

[Act 2000 No 72]



New South Wales

# Administrative Decisions Tribunal Legislation Amendment (Revenue) Bill 2000

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are:

- (a) to amend the *Administrative Decisions Tribunal Act 1997* to establish a Revenue Division of the Administrative Decisions Tribunal (the ***Tribunal***) and provide for its constitution, and
  - (b) to amend the *Taxation Administration Act 1996*:
    - (i) to confer jurisdiction on the Tribunal in respect of certain revenue matters arising under the taxation laws to which that Act applies, and
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- (ii) to re-enact (with some modifications) provisions relating to appeals to the Supreme Court to enable taxpayers to apply to that Court for a review of certain revenue decisions of the Chief Commissioner of State Revenue (the *Chief Commissioner*) as an alternative to review by the Tribunal, and
  - (iii) to re-enact (with some modifications) provisions to enable taxpayers to apply to the Land and Environment Court for a review of certain land value decisions of the Chief Commissioner made under the *Land Tax Management Act 1956*, and
  - (iv) to provide for a common set of procedural provisions in respect of applications for review to the Tribunal, Supreme Court and Land and Environment Court, and
- (c) to make consequential amendments to the *Land and Environment Court Act 1979* and the *Land Tax Management Act 1956*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Administrative Decisions Tribunal Act 1997* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Taxation Administration Act 1996* set out in Schedule 2.

**Clause 5** is a formal provision giving effect to the consequential amendments of other Acts set out in Schedule 3.

## **Schedule 1    Amendment of Administrative Decisions Tribunal Act 1997**

**Schedule 1 [1]** amends Schedule 1 to the Act to establish a Revenue Division of the Tribunal.

**Schedule 1 [2]** amends Schedule 2 to the Act to insert a new Part to provide for the composition and functions of the proposed Revenue Division of the Tribunal.

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**Schedule 1 [3]** amends clause 1 of Schedule 5 to the Act to enable regulations of a savings or transitional nature to be made that are consequent on the enactment of the proposed Act.

**Schedule 1 [4]** amends Schedule 5 to the Act to make provision in respect of certain savings and transitional matters consequent on the enactment of the proposed Act.

## **Schedule 2 Amendment of Taxation Administration Act 1996**

**Schedule 2 [2], [4] and [7]** remove unnecessary references to non-reviewable decisions under the Act. A non-reviewable decision is a decision that cannot be the subject of an objection or appeal under Part 10 of the Act or the subject of a review by a court or administrative review body. At present, a compromise assessment made in agreement with a taxpayer under section 12 of the Act is the only non-reviewable decision under the Act. These decisions will continue to be non-reviewable under the new section 86 to be inserted by Schedule 2 [10].

**Schedule 2 [10]** replaces section 86 of the Act with a new section dealing with the right to make objections to the Chief Commissioner against certain decisions of the Chief Commissioner. The new section retains the general right of a taxpayer to make an objection in respect of assessments and other decisions of the Chief Commissioner under the taxation law. The new section excludes the following classes of decisions from being the subject of an objection:

- A compromise assessment made under section 12, which is presently a “non-reviewable decision” under the Act. This exclusion ensures that such decisions remain non-reviewable under the new review provisions of the Act.
- The determination of an objection under Part 10 (including such part of any reassessment that gives effect to the determination of an objection that is allowed in whole or in part). This class of excluded decision seeks to clarify the class of excluded decision presently contained in section 86 (1A), which refers to reassessments as a result of objections that are allowed in part.
- A decision to reassess the taxpayer’s tax liability that does not have the effect of increasing that liability where the taxpayer seeks to lodge the objection more than 60 days after the date of service of the notice of the initial assessment. This new class of excluded decision will not affect the right of a taxpayer to object against the initial assessment if it is lodged in accordance with the Act.

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- A decision not to reassess the taxpayer's tax liability where the taxpayer seeks to lodge the objection more than 60 days after the date of service of the notice of the initial assessment. This new class of excluded decision will not affect the right of a taxpayer to object against the initial assessment if it is lodged in accordance with the Act.

**Schedule 2 [13]** amends section 93 (Notice of determination) of the Act to require the Chief Commissioner to give reasons for the determination of an objection against an assessment or other decision of the Chief Commissioner that the Tribunal has jurisdiction under Division 2 of Part 10 (as inserted by Schedule 2 [15]) to review. The reasons must set out the matters referred to in section 49 (3) of the *Administrative Decisions Tribunal Act 1997*. Moreover, the notice of the determination will also have to inform the objector of the objector's right to make an application for review under Division 2 of Part 10 in the case of a determination to disallow the objection in whole or in part.

**Schedule 2 [15]** replaces Division 2 of Part 10 with a new Division.

At present, Division 2 of Part 10 of the *Taxation Administration Act 1996* confers a right on taxpayers to appeal to the Supreme Court in respect of tax assessments and certain other decisions of the Chief Commissioner that have been the subject of objections made to the Chief Commissioner under Division 1 of that Part. Section 38A of the *Land Tax Management Act 1956*, additionally, provides that the provisions of Part 10 apply to certain land value decisions of the Chief Commissioner made under that Act as if references to the Supreme Court were references to the Land and Environment Court.

The new Division will enable a taxpayer to apply either to the Tribunal or Supreme Court for a review of assessments and certain other decisions of the Chief Commissioner (other than land value decisions). It also expressly provides taxpayers with a right to apply to the Land and Environment Court for a review of certain land value decisions made by the Chief Commissioner under the *Land Tax Management Act 1956*. The new Division seeks, wherever possible, to introduce a common set of procedural provisions in respect of all such applications for review.

The other items of Schedule 2 make amendments that are consequential on the amendment made by Schedule 2 [15].

### **Schedule 3 Consequential amendment of other Acts**

**Schedule 3.1** makes a consequential amendment to the *Land and Environment Court Act 1979* arising from the amendments made by Schedule 2.

**Schedule 3.2** makes consequential amendments to the *Land Tax Management Act 1956* arising from the amendments made by Schedule 2. In particular:

- **Schedule 3.2 [3]** replaces section 38A of the Act with a new section. Section 38A presently provides that the provisions of Part 10 of the *Taxation Administration Act 1996* apply to certain land value decisions of the Chief Commissioner made under the *Land Tax Management Act 1956* as if references to the Supreme Court were references to the Land and Environment Court. The new section 38A recognises that section 98 of the *Taxation Administration Act 1996* (as inserted by Schedule 2 [15]) will expressly provide for reviews by the Land and Environment Court of decisions concerning land value.
- **Schedule 3.2 [2]** and **[4]** amend the Act to make it clear that an objection under Part 10 of the *Taxation Administration Act 1996* may be made in respect of alterations of certain strata unit entitlements under section 65A of the *Land Tax Management Act 1956* as if they were decisions in respect of land value.