

REPORT FOR TABLING IN PARLIAMENT
SECTION 134 OF THE TAXATION ADMINISTRATION ACT

REPORT TO PARLIAMENT IN ACCORDANCE WITH SECTION 134 OF THE *TAXATION ADMINISTRATION ACT 2003*

Division 6 of Part 10 of the *Taxation Administration Act 2003* (the Act) commenced on 28 June 2008 and provides a framework for the early operation of certain amendments to taxation Acts as re-enactment provisions.

Section 134 of the Act requires the responsible Minister to carry out a review of the effectiveness of that Division following the fifth anniversary of its commencement and every five years after that. A report based on the review must be tabled before each House of Parliament as soon as practical after it is prepared (and in any event not more than 12 months after the relevant anniversary).

On 4 December 2013, the then Minister for Finance tabled the first report on the operation of the pre-enactment provisions for the five years to 28 June 2013. That report contained details of the two instances the pre-enactment provisions had been applied and concluded the provisions had been used effectively on both occasions.

On 11 February 2020, the then Minister for Finance tabled the second report setting out that no re-enactment provisions had been determined in the five years to 28 June 2018.

This report is the five-year period to 28 June 2023. The pre-enactment provisions were used once in this time to increase the payroll tax exemption threshold.

Background

The pre-enactment provisions were introduced by the *Revenue Laws Amendment Act (No. 2) 2008* to improve the efficiency of government processes when providing tax relief to taxpayers.

It is common for changes to tax legislation to have a commencement date prior to the passage of the amending Bill because annual taxes, such as payroll tax and land tax, require a commencement date from the beginning of a financial year. Further, transfer duty concessions generally apply from an announced date to minimise distortion of the market.

The pre-enactment provisions allow the early commencement of amendments pending passage of a Bill. By publishing a notice in the *Government Gazette*, the Minister for Finance can determine specified provisions in a Bill to be pre-enactment provisions. This allows the Commissioner of State Revenue to administer the amendments as if they had been enacted from the date the notice is published.

Application

To ensure the powers are appropriately used, the Minister can only determine clauses of a Bill to be pre-enactment provisions if the provisions:

- reduce an amount or rate of tax (including by reducing it to zero);
- change or remove a tax threshold;
- expand the class of persons, acts, matters or things in respect of whom or which a concession or exemption applies;
- introduce a concession or exemption; or
- will have the same effect as amendments of a kind described above.

If a taxpayer would have to pay more tax because a pre-enactment determination notice has been made, section 133 of the Act reduces the amount to what would be payable if the determination notice was not in force.

A pre-enactment notice ceases to have effect from the earlier of when:

- the amending Bill receives the Royal Assent;
- the notice is revoked by the Minister by notice published in the *Government Gazette*;
- six months expires from the date the notice came into force;
- the amending Bill is defeated in either House of Parliament;
- the Legislative Assembly expires or is dissolved before the amending Bill has been passed by both Houses of Parliament; or
- a resolution by either House of Parliament is passed disallowing the notice.

Given the unusual nature and characteristics of the pre-enactment provisions, section 134 was introduced to review their operation and effectiveness.

Pre-enactment determination notices published

The former Minister for Finance made one pre-enactment determination notice in the five-year period to 28 June 2023 relating to clauses in the *Pay-roll Tax Assessment Amendment (Thresholds) Bill 2019*.

This Bill was introduced into the Parliament on 28 November 2019 to increase the payroll tax exemption threshold from \$850,000 to \$950,000 on 1 January 2020 and from \$950,000 to \$1 million on 1 January 2021.¹

The *Taxation Administration (Pre-enactment Provisions Determination) Notice 2019* was published in *Government Gazette* No. 175 on 6 December 2019. It specified that clauses 2 to 9 of the Bill, which related to the threshold increase to \$950,000, were pre-enactment provisions.

The Bill received Royal Assent on 6 April 2020 as the *Pay-roll Tax Assessment Amendment (Thresholds) Act 2020*. The determination notice ceased to be in force from this date after being in operation for four months.

Reason for determination

The determination was made in accordance with the pre-enactment framework as the amendment changed a tax threshold.

The use of the pre-enactment provisions allowed the increase in the exemption threshold to \$950,000 to be administered from the proposed start date of 1 January 2020, four months before the Bill was enacted. Approximately 12,000 employers immediately benefitted from the payroll tax savings delivered by this threshold increase.

If the pre-enactment provisions had not been used, employers would have needed to continue paying payroll tax based on the \$850,000 exemption threshold and adjust their payroll tax returns, and seek a refund where applicable, after the Bill had passed. This would have increased red tape for taxpayers and administrative costs for the Commissioner.

Effectiveness of the pre-enactment framework

The results of the review show the pre-enactment framework was used on one occasion during the five-year period to 28 June 2023 in circumstances the Parliament intended. Allowing the Commissioner to administer the amendments before the relevant Bill had passed resulted in benefits to taxpayers and increased efficiency in government processes.

¹ Committee amendments were subsequently made to the Bill to bring forward the threshold increase to \$1 million to 1 July 2020.