

# Revenue and Other Legislation Amendment Bill 2011

## Explanatory Notes

### Short title

The short title of the Bill is the Revenue and Other Legislation Amendment Bill 2011.

### Policy objectives and the reasons for them

#### *Amendments to revenue legislation*

The Bill amends, and in two cases repeals, Queensland's revenue legislation to maintain its currency and ensure its proper operation.

The *Debits Tax Repeal Act 2005* will be repealed following abolition of debits tax on 1 July 2005 and the winding up of all outstanding matters. The *Tobacco Products (Licensing) Act 1988* will also be repealed. Licence fees have not been collected since the 1997 High Court decision casting doubt on their validity. Consequential amendments to other legislation are required as a result of the repeal of these Acts.

Amendments to the *Duties Act 2001* will -

- continue concessional vehicle registration duty arrangements for special vehicles following commencement of the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* on 1 September 2010;
- give retrospective effect to an administrative arrangement which provides a vehicle registration duty concession on the registration or transfer of registration of a vehicle which has been modified to enable a person with a disability to drive, or be transported in, it;
- allow the imposition of administrative penalties as an alternative to prosecuting for an offence for certain self assessment matters;

- extend the conditions for the change of trustee exemption to require that transfer duty has been paid on all previous liable trust surrenders for the trust;
- remove the requirement for a person to pay duty before being entitled to a concession under the cancelled transfer provision or section 499;
- extend the definition of *resale agreement* under the cancelled agreement provision to include circumstances where a related person of the transferee receives a financial benefit;
- remove the Commissioner of State Revenue's (Commissioner's) discretion in relation to whether or not a trust qualifies for the family trust concession;
- give prospective legislative effect to an administrative arrangement extending the transfer duty home concessions to acquisitions by way of a vesting pursuant to statute or court order;
- clarify the operation of the corporate reconstruction duty exemption;
- provide an exemption for the transfer of dutiable property to a special disability trust in certain circumstances;
- clarify the provisions relating to partitions of property;
- give prospective legislative effect to an administrative arrangement providing transfer duty relief for certain transfers of land in relation to registered indigenous land use agreements under the *Native Title Act 1993* (Cwlth); and
- clarify the meaning of *registered managed investment scheme*.

Amendment of the *First Home Owner Grant Act 2000* will extend to five years the time for commencing a proceeding for an offence, aligning the timeframe with that under the *Taxation Administration Act 2001*.

Amendments to the *Land Tax Act 2010* will remove an unintended consequence of the new extended payment arrangements which arises in limited circumstances where a reassessment is made to decrease liability, and will also allow the Commissioner to extend the use requirement period for vacant land acquired by a charitable institution. Both amendments give beneficial retrospective effect to administrative arrangements that have applied since 2 September 2010.

Amendments to the *Payroll Tax Act 1971* will:

- ensure that payroll tax is not payable on benefits exempt under the *Fringe Benefits Tax Assessment Act 1986* (Cwlth);
- remove the requirement to group a company with another company as related corporations where one of the companies holds its interest in the other company on trust; and
- ensure that, where two or more members of a group together have a controlling interest in a business, all the members of the group and the persons who carry on the business together constitute a group.

Amendments to the *Payroll Tax Act 1971* will also define when a share or option is acquired and make other consequential amendments arising from changes to the Commonwealth income tax legislation relating to employee share schemes. All amendments to the *Payroll Tax Act 1971* will apply on and from 1 July 2011.

### ***Amendments to the South East Queensland Water (Restructuring) Act 2007***

The Bill amends the *South East Queensland Water (Restructuring) Act 2007* (SEQWR Act) to:

- introduce a statutory mechanism enabling the transfer of assets, liabilities, instruments and employees between certain State-owned water entities. The new regulation-making power will be used to facilitate the proposed merger of the Queensland Manufactured Water Authority (WaterSecure) and the Queensland Bulk Water Supply Authority (Seqwater) announced by Government in late 2010, as well as future transfers of bulk water assets and associated liabilities from the Government-owned special-purpose vehicle construction companies to the bulk water authorities. This will significantly ease the cost and administration connected with the transfer of bulk water assets;
- incorporate transitional provisions for the proposed merger of Seqwater and WaterSecure, including a statutory exemption from transfer duty on the transaction and provisions confirming the protection of rights and entitlements of transferring employees;
- allow for the dissolution of WaterSecure upon transfer of its assets, liabilities and employees; and

- remove the existing restriction on the number of directors that may be appointed to a board under the Act (currently five, including the chair).

In September 2007, the Queensland Government approved a range of institutional reforms to be implemented across the South East Queensland (SEQ) urban water sector. These reforms addressed a number of critical shortfalls in the urban water supply arrangements, and coincided with the establishment of the SEQ Water Grid.

The SEQWR Act established four new statutory authorities to own and operate bulk water supply, transmission and production infrastructure in the region and to oversee the operation of the SEQ Water Grid. Seqwater is responsible for the major bulk water storage and treatment assets across the region, including dams, weirs and water treatment plants. Water Secure was established to own and operate the Gold Coast Desalination Plant (the Desalination Plant) and the Western Corridor Recycled Water Scheme.

In late 2010, the Government announced a revised operating strategy for the manufactured water assets to reflect the substantial improvement in water security in SEQ. The Government also endorsed the further consolidation of the Water Grid industry structure through the establishment of a single supplier of bulk water into the Grid. To ensure retention of the expertise necessary to preserving business continuity, the merger of Seqwater and WaterSecure is to take effect from 1 July 2011.

In addition to enabling the merger of the authorities within the agreed timeframe, the amendments will provide a mechanism to facilitate the future transfer of key Water Grid assets from the SPV companies delivering the projects to the bulk water authorities, consistent with the institutional model given effect under the SEQWR Act.

### ***Repeal of the New Tax System Price Exploitation Code (Queensland) Act 1999***

The Bill repeals legislation that applied as a transitional protection at the introduction of the New Tax System (i.e. introduction of the Goods and Services Tax) in 2000.

In 1999, the Australian Government made amendments to the *Competition and Consumer Act 2010* (Cwlth) (formally known as the *Trade Practices Act 1974* (Cwlth)) to protect consumers during the transition to the New Tax System. The amendments made it an offence for a business to engage

in price exploitation in relation to the New Tax System. Due to constitutional limitations, these amendments only applied to corporations.

Under the 1999 *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Arrangements* (1999 IGA), States and Territories agreed to introduce template (or mirror) legislation allowing the price exploitation provisions to apply against areas outside the Australian Government's constitutional powers (for example, the business activities of individuals and partnerships). These protections were only intended to be a temporary measure designed to protect consumers during the transition to the New Tax System when consumers may have been at risk of price exploitation by businesses. The New Tax System transition period expired on 30 June 2002. As the Goods and Services Tax has now been in place for more than a decade, it is unlikely that a business could attribute a price rise to the introduction of the New Tax System.

The Commonwealth repealed the related price exploitation provisions of the *Competition and Consumer Act 2010* (Cwlth) in 2009.

#### ***Amendment of the Queensland Competition Authority Act 1997***

The amendment will allow the Ministers responsible for administering the *Queensland Competition Authority Act 1997* (QCA Act) to be as prescribed in the Government's Administrative Arrangements Order.

The QCA Act provides for "Ministers" to perform certain acts. The QCA Act defines the "Ministers" as meaning the Premier and Treasurer. However, it is intended that responsibility be assigned in accordance with the *Constitution of Queensland Act 2001*, which provides for the Governor in Council to make administrative arrangements (an Administrative Arrangements Order) specifying the Acts that are to be administered by each Minister.

#### ***Repeal of bank merger, transfer of undertaking and integration acts***

Consistent with Treasury Department's Regulatory Simplification Plan, the Bill will repeal various bank merger, transfer of undertaking and integration acts which have achieved their purpose and are no longer required.

#### ***Amendments to the Royal National Agricultural and Industrial Association of Queensland Act 1971 (RNA Act)***

This Bill amends the *Royal National Agricultural and Industrial Association of Queensland Act 1971* (RNA Act) to enable the Royal National Agricultural and Industrial Association of Queensland

(Association) to maintain an Australian Taxation Office (ATO) endorsement as an income tax exempt charitable institution under the *Income Taxation Assessment Act 1997*. The Bill removes any opportunities for members of the Association to gain financially on the winding-up of the Association, which is inconsistent with a charitable institution endorsement.

The Association owns the Royal Queensland Showground and since its establishment in 1875, has promoted the development of agricultural, manufacturing, industrial and cultural pursuits in Queensland. It operates as a charitable institution and is governed by the RNA Act, with Objects and Rules that aim to promote industry for the public good. Under the governing legislation, no dividend, bonus or other distribution of profit shall at any time be paid out of the income or property of the Association to any member. However, this provision fails to capture situations involving the distribution of the Association's assets to members on winding-up, and hence this Bill enacts a new provision ensuring members cannot benefit from surplus assets, should the Association become insolvent.

### ***Amendments to the Local Government Act 2009 and City of Brisbane Act 2010***

Amendments to the *Local Government Act 2009* (LGA) and the *City of Brisbane Act 2010* (COBA) relate to a Local Government change assessment, the consolidation of the Local Government Superannuation Scheme (LG super scheme) with Brisbane City Council Superannuation Plan (City Super), correcting a minor drafting error in relation to inappropriate conduct by a Councillor, and a numbering error in the LGA.

The Local Government Change Commission (the Commission) established under the LGA has jurisdiction to recommend changes to a Local Government's boundaries, divisions, number of Councillors, name and classification. The Commission is made up of at least the Electoral Commissioner. The Commission must consider whether an application for a proposed change is in the public interest. The LGA and COBA require the Commission to conduct public hearings and to seek submissions when assessing a proposed change.

A significant number of change applications are relatively minor in nature, uncontentious and unlikely to generate a significant level of public interest. Proposed amendments to the LGA and COBA provide the Commission with the discretion and flexibility to call for submissions and conduct public hearings in relation to a Local Government change application, and

for the Local Government Minister to direct the Commission to call for submissions and conduct public hearings in certain circumstances.

This amendment is consistent with the previous *Local Government Act 1993* which provided the Local Government Electoral and Boundaries Review Commission (LGEBRC) with the flexibility for assessing certain minor and limited reviewable Local Government matters in a way the LGEBRC considered appropriate.

The consolidation of the LG super scheme with City Super aligns with the key findings of the 2010 Cooper review into Australia's superannuation system as the consolidation is in both funds' interests. It also meets the successor fund transfer requirements under the *Superannuation Industry Supervision Act 1993* (Cwlth) (SIS Act). Both funds have agreed that the proposed consolidation be conducted as a successor fund transfer by 30 June 2011, with City Super members as eligible members of the LG super scheme.

The COBA provides for complaints of misconduct and inappropriate conduct to be assessed for referral to a conduct review panel. However, the term 'inappropriate conduct' was inadvertently omitted from the provisions dealing with the hearing and deciding of those complaints about a Councillor and the taking of disciplinary action. The Bill corrects a minor drafting error in the LGA by renumbering section 38A as section 38AA.

### ***Amendments to Sustainable Planning Act 2009***

Amendments to *Sustainable Planning Act 2009* (SPA) transition the protection of iconic places under the *Iconic Queensland Places Act 2008* (IQPA) into the SPA framework. These amendments continue the rollout of the planning reform agenda which seeks to consolidate matters impacting on planning and development within SPA itself.

The IQPA was enacted in March 2008 with the purpose of protecting areas of Queensland with special characteristics under possible threat by future development. Four iconic places were declared under the IQPA, and iconic place development assessment panels established with responsibilities in the development assessment process to ensure iconic values are appropriately considered in decision-making.

As a result of the review of the IQPA in 2010, the Bill proposes to repeal the IQPA, and consequently absorb the policy for the ongoing protection of declared Iconic places into SPA. It is also proposed to provide a new temporary advisory role for iconic place panels.

***Cape York parks – Aboriginal Land Act 1991 amendment***

The amendments will enable Mungkan Kandju, Lakefield, Iron Range, Cape Melville and Flinders Group national parks on Cape York Peninsula, and defined areas near those parks, to be transferred as Aboriginal land under section 27 of that Act.

The Queensland Government has made a commitment to convert existing national parks on Cape York Peninsula to “national parks (Cape York Peninsula Aboriginal land)”, which are jointly managed by the Aboriginal Traditional Owners and the Queensland Government. The proposed amendment is necessary so that this can occur for these five parks.

The Government has also made a commitment to expand the protected area estate in Queensland. This amendment will assist the Government to expand two national parks (Iron Range and Lakefield) and increase the total protected area estate.

***Flood Recovery – Water Act 2000 amendments***

The amendments will provide a mechanism for a constructing authority, such as a state government agency or local government, to take water for the construction or maintenance of state infrastructure without a water licence or permit.

The rationale for such policy objectives stems from an intent to provide an alternative mechanism that can reduce the administrative burden on the department, other state government agencies and local governments imposed by the current approval processes for water licensing and permitting. Currently water permits and water licences are issued for large infrastructure projects carried out by state government agencies and local governments. Such projects often stretch over long distances and continue for a lengthy period of time. This has led to the department renewing or reissuing water licences and permits to take water from multiple water sources.

The proposed legislative amendment will remove the need to continue renewing or reissuing multiple source licences and permits held by constructing authorities, such as state government agencies and local governments, through a designated statutory authorisation to take water for the purpose of state infrastructure projects.

The recent floods and cyclones have resulted in the declaration of disaster events. Recovery from these events will include the need to take water for road repairs etc. While this can initially be done under emergency

provisions in the Water Act, it is prudent to provide for these recovery activities to continue for some time after the initial emergency has passed. These events have highlighted the need for this amendment and increased the urgency of its progression.

***Urban Water Reform – Water Act 2000 and Water Supply (Safety and Reliability) Act 2008 amendments***

The amendments will defer or remove certain planning and reporting requirements as a first stage of the review of urban water regulatory arrangements that apply predominately to service providers outside the south east Queensland (SEQ) region.

Urban water regulatory arrangements that apply outside the SEQ region are being reviewed by the Department of Environment and Resource Management to ensure the regulatory framework continues to deliver safe and reliable water and sewerage services while achieving regulatory efficiency and reducing regulatory burden on service providers.

**Achievement of policy objectives**

***Amendments to revenue legislation***

***Debits Tax Repeal Act 2005***

The *Debits Tax Repeal Act 2005* repealed the *Debits Tax Act 1990* to abolish debits tax effective from 1 July 2005. The tax applied to certain debits to accounts with cheque-drawing facilities held with financial institutions in Queensland. Abolition was announced in the 2004-05 State Budget consistent with Queensland's obligations under the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations.

The *Debits Tax Act 1990* continued to apply after its repeal to allow for the winding up of outstanding matters in relation to debits made before 1 July 2005. All outstanding debits tax matters have now been wound up so that the *Debits Tax Repeal Act 2005* is no longer required. The Bill will therefore repeal the *Debits Tax Repeal Act 2005*.

## *Duties Act 2001*

### Vehicle registration duty – special vehicles

Under the *Duties Act 2001*, vehicle registration duty is imposed on an application to register a vehicle, or on an application to transfer a vehicle. Vehicle registration duty is based on the vehicle's dutiable value. Concessional arrangements apply for special vehicles, so that an application to register or an application to transfer a special vehicle is liable for duty of \$25. A special vehicle is defined by reference to the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*. In the absence of that definition, the standard, higher rate of vehicle registration duty would apply.

The *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999* expired on 1 September 2010 and was replaced by the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010*. To reflect this change, the definition of *special vehicle* in the *Duties Act 2001* is being amended to refer to the new regulation. The transitional arrangements under section 130 of the *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010* apply pending commencement of the amendment.

### Vehicle registration duty – vehicles modified for persons with disabilities

Where a vehicle is modified to enable a person with a disability to drive or be transported in it, vehicle registration duty is payable on the value of those modifications when the vehicle is registered or the registration is transferred. An administrative arrangement has applied since 4 March 2009 providing relief from the additional duty payable on the costs of the modifications in these cases. As a result, where a person with a disability, or a relative or carer of the person, registers or transfers the registration of a modified vehicle, duty is calculated without regard to the cost of the modifications where the vehicle will be used as required. The Bill will amend the *Duties Act 2001* to give retrospective legislative effect to the administrative arrangement.

### Self assessment – administrative penalties

The *Duties Act 2001* provides for self assessment of transfer duty liability by registered self assessors. Where self assessors fail to comply with their obligations, they commit an offence. The Commissioner may impose administrative penalties for some of these offences as an alternative to prosecution, which is appropriate in the less serious cases.

Amendments to the *Duties Act 2001* will enable the Commissioner to impose administrative penalties as an alternative to prosecution in the following additional cases:

- failure by an agent self assessor to remit duty received from a client for a standard self assessment;
- endorsement of an instrument by a self assessor before duty is paid to the Commissioner or received by the self assessor;
- failure by a self assessor to endorse an instrument when required; and
- endorsement of an instrument by a person who is not a self assessor.

#### Change of trustee concession

The *Revenue and Other Legislation Amendment Act 2010* amended the *Duties Act 2001* to extend the change of trustee exemption by providing a conditional exemption for dutiable transactions undertaken solely to effect a change of trustee involving a change in the rights or interest of a beneficiary of the trust. One of the conditions of the exemption is that transfer duty has been paid on all previous trust acquisitions and trust surrenders for the trust. This condition is equally relevant for the original change of trustee exemption under section 117, which currently requires that transfer duty has been paid on all previous trust acquisitions but not trust surrenders.

The Bill will amend the *Duties Act 2001* to extend the conditions of the change of trustee exemption to require in all cases that transfer duty has been paid on all previous liable trust acquisitions and trust surrenders for the trust.

#### Concessions for cancelled agreements and transfers, and other instruments

The *Duties Act 2001* was amended by the *Revenue and Other Legislation Amendment Act 2010* to provide that duty is not payable on cancelled transfers of dutiable property if certain conditions are satisfied, including that no resale agreement occurs. As resale agreements commonly occur in transactions between related persons, the *Duties Act 2001* expressly provides that a resale agreement arises where the transferee under the cancelled transfer, or a related person of the transferee, receives a direct or indirect financial benefit.

A similar concession applies under the *Duties Act 2001* for agreements to transfer dutiable property where the agreement is subsequently cancelled. This concession also includes a condition which limits its application

where there is a resale agreement. However, in these instances, the term *resale agreement* covers only cases where the transferee directly or indirectly receives a financial benefit, and does not extend to the receipt of a financial benefit by a related person.

As the *no resale agreement* condition of both exemptions seeks to address potential revenue risk, the circumstances in which a resale agreement exists should be consistent. Consequently, the definition of *resale agreement* for the cancelled agreement exemption will be amended to align with that applying for the cancelled transfer exemption.

Under the cancelled transfer exemption, a reassessment to reduce the duty liability may only be made where the duty has first been paid on the transfer that is cancelled. A similar approach applies under section 499 of the *Duties Act 2001*, which deals with reassessments where instruments are, amongst other things, void, voidable or unfit for their purpose. To simplify arrangements for taxpayers, the requirement that duty is paid before a reassessment may be made to allow the concession is being removed.

#### Family trust concession

The *Duties Act 2001* provides an exemption from transfer duty for acquisitions or surrenders of trust interests, and from corporate trustee duty for dealings in shares in a corporate trustee of a trust, where certain conditions are satisfied. Broadly, the exemptions are available where the Commissioner is satisfied the trust is established and maintained primarily for the benefit of the members of a particular family or a family company (a *family trust*).

Following a review of the exemptions, the existing discretions will be replaced with legislatively stipulated conditions that must be satisfied for the exemptions to apply. Sections 118 and 225 of the *Duties Act 2001* are therefore being amended to remove the Commissioner's discretions and include provisions that clarify when a trust is established and maintained primarily for the benefit of the members of a particular family or a family company.

#### Home concession – vestings by statute or court order

Under the *Duties Act 2001* if property will be a person's home, a transfer duty home concession or first home concession may apply. These concessions only apply to dutiable transactions that are a transfer or agreement to transfer a home or first home, or an acquisition of a new right

that is a lease of residential land in Queensland where the lessee is required to pay a premium, fine or other consideration. The concessions do not apply to a dutiable transaction that is a vesting of dutiable property by statute or court order.

Under an administrative arrangement, the transfer duty home concessions have been extended through the provision of ex gratia relief for such transactions made on or after 4 May 2005. The *Duties Act 2001* is therefore being amended to give this arrangement legislative effect by prospectively extending the transfer duty home concessions to the acquisition of a home or first home, or of vacant land on which a first home is to be constructed, by way of a vesting under statute or court order.

#### Corporate reconstruction concession

The corporate reconstruction concession exempts certain transfers of group property within a corporate group from transfer duty and vehicle registration duty. Conditions apply to ensure that the exemption cannot be exploited to avoid duty on transfers for purposes other than making internal adjustments to corporate arrangements such as the sale of assets outside the group. The proposed amendments will address a technical issue that has been identified with the operation of this purpose requirement.

Another condition for the corporate reconstruction concession is that the property transferred is group property. Generally, this will be satisfied if the transferor and transferee were group companies from before the property was acquired until it is transferred. An unintended consequence of land subdivisions was addressed in the *Revenue and Other Legislation Amendment Act 2010* to ensure that property subdivided after companies became group companies would not then be regarded as group property if it was not group property prior to subdivision. Some technical issues have arisen with the interpretation of the new provisions, which are being addressed.

#### Special disability trust concession

Special disability trusts (SDTs) established under Commonwealth social security and veterans' affairs legislation are intended to assist immediate family members of people with severe disabilities to make private financial provision for the future care and accommodation needs of the person with a disability. This may include a transfer of a principal place of residence to the trustee of an SDT for use by the person with a disability. To facilitate such transactions, a transfer duty exemption for SDTs was announced in the 2010-11 State Budget. This is currently operating under an

administrative arrangement, providing relief from transfer duty in relation to certain dutiable transactions involving an SDT where the dutiable property will be used as the principal place of residence by the beneficiary of the SDT. The *Duties Act 2001* is being amended to give this arrangement prospective legislative effect.

### Partitions of dutiable property

The *Duties Act 2001* establishes special rules for assessing the dutiable value of property transactions known as *partitions*. These transactions involve jointly owned property being transferred from the joint owners to one or more of the joint owners. For these transactions, the dutiable value is determined having regard to the amount by which the unencumbered value of the dutiable property transferred, or agreed to be transferred, is more than the unencumbered value of the interest held in the property by the transferee immediately before the transaction. The intention is to ensure that duty does not apply to the interest in the property already held by the transferee, but rather applies to the additional interest being acquired under the transaction. For example, where A and B own property as joint tenants and effect a transfer with A and B as transferors and B as transferee, transfer duty is to be calculated by reference to the 50% additional interest acquired by B.

Issues have arisen with the interpretation of the provision and the *Duties Act 2001* is therefore being amended to clarify its intended scope and ensure the proper operation of the provision. The aggregation provisions in section 30 of the *Duties Act 2001* may apply to such transactions, where relevant.

### Concession for indigenous land use agreements

Under the *Native Title Act 1993* (Cwlth), the settlement of native title claims may involve the transfer of land pursuant to an Indigenous Land Use Agreement (ILUA). Such a transfer may give rise to a dutiable transaction under the *Duties Act 2001*, being either a transfer of land, an agreement to transfer land, or an acquisition of a new right, that is land, on its creation, grant or issue. Under an administrative arrangement, *ex gratia* relief from duty is provided to native title claimants in relation to transactions under a registered ILUA, subject to the satisfaction of certain conditions. The administrative arrangement took effect on 3 May 2006, pending legislative amendment. The *Duties Act 2001* is being amended to give this administrative arrangement prospective legislative effect. Reassessment provisions will also apply where a concession was not allowed but the

relevant conditions were subsequently satisfied, and where a concession was allowed but the eligibility requirements subsequently were not satisfied.

### Managed investment schemes

The *Duties Act 2001* provides transfer duty concessions for certain transactions involving registered managed investment schemes. A *registered managed investment scheme* is defined to mean a managed investment scheme registered under the *Corporations Act 2001* (Cwlth). Subject to conditions, dealings in units in a trust which is a registered managed investment scheme do not attract transfer duty.

The *Duties Act 2001* is being amended to clarify that a *registered managed investment scheme* for the purposes of the *Duties Act 2001* means a managed investment scheme within the meaning of the *Corporations Act 2001* (Cwlth) that is registered under the *Corporations Act 2001* (Cwlth). This will ensure that, where a scheme is registered under the *Corporations Act 2001* (Cwlth) but, for whatever reason, is no longer a *managed investment scheme* within the meaning of the *Corporations Act 2001* (Cwlth), it will no longer constitute a *registered managed investment scheme* for the purposes of the *Duties Act 2001*.

### *First Home Owner Grant Act 2000*

First home owner grants are payable to first home owners under the *First Home Owner Grant Act 2000* if there is an eligible transaction and the applicant complies with the eligibility criteria. As the grant may be payable before completion of the transaction and before the applicant has satisfied the eligibility criteria, the *First Home Owner Grant Act 2000* requires applicants to notify the Commissioner and repay the grant where conditions are subsequently not satisfied. Failure to do so constitutes an offence.

The *First Home Owner Grant Act 2000* currently requires that proceedings for an offence be commenced within 1 year after the commission of the offence or within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence. However, given the time that may elapse between the grant being paid and eligibility becoming clear, this timeframe limits the Commissioner's ability to properly enforce compliance, particularly for the more serious breaches for which prosecution is appropriate.

The *First Home Owner Grant Act 2000* is therefore being amended to extend to five years the time for commencing a proceeding for an offence under that Act. This will align the prosecution timeframe under the *First Home Owner Grant Act 2000* with that under the *Taxation Administration Act 2001* and also more closely align it with the timeframes under corresponding interstate legislation in several other jurisdictions.

#### *Land Tax Act 2010*

##### Discretion to extend the use requirement period for vacant land acquired by a charitable institution

The *Land Tax Act 2010* provides that vacant land owned by or held in trust for a charitable institution is exempt land if the institution intends to use it predominantly for one or more exempt purposes within a certain period (*use requirement period*). The Commissioner may extend the *use requirement period*, but only after the institution has initially satisfied the Commissioner that the exemption conditions will be satisfied within the required time. The *Land Tax Act 2010* replaced the *Land Tax Act 1915* from 30 June 2010. The *Land Tax Act 1915* allowed the Commissioner to extend the period within which vacant land acquired by the institution must be used for the exempt purpose, both at the time the vacant land was acquired and subsequently. No policy change was intended in the *Land Tax Act 2010*.

An administrative arrangement allowing the use requirement period to be extended by the Commissioner at the time the exemption is applied for has been in place since 2 September 2010 to ensure consistency with the previous legislation. The *Land Tax Act 2010* is therefore being amended to give this beneficial arrangement retrospective legislative effect.

##### Payment of reassessments by taxpayers who have elected to pay land tax by instalments

The *Land Tax Act 2010* introduced extended payment arrangements for land tax. From 30 June 2010 land tax may, at the election of a taxpayer, be paid in three instalments by direct debit. The Commissioner may make a reassessment varying an assessment by increasing or decreasing a taxpayer's liability. Reassessments increasing liability are payable 30 days after notice of assessment is given to the taxpayer.

Special rules regarding reassessments apply under the *Land Tax Act 2010* where a taxpayer has elected to pay an assessment by instalments. In particular, the special rules set out when an instalment can and cannot be

adjusted to take into account a varied liability resulting from the reassessment, mirroring the general reassessment payment provisions. However, in limited circumstances, the restriction on adjusting an instalment following a reassessment decreasing liability can have unintended consequences for taxpayers where the next instalment is due within 30 days. An administrative arrangement allowing reduction of an instalment payable less than 30 days after the reassessment in these limited circumstances has been in place since 2 September 2010. The *Land Tax Act 2010* is therefore being amended to give this beneficial arrangement retrospective legislative effect.

### *Payroll Tax Act 1971*

#### Exempt fringe benefits

Payroll tax is imposed under the *Payroll Tax Act 1971* on wages paid by employers to their employees, including amounts that are fringe benefits under the *Fringe Benefits Tax Assessment Act 1986* (Cwlth), other than a car parking fringe benefit and a tax-exempt body entertainment fringe benefit.

The *Fringe Benefits Tax Assessment Act 1986* (Cwlth) provides specific exemptions from fringe benefits tax for certain types of benefits (*exempt benefits*). Although such exempt benefits are not liable for payroll tax as fringe benefits, they may remain liable for payroll tax in Queensland if they also fall within another part of the definition of *wages*. For instance, wages paid in kind, which are specifically included within the definition of *wages*, remain liable for payroll tax even if they are also an exempt benefit.

To align with the majority of other jurisdictions, the *Payroll Tax Act 1971* is being amended to exclude exempt benefits from liability for payroll tax. The amendments will commence on 1 July 2011.

#### Grouping of employers

Payroll tax is payable in Queensland if an employer's total annual Australian wages exceed the threshold amount of \$1 million. A reducing deduction applies until wages exceed \$5 million. Where employers are members of a group for payroll tax purposes, only one member of the group may claim the \$1 million exemption threshold or deduction, and the calculation is based on the total wages of the group. Other members of the group pay payroll tax on the full amount of their wages, without deduction.

Most of the grouping provisions provide a discretion for the Commissioner to exclude an employer from a group where it is appropriate to do so. The

exception is where employers are grouped because they are related bodies corporate under the *Corporations Act 2001* (Cwlth). Currently, a company which holds its shares in another company on trust may be grouped with that company as related bodies corporate, with no discretion for the Commissioner to exclude grouping. The *Payroll Tax Act 1971* is being amended to prevent grouping in these circumstances. While such companies may still be grouped under other grouping provisions, the Commissioner has a discretion to exclude them from the group in appropriate cases.

Also, where an employer is a member of two or more groups, the members of all of the groups together are taken to constitute one group for payroll tax purposes. The smaller groups are then taken to cease to exist for payroll tax purposes. An issue has been identified where, for example, a person has a controlling interest in two businesses carried on by separate companies and each of those companies in turn has a 50 per cent interest in a partnership. The partnership business is unable to be included in the group as the controlling interest test requires that an interest of more than 50 per cent be held by one person in relation to a business carried on by the other person. The *Payroll Tax Act 1971* is being amended to ensure that, where members of a smaller group have together a controlling interest in another business, the person who carries on the business constitutes a group with the members of the smaller group.

These amendments to the *Payroll Tax Act 1971* will align Queensland's position with the majority of the other jurisdictions, and thereby maintain substantially harmonised payroll tax arrangements. The amendments will commence on 1 July 2011.

### Shares and options

The *Payroll Tax Act 1971* defines *wages* to include a share or option granted:

- by an employer to an employee in respect of services performed or rendered by the employee; or
- by a company to a director of the company by way of remuneration for the appointment or services of the director.

For determining when shares and options are granted, section 13O of the *Payroll Tax Act 1971* refers to section 139G of the *Income Tax Assessment Act 1936* (Cwlth). For determining the value of taxable wages comprising the grant of a share or option, section 13U of the *Payroll Tax Act 1971*

refers to Division 13A, subdivision F of the *Income Tax Assessment Act 1936* (Cwlth), which specifies certain methodologies for determining the market value of shares and options for income tax purposes.

The employee share scheme provisions of the *Income Tax Assessment Act 1936* (Cwlth) have been repealed and re-enacted in Division 83A of the *Income Tax Assessment Act 1997* (Cwlth). The amendments took effect on 1 July 2009. No provisions for defining when a share or option is granted or for determining market value have been included in the *Income Tax Assessment Act 1997* (Cwlth) as the terms have their ordinary meaning under that Act. However, for determining payroll tax liability for shares and options since 1 July 2009, regard has continued to be had to the repealed Commonwealth income tax provisions pursuant to the *Acts Interpretation Act 1954*.

Following a review, all jurisdictions will progress consistent amendments to their payroll tax legislation to clarify the treatment of shares and options from 1 July 2011. As a result, the *Payroll Tax Act 1971* is being amended to define when a share or right is acquired for Part 2 Division 1C, to clarify the basis for determining the value of a share or option under that Division, and to make other consequential amendments. Transitional provisions clarify the basis for accounting for payroll tax for shares and options between 1 July 2009 and 30 June 2011, and the basis for determining liability for shares or options granted before 1 July 2011 where liability arises on a vesting date that is on or after 1 July 2011.

#### *Tobacco Products (Licensing) Act 1988*

The *Tobacco Products (Licensing) Act 1988* provided for the collection of licence fees from tobacco wholesalers who sold tobacco products in Queensland. In 1997, the High Court, in *Ha v New South Wales* (1997) 189 CLR 465, held invalid the tobacco licence fees imposed under New South Wales' corresponding legislation, casting doubt on the validity of the *Tobacco Products (Licensing) Act 1988* and similar franchise fee legislation operating in the other jurisdictions. As a result, the Commonwealth enacted the franchise fees windfall tax legislation, which imposes a tax of 100% of any refund that is required to be paid under invalid legislation.

While retention of the *Tobacco Products (Licensing) Act 1988* was considered necessary as an interim measure, it is now appropriate to repeal the Act. The effect of the confidentiality provisions in section 43 of the

*Tobacco Products (Licensing) Act 1988* is being continued under savings provisions in the *Taxation Administration Act 2001*.

### ***Amendments to South East Queensland Water (Restructuring) Act 2007***

The Bill will insert a new regulation-making power into the SEQWR Act that will enable a regulation to transfer assets, liabilities, instruments and employees between certain State-owned water entities. Several provisions have been included which will support transfers made through the regulation-making power and protect relevant entities from any liability arising from a transfer.

The new regulation-making power will provide a flexible and efficient means of transferring WaterSecure's assets, liabilities, instruments and employees to Seqwater as part of the merger of the two authorities announced by Government in December 2010. The new power may also be used to facilitate future transfers of assets and liabilities between the other bulk water authorities and the State-owned special-purpose vehicle (SPV) companies established to deliver particular SEQ Water Grid projects, including Wyaralong Dam and the Northern Pipeline Interconnector Stage 2 (both declared works for the SEQ regional water security program, advised pursuant to section 360M (1)(b) of the *Water Act 2000*).

This transfer mechanism will significantly reduce the costs and administration associated with these transfers, and has been modelled on a similar power provided for under the *Government Owned Corporations Act 1993* (GOC Act).

The amendments will also lift the current five-member limit for water entity boards, allowing responsible Ministers to appoint additional directors to the post-merger Seqwater to reflect its added responsibilities and the expertise required. Allowing greater discretion in this regard is consistent with the GOC Act.

The Bill also inserts the following provisions into the SEQWR Act which will only apply to transfers between WaterSecure and Seqwater made as part of the proposed merger:

- specific employment guarantees for WaterSecure employees transferred to Seqwater; and
- a statutory exemption from transfer duty and other State fees for transfers made in relation to the merger.

The Bill also provides that a regulation may dissolve a new water entity where all of its assets and liabilities have been transferred to another new water entity or otherwise disposed of, and provide for matters related to the dissolution. This will provide a mechanism to dissolve WaterSecure as a statutory authority following the proposed merger with Seqwater. Among other things, the regulation may make provision for the preparation of the dissolved entity's final financial statements and final annual report. This power has also been modelled on a provision of the GOC Act.

### ***New Tax System Price Exploitation Code (Queensland) Act 1999***

To achieve its objectives, the Bill will repeal the *New Tax System Price Exploitation Code (Queensland) Act 1999*.

### ***Amendment of the Queensland Competition Authority Act 1997***

The Bill will amend the definition of "Ministers" in the QCA Act so that the Ministers required to perform acts under the QCA Act are those that are assigned administrative responsibility in the Government's Administrative Arrangements Order. This amendment will accommodate changes to the Administrative Arrangements Order over time.

### ***Repeal of bank merger, transfer of undertaking and integration acts***

The Bill will update and simplify Queensland laws by repealing various bank merger, transfer of undertaking and integration acts which have achieved their purpose and are no longer required.

### ***RNA Act amendments***

The Bill removes an anomaly in the legislation governing the Association by fully meeting requirements in the Income Taxation Assessment Act for endorsement as an income tax exempt charitable institution. The Bill removes the rights of the members of the Association to vote on the distribution of surplus assets to themselves in the event that the Association is wound up. This complies with a requirement for an income tax exemption, which is that members of a charitable institution cannot benefit from the income or assets of such a body.

### ***LGA and COBA amendments***

The amendments to the COBA and the LGA provide the Local Government Change Commission with greater discretion and flexibility to call for submissions and conduct public hearings when assessing a Local Government change application. More contentious and complex

applications will still require a more rigorous consultation process to ensure the interests of the public are considered in assessing an application.

The amendments also provide the Minister for Local Government with the discretion to direct the Commission to call for submissions from affected Local Governments and to conduct public hearings, if a particular application warrants it. To ensure the accountability and transparency of a Ministerial direction to the Commission (an independent body), an amendment is required to provide that a Ministerial direction must be recorded in the Electoral Commission of Queensland's annual report. This report is tabled in Parliament and also made available for public inspection.

The LGA provides the legislative framework for the LG Super scheme and makes membership automatic for most Local Government employees. The COBA provides the general legislative superannuation framework for Brisbane City Council (BCC) employees, associated persons and Councillors. The amendments consolidate the LG super scheme with City Super under the LGA.

Amendments to the COBA clarify that a conduct review panel may hear a complaint of inappropriate conduct against a Councillor and may take disciplinary action. An amendment renumbers the LGA section 38A as 38AA to correct a minor drafting error.

### ***Amendments to Sustainable Planning Act 2009***

The Bill proposes that the IQPA be repealed and that SPA absorb the policy for protection of iconic places, including appointment of advisory panels and the requirement for an iconic impact report, to address the ongoing protection of the declared iconic places.

This action is proposed because the review of the IQPA in 2010 found that the preparation of an iconic impact assessment report by the Regional Council when proposing planning scheme amendments or an amalgamated planning scheme, for consideration by the Minister, is a valid mechanism for ensuring the protection of the iconic values, and should be retained.

Additionally, the iconic place development assessment panels were found to not be the most effective mechanism for the protection of iconic values. The Bill proposes a new role for the iconic panels under SPA, as advisory panels to the Regional Council in relation to the preparation of an iconic impact report. However, once an amalgamated planning scheme that appropriately deals with the iconic values takes effect, it is proposed there be no further requirement for iconic impact reports, and the relevant iconic

panel be abolished. Full responsibility for future planning and development decisions in relation to iconic places will then return to the relevant Regional Council.

***Cape York parks – Aboriginal Land Act 1991 amendment***

To achieve its objective, the amendment will add a new section 83LA to the *Aboriginal Land Act 1991* to designate specified areas as “transferable” rather than “claimable” under that Act. This approach is reasonable and appropriate as it extends existing provisions that apply to many other areas in Queensland to these specified areas.

***Flood Recovery – Water Act 2000 amendments***

Amending the Water Act to provide a mechanism for the State or local government to take water for the purposes of construction or maintenance of State infrastructure (for example public roads, state railways, pipelines etc) across multiple water sources without a water licence or permit.

The amendment will significantly reduce the regulatory burden on constructing authorities and reduce the administrative burden on the department by removing the need for obtaining a water licence or permit under the Water Act before accessing water necessary for construction activities. The amendment will enable more timely access to temporary water by constructing authorities for the repair and construction of community infrastructure damaged or destroyed by natural disasters.

***Urban Water Reform – Water Act 2000 and Water Supply (Safety and Reliability) Act 2008 amendments***

Amending the Water Act and the Water Supply Act to defer or remove certain planning and reporting requirement, specifically the Bill will:

- defer the due date for preparation of system leakage management plans by service providers until 2013;
- remove the annual reporting requirements relating to issuing water advices to residential tenants; and
- remove the requirement for the preparation of outdoor water use conservation plans, other than where the regulator is satisfied a service provider faces a water security risk and has not implemented adequate water use efficiency measures.

## **Alternative ways of achieving policy objectives**

### ***Amendments to the South East Queensland Water (Restructuring) Act 2007***

The dissolution of WaterSecure on transfer of all assets, liabilities, instruments and employees to Seqwater can only be achieved through amendments to the SEQWR Act.

An alternative to the introduction of the regulation-making power under the SEQWR Act would be for the water entities to negotiate transfers on commercial terms. This was not adopted due to the greater length of time involved and higher costs associated with transfers made under this option.

### ***Other amendments***

There are no alternative ways of achieving the policy objectives associated with the remaining amendments included in the Bill.

## **Estimated cost for government implementation**

### ***Amendments to revenue legislation***

Implementation costs in relation to amendments to the revenue legislation are not expected to be significant. These costs relate to client education activities, changes to publications, documents, website and systems, staff training and managing any enquiries on the amendments. Such costs will be funded through existing resources.

### ***Amendments to the South East Queensland Water (Restructuring) Act 2007***

The amendments to the SEQWR Act are facilitative in nature and will give effect to transfers between State-owned entities. It is not expected that the implementation of these amendments will result in any appreciable cost for government.

### ***New Tax System Price Exploitation Code (Queensland) Act 1999***

There will be no costs incurred from the repeal of the *New Tax System Price Exploitation Code (Queensland) Act 1999*.

### ***Amendment of the Queensland Competition Authority Act 1997***

There are no anticipated implementation costs for Government.

***Repeal of bank merger, transfer of undertaking and integration acts***

There will be no costs incurred from the repeal of the various bank merger, transfer of undertaking and integration acts.

***RNA Act amendments***

The Bill has no administrative cost impacts to the State in relation to the RNA Act amendments.

***LGA and COBA amendments***

Changes proposed to the LGA in relation to the assessment of a straightforward and minor Local Government change application by the Commission will result in savings to Government, as the Commission will have the flexibility to decide when a public hearing and the calling for public submissions is appropriate.

***Amendments to Sustainable Planning Act 2009***

Proposed changes provide for a reduced role for iconic place panels under SPA, as advisory panels to the relevant regional Councils, to make recommendations to Council about the impact on iconic values. There will be no future ongoing role for iconic panels once the amalgamated planning scheme is adopted by the Council.

The iconic panels will require less funding than in previous years as a result of their changed function to consider any iconic impact report, rather than their previous role in development assessment. Previously, iconic panels met regularly to make reference decisions and to decide applications, incurring fees for members and administration costs for Government.

The Government has approved 2011-12 funding for the panels, although the panels may take up to three years to phase out after commencement. Sufficient 2011-12 funding will need to be deferred in order to fund the panels until the phase out is complete.

***Cape York parks – Aboriginal Land Act 1991 amendment***

The amendments to the *Aboriginal Land Act 1991* are not expected to impose appreciable costs on the Government in implementing the provisions.

### ***Flood Recovery – Water Act 2000 amendments***

The amendments to the *Water Act 2000* in relation to flood recovery, are not expected to impose appreciable costs on the Government in implementing the provisions.

### ***Urban Water Reform – Water Act 2000 and Water Supply (Safety and Reliability) Act 2008 amendments***

The amendments to the *Water Act* and *Water Supply Act* are not expected to impose appreciable costs on the Government in implementing the provisions.

## **Consistency with fundamental legislative principles**

### ***Amendments to revenue legislation***

#### **Retrospectivity**

The amendments to the *Land Tax Act 2010* and the amendment to the *Duties Act 2001* in relation to vehicle registration duty for vehicles modified for a person with a disability will apply retrospectively to give effect to administrative arrangements which are operating pending legislative amendment. While retrospectivity generally raises fundamental legislative principle (FLP) issues, each of the proposed amendments is beneficial to taxpayers in that they either continue, newly provide or extend an exemption, concession or other benefit. In addition as noted, the relevant legislation has been administered under administrative arrangements and the amendments will give legislative effect to those arrangements.

The transitional arrangements for the new employee share scheme provisions in the *Payroll Tax Act 1971* ensure that, following the amendments to the Commonwealth income tax legislation and prior to 1 July 2011, employers will be taken to have complied with their obligations if they accounted for payroll tax on the basis of the new arrangements. While this gives some retrospective effect to the transitional provisions, it is beneficial as it is intended to simplify compliance for employers by allowing them to apply the new arrangements for payroll tax purposes.

#### **Principles of natural justice**

The amendment to the *Duties Act 2001* to enable the Commissioner to impose administrative penalties for self assessments in certain circumstance may raise FLP issues regarding whether the legislation is

consistent with principles of natural justice. However, the imposition of administrative penalties as an alternative to prosecution is already provided in other cases under the *Duties Act 2001*, the Commissioner must provide a notice explaining the reasons for imposing the penalty and that the decision to impose the penalty is reviewable, and the penalty is not payable when prosecution proceedings for the offence are started.

#### Rights and liberties of individuals

The proposed amendment extending to five years the time for commencing a prosecution under the *First Home Owner Grant Act 2000* may raise FLP issues regarding whether the legislation has sufficient regard to the rights and liberties of individuals. However, extension of the time within which a prosecution may be commenced recognises that a grant may be paid before all qualifying conditions have been satisfied, which may take some time. The amendment is also consistent with the existing approach under the *Taxation Administration Act 2001*, which requires a proceeding against a tax law to be commenced within five years after the commission of the offence, and will more closely align the Queensland timeframes with those under corresponding interstate legislation.

#### ***Amendments to the South East Queensland Water (Restructuring) Act 2007***

The amendments to the SEQWR Act raise some issues with regard to FLPs.

The purpose of the amendments is to facilitate a significant restructure of SEQ bulk water entities by 1 July 2011, and introduce a mechanism for future transfers of major bulk water infrastructure between State-owned water entities. The new provisions aim to minimise the administrative complexity and cost associated with transactions undertaken by regulation, and to ensure a smooth transmission of business and preservation of the status quo (in terms of the application of instruments and employee entitlements). The amendments do not override the substance of any third party rights or enhance any rights of the water entities.

Within the context of the overarching structural reform objectives described above, the potential breaches of FLPs are regarded as justified, and consistent with provisions included in other, recent legislation to effect institutional reforms.

Specific FLP issues have been adequately considered and are addressed below.

Sufficient regard to rights and liberties of individuals

The new sections 105 and 106 of the Restructuring Act may affect third party rights by allowing the transfer of assets, liabilities, instruments and employees by regulation without their consent. For example, a commercial contract may be transferred by a regulation without the consent of the parties to that contract.

These provisions do not override the substance of third party rights or enhance any rights being conferred on the relevant water entities. The purpose of these provisions is to ensure that the status quo is maintained and that there is a smooth transition of any assets, employees etc that transfer under a regulation. In so far as these provisions affect relevant water entities, only government owned entities may be identified as a relevant water entity. These types of provisions are standard and necessary in the context of major structural reforms (e.g. *Energy Assets (Restructuring and Disposal) Act 2006*, the (now expired provisions of the) *SEQWR Act*, *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* and an ongoing provision of this kind is also in the *Government Owned Corporations Act 1993*).

New section 112 of the SEQWR Act provides a three year prohibition on the retrenchment of an employee covered by a certified agreement that is transferred from WaterSecure to Seqwater. This may raise FLP issues with respect to whether sufficient regard is had to rights and liberties of individuals, given that the provision will not apply to employees of WaterSecure who are not covered by a certified agreement.

The statutory protection afforded to employees on certified agreements is in addition to their rights under their existing certified agreement. The rights of employees on contracts will not be prejudiced by the transfer of these employees to Seqwater and any existing protection or compensation for termination in their contracts will continue after the transfer of these employees.

Limiting the statutory protection to employees whose terms and conditions of employment are derived from certified agreements accords with Government's position in previous structural reform projects that appropriate certainty with respect to job security should be provided with reference to a defined transitional period (set in line with equivalent guarantees adopted in previous reforms). For employees who have voluntarily entered common law contracts with WaterSecure, the objective is to preserve existing contractual protections.

### Sufficient regard to the institution of Parliament

New sections 105(2) and 113 of the SEQWR Act collectively provide that a transfer regulation or a thing done under Chapter 5 have effect despite any other law or instrument. These provisions may raise FLP issues in regards to whether it has sufficient regard to the institution of Parliament.

The purpose of these provisions is to permit transfers to occur without further administrative action by affected parties and minimise disruption to affected individuals and businesses. The provisions give certainty to entities subject to, or entities affected by, a regulation that the transfers made under the regulation are legally valid. The provisions have been modelled on similar provisions under other restructuring legislation, such as the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*, Chapter 3 of the SEQWR Act (now lapsed) and the *Energy Assets (Restructuring and Disposal) Act 2006*.

### Amendment of an Act by Subordinate Legislation

New section 104 will enable a regulation to prescribe an entity as a 'relevant water entity' for the purposes of new chapter 5 of the SEQWR Act and add to the entities already listed under this section. This provision is justified on the basis that it provides a level of flexibility and accommodation commensurate with the enduring nature of the transfer provisions. To limit the scope of this provision, a regulation may only prescribe an entity that meets the criteria in subsection (2), which ensures that only State-owned entities may be prescribed as a relevant water entity.

New section 109 may enable a regulation to specify an entity responsible for preparing a dissolved entity's final financial statement and report, despite this being dealt with under sections 48(1) and 53 of the *Financial and Performance Management Standard 2009* (the Financial Standard). This may, in effect, override the operation of sections 62 and 63 of the *Financial Accountability Act 2009*, which requires the preparation of these documents in the way specified in the Financial Standard. This is justified on the basis that, given the circumstances in which a new water entity may be dissolved (i.e. all of its assets and liabilities have been transferred to another new water entity), it may be more appropriate for another entity, such as the transferee entity, to prepare these documents. The scope for a dissolving regulation to override the Financial Standard has been limited to this aspect and may not displace the requirement to prepare these documents or change the requirements for the contents of these documents.

### Appropriate Delegation of Legislative Power

New section 107 provides the Minister with the power to give a transfer direction to a relevant water entity (or its board) that must be complied with. This power may raise an FLP issue in regards to whether there has been an appropriate delegation of legislative power. This power is justified on the basis that it will be exercised to facilitate a restructure of a relevant water entity in a timely and efficient manner. The potential use of this power has been limited in that it may only be used in relation to relevant water entities and may only be used if the Minister considers it necessary or convenient for effectively restructuring a relevant water entity. The directions power under section 107 is also consistent with similar Ministerial directions powers provided under other restructuring legislation, such as the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* and the *Energy Assets (Restructuring and Disposal) Act 2006*.

### ***New Tax System Price Exploitation Code (Queensland) Act 1999***

The repeal of the *New Tax System Price Exploitation Code (Queensland) Act 1999* is consistent with fundamental legislative principles.

The Bill has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* (LSA).

### ***Queensland Competition Authority Act 1997 amendment***

The amendment is consistent with fundamental legislative principles.

### ***Repeal of bank merger, transfer of undertaking and integration acts***

The repeal of the various bank merger, transfer of undertaking and integration acts is consistent with fundamental legislative principles.

### ***Local Government Act 2009 Change Commission amendments***

The amendment to enable the Local Government Minister to direct the Local Government Change Commission (the Commission) to call for submissions and conduct public hearings, if a certain change application warrants it, may be a potential FLP issue, in that an independent body, the Commission, should not be subject to direction. An accountability and transparency amendment has been included which provides that details of any Ministerial directions are to be reported in the Electoral Commission of Queensland's annual report. The LGA provides that the report must be provided to the Minister each year for tabling in Parliament, and made available for inspection by the public.

### ***Amendments to the Sustainable Planning Act 2009***

The Bill has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

The non payment of compensation to the iconic panel members on dissolution of the current panels has been raised as a potential FLP issue in relation to the member's rights and liberties. Under amendments proposed to SPA, compensation is not provided to panel members due to the proposed dissolution of the iconic panels, and is not considered necessary. Panel members are aware of the short-term nature of their appointments, which will cease on 19 June 2011, and the proposal to change the panel's role to that of an advisory panel. Should the amendments commence after 19 June 2011, reappointment of existing members or appointment of new members will be required so that the panel's current development assessment responsibilities can continue. Should this occur panel members will be again advised of the temporary nature of their appointments, and that no compensation will be payable on dissolution of the panel on commencement.

### ***Cape York Parks – Aboriginal Land Act 1991 amendment***

The amendment is consistent with fundamental legislative principles.

### ***Flood Recovery – Water Act 2000 amendments***

Whether legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons—LSA, 4(3)(c)

Under proposed amendments of section 20, the chief executive may impose conditions on the taking of water by a constructing authority. Apart from being prescribed under a regulation, the chief executive may impose the conditions. Examples of the conditions are given in the Bill. It is necessary for the chief executive to have a power to impose conditions in addition to those in the Regulation in particular circumstances when the taking of water under the section 20(8) authorisation may have an impact on entitlement holders or the environment. For example there may be a requirement to restrict the level of drawdown on a particular water hole to ensure that aquatic ecosystems are not adversely affected.

Whether legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is subject to appropriate review—LSA s 4(3)(a)

New section 20(9) provides that the taking of water is subject to the conditions that are prescribed under regulation or that the chief executive

may impose on the taking of water. There are no review or appeal rights on the imposition of these conditions which is arguably a breach of the fundamental legislative principle that appropriate review rights should be provided.

With regard to any conditions imposed by Regulation it is considered justified as the Regulation is subject to Governor in Council scrutiny and subsequently when tabled in Parliament House the Regulation is subject to public scrutiny with an avenue available for disallowance of the Regulation.

With regard to any conditions imposed by the chief executive it is considered justifiable. Utilisation of the section 20(8) authorisation is voluntary and this authorisation only exists for a constructing authority if the conditions are complied with. If a constructing authority given such notice of conditions under section 20(9) feels the conditions are not appropriate the constructing authority may choose not to take water under the authorisation and instead make application for a water permit under section 237 of the Water Act. Application for a water permit under this section is afforded full review and appeal rights for any conditions imposed on the grant of the permit. It is therefore considered that the absence of review of chief executive imposed conditions under the new section 20(9) does not remove any rights of a constructing authority.

Whether legislation has sufficient regard to the rights and liberties of individuals—LSA s 4(3)

New section 25(1)(d) allows the chief executive, to limit the water that may be taken under section 20(8). This is arguably a breach of the fundamental legislative principle of whether the Bill has sufficient regard to the rights and liberties of individuals.

The authorisation to take water under the proposed new section is currently authorised through water permits granted under section 240 of the Water Act. Under the current legislative arrangements the take of water under a water permit may be limited under a notice published under section 25 of the Act. A notice under section 25 is contingent on there being a shortage of water. It is therefore considered entirely appropriate that the authorisation provided under the new section 20(8) should be subject to the same limitations imposed on the holders of water entitlements and water permits by a notice published under section 25.

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## ***Urban Water Reform***

### Retrospective operation of legislation; conferring immunity from prosecution — LSA, s 4(3)(h)

The amendments to the Water Act to defer the due date for preparation and submission of system leakage management plans to the regulator for approval will in some instances apply retrospectively. While retrospectivity generally raises FLP issues, the amendments do not adversely affect the rights or obligations of relevant service providers. Similarly, the extension of time may be considered to provide an immunity from prosecution for service providers that have not yet complied with exiting requirements. While the extension of time protects service providers that may not have yet supplied a system leakage management plan, the requirement for a plan is not removed; only the time is extended to allow for new regulatory arrangements to be determined.

### Whether legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is subject to appropriate review – LSA s4(3)(a)

The amendment to section 133 of the Water Supply Act to alter the circumstances under which retail water service provide located outside the SEQ region will be required to prepare outdoor water use conservation plans may breach FLPs. The amendment provides that the regulator can require the preparation of a plan where the regulator is satisfied the provider is facing a risk to their water security and is considered not to have implemented adequate water use efficiency measures. There is no right to review to the regulator's decision to issue a notice requiring a plan. However, the regulator is obligation to consult with the service provider before issuing a notice giving the provider an opportunity to respond the regulator's intended action. This amendment will balance potential impacts on communities from water restrictions with the need to secure a community's water supply.

## **Consultation**

### ***Amendments to revenue legislation***

Consultation regarding the amendments to the family trust concessions under the *Duties Act 2001* was undertaken with the Office of State Revenue's Taxation Consultative Committee, which comprises representatives of the main legal and accounting professional bodies,

including the Queensland Law Society. Some technical issues were raised and were considered in drafting the Bill.

The amendments to the shares and options provisions of the *Payroll Tax Act 1971* were subject to consultation with the other State and Territory revenue offices. The provisions reflect the position agreed as part of that consultation.

Consultation was undertaken generally with the other State and Territory revenue offices on the remaining revenue provisions included in the Bill. No issues have been raised.

Consultation was not undertaken in relation to the remaining amendments as many either make technical changes to the legislation to ensure its continued proper operation, have operated under administrative arrangements for some time or are not considered appropriate for consultation.

### ***Amendments to the South East Queensland Water (Restructuring) Act 2007***

The Queensland Government announced its intention to merge the operations of WaterSecure and Seqwater on 5 December 2010. The Bill provides a mechanism to achieve the merger by 1 July 2011 in accordance with the timeframe announced by Government.

Since the announcement, the Treasury Department has consulted extensively with WaterSecure and Seqwater on the implementation of the merger and necessary amendments to the SEQWR Act. Consultation has also been ongoing with representatives of relevant trade unions on arrangements for the transfer of employees from WaterSecure to Seqwater and the protection of terms and conditions of employment.

In developing the Bill, Treasury Department has also consulted with –

- Queensland Water Commission, the Department of the Premier and Cabinet and Department of Environment and Resource Management (DERM) about the overall content of the amendments;
- DERM about the particular issues relating to the transfer of land under the *Land Act 1994* and *Land Titles Act 1994*;
- Department of Justice and Attorney-General about the transfer of staff between water entities and the preservation of employment conditions;

- Department of Infrastructure and Planning about the transfer of assets belonging to the special-purpose vehicle companies (i.e. Queensland Water Infrastructure Pty Ltd (QWI) and Southern Regional Water Pipeline Company Pty Ltd (SRWP);
- the Office of State Revenue about the proposed exemption from duties on transfers from WaterSecure to Seqwater to achieve the merger; and
- QWI and SRWP on the proposed regulation-making power and associated provisions.

The amendments in the Bill are specific to Queensland and are not uniform or complementary to legislation of the Commonwealth or another state.

#### ***New Tax System Price Exploitation Code (Queensland) Act 1999***

Public consultation was not undertaken regarding the repeal of the *New Tax System Price Exploitation Code (Queensland) Act 1999* due to the administrative nature of the amendments and because it is not anticipated to impact any stakeholders.

#### ***Queensland Competition Authority Act 1997 amendment***

Consultation has not been undertaken as the amendments to the QCA Act are administrative in nature and are not anticipated to have any adverse impacts.

#### ***Repeal of bank merger, transfer of undertaking and integration acts***

Successor banks have been consulted and no objections have been raised.

#### ***RNA Act amendments***

In relation to the RNA Act amendment, consultation has been undertaken with the Department of the Premier and Cabinet, Treasury Department and Queensland Treasury Corporation. All agencies support the Bill.

#### ***LGA and COBA amendments***

In relation to the LG Super/City Super consolidation, LG Super advised members, stakeholders and key service providers that the execution of the LG Super City Super Successor Fund Transfer Deed occurred on 1 December 2010. Further consultation with the Australian Workers Union (AWU) and the Australian Services Union (ASU)-Queensland Branch, LG Super, City Super, BCC and the Local Government Association of Queensland (LGAQ) was undertaken during the development of the legislation. The Electoral Commissioner supports the amendments to

provide flexibility to the Local Government Change Commission to assess a change application.

### ***Amendments to the Sustainable Planning Act 2009***

A discussion paper outlining the matters for consideration during the review of the IQPA was issued in August 2010 for public comment. All panel members and Regional Councils with declared Iconic places were provided with a copy of the discussion paper and encouraged to provide feedback on the effectiveness of the IQPA and the iconic place development assessment panels.

The relevant Regional Councils and iconic panel members have been advised about the findings of the review. The relevant Regional Councils have also been consulted on the intent of the proposed provisions and their practicality for implementation.

The relevant Regional Councils support the intent of the Bill including provisions specific to the transition of development assessment functions in iconic places back to Council and the process and timing for the iconic impact reports, including assessment by the new advisory panels.

### ***Cape York parks – Aboriginal Land Act 1991 amendment***

The Cape York Land Council, Balkanu Cape York Development Corporation and relevant Aboriginal people were consulted and are in support of the proposed amendment.

### ***Flood Recovery – Water Act amendments***

Local Government Association of Queensland were consulted and are in support of the amendments.

The Department of the Premier and Cabinet, Treasury Department and the Department of Transport and Main Roads were consulted and are in support of the amendments.

### ***Urban Water Reform***

Industry bodies, the Local Government Association of Queensland and qldwater were consulted in relation to the amendments to the Water Act and Water Supply Act. Industry bodies support the amendments to the Water Act and Water Supply Act.

The Department of the Premier and Cabinet was consulted in relation to the amendments to the Water Act and Water Supply Act. All Departments consulted support the Bill.

## **Consistency with legislation of other jurisdictions**

### ***Amendments to revenue legislation***

The Bill is not part of national scheme legislation.

### ***New Tax System Price Exploitation Code (Queensland) Act 1999***

In 2009, the Commonwealth Government repealed the relevant price exploitation provisions in the *Competition and Consumer Act 2010* (Cwlth), noting that:

- the provisions applied during the New Tax System transition period which ended on 30 June 2002; and
- it is now unlikely that a business could attribute a price rise to the introduction of the Goods and Services Tax.

The repeal of the *New Tax System Price Exploitation Code (Queensland) Act 1999* is therefore consistent with the 1999 IGA and legislation of the Commonwealth Government.

### ***Amendments to Sustainable Planning Act 2009***

The protection of places with special characteristics is consistent with the National planning framework agenda.

### ***Other amendments***

The remaining amendments are specific to the State of Queensland and do not intend to be complementary, or conflict with, legislation of the Commonwealth or another state.

## **Notes on provisions**

### **Part 1 Preliminary**

*Clause 1* cites the short title of the Act as the *Revenue and Other Legislation Amendment Act 2011*.

*Clause 2* provides when the provisions of the Bill commence.

## **Part 2**                      **Amendment of Aboriginal Land Act 1991**

*Clause 3* provides that this part amends the *Aboriginal Land Act 1991*.

*Clause 4* amends section 12 (Lands that are transferable land) to include reference to new section 83LA.

*Clause 5* inserts section 83LA which designates as “transferable” defined areas within and near Mungkan Kandju, Lakefield, Iron Range, Cape Melville and Flinders Group national parks. This enables those areas to be transferred as Aboriginal land under section 27 of this Act.

## **Part 3**                      **Amendment of City of Brisbane Act 2010**

*Clause 6* provides that this part amends the *City of Brisbane Act 2010* (COBA).

*Clause 7* amends section 21 (Assessment). The Local Government Change Commission (the Commission), established under the *Local Government Act 2009* (LGA), is made up of at least the Electoral Commissioner. Under subsections 21(1) and (2) the Commission must consider whether a boundary change application is in the public interest, is consistent with a local government related law, the views of the Minister, community interest, joint arrangements, planning and resource base sufficiency. Subsections 21(3) and (4) enable the Commission to conduct an assessment of the application in any way it considers appropriate and prescribes that the Commission must ask for submissions from any local government that would be affected by the proposed boundary change and hold a public hearing.

New subsections 21(3), (4) and (4A) provide the Commission with greater discretion and flexibility to call for submissions and conduct public hearings in relation to a boundary change application, and for the Minister to direct the Commission to call for submissions and conduct public hearings in certain circumstances and for the Commission to comply with the Minister’s direction.

The Electoral Commissioner advised that some change applications are relatively minor in nature, for example, a boundary realignment to bring the whole of one property within a Local Government area. The requirement for the Commission to publically consult may result in unnecessary costs coupled with likely delays in assessing proposals that are for the most part uncontentious and unlikely to generate a significant level of public interest.

The amendment provides the Commission with the discretion and greater flexibility to call for submissions and to conduct public hearings if the Commission considers it appropriate and for the Minister to direct the Commission to call for submissions and conduct public hearings when appropriate.

Should the Local Government Minister give a direction to the Commission to conduct a public hearing or call for submissions in relation to a change application, the Ministerial direction is to be reported in the Commission's annual report. The LGA provides that the Commission's annual report must be provided to the Minister each year for tabling in Parliament, included in the Electoral Commission of Queensland's annual report and be available for inspection by the public.

*Clause 8* amends section 181 (Notifying councillor of the hearing of a complaint) to correct a minor drafting error which inadvertently omitted the application of subsection (1) to complaints of inappropriate conduct. Subsection (1) applies if the chief executive officer refers a complaint of inappropriate conduct or misconduct to the Brisbane City Council conduct review panel, the panel must give the accused councillor a written notice that informs the councillor about the hearing of the complaint.

*Clause 9* amends section 182(1) and (2) to correct a minor drafting error which inadvertently omitted the application of the section to the hearing of a complaint of inappropriate conduct by the BCC councillor conduct review panel.

*Clause 10* replaces section 183 to clarify the jurisdiction of the BCC councillor conduct review panel to take disciplinary action after hearing a complaint of inappropriate conduct or misconduct and deciding that a councillor has engaged in such conduct. The amendment corrects a minor drafting error.

New section 183A (Taking disciplinary action—tribunal) complements the new section 183 and clarifies the jurisdiction of the tribunal to take

disciplinary action if, after hearing a complaint of misconduct, the tribunal decides that a councillor engaged in misconduct.

*Clause 11* omits section 211(1) as a consequence of the LGA applying to BCC, an employee of BCC and an associated person to the extent of their participation in the LG super scheme. Subsection (6) provides that the LG Super scheme is the Local Government Superannuation Scheme under the LGA section 217(1).

*Clause 12* amends section 212 to provide that the section applies to a superannuation scheme that the Council may establish for councillors or employees and associated persons is required to be audited under the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

*Clause 13* inserts new Chapter 8, Part 4 section 266 which provides that on the commencement of this section, the superannuation scheme for council employees continued in existence under section 211 (that is, the superannuation scheme for council employees under the repealed *City of Brisbane Act 1924*, section 25E), ceases to continue under this Act and the trust deed for that scheme ceases to continue in force as a trust deed under this Act.

*Clause 14* amends the schedule (Dictionary) by omitting the definitions *super board* and *trust deed* as a result of the consolidation of the LG super scheme and City Super.

## **Part 4                      Amendment of Duties Act 2001**

*Clause 15* provides that this part amends the *Duties Act 2001*.

*Clause 16* amends subsection 30(7) as a consequence of the amendments being made to section 31. This ensures that a dutiable transaction that is a partition may be aggregated with another transaction, including another partition, under section 30.

*Clause 17* replaces subsection 31(1) and amends subsection (2) to clarify the circumstances in which a dutiable transaction is a partition. Where dutiable property that is held jointly by co-owners as joint tenants or tenants in common is transferred or agreed to be transferred to one or more of the co-owners, the transaction is a partition for section 31 if the dutiable

property transferred or agreed to be transferred includes the interest in the property held by the transferee immediately before the transaction.

Example 1: A and B own a parcel of land as joint tenants. They agree that B is to own the land outright and effect this by a transfer of the land, with A and B as transferors and B as transferee. The transaction is a partition under subsection 31(1) as the dutiable property transferred includes the interest in the dutiable property held by B immediately before the transaction. Subsection 31(2) will apply for determining the dutiable value, with B's 50% interest in the dutiable property before the transaction being taken into account for determining the dutiable value of the transaction.

Example 2: A and B jointly own a parcel of land. They agree that B is to own the land outright and effect this by a transfer of the land, with A as transferor and B as transferee. The transaction is not a partition under subsection 31(1) as the dutiable property transferred does not include the interest in the dutiable property held by B immediately before the transaction. Subsection 11(7) will apply for determining the dutiable value.

Subsections 31(3) and (4) are omitted as the aggregation provisions in section 30 will apply where the requirements for aggregation are satisfied in relation to a dutiable transaction that is a partition.

Subsection 31(5) is renumbered.

*Clause 18* amends section 85 to extend the purpose of Chapter 2 Part 9 of the Act to providing transfer duty home concessions for a dutiable transaction that is a vesting under subsection 9(1)(d) of a home or first home, or of vacant land on which a first home is to be constructed.

*Clause 19* extends the definition of *vacant land concession beneficiary* in subsection 86D(1) as a result of the inclusion of vesting transactions under new subsection 85(c).

*Clause 20* extends the definition of a person's *transfer date* for residential land or vacant land in section 89 as a result of the inclusion of vesting transactions under new subsection 85(c).

*Clause 21* extends the definition of *dutiable value* of residential land or vacant land in section 90 as a result of the inclusion of vesting transactions under new subsection 85(c), and makes a consequential amendment to subsection (2).

*Clause 22* amends section 91 to extend the application of the transfer duty home concession to vestings mentioned in new subsection 85(c), and makes a consequential amendment in relation to vested persons for the land.

*Clause 23* amends section 92 to extend the application of the transfer duty first home concession to vestings mentioned in new subsection 85(c), and makes a consequential amendment in relation to vested persons for the land.

*Clause 24* amends section 93 to extend the application of the home concession in relation to mixed and multiple claims for individuals for residential land to include vestings mentioned in new subsection 85(c), and makes consequential amendments in relation to vested persons for the land.

*Clause 25* amends section 93A to extend the application of the home concession in relation to mixed and multiple claims for individuals for vacant land to include vestings mentioned in new subsection 85(c), and makes consequential amendments in relation to vested persons for the land.

*Clause 26* amends section 94 to extend the application of the home concession in relation to mixed and multiple claims for trustees for residential land to include vestings mentioned in new subsection 85(c).

*Clause 27* amends section 94A to extend the application of the home concession in relation to mixed and multiple claims for trustees for vacant land to include vestings mentioned in new subsection 85(c).

*Clause 28* amends subsection 95A to extend the application of the home concession in relation to particular arrangements for retirement villages to include vestings mentioned in new subsection 85(c), and makes a consequential amendment in relation to vested persons for the land.

*Clause 29* amends subsection 115(2)(b) to extend the circumstances in which an agreement is a resale agreement to include the case where a related person of the transferee receives or will receive, directly or indirectly, a financial benefit. As a consequence, subsection (2)(b)(i) is also amended to clarify when a financial benefit will not be relevant.

*Clause 30* amends subsection 117(1)(b), consistent with the approach taken in subsection 117(2)(c), so that the exemption under subsection 117(1) will apply only when transfer duty has been paid on all trust acquisitions or trust surrenders for which transfer duty is imposed for the trust before the transaction.

*Clause 31* replaces section 118. The principal purpose of the amendment is to remove the Commissioner's discretion in relation to the exemption for trust acquisitions and trust surrenders in family trusts, and to clarify when a trust is established and maintained primarily for the benefit of the members of a particular family or a family company.

Subsections 118 (1) and (2) are replaced to remove the Commissioner's discretion in relation to whether a trust is established and maintained primarily for the benefit of the members of a particular family or a family company.

Subsection 118(3) specifies when a discretionary trust is established and maintained primarily for the benefit of the members of a particular family or family company. This is satisfied if:

- the primary beneficiaries consist only of the members of the family or the family company; and
- the takers in default of an appointment for capital consist only of members of the family or the family company.

*Primary beneficiary* is defined in schedule 6 and is a person who, under the instrument creating the trust, is the first taker in default of an appointment for capital by the trustee. A trust deed may provide for multiple primary beneficiaries.

Whether or not a trust satisfies the requirements in subsection 118(3) will be determined based on the state of affairs at the time the trust is established, and also at the time of a relevant transaction for which exemption is sought. The nature of the family relationships contemplated in subsection 118(6) are such that the constitution of the *particular family* may change over time.

Subsection 118(4) recognises that there will be circumstances where the last taker in default for a discretionary trust will not be a family member or family company. This would be the case where all of the specified family members no longer exist at the relevant time. The requirement in subsection (3)(b) in relation to the takers in default will therefore be taken to be satisfied if the last taker in default for capital is a person decided under the *Succession Act 1981* or is a charitable institution.

Subsection 118(5) specifies when a trust other than a discretionary trust is established and maintained primarily for the benefit of the members of a particular family or family company. This is satisfied if at least 90% of the

trust interests in the trust are held by members of the family or the family company.

Subsection 118(6) specifies the family relationships which, for the purposes of the exemption provided under section 118, establish that a person is a member of a particular family.

Subsection 118(7) defines terms for the section.

*Clause 32* inserts new section 126A, which provides an exemption from transfer duty for certain dutiable transactions relating to special disability trusts. Where the transaction is either the creation of a special disability trust or a trust acquisition in a special disability trust, the exemption will apply to the extent the dutiable property is, or the trust interest acquired relates to, an eligible home. A transfer, or agreement to transfer, an eligible home to the trustee of a special disability trust is also exempt.

Subsection 126A(2) defines terms for the section. An eligible home is residential land that is being used, or will be used, as the principal place of residence by the beneficiary of a special disability trust. A *special disability trust* is defined by reference to section 1209L of the *Social Security Act 1991* (Cwlth) or section 52ZZZW of the *Veterans' Entitlement Act 1986* (Cwlth).

*Clause 33* inserts new section 151A to provide a transfer duty exemption for certain dutiable transactions in relation to indigenous land use agreements, subject to satisfaction of stated requirements.

Under subsection 151A(1), the dutiable transactions that may be exempt are transfers, or agreements for the transfer, of land, and the acquisition of a new right that is land.

Subsection 151A(2) specifies the requirements for the exemption. These include a requirement for the Commissioner to be satisfied that the land the subject of the transaction will be used by the transferee or acquirer for an eligible use by the *start date* (as defined) and for the *duration period* (as defined).

The land must begin being used by the transferee or acquirer for an eligible use within six months after the transferee or acquirer is entitled to possession of the land, or the later date fixed by the Commissioner. The land must then be used for the eligible use for 12 months.

*Eligible use* is defined in schedule 6 of the *Duties Act 2001*. Under that definition, the land must be used solely or almost solely for traditional purposes (as defined in schedule 6) or residential purposes. Use of the land

for a commercial purpose, including the leasing or sale of the land, is not an eligible purpose and will preclude the exemption.

Subsections (3) and (4) specify when a reassessment will not be made where the land is not used for an eligible use by the start date but the Commissioner is satisfied it will be used as required by a later date for the period required.

Subsection 151A(5) provides a definition for section 151A.

*Clause 34* amends section 153 to extend its application to cases where a home concession applied for a vesting mentioned in new subsection 85(c) and there is a disposal of the residence after occupation.

*Clause 35* amends section 154 to extend the requirement to reassess in relation to a home concession to include cases where the concession applied for a vesting mentioned in new subsection 85(c) and the occupancy requirements were not satisfied. Consequential amendments are also made to subsections 154(2)(b), (2A) and (2B) to clarify when there will not be a disposal of the land in relation to circumstances relevant to vestings.

*Clause 36* amends section 155 to extend the requirement to give notice of a notifiable event under section 91, 92, 93 or 93A in relation to vestings mentioned in new subsection 85(c).

*Clause 37* amends the heading for Chapter 2, Part 14 Division 3.

*Clause 38* amends section 156A to remove the requirement for a person to pay transfer duty in order for the provision to apply.

*Clause 39* inserts new Division 4 in Chapter 2 Part 14, containing provisions dealing with reassessments for exemptions for indigenous land use agreements.

New subsections 156B(1) and (2) provide for the making of a reassessment to reduce the duty that was originally assessed without the benefit of the indigenous land use exemption under section 151A. A reassessment must be made if the Commissioner is satisfied, on application, that the dutiable transaction is now eligible for the exemption because the land has been used for an eligible use from the start date and for the duration period. All other requirements of subsection 151A(2) must also be satisfied.

Subsection 156B(3) provides that the requirement to reassess applies despite the limitation period for reassessments under section 21 of the *Taxation Administration Act 2001*. However, under new subsection 156B(4) where the limitation period has expired, the application for

reassessment must be made within 6 months after the relevant requirements are satisfied.

New section 156C provides that the Commissioner must make a reassessment of duty to disallow an indigenous land use exemption if a dutiable transaction was originally assessed as exempt under section 151A but is subsequently not eligible for the exemption due to the happening of an event specified in subsection (1)(b). This will arise where the land is not used for an eligible use before the start date or new start date, or is not used for the eligible use for the duration period or new duration period. Subsection 156C(2) requires the transferee or acquirer to notify the Commissioner within 28 days of the relevant event and lodge the relevant instruments for reassessment.

Under subsection 156C(5), the reassessment may be made despite the limitation period for reassessment under section 22 of the *Taxation Administration Act 2001*. However, under subsection (4), where the limitation period has expired, the Commissioner must make the reassessment within 12 months of the happening of the disqualifying event.

*Clause 40* amends section 225 similarly to section 118 to remove the Commissioner's discretion in relation to the operation of the corporate trustee duty exemption for family trusts, and to clarify when a trust is established and maintained primarily for the benefit of the members of a particular family or a family company.

*Clause 41* amends section 378 to insert a new subsection (3) for determining the dutiable value for a vehicle registration duty of a vehicle that has been modified for a person with a disability. Where the vehicle is one mentioned in subsection 378(1), the dutiable value is the amount worked out under that subsection, reduced by the value of the modifications. For instance, where a person purchases a new vehicle and arranges to have modifications made before purchase, the dutiable value worked out under subsection 378(1) for vehicle registration duty includes the value of the modifications. Applying new subsection (3), the relevant dutiable value for the vehicle is the dutiable value worked out under subsection (1), reduced by the value of those modifications.

Where the vehicle is one mentioned in subsection 378(2), the dutiable value for vehicle registration duty is the market value of the vehicle without regard to the value of the modifications.

*Clause 42* inserts new section 379B which states when a vehicle is modified for a person with a disability. Where a vehicle is modified for a

person with a disability, 378(3) applies for working out the dutiable value of the vehicle.

*Clause 43* amends subsection 398(1)(c) to clarify what is a corporate reconstruction. An arrangement under which a company involved with any of the transactions will or may cease to belong to the same corporate group, other than as permitted under subsection 412(4), will preclude the transaction being a corporate reconstruction. There is no requirement that cessation of group membership be definite or contemporaneous with the relevant transaction.

*Clause 44* amends subsection 407(1) and replaces subsection 407(3) to clarify that, for the purposes of determining the application of the corporate reconstruction exemption, property that is a lot on a plan of subdivision registered after the transferor and the transferee became group companies is only group property for subsection 407(1)(a) or (b) to the extent that the property comprising the lot was group property under subsection (1)(a) or (b) immediately before the plan of subdivision was registered.

*Clause 45* inserts four new categories of offence for which the Commissioner may impose a penalty under section 488. Under section 489, the penalty amount is an alternative to prosecution for the relevant offence.

*Clause 46* amends section 499 to remove the requirement for a person to pay duty in order for the provision to apply.

*Clause 47* inserts a new Part 14 in Chapter 17, providing a transitional provision for amendments which have retrospective effect.

New section 621 provides that the amendments in relation to determining the dutiable value of a vehicle modified for a person with a disability are taken to have had effect on and from 4 March 2009.

*Clause 48* amends the Dictionary in Schedule 6 to the *Duties Act 2001*.

## **Part 5                      Amendment of First Home Owner Grant Act 2000**

*Clause 49* provides that this part amends the *First Home Owner Grant Act 2000*.

*Clause 50* replaces section 55 to provide that a proceeding for an offence against the Act must be commenced within 5 years after the commission of the offence.

*Clause 51* inserts section 78, which is a transitional provision for section 55. The provision ensures that, where acts or omissions constituting an offence occur prior to the commencement of section 78, the timeframes for commencing proceedings for the offence will be governed by section 55 as it applied prior to commencement of section 78.

## **Part 6                      Amendment of Land Tax Act 2010**

*Clause 52* provides that this part amends the *Land Tax Act 2010*.

*Clause 53* amends section 47 to provide the Commissioner with discretion to extend the use requirement period for vacant land acquired by a charitable institution at the time the institution applies for an exemption for the land.

*Clause 54* inserts a new subsection 75(1A) in relation to extended payment arrangements. Despite subsection 75(2)(b), where a reassessment decreases a taxpayer's liability so that the remaining land tax payable is less than the amount of the next instalment, the next instalment is adjusted regardless of when it is payable.

*Clause 55* inserts a new Division 5 in Part 10, providing for transitional provisions for the amendments to the *Land Tax Act 2010*, which have retrospective effect. Section 98A provides that the amendments in relation to sections 47 and 75 are taken to have had effect on and from 2 September 2010.

*Clause 56* omits Part 11.

## **Part 7**

# **Amendment of Local Government Act 2009**

*Clause 57* provides that this part amends the *Local Government Act 2009* (LGA).

*Clause 58* amends section 19 (Assessment). The Local Government Change Commission (the Commission) has jurisdiction to recommend a change to a Local Government's boundaries, divisions, number of Councillors, name and classification. The Commission is made up of at least the Electoral Commissioner. Under subsections 19(1) and (2) the Commission must consider whether a boundary change application is in the public interest, is consistent with a local government related law, the views of the Minister, community interest, joint arrangements, planning and resource base sufficiency. Subsections 19(3) and (4) enable the Commission to conduct an assessment of the application in any way it considers appropriate and prescribes that the Commission must ask for submissions from any local government that would be affected by the change application and hold a public hearing.

New subsections 19(3) and (4) provide the Commission with greater discretion and flexibility to call for submissions and conduct public hearings when assessing an application for change to a Local Government's boundaries, divisions, number of Councillors, name and classification, and for the Minister to direct the Commission to call for submissions and conduct public hearings in certain circumstances.

The Electoral Commissioner advised that some change applications are relatively minor in nature, for example, a boundary realignment to bring the whole of one property within a Local Government area. The requirement for the Commission to publically consult may result in unnecessary travel and associated costs coupled with likely delays in assessing proposals that are for the most part uncontentious and unlikely to generate a significant level of public interest.

The amendment provides the Commission with greater flexibility to call for submissions and conduct public hearings if the Commission considers it appropriate and for the Minister to direct the Commission to call for submissions and conduct public hearings when appropriate.

*Clause 59* amends section 25 to provide that should the Local Government Minister direct the Local Government Change Commission to call for

submissions and conduct public hearings, if a certain application warrants it, the Ministerial direction is to be reported in the Electoral Commission of Queensland's annual report. This report is provided to the Minister each year for tabling in Parliament, and also made available for public inspection.

*Clause 60* renumbers section 38A as section 38AA as a consequence of a minor drafting error that results in section 38A appearing twice in the LGA.

*Clause 61* amends section 210(4) to make provision for changes to the board of directors as a consequence of BCC, the employees and the agents or contractors of BCC participating in the LG super scheme. The board is made up of eight representative directors: three appointed on the nomination of the LGAQ; one appointed on the nomination of BCC; and, four appointed on the nomination of members of the LG super scheme. LG Super received advice from the Australian Prudential Regulation Authority that it had no in-principle objection to the proposed Board structure. The trust deed may also provide for the appointment of additional independent directors.

*Clause 62* amends section 216 to provide that the LGA chapter 7 part 2 has effect despite section 5(2). Section 5(2) provides that this Act does not apply to BCC. If a provision in chapter 7 part 2 does not apply to BCC, the provision will provide that it does not apply to BCC.

*Clause 63* inserts new section 216A in chapter 7 part 2 to provide the following new definitions for the part:

- 'accumulation benefit member' means a person who is a member of the LG super scheme in a category, other than the defined benefit category, under the trust deed.
- 'defined benefit member' means a person who is a member of the LG super scheme in a defined category under the trust deed.
- 'local government' includes a reference to Brisbane City Council.
- The definition of 'local government entity' replicates the original definition.

*Clause 64* amends section 217(3)(a) to provide that the trust deed must also provide for the yearly contribution that a local government entity must make for a permanent employee.

*Clause 65* amends section 218(1) to clarify that an employee of Brisbane City Council is not an automatic member of LG super and to provide that employees of the super board, while their employment continues, are automatic members of the LG super scheme.

Section 218(2)(a) has been amended to clarify that a councillor of BCC is not an eligible member of the LG super scheme.

Section 218(2)(aa) has been inserted to provide that an employee of BCC is eligible to become a member of the LG super scheme.

Section 218(2)(e) is amended to provide that a person for whom a local government entity is required under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) to contribute to a superannuation scheme is a person eligible to become a member of the LG super scheme.

Section 218(2)(h) is amended to clarify that another type of person, including a person who is an employee of an entity that is an Associated Employer, under the trust deed, may also be prescribed under a regulation to become eligible members of the LG super scheme.

The policy intent is for a regulation to prescribe that certain persons, including a person who was an employee of BCC, are eligible to become members of the LG super scheme.

*Clause 66* substitutes section 219(1) to provide that a local government and a local government entity must pay superannuation contributions into the LG super scheme if the *Superannuation Industry (Supervision) Act 1993* (Cwlth) requires it. Section 219(3) is amended to clarify that an employee of a local government (other than the BCC) is a permanent employee if the employee has been continuously employed by the local government, or by the local government and other local governments or local government entities consecutively for at least 1 year, or less than 1 year (but the employee has given the local government a membership notice).

Section 219(4) is amended to clarify that a membership notice is a written notice given to the local government and the super board by the employee electing to become a permanent employee for this part.

Subsections 219(5) to (7) are amended to clarify that the subsections relate to a local government or a local government entity.

*Clause 67* replaces section 220 (Amount of yearly contributions—particular employers) Section 220(1) provides that the section applies to a local government, a local government entity and the

BCC. Section 220(2) provides that subsections (3) and (4) do not apply to BCC.

Section 220(3) does not apply to BCC. Subsection (3) provides that the yearly contribution that the employer (the local government/local government entity) must make to the LG super scheme, for a permanent employee who is an accumulation benefit member is the amount prescribed under a regulation. The amount prescribed under a regulation is the minimum contribution amount that the employer must make. *Accumulation benefit member* is defined in section 216A and means a person who is a member of the LG super scheme in a category, other than the defined benefit category, under the trust deed.

Section 220(4) does not apply to BCC. Subsection (4) provides that the yearly contribution that the employer (local government/local government entity) must make to the LG super scheme for a permanent employee who is a defined benefit member is the amount stated from time to time, in the trust deed. *Defined benefit member* is defined in section 216A and means a person who is a member of the LG super scheme in a defined benefit category under the trust deed.

Section 220(5) provides that the yearly contribution that the BCC must make, to the LG super scheme, for an employee who is an accumulation benefit member is the amount prescribed under a regulation. The amount prescribed under a regulation is the minimum contribution amount that the BCC must make.

Section 220(6) provides that the yearly contribution that the BCC must make, to the LG super scheme as an employer for an employee who is a defined benefit member is the amount stated, from time to time, in the trust deed.

Section 220(7) provides that if an employer is required under an industrial instrument to make superannuation contributions for an employee, the superannuation contribution required under the industrial instrument is not in addition to the yearly contribution the employer is required to make under section 220.

An industrial instrument can not replace the minimum contribution amount prescribed in a regulation nor can an industrial instrument provide that the yearly contribution is less than that prescribed by a regulation. An industrial instrument may provide for contribution amounts to exceed the minimum amounts prescribed in a regulation under the section.

Should there be an industrial agreement to change the minimum contribution amounts prescribed in a regulation for an employee who is an accumulation benefit member under subsections (3) and (5), the regulation under subsections (3) and (5) would need to be amended so that the amended regulation will prescribe the changed minimum contribution amounts.

Section 220(8) provides that an employer need not pay an amount as a yearly contribution to the extent that the amount can not be accepted by a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cwlth). Section 220(8) reflects the unamended section 220(3).

Section 220(9) provides that an employer must pay the yearly contribution within the time stated in the trust deed. Section 220(9) reflects the unamended section 220(4).

New section 220A (Amount of yearly contributions—permanent employees and prescribed employees) provides that the section applies to a permanent employee of a local government (other than BCC), a permanent employee of a local government entity and a prescribed employee of the BCC.

Section 220A(2) defines a prescribed employee of BCC is an employee who is a member of the LG super scheme.

Section 220A(3) provides that an employee must make a yearly contribution to the LG super scheme of the amount prescribed by regulation.

Section 220A(4) provides that an employee need not make the yearly contribution under this section if a local government or a local government entity for the employee makes the contribution, in accordance with the employee's remuneration agreement, as well as the yearly contribution that their employer is required to make under this Act. This provision reflects the unamended section 220(8).

Section 220A(5) provides that the employer of the employee may (despite the provisions of any other Act) deduct all or part of an employee's contributions from the employee's salary or any money that the employee owes to the employer. This provision reflects the unamended section 220(9).

Section 220A(6) provides that if the employee is required under an industrial instrument to make superannuation contributions, the

superannuation contributions required under the industrial instrument is not in addition to the yearly contribution the employee is required to make under this section.

An industrial instrument can not replace the minimum contribution amount prescribed by regulation nor can an industrial instrument provide that the yearly contribution is less than that prescribed by the regulation. An industrial instrument may provide for contribution amounts to exceed the minimum amounts prescribed in a regulation under this section.

Should there be an industrial agreement to change the prescribed minimum contribution amounts prescribed in a regulation, the regulation would need to be amended so that the amended regulation will prescribe the changed minimum contribution amounts.

*Clause 68* amends section 221 to clarify that local government entities may make extra contributions for a member to the LG super scheme but can not make extra contributions to the LG super scheme to the extent that the contribution can not be accepted under the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

*Clause 69* amends section 222 to provide that the super board may require a local government (other than the BCC), and a local government entity to give the super board certain salary details.

*Clause 70* amends section 223 to provide that if a local government is required to pay superannuation contributions for a non-contributory member under an Act of the state or Commonwealth or an industrial instrument or a local government entity is required to pay superannuation contributions for a non-contributory member under an industrial instrument, the local government or local government entity must pay the contributions to the LG super scheme.

*Clause 71* amends section 224 to provide that if a local government or a local government entity does not pay a contribution that is payable to the LG super scheme within the time stated in the trust deed, the local government or local government entity must pay interest on the amount of the contribution to the LG super scheme. The super board may waive the payment of interest and any interest that is payable is to be paid at the rate prescribed under a regulation and is to be calculated on a daily basis.

*Clause 72* amends section 225 to clarify that this section does not apply to BCC. The *City of Brisbane Act 2010* provides that the BCC may establish

and take part in a superannuation scheme for employees and associated persons.

*Clause 73* amends section 226 to clarify that this section does not apply to BCC. The *City of Brisbane Act 2010* provides that the BCC may establish and take part in a superannuation scheme for its councillors.

*Clause 74* amends Chapter 8 heading (Transitionals, savings and repeals) by inserting Act No. 17 of 2009 and Act No. 23 of 2010 to clarify that chapter 8 applies to these two Acts. The reference to Act No. 17 of 2009 is to the *Local Government Act 2009* and the reference to Act No. 23 of 2010 is to the *City of Brisbane Act 2010*.

*Clause 75* inserts new Chapter 9 heading (Transitional provision for Revenue and Other Legislation Amendment Act 2011) and section 292 (References to City Super etc in industrial instruments) to provide that a reference, in an industrial instrument to City Super or the Brisbane City Council Superannuation Plan, may if the context permits, be taken to be a reference to the LG super scheme.

*Clause 76* amends schedule 4 (Dictionary) to signpost the following definitions; *accumulation benefit member*, *defined benefit member*, *LG super scheme*, *local government*, and *local government entity*.

## **Part 8                      Amendment of Payroll Tax Act 1971**

*Clause 77* provides that this part amends the *Payroll Tax Act 1971*.

*Clause 78* amends subsection 13(6) to provide that the basis for valuing taxable wages under section 13 does not apply to shares and options to which division 1C of part 2 applies. The basis for valuing these shares and options is specified in section 13U.

*Clause 79* amends section 13M to provide that division 1C applies to paragraphs (j) and (k) of the definition of wages in the schedule. This reflects the amendment of paragraph (j) and the inclusion of new paragraph (k) relating to shares and options granted to a director.

*Clause 80* replaces section 13O to ensure that the way of determining when a share or option is granted remains the same for payroll tax purposes

despite the repeal of section 139G of the *Income Tax Assessment Act 1936 (Cwlth)* which defined acquiring or providing a share or right.

*Clause 81* amends section 13P to include reference to new paragraph (k) of the definition of wages in the schedule.

*Clause 82* amends section 13R to limit the period for the vesting day for a share or option to no more than 7 years after the day the share or option is granted to the grantee. The vesting day for a share is the earlier of the day it vests in the grantee or the day that is 7 years after the day the share is granted. The vesting day for an option is the earlier of the day the share to which the option relates is granted to the grantee, the day the grantee exercises the right under the option to have the share transferred to, allotted to, or vested in the grantee, or the day that is 7 years after the day the option is granted.

*Clause 83* amends section 13U to remove reference to the repealed division 13A of the *Income Tax Assessment Act 1936 (Cwlth)* for working out the market value of a share or option. The value of a share or option is the amount worked out using the methodology under regulations made under section 83A-315 of the *Income Tax Assessment Act 1997 (Cwlth)* if there is such a regulation or, in any other case, the market value.

Subsection 13U(3) provides direction for applying a regulation mentioned above for payroll tax purposes. In this regard, the value of an option is worked out as if it were a right to acquire a beneficial interest in a share, and a reference in the regulations to a right to acquire a beneficial interest in a share is taken to be a reference to an option and a reference to the acquisition of a beneficial interest in a share or right is taken to be a reference to the grant of a share or option. Any other changes necessary for applying the regulation will also apply.

Subsection (4) provides that, for working out the market value of a share or option, anything that would prevent or restrict its conversion to money must be disregarded.

Subsections (5) – (7) allow the Commissioner to request or obtain evidence of the value of a share or option and to claim all or part of the valuation costs from the employer in certain circumstances.

*Clause 84* amends section 69 by omitting subsection 69(2) in relation to when a company will be grouped with another company as related bodies corporate under the *Corporations Act 2001 (Cwlth)*.

*Clause 85* inserts a new subsection 73(2) to clarify that, when two or more members of a group together have a controlling interest in a business under section 71, all the members of the group and the person or persons who carry on the business will together constitute a group.

*Clause 86* inserts a new Part 10 containing transitional provisions in relation to the amendments for shares and options.

New section 141 validates any act or omission of an employer relating to the assessment or payment of payroll tax for wages paid or payable for the period 1 July 2009 to 30 June 2011 where the act or omission would have been valid had the amendments relating to shares and options that are in effect on commencement of section 141 then been in force.

#### Example

On 1 April 2011, an employer grants a share in Company X to an employee. The share is not an ESS interest under the employee share scheme provisions of the Income Tax Assessment Act 1997 (Cwlth) and constitutes a fringe benefit for Commonwealth fringe benefits tax purposes. However, under the Payroll Tax Act 1971 as it applied prior to 1 July 2011, it is taxable as the grant of a share to which part 2, division 1C of the Payroll Tax Act 1971 applies.

The employer decides to treat the grant of the share as a fringe benefit in the employer's payroll tax return for the relevant month. The treatment of the share as a fringe benefit is taken to be valid for payroll tax purposes as, had the amendments to part 2, division 1C of the Payroll Tax Act 1971 been in effect at that time, the grant of the share would have been liable for payroll tax purposes as a fringe benefit.

New section 142 applies to a share or option granted before 1 July 2011 if:

- when granted, the share or option constituted wages under paragraph (j) of the definition of *wages* in the schedule as it applied prior to 1 July 2011; and
- the grantor elects the vesting day as the relevant day and the relevant day occurs after 1 July 2011.

Section 142 provides that the share or option is to be taken to be wages to which sections 13R and 13U, as in force on the commencement of section 142, apply. This is regardless of whether or not the share or option is now within the definition of *wages* in paragraphs (j) or (k). Under section 13R,

the 7 year period for vesting applies to the share or option and, under section 13U, the new valuation rules apply to the share or option.

Example

*On 1 May 2011, an employer grants a share in Company Y to an employee. At the time it is granted, the share constitutes wages under paragraph (j) of the definition of wages in the schedule to the Payroll Tax Act 1971. Under section 13R of the Act, the employer elects to treat the vesting day for the share as the day on which wages comprising the grant of the share (the relevant day) are paid and payable.*

*The vesting day occurs on 1 May 2012. The share does not constitute an ESS interest under the Income Tax Assessment Act 1997 (Cwlth) and therefore is not within paragraph (j) of the definition of wages at the relevant day. Despite this, the value of the taxable wages comprising the grant of the share is the value worked out under section 13U of the Payroll Tax Act 1971 as amended by the amending Act.*

*Had the share not vested in the grantee by 1 May 2018, section 13R would apply to make the vesting day 1 May 2018.*

Clause 87 amends the Dictionary in the Schedule to the *Payroll Tax Act 1971*.

The definition of *share* is replaced to remove reference to section 139GCD of the *Income Tax Assessment Act 1936* (Cwlth) in relation to a stapled security, with that term now taking its ordinary meaning.

The definition of *wages* is amended to restructure it to insert paragraph numbering.

Subclause (4) omits paragraph (1)(j) of the definition of *wages* and inserts new paragraphs (1)(j) and (k). Under paragraph (1)(j), wages include a share or option granted by an employer to an employee under an employee share scheme, in relation to services performed or rendered by the employee, that is an ESS interest under section 83A-10 of the *Income Tax Assessment Act 1997* (Cwlth). Under paragraph (1)(k), wages include a share or option granted by a company to a director of the company by way of remuneration for the appointment or services of the director.

Subclause (5) inserts paragraph 2 to specifically exclude from the definition of *wages* exempt benefits under the *Fringe Benefits Tax Assessment Act 1986* (Cwlth).

## **Part 9**                      **Amendment of Queensland Competition Authority Act 1997**

*Clause 88* states that this part amends the *Queensland Competition Authority Act 1997*.

*Clause 89* inserts a new part 14 (Transitional provision for Revenue and Other Legislation Amendment Act 2011). Part 14 clarifies how the definition of “Ministers” is to be applied to documents and to directions, referrals, declarations, revocations, decisions or other acts of Ministers that were in existence, or made, before the definition of “Ministers” was amended (see clause 90 below).

*Clause 90* amends schedule 2 (Dictionary) to amend the definition of “Ministers”.

## **Part 10**                      **Amendment of the Royal National Agricultural and Industrial Association of Queensland Act 1971**

*Clause 91* provides that this part amends the *Royal National Agricultural and Industrial Association of Queensland Act 1971* (RNA Act).

*Clause 92* removes a previous anomaly in the legislation governing the Royal National Agricultural and Industrial Association of Queensland (Association) which allows members at a general meeting to resolve to distribute surplus assets of the Association to themselves upon the winding-up the Association. The amendment prevents the distribution of surplus assets to any members of the Association on its winding-up. The amendment allows members to retain the right to voluntarily resolve to wind-up the Association and to resolve to distribute surplus assets when winding-up the Association, but not to themselves. However, the amendment limits the members to resolving to distribute surplus assets only to another entity that has similar purposes to the Association, that is not carried on for the profit or gain of its members and whose members

cannot obtain any benefit from surplus assets of the other entity upon its winding-up.

This amendment is to allow the Association to satisfy criteria identified in a Binding Private Taxation Ruling as necessary for endorsement by the Australian Taxation Office as an income tax exempt charitable institution.

The amendment continues to allow the winding-up provisions within the *Associations Incorporation Act 1981* to apply to the Association, while not allowing surplus assets of the Association to be distributed to any of its members. In mitigating circumstances where members of the Association fail to resolve to wind-up and distribute assets, the Governor in Council retains the power to wind-up the Association and to vest its assets in the Public Trustee or another entity in trust for the original or another purpose. Additionally, the powers of the Supreme Court to wind-up an association continue to apply to the Association, as do a number of functions for the Chief Executive to obtain financial information, to cancel and/or reinstate its registration and to invest its assets in the Public Trustee.

## **Part 11                      Amendment of South East Queensland Water (Restructuring) Act 2007**

*Clause 93* states that this part amends the *South East Queensland Water (Restructuring) Act 2007*.

*Clause 94* amends section 16 (Appointment of members) to remove the limit on the number of members that the responsible Ministers may appoint to the board of a new water entity.

*Clause 95* amends section 64 (Expiry of new water entities) to enable a new water entity to be dissolved earlier than its expiry date by a regulation made under new section 109.

*Clause 96* relocates section 94 (Delegation by Minister) to chapter 6.

*Clause 97* relocates section 96 (Regulation-making power) to chapter 6.

*Clause 98* inserts a new chapter 5 (Restructuring relevant water entities) and chapter 6 heading (Miscellaneous).

New section 104 (Relevant water entities) lists the entities that are each a 'relevant water entity' for the purposes of chapter 5. A regulation may prescribe other entities as a 'relevant water entity' if the entity meets the criteria set out under subsection (2).

New section 105 (Transfer of shares, assets, liabilities etc. to relevant water entity) enables a regulation to make provision about any of the matters listed under subsection (1) for a relevant water entity. A regulation has effect despite any other law or instrument.

New section 106 (Effect on legal relationships) protects the State and other relevant entities from liability for things done under chapter 5. Subsection (2) and (3) provide that where consent or notice is required to do something under chapter 5 that consent or notice is taken to have been given unconditionally.

New section 107 (Ministerial direction) provides that the Minister may give a transfer direction to a relevant water entity or its board requiring it to do something the Minister considers necessary or convenient for effectively restructuring a relevant water entity under chapter 5. A relevant water entity (and its board) must comply with a transfer direction.

New section 108 (Registering authority to register or record transfer or other dealing) provides for the registration or recording of a transfer of, or other dealing affecting, an asset, liability or instrument provided for under a regulation made under section 105.

New section 109 (Regulation dissolving new water entity) enables a regulation to dissolve a new water entity (the *first entity*) if all of its assets and liabilities have been transferred to another relevant water entity or have been otherwise disposed of. The regulation may also make provision about the preparation of the first entity's final financial statements and final report for the purposes of the *Financial Accountability Act 2009*, sections 62 and 63. The regulation may specify the entity that is to prepare the first entity's final financial statements and final report despite the *Financial and Performance Management Standard 2009*, sections 48(1) and 53.

New section 110 (Non-liability for State taxes) provides that neither WaterSecure nor Seqwater is liable to pay a State tax in relation to a transfer or other dealing described in subsection (1). Other dealings include other matters that may be provided for under a regulation made under section 105, such as the grant, variation or extinguishment of a lease, easement or other right. A State tax is defined in subsection (3).

New section 111 (Preservation of rights of transferred employee) applies if there is a transfer of an employee from WaterSecure to Seqwater under a regulation made under section 105. This section provides for the preservation of a transferred employee's terms and conditions of employment as applied immediately before the transfer until the employee becomes covered by a new certified agreement after the transfer or enters into a new written contract of employment with Seqwater. The transfer has effect despite any other law, contract or other instrument.

New section 112 (Prohibition on retrenchment because of transfer of employee) applies to a transfer of an employee from WaterSecure to Seqwater under a regulation made under section 105 if that employee is covered by a certified agreement at the time of the transfer. This section prohibits Seqwater from taking any action, within three years after the employee's transfer, to end the employee's employment with Seqwater by redundancy (other than voluntary redundancy) because of the transfer of the employee.

New section 113 (Things done under this chapter) provides for the validity of acts done under chapter 5 despite contrary provisions under any other Act or instrument. This section also provides that a thing is taken to be done under chapter 5 if it is done by, or in compliance with, a regulation made under section 105 or a direction given under section 107, even if steps are required to be taken under another Act.

New section 114 (Excluded matter for Corporations Act) provides that anything done by the Minister under section 107 is an excluded matter for the purposes of the Corporations Act, section 5F, in relation to the chapter 2D of the Corporations Act.

New section 115 (Severability) provides that if a provision of chapter 5 or a regulation made under section 105 is held to be beyond power, invalid or unenforceable, the provision is to be disregarded or severed and the remaining provisions of the chapter or regulation will continue to have effect.

*Clause 99* amends schedule 3 (Dictionary) to insert definitions relevant to chapter 5.

## **Part 12**                      **Amendment of Sustainable Planning Act 2009**

*Clause 100* provides that this part amends the *Sustainable Planning Act 2009*.

*Clause 101* inserts new chapter 3, part 5, division 2A (Division 2A Modifications to process for making or amending local planning instruments having effect in iconic places)

Section 122A inserts definitions relevant to division 2A.

Section 122B provides that division 2A applies to a local government if an amendment to its *Integrated Planning Act 1997* planning scheme or making a new planning scheme or preparing a proposed temporary local planning instrument would, or may, affect an iconic place and would change or replace a protecting planning provision for the place.

Subsection (2) provides for division 2A to prevail to the extent of an inconsistency with division 2.

Section 122C mirrors part of the provisions in the repealed *Iconic Queensland Places Act 2008* requiring a local government to prepare an impact report evaluating a scheme proposal's or proposed temporary local planning instrument's effect on the place's iconic values. The report and proposed planning scheme or amendment must be given to the advisory panel before the Minister's first review of State interests.

Section 122D requires that any public notice about the scheme proposal or proposed temporary local planning instrument under the guideline, is to state that the advisory panel has been given a report by the local government about the scheme proposal evaluating its effect on an iconic place.

Section 122E subsection (1) requires the advisory panel to consider the impact report and give the local government a panel report about the effect of the scheme proposal within 40 business days of receiving it.

Subsection (2) provides that the panel's report may make recommendations to the local government about protecting the place's iconic values.

Subsection (3) provides that in its preparing its report, the panel may consult with anyone it considers appropriate.

Section 122F requires the local government to consider the panel report in preparing or making an amendment to the planning scheme, or in preparing a proposed temporary local planning instrument.

Section 122G provides that if, after considering the panel report, the local government decides to proceed with the scheme proposal or proposed temporary local planning instrument, the local government must, when giving the Minister a copy of the proposed planning scheme or amendment or the proposed temporary local planning instrument for the Minister's first State interest review, also give the Minister—

- the impact report
- the panel report, and
- a document stating the local government's response to the panel report.

Section 122H requires that when the Minister considers State interests at the first State interest check for a planning scheme or amendment, or when considering a proposed temporary local planning instrument, the Minister must also consider whether the scheme proposal, if given effect to, would be inconsistent with protecting the place's iconic values.

Section 122I provides that if the Minister considers that the scheme proposal, or proposed temporary local planning instrument, if given effect to, would be inconsistent with protecting the place's iconic values, and the Minister advises the local government that it may adopt the scheme proposal or temporary local planning instrument, the Minister must impose conditions to preserve the iconic values.

*Clause 102* inserts new chapter 4, part 2 division 4, subdivision 1 General Process. Existing sections 145 to 149 are inserted into subdivision 1.

*Clause 103* inserts new chapter 4, part 2 division 4, subdivision 2 Modifications to process for making structure plans having effect in iconic places.

Section 149A inserts definitions relevant to subdivision 2.

Section 149B provides that subdivision 2 applies to a local government if the making of a structure plan would, or may affect an iconic place and would change or replace a protected planning provision for the place. This only applies if the structure plan is made before the local government's first planning scheme made under the *Sustainable Planning Act 2009* takes effect.

Subsection (2) provides for subdivision 2 to prevail to the extent of an inconsistency with subdivision 1.

Section 149C mirrors part of the provisions in the repealed *Iconic Queensland Places Act 2008*.

The local government is required to prepare an impact report evaluating the structure plan proposal's effect on the place's iconic values. The report and proposed structure plan must be given to the advisory panel before the local government agrees with the coordinating agency on the proposed structure plan under the structure plan guideline.

Section 149D requires that any public notice under the proposed structure plan guideline is to state that the advisory panel has been given a report by the local government about the structure plan proposal evaluating its effect on an iconic place.

Section 149E subsection (1) requires the advisory panel to consider the impact report and give the local government a panel report about the effect of the proposed structure plan within 40 business days of receiving it.

Subsection (2) provides for the panel's report to make recommendations to the local government.

Subsection (3) provides that, in preparing its report, the panel may consult with anyone it considers appropriate.

Section 149F requires the local government to consider the panel report in preparing the structure plan.

Section 149G provides that if, after considering the panel report, the local government decides to proceed with the proposed structure plan, the local government must, when giving the Minister a copy of the proposed structure plan for the Minister's consideration of State interests, also give the Minister –

- the impact report
- the panel report and
- a document stating the local government's response to the panel report.

Section 149H requires that if, under the structure plan guideline, the Minister is considering whether State interests would be adversely affected by the proposed structure plan, the Minister must also consider whether the

proposed structure plan would, if given effect to, be inconsistent with protecting the place's iconic values.

Section 149I provides that if the Minister considers that the proposed structure plan, if given effect to, would be inconsistent with protecting the place's iconic values, and the Minister advises the local government that it may adopt the proposed structure plan, the Minister must impose conditions to preserve the iconic values.

*Clause 104* inserts new chapter 9, part 7B Advisory panels for iconic places.

Section 755X provides a definition of *local government* for this part, meaning the local government in whose local government area the panel's iconic place is situated.

Section 755Y requires the Minister, by gazette notice, to establish a panel for each iconic place, and appoint its members and chairperson. Persons appointed must comply with the membership requirements in section 755ZB.

Section 755Z requires the Minister, on establishing a panel, to notify the local government of the establishment of the panel and its members.

Section 755ZA establishes a panel's function which is to advise local government about whether or not the panel considers a scheme proposal or a proposed temporary local planning instrument would, if given effect to, be inconsistent with protecting the iconic values of the iconic place.

Section 755ZB sets out the requirements for membership of advisory panels, which is the same as for the previous iconic panel members under the repealed *Iconic Queensland Places Act 2008*. A panel cannot have more than 5 members, and a person may be a member of more than one panel.

The membership must include a person with community or environmental experience, a person with professional or technical qualifications and a councillor of the local government. However, councillors of a local government must not make up a majority of the number of members.

Section 755ZC establishes that the Governor in Council decides the remuneration and allowances to be paid to a member. A member who is a public servant must not be paid if panel business is conducted during the officer's ordinary hours of duty. However the officer is entitled to expenses incurred in acting as a member.

Section 755ZD provides for disclosure by a panel member of material personal interests that may occur while an issue is being considered by a panel. The circumstances in which a member may have a material personal interest are specified and what should occur if a material person interest is declared by a member. A maximum of 200 penalty units applies to breaches of this provision.

Section 755ZE establishes reporting requirements for panels.

Subsection (1) requires the chairperson of each panel to prepare and give the Minister a report about the panel's performance during each financial year.

Subsection (2) requires the report to be given to the Minister as soon as practicable, and no later than 4 months after, the end of each financial year.

Subsection (3) requires inclusion in the report of any information reasonably required by the Minister about the panel's financial performance.

Section 755ZG provides for a panel to conduct its business in the way it considers appropriate.

Section 755ZH provides for a panel to be dissolved on the day the local government's first planning scheme made under the *Sustainable Planning Act 2009* takes effect and the panel members go out of office. No compensation is payable to a panel member affected by this section.

*Clause 105* amends the heading of chapter 10, part 2 to clarify that the provisions relate to the *Sustainable Planning Act 2009*.

*Clause 106* inserts new chapter 10, part 3 Transition provisions for Revenue and Other Legislation Amendment Act 2011.

Section 872 inserts definitions for part 3.

Section 873 provides for various scenarios that have occurred before commencement. In all scenarios below, the *Iconic Queensland Places Act 2008* ceases to apply to an iconic places development application on commencement and the local government may decide the application and issue a decision notice:

- the local government has not given the application to the panel
- the local government has given the application to the panel and the panel has not made a reference decision about the application

- the panel has made a reference decision, chosen to decide an application and the local government has not made a decision about the application
- the panel has made a reference decision, chosen to decide an application, the local government has decided the application and given its recommendation to the panel, and the panel has not made a decision about the application
- the panel has made a reference decision, chosen to decide an application and has decided the application, but has not given a decision notice for the application.

Section 874 applies where, before commencement of this provision, a panel has issued a decision notice for an application and the applicant makes representations to the panel (under chapter 6, part 8, division 1) for a negotiated decision and by commencement, the panel has not given a negotiated decision notice for the application.

The applicant's representations are taken to have been made to the local government, and the local government must consider the representations and make a decision about them under chapter 6, part 8, division 1. However, the chairperson of the relevant panel must, as soon as practicable after commencement, give the representations to the local government.

Section 875 provides that, regardless of whether an appeal under sections 461 to 464 started before the commencement or after commencement, the Minister is the respondent for the appeal. The local government may appeal to the Court as if it had been a submitter for the application.

Section 876 provides that on commencement, each panel is dissolved and the members of each panel go out of office. No compensation is payable to panel members.

Section 877 nominates the local government as the responsible entity for a change or approval mentioned in section 369(1)(e) of the Sustainable Planning Act 2009 for a development approval given by a panel by decision notice or a negotiated decision notice.

Section 878 mirrors requirements under the repealed Iconic Queensland Places Act 2008, requiring the chairperson of each panel to give the Minister a written report about the performance of the panel's functions for each financial year. This section requires the chairperson to give the Minister the report for the financial year up until the time of dissolution of the panel, as soon as practicable after commencement.

*Clause 107* amends schedule 3 dictionary to insert definitions for this part.

## **Part 13                      Amendment of Taxation Administration Act 2001**

*Clause 108* provides that this part amends the *Taxation Administration Act 2001*.

*Clause 109* inserts a new Part 16 in the *Taxation Administration Act 2001*, which provides savings provisions for the repeal of the *Tobacco Products (Licensing) Act 1988*. Despite the repeal, section 43 of the *Tobacco Products (Licensing) Act 1988* continues to apply for information and records obtained in connection with the administration of that Act before its repeal. Section 169 also clarifies the ongoing effect of other matters for section 43.

## **Part 14                      Amendment of Water Act 2000**

*Clause 110* provides that this part amends the *Water Act 2000*.

*Clause 111* amends section 20 (Authorised taking of water without water entitlement). Clause 111(1) clarifies a minor anomaly within the section relating to an owner of land adjoining a watercourse, lake or spring being authorised to take water for stock or domestic purposes. An inaccurate cross reference between this subsection and another subsection, dealing with taking overland flow water, or taking or interfering with subartesian water without a water entitlement, is deleted in the proposed amendment.

Clause 111(2) renumbers the existing subsection 20(8) to be subsection 20(11) to provide for insertion of new subsections.

Clause 111(3) amends the existing section to provide authorisation for a constructing authority to take water for the purpose of constructing or maintaining infrastructure, which the constructing authority has lawful ability to construct or maintain. Water may only be taken under this authorisation if it is being taken for a purpose prescribed under regulation and if the constructing authority complies with any conditions prescribed

under regulation or imposed by the chief executive on the take of water. Such conditions may for instance limit the volume of water the constructing authority may take in a year for a particular project.

This amendment provides a mechanism for a State government agency or a local government to take water for construction and maintenance purposes subject to a protocol permitted by regulation which may impose certain requirements and limitations. However, the amendment does not envisage the authorisation to replace all water permits for project based activities, or that the authorisation will operate as an alternative to holding a water entitlement in appropriate circumstances.

*Clause 112* amends section 25 to extend the chief executives power under section 25 to limit water taken under a water licence or permit to the new section 20(8) authorisation.

*Clause 113* amends section 1136F to provide an extension of time for water service providers outside the south east Queensland (SEQ) region that provide either a retail water service or a drinking water service to prepare and submit system leakage management plans to the regulator for approval.

*Clause 114* amends section 1158 to provide an extension of time for relevant local governments that had their boundaries adjusted at the 2008 local government elections, to prepare and submit system leakage management plans for the new or adjusted area to the regulator for approval.

*Clause 115* inserts new definitions for ‘constructing authority’, ‘regulator’ and ‘urban water service’ into the Water Act to support the amendments in the Bill.

## **Part 15                      Amendment of Water Supply (Safety and Reliability) Act 2008**

*Clause 116* provides that this part amends the *Water Supply (Safety and Reliability) Act 2008* (the Water Supply Act).

*Clause 117* amends section 133 to alter the existing requirement for retail water service providers located outside the SEQ region to prepare outdoor water use conservation plans. The amendment provides that the regulator can require the preparation of a plan where the provider is facing a risk to

their water security and is considered not to have implemented adequate water use efficiency measures. However, the regulator is obligated to consult with the service provider before issuing a notice requiring the preparation of a plan. This amendment will balance potential impacts on communities from water restrictions with the need to secure a community's water supply.

*Clause 118* omits section 141(1)(d) to remove the annual reporting requirements relating to issuing water advices to residential tenants and makes a consequential amendment to section 141(2).

*Clause 119* omits section 142(5) which states the information to be reported about the issuing of water advices to residential tenants. The annual reporting requirements are being omitted by the Bill.

*Clause 120* amends section 602 to make clear that section 1136F of the Water Act 2000 called up in the section continues to apply subject to amendments made to it. Section 1136F is being amended by another clause of the Bill.

## **Part 16                      Repeal of Acts**

*Clause 121* repeals various Acts.

## **Part 17                      Minor and consequential amendments**

*Clause 122* provides that the Acts amended are mentioned in the schedule.

## **Schedule      Acts amended**

### **Duties Act 2001**

*Clauses 1 to 20* make minor consequential amendments to the *Duties Act 2001* as a result of extending the transfer duty home concessions to the acquisition of a home or first home, or of vacant land on which a first home is to be constructed, by way of a vesting under subsection 9(1)(d) of the *Duties Act 2001*.

*Clause 21* removes the hyphen from *self-assessor's* in subsection 481A(2)(a)(i).

### **Judicial Review Act 1991**

*Clauses 1 and 2* amend sections 15 and 16 in Schedule 2 of the *Judicial Review Act 1991* as a consequence of the repeal of the *Tobacco Products (Licensing) Act 1988*.

### **Right to Information Act 2009**

*Clause 1* amends Schedule 3 section 12 to remove the reference to the *Debits Tax Repeal Act 2005* as a consequence of that Act's repeal.