

**State Taxation and Accident Compensation Acts
Amendment Act 2007
No. 68 of 2007**

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Victoria

State Taxation and Accident Compensation Acts Amendment Act 2007[†]

No. 68 of 2007

[Assented to 11 December 2007]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The main purpose of this Act is—

- (a) to amend the **Congestion Levy Act 2005**—
 - (i) to exempt parking spaces owned by consular posts and consular officers and employees from the congestion levy;
and

- (ii) to provide owners and operators of public car parks who cannot set parking fees with an indemnity for the amount of the congestion levy from the party that can set parking fees for the car park; and
 - (iii) to provide that owners of private car parks can pass on the full cost of the congestion levy to car park users, including any GST payable by the owner on the amount of the levy received from the user; and
- (b) to amend the **Land Tax Act 2005** in relation to—
- (i) land held by personal representatives of deceased estates; and
 - (ii) the operation of the principal place of residence exemption for deceased estates; and
 - (iii) the use of valuations of land based on the occupancy on that land; and
- (c) to amend the **Accident Compensation Act 1985** to increase the amount of compensation payable under that Act.

2 Commencement

This Act comes into operation on the day after the day on which it receives the Royal Assent.

PART 2—CONGESTION LEVY ACT 2005

3 Definitions

- (1) In section 3(1) of the **Congestion Levy Act 2005** insert the following definitions—

"domestic partner of a person means a person to whom the person is not married, but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

GST has the same meaning as it has in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth except that it includes notional GST of the kind for which payments may be made under Part 3 of the **National Taxation Reform (Consequential Provisions) Act 2000** by a person that is a State entity within the meaning of that Act;

relative, in relation to a person, means—

- (a) a spouse or domestic partner of the person;
- (b) a lineal ancestor or lineal descendant of the person or of the spouse or domestic partner of the person;
- (c) a brother or sister of the person or of the spouse or domestic partner of the person;
- (d) a spouse or domestic partner of a person in paragraph (b) or (c);
- (e) a child of a brother or sister of the person or of the spouse or domestic partner of the person;

See:
Act No.
74/2005
and
amending
Act Nos
22/2007 and
74/2006.
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- (f) a brother or sister of a parent of the person or of the spouse or domestic partner of the person;

spouse of a person means a person to whom the person is married;"

- (2) After section 3(2) of the **Congestion Levy Act 2005** insert—

"(3) For the purposes of the definition of *domestic partner* in subsection (1), in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case."

4 New section 18A inserted

After section 18 of the **Congestion Levy Act 2005** insert—

"18A Parking spaces owned by consulates, consular officers etc.

- (1) A parking space is an exempt parking space if it is owned by—
- (a) a consular post within the meaning of the Vienna Convention on Consular Relations; or
 - (b) a consular officer or consular employee within the meaning of the Vienna Convention on Consular Relations; or
 - (c) a relative of a person referred to in paragraph (b) who is residing in the same household.
-

- (2) In this section—

Vienna Convention on Consular Relations
means the Vienna Convention on
Consular Relations done at Vienna on
24 April 1963."

5 New section 33A inserted

After section 33 of the **Congestion Levy Act
2005 insert—**

"33A Indemnity

- (1) This section applies if a lease, licence or other arrangement between an operator and an owner of a public car park provides that only one of the operator or the owner may set the fees for use of the car park.
- (2) If the lease, licence or other arrangement referred to in subsection (1) provides that the owner may set the fees for the use of the car park, the owner must indemnify the operator for the amount of the levy.
- (3) If the lease, licence or other arrangement referred to in subsection (1) provides that the operator may set the fees for the use of the car park, the operator must indemnify the owner for the amount of the levy.
- (4) This section has effect despite the terms of any lease, licence or arrangement unless the parties to the lease, licence or arrangement expressly agree that this section is not to apply."

6 Private car parks—obligation of lessees, licensees etc.

For section 34(2) of the **Congestion Levy Act 2005** substitute—

- "(2) A person who uses a parking space that is a leviable parking space for a levy year under an agreement with the owner of the parking space must pay to the owner—
- (a) the amount of the levy for that levy year in respect of that parking space; and
 - (b) the amount of any GST payable in respect of the amount referred to in paragraph (a)."

7 New Part 8 inserted

After Part 7 of the **Congestion Levy Act 2005** insert—

"PART 8—TRANSITIONAL PROVISIONS

38 State Taxation and Accident Compensation Acts Amendment Act 2007—indemnity

- (1) Section 33A, as inserted by section 5 of the **State Taxation and Accident Compensation Acts Amendment Act 2007**, applies, and is taken to have always applied, to owners and operators of public car parks on or after 1 January 2006.
- (2) If, because of subsection (1), the owner or operator of a public car park is required to indemnify another person for an amount that the owner or operator would not otherwise have been required to indemnify that other person for, that amount must be paid within 90 days after the commencement of section 5

of the **State Taxation and Accident
Compensation Acts Amendment Act 2007**.

**39 State Taxation and Accident
Compensation Acts Amendment Act
2007—agreement to use leviable parking
space**

- (1) Section 34(2), as substituted by section 6 of the **State Taxation and Accident Compensation Acts Amendment Act 2007**, applies, and is taken to always have applied, to any person who uses a leviable parking space on or after 1 January 2006.
- (2) If, because of subsection (1), a person is required to pay an amount that the person would not otherwise have been required to pay, that amount must be paid within 90 days after the commencement of section 6 of the **State Taxation and Accident Compensation Acts Amendment Act 2007**.

_____".

PART 3—LAND TAX ACT 2005

8 Definitions

See:
Act No.
88/2005.
Reprint No. 2
as at
18 October
2007
and
amending
Act No.
22/2007.
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legislation.
vic.gov.au

- (1) In section 3(1) of the **Land Tax Act 2005**, in the definition of *excluded trust*, paragraph (f) is **repealed**.
- (2) In section 3(1) of the **Land Tax Act 2005** insert the following definitions—

"*administration trust* means a trust under which the assets of a deceased person are held by a personal representative, but only during the period ending on the earlier of—

- (a) the completion of administration of the deceased estate; or
- (b) the third anniversary of the death of the deceased person or the further period approved by the Commissioner under subsection (3);

personal representative means a person acting in the capacity of an executor or administrator of a deceased estate;"

- (3) In section 3(1) of the **Land Tax Act 2005**, for the definition of *trust substitute*—

"*trust*—

- (a) includes a trust under which the assets of a deceased person are held by a personal representative; and
- (b) does not include an implied or constructive trust;"

- (4) In section 3(3) of the **Land Tax Act 2005**, for "paragraph (f)(i) of the definition of *excluded trust*" substitute "paragraph (b) of the definition of *administration trust*".

9 Use of valuations

At the end of section 21 of the **Land Tax Act 2005 insert**—

- "(2) Without limiting subsection (1), the Commissioner may—
- (a) use a valuation made under the **Valuation of Land Act 1960** that has determined the value of each separate occupancy on land; and
 - (b) include in a notice of assessment a description of the occupancy on land.
- (3) A valuation of occupancy on land made under the **Valuation of Land Act 1960** is deemed to be a valuation of land for the purposes of this Act."

10 General land tax surcharge for trusts

In section 46A(3) of the **Land Tax Act 2005**—

- (a) in paragraph (c), for "excluded trust."
substitute "excluded trust; or";
- (b) after paragraph (c) **insert**—
"(d) land subject to an administration trust."

11 Land tax for fixed trust if beneficial interests notified to Commissioner

For section 46B(3)(b) of the **Land Tax Act 2005 substitute**—

- "(b) in any other case, for the tax year in respect of which the notice is lodged—".

12 Land tax for unit trust scheme if unitholdings notified to Commissioner

For section 46C(3)(b) of the **Land Tax Act 2005 substitute**—

"(b) in any other case, for the tax year in respect of which the notice is lodged—".

13 Nomination of beneficiary of pre-2006 discretionary trust for land tax purposes

(1) For section 46F(5)(a)(ii) of the **Land Tax Act 2005 substitute**—

"(ii) in any other case, for the tax year in respect of which the nomination is lodged; and".

(2) For section 46F(8)(b) of the **Land Tax Act 2005 substitute**—

"(b) takes effect for the tax year in respect of which the nomination is lodged; and".

14 Nomination of PPR beneficiary of unit trust scheme or discretionary trust for land tax purposes

(1) For section 46H(4)(a)(ii) of the **Land Tax Act 2005 substitute**—

"(ii) in any other case, for the tax year in respect of which the nomination is lodged; and".

(2) For section 46H(4)(b) of the **Land Tax Act 2005 substitute**—

"(b) remains in force until whichever of the following occurs first—

- (i) the nominated PPR beneficiary dies; or
 - (ii) the nominated PPR beneficiary ceases to use and occupy the land as his or her principal place of residence."
-

(3) For section 46H(5) of the **Land Tax Act 2005** **substitute**—

"(5) The trustee of the scheme or trust may nominate a natural person who is a unitholder in the scheme or a beneficiary of the trust as the nominated PPR beneficiary if—

- (a) the nominated PPR beneficiary dies; or
- (b) the nominated PPR beneficiary ceases to use and occupy the land as his or her principal place of residence and the Commissioner considers that the nomination of a PPR beneficiary under this subsection is just and reasonable in the particular case."

(4) In section 46H(6) of the **Land Tax Act 2005**—

(a) for paragraph (b) **substitute**—

"(b) takes effect for the tax year in respect of which the nomination is lodged; and";

(b) for paragraph (c) **substitute**—

"(c) remains in force until whichever of the following occurs first—

- (i) the nominated PPR beneficiary dies; or
- (ii) the nominated PPR beneficiary ceases to use and occupy the land as his or her principal place of residence."

15 Land tax for PPR land if nominated PPR beneficiary

(1) In section 46I(2) of the **Land Tax Act 2005**, for "used or occupied" **substitute** "used and occupied".

(2) After section 46I(2) of the **Land Tax Act 2005** insert—

"(3) Subsection (2) applies only if the land has been used and occupied as the principal place of residence of the nominated PPR beneficiary—

(a) since 1 July in the year preceding the tax year in which the nomination for that PPR beneficiary is lodged under section 46H; or

(b) if the trustee became owner of the land on or after 1 July in the year preceding the tax year in which the nomination for that PPR beneficiary is lodged under section 46H, since a later date during that year."

16 Requirements for trustees to notify Commissioner

After section 46K(5) of the **Land Tax Act 2005** insert—

"(5A) A person who was a personal representative of a deceased estate that includes land in Victoria must lodge a written notice with the Commissioner within one month after the administration of that estate is completed."

17 New section 53A inserted

After section 53 of the **Land Tax Act 2005** insert—

"53A What is a right to reside?

(1) For the purposes of this Division, a person has a right to reside on land if—

(a) the right was granted on the death of the person previously occupying the land; and

-
- (b) the right was granted in writing under a will or testamentary instrument; and
 - (c) the right was not granted or acquired for monetary consideration.
- (2) For the purposes of this Division, a right to reside on land does not include—
- (a) a right to occupy land as a lessee; or
 - (b) a right to occupy land as a beneficiary of a discretionary trust or as a unitholder in a unit trust scheme."

18 Principal place of residence exemption

- (1) After section 54(1)(a) of the **Land Tax Act 2005** insert—

"(ab) land owned by a person that is used and occupied as the principal place of residence of a natural person who has a right to reside on that land;"

- (2) After section 54(1) of the **Land Tax Act 2005** insert—

"(1A) Despite subsection (1)(ab), land referred to in that subsection is not exempt land unless—

- (a) immediately before the natural person who has a right to reside on the land was granted the right, the land was exempt land under section 54(1)(a) or (b); and
- (b) that person is not entitled to—
 - (i) an exemption under this Part in respect of any land; or

(ii) an exemption from land tax under a law of any other State or Territory that corresponds to this Part."

(3) In section 54(2) of the **Land Tax Act 2005**, for "subsection (1)" **substitute** "subsection (1)(a) or (b)".

19 Exemption continues on death of resident

(1) For section 57(2)(a) of the **Land Tax Act 2005** **substitute**—

"(a) the third anniversary of the person's death or the expiry of the further period approved by the Commissioner under subsection (3); or".

(2) After section 57(2) of the **Land Tax Act 2005** **insert**—

"(3) For the purposes of subsection (2)(a), the Commissioner may approve a further period in any particular case."

20 New clause 12 inserted in Schedule 3

After clause 11 of Schedule 3 to the **Land Tax Act 2005** **insert**—

"12 State Taxation and Accident Compensation Acts Amendment Act 2007

(1) Despite its repeal, paragraph (f) of the definition of *excluded trust* in section 3(1) continues to apply on and after the commencement of section 8(1) of the **State Taxation and Accident Compensation Acts Amendment Act 2007** in relation to a testator who died before that commencement.

(2) Division 2A of Part 3, as amended by sections 10 and 16 of the **State Taxation and Accident Compensation Acts**

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- Amendment Act 2007**, applies to an administration trust if the person whose estate is subject to the trust died on or after the commencement of those sections.
- (3) Section 21 is deemed to have always been enacted as amended by section 9 of the **State Taxation and Accident Compensation Acts Amendment Act 2007**.
- (4) Sections 46B(3)(b), 46C(3)(b), 46F(5)(a)(ii), 46F(8)(b), 46H(4)(a)(ii) and 46H(6)(b) as substituted by the **State Taxation and Accident Compensation Acts Amendment Act 2007** apply and are taken always to have applied to nominations made on or after 1 January 2006.
- (5) A taxpayer is entitled to a refund of any land tax paid on or after 1 January 2006 that is not payable because of subsection (4)."
-

PART 4—ACCIDENT COMPENSATION ACT 1985

21 Definition

See:
Act No.
10191.
Reprint No. 14
as at
26 July 2006
and
amending
Act Nos
107/1997,
95/2003,
97/2005,
24/2006,
69/2006,
80/2006 and
34/2007.
LawToday:
www.
legislation.
vic.gov.au

In section 5(1) of the **Accident Compensation Act 1985**, paragraph (c) of the definition of *personal and household service* is **repealed**.

22 Compensation for medical and like services

- (1) In section 99(2) of the **Accident Compensation Act 1985**—
 - (a) for "subsection (1)" **substitute** "subsections (1), (5A), (5D) and (5E)";
 - (b) after "service" (where first occurring) **insert** "(including modification of a car or home)".
 - (2) After section 99(5) of the **Accident Compensation Act 1985 insert**—

"(5A) If a worker, as a result of his or her injury, reasonably requires a car used by him or her in Australia to be modified, the Authority is liable—

 - (a) to pay the reasonable costs of modifying the car; or
-

-
- (b) if the car is not capable of being modified, to contribute a reasonable amount to the purchase cost of a suitably modified car selected by the Authority.
- (5B) If a worker, as a result of his or her injury, reasonably requires access to a car, and he or she does not have access to a car, the Authority is liable to contribute a reasonable amount to the purchase cost of a suitable car selected by the Authority.
- (5C) Without limiting the factors the Authority may consider in determining what is a reasonable amount for the purposes of subsections (5A)(b) and (5B), the Authority must have regard to any of the following factors that are applicable—
- (a) the market value now of the car used by the worker at the time of the injury;
 - (b) if that car is no longer used by the worker, the market value of the car at the time of the injury;
 - (c) how often the worker was using a car at the time of the injury;
 - (d) how often the worker will, or is likely to, use a car in future;
 - (e) the market value of any other car that the worker uses.
- (5D) If a worker, as a result of his or her injury, reasonably requires that a home in which he or she resides in Australia be modified, the Authority is liable—
- (a) to pay the reasonable costs of modifying the home; or
-

- (b) if for any reason the home cannot be reasonably modified, to contribute a reasonable amount—
 - (i) to the purchase costs of a semi-detachable portable unit; or
 - (ii) to the costs of relocating the worker to another home that is suitable for the worker or that is capable of being reasonably modified.
 - (5E) Without limiting the factors the Authority may consider in determining the reasonable costs or amount for the purposes of subsection (5D), the Authority must have regard to the following factors—
 - (a) whether the home in which the worker resides is structurally suitable for modification;
 - (b) the nature of the worker's injuries;
 - (c) how those injuries restrict, or are likely to restrict, the worker's ability—
 - (i) to enter and leave the home in which the worker resides; and
 - (ii) to move about the home for necessary purposes;
 - (d) the extent of the modifications that will be needed to address those restrictions or likely restrictions;
 - (e) any complex, unique or unusual circumstances associated with those modifications;
 - (f) whether the cost of those modifications is likely to exceed the value of the home in which the worker resides.
-

-
- (5F) If a worker moves from a home that has modifications to which the Authority made a contribution, in assessing whether to make a payment in respect of modifications to the worker's new home, the Authority must have regard to the appropriateness of that home for modification, having regard to all relevant circumstances, with respect to the modifications that are needed.
- (5G) The Authority must not make a payment or contribution under subsection (5A), (5B) or (5D) which exceeds \$10 000 or a greater amount as may be prescribed, unless the worker enters into an agreement with the Authority in relation to the ownership of, and maintenance of modifications to, the car, home or semi-detachable portable unit.
- (5H) Without limiting what may be included in an agreement under subsection (5G), the agreement must include provisions in respect of—
- (a) subsequent modifications;
 - (b) changes of ownership;
 - (c) the frequency of modifications and changes of ownership."
- (3) In section 99(15)(a) of the **Accident Compensation Act 1985** for "modifications to a home approved by the Authority under this Act" **substitute** "contributions or costs for which the Authority is liable under subsection (5D)".

23 Indexation

In section 100(2B)(d) of the **Accident Compensation Act 1985**, for "section 99(1)(aa)" **substitute** "subsections (1)(aa) and (5G)".

24 New Division 9 of Part IX inserted

After Division 8 of Part IX of the **Accident Compensation Act 1985** insert—

"Division 9—State Taxation and Accident Compensation Acts Amendment Act 2007

298 Section 99

Section 99 as amended by section 22 of the **State Taxation and Accident Compensation Acts Amendment Act 2007**, applies in respect of any claim for compensation made under that section, irrespective of when the injury occurred or when the claim was made."

PART 5—REPEAL OF ACT

25 Repeal of Act

This Act is **repealed** on the first anniversary of its commencement.

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ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 1 November 2007

Legislative Council: 22 November 2007

The long title for the Bill for this Act was "A Bill for an Act to amend the **Accident Compensation Act 1985**, the **Congestion Levy Act 2005** and the **Land Tax Act 2005** and for other purposes."