, it is reasonable to suggest that a person's right to privacy can be interfered with, provided the interference is both lawful (allowed for by the law) and not arbitrary (reasonable in the circumstances).

These rights may be impacted through notification of mortgagees or credit providers, and debt recovery actions. However, disclosure of tax debts and recovery actions is not to be undertaken in arbitrary manner and, where required, would be performed in a lawful considered manner.

Section 21 HR Act – Right to a fair trial

The right to a fair trial includes all proceedings in a court or tribunal and all stages of proceedings. It is concerned with procedural fairness, that is, the right of all parties in proceedings to be heard and respond to any allegations, and the requirement that the court be unbiased and independent. The nature of the right may be absolute in itself, in that it can never be justified to hold an unfair trial, but many of the principles that characterise a fair trial are not absolute.

The right to a fair hearing may be engaged through the recovery of debt from a mortgagee rather than the tax debtor. The existence of a tax debt is not affected by the amendments and there is substantial opportunity afforded to the taxpayer to affect the commencement of any recovery actions.

The importance of the limitation

The overarching intent of the amendments is the protection of public revenue. This is an important public policy goal, as revenue is required to fund services provided by the ACT Government, such as transport, health and education. The collection of tax from non-compliant taxpayers also promotes public confidence in the tax system. There is

knowledge that every individual either pays their taxes or is subject to recovery action. This ensures all citizens are more likely to pay their taxes in full and on time.

Debt recovery action also ensures that taxpayers who pay correctly and on time are not at a disadvantage in relation to recalcitrant taxpayers who do not comply with the law and who avoid payment of tax.

The new recovery provisions will only apply to persons who are in tax default and have not actively engaged with the ACT Revenue Office, such as by entering into and honouring a time payment arrangement.

At present, the following sanctions may apply to defaulting taxpayers:

- debts incur a penalty rate of interest of a market rate plus a premium component (currently totalling 9.96 per cent);
- penalty tax for tax defaults starts at a rate of 25 per cent of the tax unpaid;
- tax payable in relation to a parcel of land is a charge on the interest held by the owner that takes priority over all other interests (a 'first charge') – this occurs automatically without the discretion of the ACT Revenue Office;
- the Commissioner for ACT Revenue may instruct the Registrar-General for Land Titles to place a physical charge (caveat) on the title of the parcel of land – this is available to anyone who inspects the title and shows that the Commissioner has an interest in the property (but not the amount);
- the Commissioner may garnishee the amount of unpaid tax from sources such as a taxpayer's bank account or wages to be paid by an employer – there is no requirement to inform the taxpayer before the garnishee action occurs; and
- the Commissioner may commence a process of selling the land, this involves a public declaration that the tax for the parcel of land is in arrears.

Informing a mortgagee or credit provider of the tax debts of a defaulting taxpayer (section 56H (2) provides a middle ground between the automatic creation of a statutory first charge, and the existing recovery action where the repayment processes and amounts are dictated by penalty, garnishee and sale of land provisions.

By mortgagees being informed earlier of these debts, rather than at the time the property is about to be sold, allows for improved management of liabilities and interests. It is also generally a condition of a mortgage contract that the property owner pays all charges and taxes relating to the property.

Taxpayers may be more inclined to engage with their mortgage provider than with the Revenue Office to clear their debts. A mortgage provider may provide the opportunity for the debt to be rolled into the existing mortgage – this is likely to result in a lower interest rate on the debt than the Revenue Office's statutory interest rate (which includes a premium on market rates), which is of advantage to the taxpayer.

The taxpayer and the mortgagee are also given an incentive to manage existing tax debts before more aggressive debt recovery options, like garnishee (which could result in a mortgage default) or public sale of land proceedings, are employed.

The amendment is important to ensure the integrity of requirements for credit providers. Without information on parties' debts, lending institutions could inadvertently provide credit beyond the individual's means, thereby posing risks of financial harm to both individuals and credit providers.

The recovery of tax debts from a mortgagee of the affected parcel of land (sections 56HA and 56N) is a step to be used after a mortgagee has been informed of the statutory charge and tax debt, and as a possible alternative to the sale of land provisions. This amendment will provide a better opportunity for the taxpayer to maintain ownership of their property.

The recovery of tax debts from a mortgagee does not necessarily alter a person's property rights contemplated in their deed of mortgage. The Territory's interest in a person's property arises because of the tax default alone. Recovering from a mortgagee ahead of the sale of the land simply shifts the timing as to when the Territory will recover the tax debt.

This amendment will discourage those individuals who vary their affairs to avoid and evade the payment of tax. By improving debt enforcement and recovery, fairness and equity between taxpayers is better achieved. It ensures that taxpayers who pay correctly and on time are not put at a disadvantage in relation to taxpayers who do not comply with the law and avoid payment of tax.

Placing a statutory first charge on the title of property held by a taxpayer (sections 56M and 56N) protects public revenue by guaranteeing the recovery of tax debts. There are situations where the parcel of land to which the tax debt relates is sold before the debt is realised. For example, it is a taxpayer's responsibility to inform the Commissioner for ACT Revenue that their property is liable for land tax. Some taxpayers do not inform the Commissioner and it may be several years before the Revenue Office identifies their liability and issues an assessment. If the ownership of the property has changed hands before the debt is realised there is no longer land against which the Revenue Office can secure the debt. This has limited the Revenue Office's ability to collect this revenue.

Placing a statutory first charge on another property of the taxpayer guarantees the recovery of the tax debt. It also ensures equity between taxpayers who have incurred debts in relation to a property. It will no longer matter that property has been sold.

The nature and extent of the limitation

The new tax in arrears recovery measures are imposed in the context of tax system that requires taxpayers to be aware of and meet their tax obligations. The tax laws variously require taxpayers to pay taxes, and penalty and charges in the event of default. The measures support the recovery of taxes in the event of default.

The new recovery measures are limited to debts of more than \$2,000 or an amount determined by the Minister, by disallowable instrument via the operation of sections 56H (2B) (c) and 56L (1) (a). This will avoid consequences for a person's financial reputation for prescribed lesser tax debts as related to sections 8 and 12 of the HR Act.

The amendments for notification of a tax debt and recovery from a mortgagee provide a middle ground between the automatic creation of a statutory first charge and recovery by way of garnishee and public sale of land proceedings.

Debtors with tax in arrears are provided with substantial opportunities to consider and address their unpaid taxes – demonstrating a fair and reasonable process (section 21 of the HR Act). The Commissioner for ACT Revenue will utilise these steps only in respect of defaulting taxpayers who do not engage despite all reasonable attempts made by the ACT Revenue Office to facilitate payment of the debt (for example, automated arrears notices or reminders, issuing letters for payment, engaging the assistance of debt collectors, follow up phone calls, offering time payment arrangements).

Before the Commissioner notifies a mortgagee or credit provider however, a statutory charge will be registered on the title, and 28 days' notice given to the taxpayer and any joint owner of the Commissioner's decision to notify their mortgagee or credit provider of the tax debt. Before the Commissioner can recover from a mortgagee, the tax must have been in arrears for a period of at least one (1) year. 90 days' notice of the decision to recover must also be given to the taxpayer and joint owners of the land before recovery action is taken.

In addition, before registering a charge or recovering from a mortgagee, the Commissioner must be satisfied that recovery is reasonable having consideration, from the information available, whether recovery is likely to cause substantial hardship to the taxpayer, any joint owner, or others residing at the property as their principal place of residence. Thereby, considering rights to family and home under sections 11 and 12 of the HR Act.

The amendment to recover tax debts by registering a statutory first charge on land of a debtor will be exercised in situations where there is no security available over land. For example where land that would otherwise have been secured by a statutory charge has been sold.

Relationship between limitation and purpose

The limitation is necessary to achieve the purpose of revenue protection and preservation of the integrity of the tax system. It minimises the risk of non-compliance and revenue loss.

The notification of tax debts to mortgagees and credit providers (subsection 56H (2)) and registration of charges (section 56M and 56N) are directly related enabling the ACT Revenue Office to recover tax unpaid and in arrears. They may also act as deterrent to tax arrears while affording debtors appropriate notice to take alternate action.

The alternative recovery of debts (sections 56HA and 56N) will allow the ACT Revenue Office to pursue a different option to garnishee or sale of land proceedings which will be more beneficial to taxpayers and financiers. Earlier identification of tax debts will enable parties to better manage debts and minimise the risk of financial harm.

Any less restrictive means

For registration of charges (section 56M and 56N) the current land titles process issues notices to a mortgagee when a charge or caveat is registered over property. It is not necessary for the ACT Revenue Office to register a charge or caveat as the TAA provides for a statutory charge for tax payable.

This is a less effective means of notifying mortgagees which can result in extended timeframes as it relies on the physical registration of the charge or caveat on title, and the processes of another authority to provide notice.

Notice of outstanding tax debts of an individual (subsection 56H (2)) may also be obtained by application and the payment of a fee to the ACT Revenue Office. A certificate of the land-based taxes payable (for example, land tax, rates and duties) for the parcel of land is produced. This is ordinarily undertaken as part of the conveyance of a property by the purchaser of land. This is not a fully reliable means of providing notice due to timing of administrative process for certification and tax assessments, and the involvement of a third party who is interested in purchasing the land, or an existing mortgagee with an interest in the land to apply for a certificate.

It is not considered that there are any less restrictive means to achieve the purpose of these amendments. Existing provisions already provide an ability for the Commissioner to exert greater powers in recovery through the garnishee and sale of land proceedings.

Similar provisions exist in tax legislation of other jurisdictions such as Victoria, Queensland and New South Wales.

Commencement

The amendments will commence on the day after the notification day, except for the amendments that relate to the TAA to re-align the 25 per cent rate as the base default penalty tax rate that will commence on 1 July 2019.

Details of the Revenue Legislation Amendment Bill 2019

Clause 1 Name of Act

This clause provides the name of the Act is the *Revenue Legislation Amendment Act 2019*.

Clause 2 Commencement

This clause provides the Act commences:

- after the day of notification – other than schedule 1, amendments 1.45 and 1.46; and
- 1 July 2019 for schedule 1, amendments 1.45 and 1.46.

Clause 3 Legislation amended

This clause provides the Act amends the legislation mentioned in schedule 1.

- *Betting Operations Tax Act 2018* (Betting Operations Tax Act);
- *Duties Act 1999* (Duties Act);
- *Land Rent Act 2008* (Land Rent Act), *the Land Tax Act 2004* (Land Tax Act);
- *Planning and Development Act 2007* (Planning and Development Act);
- *Rates Act 2004* (Rates Act); and
- *Taxation Administration Act 1999* (TAA).

Schedule 1 Legislation amended

Part 1.1 Betting Operations Tax Act 2018

Clause 1.1 Section 12 (2) (b)

This clause updates paragraph 12 (2) (b) so that it correctly references paragraph 10 (2) (b) and uses consistent terminology to describe the tax payable by a betting operator.

Clause 1.2 Section 12 (4) (b)

This clause corrects an incorrect reference in section 12 (4) (b) to section 10 (1) (b) which does not exist. The correct section number is section 10 (2) (b) which provides for the amount of betting operations tax payable.

Clause 1.3 Dictionary, definition of *gaming Act*, new paragraph (e)

This clause amends the Betting Operations Tax Act to exclude bets placed under the *Pool Betting Act 1964*.

Part 1.2 Duties Act 1999

Clause 1.4 Section 10 (1) (f), note

This clause makes a minor amendment to remove a note related to an earlier transitional provision.

Clause 1.5 Section 51 (3)

This clause amends subsection 51 (3) of the Duties Act to provide for declared land subleases to be treated in the same way as Crown leases with respect to the duty exemption for the surrender and regrant of development leases. It also includes an amendment to the definition of 'development lease' at subsection 51 (4) to include declared land subleases.

Clause 1.6 Section 75AA, definition of *home buyer concession scheme*, except note

This clause amends the Duties Act to clarify the head of power in relation to home buyer assistance schemes to be section 139 of the TAA.

Clause 1.7 Section 115A, definition of *FS (BTGR) Act*

Clause 1.8 Section 115A, definition of *FS (TR) Act*

Clause 1.12 Dictionary, definition of *FS (BTGR) Act*

Clause 1.13 Dictionary, definition of *FS (TR) Act*

Clause 1.14 Further amendments, mentions of *Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cwlth)*

Clause 1.15 Further amendments, mention of *FS (BTGR) Act*

These clauses provide technical amendments to the definition of the 'asset', 'business', 'receiving body' and 'voluntary transfer' under Part 3.6 of the Duties Act by reference to the relevant Commonwealth legislation.

Clause 1.9 Section 244 (1)

Clause 1.10 Section 244 (1) (a)

Clause 1.11 Section 244 (5)

These clauses limit the operation of the section with respect to the 'relevant person' eligible to apply for a certificate of duty and other charges and the related dutiable transaction. By limiting the relevant person to the transferor, transferee or the mortgagee of the property subject to the dutiable transaction the privacy of property owners is protected.

Part 1.3 Land Rent Act 2008

- Clause 1.16 Section 18 heading**
- Clause 1.17 Section 18, new definition of *tax***
- Clause 1.18 Section 26 (3)**
- Clause 1.19 Section 26 (4) (a) (iii) (A)**
- Clause 1.20 Section 26 (4) (a) (iii) (B)**
- Clause 1.21 Section 26A (3)**
- Clause 1.22 Section 26A (4) (a) (ii) (A) and (B)**
- Clause 1.23 Section 27 (6) (b) and (e)**
- Clause 1.24 Section 31 (1)**
- Clause 1.25 Section 31 (1) (a)**
- Clause 1.26 New section 31 (5)**
- Clause 1.27 Dictionary, new definition of *tax***

These clauses amend the reference to tax in the Land Rent Act so as to include all taxes under the Duties Act, Land Tax Act and the Rates Act as recoverable in the sale of land provision.

See also clauses 1.36 and 1.37 for related amendments to the association rent payout lease variation provision of the Planning and Development Act.

Part 1.4 Land Tax Act 2004

- Clause 1.28 New section 10 (1) (ba)**
- Clause 1.29 New sections 13A**

These clauses amend the *Land Tax Act 2004* to insert an exemption from land tax for private properties rented through a community housing provider for the purpose of affordable community housing (section 13A).

Under subsection 13A (3) agreements between property owners and a community housing provider must require the registered community housing provide to ensure the use of the property for affordable housing and notify the Commissioner of the rental status of the property. Where a property is not being rented for affordable community housing the exemption will not apply (subsection 13A (4)).

Paragraph 31A (5) (a) provides for the Minister to determine the eligibility criteria for the owner of a property to obtain the exemption. It is intended that the properties must be rented at below market rent (that is less than 75 per cent of market rent) and be accessible to tenants in the bottom two income quintiles.

The number of properties available for rent may also be capped by the Minister (paragraph 31A (5) (b)).

The operation of section 13A and paragraph 10 (1) (ba), a related amendment, and are to expire on 30 June 2021.

Clause 1.30 Section 17F (3) definition of P, except note

This clause provides a technical amendment to align the ‘percentage rate’ applied in the determination of the ‘appropriate rate’ for the foreign ownership surcharge in the case of land partly foreign owned (under section 17F) with the general imposition of the foreign ownership surcharge under section 17E.

Clause 1.31 Section 36
Clause 1.32 Section 38 (i)

The substitution of section 36 aligns with amendments to other tax laws in this Bill to provide a consistent arrangement for the remission penalty tax by the Commissioner. Clause 1.32 provides a consequential technical amendment to referencing of section 36.

Clause 1.33 Section 41 (1)
Clause 1.34 Section 41 (1) (a)
Clause 1.35 Section 41 (5), new definition of *relevant person*

These clauses limit the operation of the section with respect to the ‘relevant person’ eligible to apply for a certificate of land tax and other charges. By limiting the relevant person to the owner, buyer or the mortgagee of the property the privacy of property owners is protected.

Part 1.5 Planning and Development Act 2007

Clause 1.36 Section 272B (2) (a)
Clause 1.37 New section 272B (4)

Further to clauses 1.17 to 1.18 in the Bill, these clauses provide the related consequential amendment to the Planning and Development Act so as to include all taxes under division 9.6.3 of that Act, the Duties Act, Land Tax Act and the Rates Act as recoverable in the sale of land.

Clause 1.38 Section 279AE (2)
Clause 1.39 New section 279AE (6)

These clauses limit the operation of the section with respect to the ‘relevant person’ eligible to apply for a certificate of lease variation charge and other charges. By limiting the relevant person to the lessee, buyer, mortgagee of the property, or applicant for development in relation to the property the privacy of property owners is protected.

Part 1.6 Rates Act 2004

Clause 1.40 Section 43

The substitution of section 43 aligns with amendments to other tax laws in this Bill to provide a consistent arrangement for the remission of penalty tax by the Commissioner.

Clause 1.41 Section 76 (1)

Clause 1.42 Section 76 (1) (a)

Clause 1.43 New section 76 (5)

These clauses limit the operation of the section with respect to the ‘relevant person’ eligible to apply for a certificate of rates and other charges. By limiting the relevant person to the owner, buyer, or the mortgagee of the property the privacy of property owners is protected.

Part 1.7 Taxation Administration Act 1999

Clause 1.44 Section 29

Clause 1.48 Section 37

The substitution of sections 29 and 37 align with amendments to other tax laws in this Bill to provide a consistent arrangement for the remission of interest and penalty tax, respectively, by the Commissioner.

Clause 1.45 Section 31 (2) to (5)

Clause 1.46 Table 34, items 3 and 4

These clauses amend the penalty tax provisions of the TAA to ensure that in the event of a default by a taxpayer the base penalty tax payable is at 25 per cent.

Under subsection 31 (2) the 50 per cent penalty tax rate remains but applies at the discretion of the Commissioner for specified circumstances. Those circumstances involve the conduct of the taxpayer such as delays relating to payment or provision of information, or providing incorrect, incomplete or misleading information. The amended penalty tax arrangements apply from 1 July 2019 to tax defaults occurring before or after the commencement of the subsection.

The circumstances for the application of 75 per cent penalty tax rate under subsection 31 (4) are unchanged in requiring the Commissioner to be satisfied that a tax default is subject to intentional disregard by the taxpayer. For consistency, the wording of section is revised to align with the discretionary approach under subsection 31 (2).

The amendments to Table 34 reflect the abovementioned amendments to section 31 of the TAA.

Clause 1.47 Section 36

This clause amends the time period for the payment of penalty tax from 14 days to a ‘stated’ period.

Clause 1.49 New division 7.3 heading

This clause is a technical amendment to reflect that the division has been expanded to cover additional debt recovery options for tax debts other than the sale of land in the event of tax arrears.

Clause 1.50 Section 56H (3) (a) (iv)

This clause provides an editorial amendment to the referenced section 279AE.

Clause 1.51 New section 56H (2)

Clause 1.52 New section 56H (4)

This clause amends the TAA to allow the Commissioner the discretion to notify a mortgagee or credit provider about a tax debt and a charge in relation to a parcel of land.

The operation of this action is limited by requirements relating to the parcel of land and the tax debt of the owner (including debt in arrears, minimum amount and arrangements for repayment), and notification of the debtor/owner at least 28 days prior to notification of the mortgagee or credit provider. Determinations by the Minister of minimum tax debt amounts other than \$2,000 are disallowable instruments.

The Commissioner must give a copy of a notice to the mortgagee or credit provider to the debtor.

A charge in relation to a parcel of land ends on the earlier of Commissioner applying for removal of the charge or the sale of the land with the Commissioner’s consent.

Clause 1.53 New section 56HA

This clause inserts a new subsection permitting the Commissioner to require the mortgagee of a parcel of land to pay the unpaid tax relating to the land for a tax debtor.

The Commissioner’s ability to seek debt recovery in this manner is limited to where a mortgagee or credit provider has been notified about a tax debt and the tax debt remains in arrears for at least one (1) year.

The Commissioner must also notify the debtor of the intended action and only commence action if the debt remains unpaid after a further 90 days but before undertaking recovery be satisfied that the recovery is reasonable having regard to the potential for substantial hardship for affected parties, such as those occupying the parcel as their principal place of residence.

Where the Commissioner has notified the mortgagee or credit provider to pay the tax debt for the debtor a copy of the notice must be provided to the debtor.

Mortgagees may subsequently recover tax debts paid under this section as a debt and secured under the mortgage for the parcel of land.

Clause 1.54 Section 56J (12), definition of *related*, paragraph (b)

Clause 1.56 Section 56K (1)

These clauses provide technical amendments to correct referencing.

Clause 1.56 New sections 56L to 56N

To provide for greater security in the recovery of tax debts, these new sections provide for the Commissioner to apply to the registrar-general for the registration of a tax debt of taxpayer as a statutory charge against a parcel of land owned by the taxpayer (either solely or jointly).

The ability of the Commissioner to seek registration of tax debt is limited to amounts of tax debt exceeding \$2,000 or other amounts determined by the Minister. Such determinations by the Minister are disallowable instruments.

Under subsection 56L (5), before applying to register a charge the Commissioner must have taken reasonable steps for the repayment of the tax debt, be satisfied that the action is reasonable having considered whether it is likely to cause substantial hardship for affected persons, and notified the debtor and any joint owner at least 28 days prior.

The Commissioner must also notify the debtor and joint owner of the registration (subsection 56L (6)). Where a charge is registered, the charge will have priority over a sale consistent with other tax laws charges over land (subsection 56M (2)).

The Commissioner may also notify a mortgagee for the parcel of land or credit provider, subject to having first notified the debtor and any joint owner at least 28 days prior of the intended action (subsections 56M (3) and (4)). If the Commissioner notifies the mortgagee, then a copy of the notice must be given to the debtor and any joint owner (subsection 56M (5)).

Under subsection 56M (6), the charge will not have effect against an honest purchaser of the parcel of land where certificates of relevant taxes and charges have been obtained and the purchaser did not have notice of the liability.

The charge will end on the earlier of Commissioner applying for removal of the charge or the sale/disposal of the land with the Commissioner's consent.

Subject to notification under section 56M and tax debt remaining in arrears for at least one (1) year, new section 56N allows for the Commissioner to recover unpaid tax debt from the mortgagee of a parcel of land owned by a debtor.

After notifying the debtor of the intended action, if the tax remains unpaid after a further 90 days, the Commissioner may give notice to the mortgagee to pay the tax debt of the debtor. Aside from notice, this action is subject to a requirement for the Commissioner to be satisfied that the recovery action is reasonable having regard to whether it is likely to cause substantial hardship to the debtor, joint owner or other people occupying the parcel as their principal place of residence.

The Commissioner must notify the debtor and any joint owner of a notice to a mortgagee.

The mortgagee must pay the amount of unpaid tax on the later of the receipt of or date stated in the notice. A mortgagee may subsequently recover tax debts paid under this section as a debt and secured under the mortgage for the parcel of land.

Clause 1.57 New section 97 (aa)

This clause permits a tax officer to disclose information obtained under or in relation to the administration of a tax law in circumstances where it is unreasonable or impracticable to obtain consent and there is reasonable belief of a threat of serious harm to an individual or the public. The provisions mirror those in section 19 of the *Information Privacy Act 2014*, and will permit tax officers to effectively address matters, such as threats of harm to officers or taxpayers.

Clause 1.58 Dictionary, definition of *owner* and *parcel*

This clause provides consequential amendments to definitions related to the operation of tax recovery measures.