

This Bulletin sets out recent changes to the *Planning and Environment Act 1987* made by the *Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2011*.

# Recent Changes to GAIC Scheme

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The *Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2011* (the Amending Act) received Royal Assent on 29 June 2011 and introduces a number of changes to the Growth Areas Infrastructure Contribution (GAIC) scheme. The purposes of the Amending Act are:

- A. To deliver on the Government's election commitment to enable a 100 per cent deferral of the Growth Areas Infrastructure Contribution (GAIC) liability until the land is developed for urban purposes;
- B. To enable full or part payment of a GAIC liability to be made under a 'work in kind' (WIK) agreement; and
- C. To make minor technical changes that will improve the operation of the GAIC scheme under Part 9B of the *Planning and Environment Act 1987* (the PEA).

## A 100 per cent deferral of a GAIC liability

The Amending Act has increased the percentage of a GAIC liability deferral from 70 per cent to 100 per cent for a dutiable transaction relating to all land in the contribution area until the land is ready for land development. The 100 per cent deferral applies to land transfers with a settlement date on or after 30 June 2011 or significant acquisitions made on or after that date.

## B WIK agreements

The Amending Act introduces new provisions to enable full or partial payment of a GAIC liability to be made pursuant to a WIK agreement.

### What is a WIK agreement?

A WIK agreement is an agreement entered into by a person liable to pay the GAIC (the Relevant Person) and the Minister for Planning (the Minister) under which the Relevant Person agrees to provide land or works (construction of State infrastructure) instead of a cash

payment in discharge of the Relevant Person's GAIC liability. Other parties to the agreement may include another minister, a public authority or a landowner affected by the agreement.

### Key features of a WIK agreement

The key features of a WIK agreement include:

- a) The land or works to be provided under the WIK agreement must be situated in a growth area and be of a type that may be funded from the Growth Areas Public Transport Fund or Building New Communities Fund;
- b) The agreement must be entered into by the Relevant Person and the Minister before the day on which the GAIC liability is payable but may be entered into to discharge a GAIC liability which arose prior to 30 June 2011;
- c) The decision to enter into a WIK agreement will be at the sole discretion of the State Government;
- d) Prior to entering into a WIK agreement, the Minister must consult with any other minister that has an interest in the subject matter of the agreement; and
- e) There is no minimum amount of GAIC liability that can be discharged by a WIK agreement. However, if the value of the WIK agreement exceeds \$2 million, the Minister must obtain the Treasurer's approval.

### Performance of the obligations under a WIK agreement

Discharging a GAIC liability by performance of obligations under a WIK agreement is a new tax payment concept. The agreed value of a WIK agreement is deemed to be payment in discharge of all or part of a GAIC liability when the Growth Areas Authority (GAA) notifies the Commissioner of State Revenue (the Commissioner) that a WIK agreement has been fully performed.



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If a person who has entered into a WIK agreement fails to perform the agreement or a stage of the agreement in accordance with its terms by the due date for performance:

- a) the whole of the GAIC amount becomes payable immediately as if the GAIC had never been deferred or a staged payment approval had never been given; and
- b) a tax default occurs and the relevant interest and penalty tax will be imposed under the *Taxation Administration Act 1997*.

### Administration of the WIK agreements scheme

The Amending Act also provides for the administration of the WIK agreements scheme by the Commissioner and the GAA. This includes the registration of WIK agreements on land titles and the lodgement of notifications with the Land Registrar to restrict certain dealings on land subject to a WIK agreement. Further, the Amending Act requires the Department of Planning and Community Development to report annually on the details and value of all WIK agreements determined to have been performed or partly performed for each growth area.

Further information relating to WIK agreements is available on the GAA website ([www.gaa.vic.gov.au](http://www.gaa.vic.gov.au)).

### C Technical amendments

The Amending Act also addresses a number of minor technical issues to improve the operation of the GAIC scheme. These issues include the following:

#### Land that is less than 0.41 hectares

An amendment has been made to ensure a GAIC exemption applies to land that is a small lot of 0.41 hectares or less at the time of a GAIC event and is either:

- a) a lot in a plan of subdivision authorised by a

planning permit referred to in section 201RB(d)(i) and registration of the plan had taken effect before the time of the occurrence of the GAIC event; or

- b) a lot created by an excluded subdivision of land referred to in section 201RF(f) or (g).

This amendment is effective from 1 July 2010.

### Due date for payment of GAIC on an application for reduction, exemption or relief

The amended provisions allow a person who has applied for a reduction, exemption or relief from payment of the GAIC to pay their GAIC by the later of

- a) the date the GAIC payment was originally due; or
- b) 14 days after being notified of the determination of the application.

Consequential amendments have also been made to the deferral provisions to ensure that indexation or interest will still apply to the amounts deferred from the initial payment date if the applicant subsequently elects to defer.

### Process for an application for reduction or exemption from GAIC in exceptional circumstances

The amended provision requires a reduction or exemption application to be made directly to the Minister rather than to the Governor in Council. If necessary, the Minister may make a recommendation to the Governor in Council as to the appropriate relief to be given. If relief is not recommended, the Minister will notify the applicant and does not need to refer the application to the Governor in Council.

### Deferred GAIC liability and interest amounts

The Amending Act also clarifies that when a deferred GAIC liability is rolled over to a new owner on the occurrence of a subsequent dutiable transaction relating to the land, or when a staged payment plan is approved, the deferred GAIC liability that is rolled over will include any interest accruing on the deferred amount.



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## Consequential amendments to other Acts

A consequential amendment has also been made to section 5 of the *Land Acquisition and Compensation Act 1986* to ensure that the requirement that land be reserved under a planning scheme before it is acquired does not apply to land being provided under a WIK agreement. This amendment is necessary because of the very wide definition of “acquire” under that Act.

A consequential amendment has also been made to section 32 of the *Sale of Land Act 1962* to require a vendor to disclose to purchasers of land any information contained in a WIK agreement that affects the land in the vendor statement.

## Further information

For further information on these changes, please contact the SRO:

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