DUTIES BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

The objective of the *Duties Bill 2001* is to replace the *Stamp Act 1894* with modern legislation expressed in clear language that can be easily complied with and administered.

The Bill will be a "taxation law" for the purposes of the *Taxation Administration Bill 2001* and is to be read together with that Bill.

Reasons for the Bill

The Bill is a rewrite of the *Stamp Act 1894,* undertaken in accordance with the following principles.

- harmonisation with other jurisdictions' legislation, wherever possible, to facilitate interstate transactions;
- modernisation to reflect current business practices and technological change;
- minimisation of compliance and administration costs;
- extension of self assessment by taxpayers;
- simplification of the provisions by restructuring and use of plain language; and
- retention of Queensland's revenue base.

The principles underpinning the provisions of the *Stamp Act 1894* reflect commercial practice of earlier times. The *Stamp Act 1894* has been amended in response to changes in commercial practice on an ad hoc basis

and as a result, it lacks a coherent approach to modern business transactions.

It has been long recognised that the legislation does not meet business and community expectations and is a hindrance to efficient administration of the law. A particular criticism of the *Stamp Act 1894* is that the lack of certainty in the application of the provisions to particular transactions has lead to increased compliance costs for taxpayers.

The provisions of the *Stamp Act 1894* that charge instruments to duty are cast widely and there are instances where duty can be imposed by both Queensland and another State or Territory in respect of the same transaction.

The language of the *Stamp Act 1894* is reflective of legislative standards of the past. The internal structure of the *Stamp Act 1894* is minimal and has been adversely affected by numerous amendments over the years. For this reason the *Stamp Act 1894* is difficult to read and understand.

The Bill seeks to address these issues.

Achievement of the Objectives

The *Duties Bill 2001* is written in clear, easy to understand language. The Bill makes use of examples to clarify difficult concepts and cross references related provisions. The Bill is organised into chapters that are a self contained statement of the rules for each of the 10 types of duty. Where possible, the chapters follow the same outline and structure for ease of understanding. Miscellaneous and ancillary administrative provisions are organised in chapters around a common theme and are located at the rear of the Bill.

The Bill provides a more contemporary conceptual basis for the imposition of duty, relying on the occurrence of a transaction instead of the execution of an instrument as the trigger for liability. This recognises that modern commercial practice is increasingly transactions, as opposed to instruments, based.

In recognition that many businesses now operate on a national basis and may be subject to duty liability in more than one State or Territory, the provisions of the Bill have been aligned or harmonised, where possible, with recently rewritten duty legislation in other States and Territories. This will eliminate instances of duty imposition on the same transaction by two or more jurisdictions and will reduce taxpayer compliance costs by the use of common terminology and liability rules. An example of this is the

adoption of the multijurisdictional mortgage duty model for mortgages securing property in more than one State or Territory.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Implementation of the *Duties Bill 2001* will necessitate staff and client education programs, development of new forms, rulings and guidelines and changes to Office of State Revenue operations.

However, over time the *Duties Bill 2001* will see a reduction in administration costs as the clearer statements of the law will enable streamlining of administrative procedures and will facilitate the self assessment of liability by taxpayers and their advisers.

Consistency with Fundamental Legislative Principles

The *Duties Bill 2001* raises a number of fundamental legislative principles.

The Bill makes certain rights of individuals dependent on administrative powers by:

- providing the Commissioner with certain discretions to make decisions as part of the determination of liability. These provisions are necessary to ensure the effective operation of the Bill, and the Commissioner's decisions are open to challenge on objection and appeal under the *Taxation Administration Bill 2001*.
- providing the Commissioner with the power, under Chapter 11 of the Bill, to decide the amount of duty payable where an entity has obtained a benefit due to a duty avoidance scheme. Chapter 11 contains a general anti-avoidance provision the purpose of which is to deter artificial, blatant or contrived schemes to reduce liability. It may be applied where an entity, the avoider, has obtained a duty benefit, as defined, from a scheme, as defined, and it is reasonable to conclude that an entity has entered into the scheme for the sole or dominant purpose of the avoidance of duty by the entity or another entity. The Commissioner is required to take 10 listed matters into account when deciding an entity's purpose of entering into, or carrying out, the scheme from which

the avoider obtained the duty benefit. The provisions of Chapter 11 are essential to ensure the continued integrity of revenue collection arrangements in Queensland and the Commissioner's decision of the amount of duty payable is open to challenge on objection and appeal under the *Taxation Administration Bill 2001*.

- providing the Commissioner with the power to register persons as self assessors for liability under the Bill in the absence of an application by the person. Registration as a self assessor does not expose persons to any further liability than arises as a result of the person being a party to a transaction or instruments. In the case of persons who act as agents for parties to transactions or instruments, the Bill specifically provides that they are not liable for the payment of duty. The purpose of the provision is to provide efficient administration of the Bill.

- providing the Commissioner with the power to register institutions as exempt institutions. As registration as an exempt institution provides exemption from liability for duty, it is important that only those institutions that come within the specified class of institutions eligible for registration and which meet the other requirements for registration, be registered. The Commissioner is therefore also empowered to refuse to register those institutions that do not meet the criteria. Whilst no separate review rights are provided for, the practical effect of non-registration is that transactions entered into by the institution will be dutiable and the institution's exempt status will be fully reviewable as part of the review of the assessment under the objection and appeal provisions in the Taxation *Administration Bill 2001*.

Whether the Bill has sufficient regard to the institution of Parliament:

- The Bill provides for the apportionment of insurance premiums for contracts of insurance which have a connection with both Queensland and another State or Territory, by way of regulation. Over the past few years, a Schedule of Apportionment has been developed by the Revenue Authorities in each jurisdiction in consultation with the insurance industry to ensure that instances of multiple duty imposition do not arise. That schedule undergoes frequent review as new types of insurance products are developed. For this reason the Bill provides for the adoption of it by regulation. In any event, the Bill also provides that the

Commissioner may, upon application by an insurer or an insured person, adopt another basis of apportionment where it will result in less duty being paid.

- The Bill confers power to make transitional regulations to facilitate the transition from the *Stamp Act 1894* to the Bill and the *Taxation Administration Bill 2001* and about matters for which the Bill does not make provision or sufficient provision. This power is very broadly worded and also allows for transitional regulations to operate retrospectively, with the limitation that the regulations cannot commence prior to the commencement day for the Bill. However, the scope of the power is limited by the provision that any transitional regulations made under the clause, as well as the clause itself, will expire 5 years after the commencement day for the Bill.

Consultation

The *Duties Bill 2001* has been released for public consultation on two occasions, including a series of public seminars held in Brisbane and seven regional centres. Representatives of the accounting and legal professions and various industry groups have also been separately consulted as part of this process.

NOTES ON PROVISIONS

CHAPTER 1—INTRODUCTION

This Chapter sets out the name of the Bill and its commencement date. It provides a signpost to the Dictionary at Schedule 6 of the Bill and sets out the relationship of the Bill to the *Taxation Administration Bill 2001*. Under the *Taxation Administration Bill 2001,* the Bill is to be read with the *Taxation Administration Bill 2001*.

Part 1 Preliminary

Clause 1 cites the short title of the Bill.

Clause 2 specifies the commencement date for the Bill. The Bill, apart from clauses 300(2), 336(2) and 491 will commence on a date to be fixed by proclamation. Clauses 300(2), 336(2) and 491 will commence on the later of a date to be fixed by proclamation or when an arrangement for Queensland is made under section 9 of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth).

Part 2 Interpretation

Clause 3 refers to the Dictionary at Schedule 6 of the Bill that contains the terms defined for the Bill.

Clause 4 provides that a note in the Bill forms part of the Bill.

Clause 5 states the relationship of the Bill to the *Taxation Administration Bill 2001.*

Part 3 Application of Act

Clause 6 provides the application of the Bill to persons. Clause 6(1) provides that the Bill binds all persons, including the State and as far as the legislative power of the Parliament permits, the Commonwealth and the other State and Territories of Australia. Clause 6(2) provides that the Bill does not make the State liable to be prosecuted for an offence.

Clause 7 provides the application of the Bill to instruments and transactions. For the purpose of imposing duty, it is immaterial whether an instrument or transaction is entered into, or made inside or outside, Queensland.

CHAPTER 2—TRANSFER DUTY

Chapter 2 imposes duty on transfers and other transactions relating to property in Queensland. There are four elements of the general scheme of the duty. These are:

- ***dutiable transaction – what –*** describes or lists the transactions under which a liability arises. (clause 9)
- ***dutiable property –*** describes or lists the property that can be the subject of a dutiable transaction. It also provides the jurisdictional nexus with Queensland. (clause 10)

- ***dutiable value*** **–** provides the rules for determining the taxable value of the dutiable transaction. This is generally either the consideration for the transaction, or unencumbered value of the dutiable property, whichever is the greater. The provisions contain the rules for working out both consideration and unencumbered value and rules for apportionment and aggregation of transactions. Special rules apply in some cases. (clause 11)
- ***dutiable transaction – when*** **–** provides the timing rule for determining when the transaction occurs and consequently when liability to duty arises. (clause 16 and Schedule 1)

Part 1 Preliminary

Clause 8 provides for the imposition of transfer duty. Transfer duty is imposed on the dutiable value of a dutiable transaction.

Part 2 Some basic concepts about transfer duty

Clause 9 contains the ten dutiable transactions for which transfer duty is imposed. Clause 9(2) provides that it does not matter whether a transaction is effected by an instrument or in another way or is a unilateral transaction. This means that written, oral and electronic transactions are capable of being dutiable transactions. Clause 9(3) states that the clause is to be read subject to clauses 21, 29 and 37. These three clauses contain rules that apply so that a transaction cannot be imposed with duty more than once and provide that certain transactions that would otherwise be dutiable transactions are not a dutiable transaction for the Bill.

Clause 10 contains the 6 types of dutiable property. Clause 10(2) provides that a reference to dutiable property includes a reference to an interest in the property, other than one of 5 listed interests. The purpose of the exclusion of these interests is to ensure that they are either not classed as dutiable property and therefore are not dutiable as the subject of a dutiable transaction or they fall into a specific dutiable transaction, for example, the acquisition of a new right or a trust interest.

Clause 11 sets out what is the dutiable value of a dutiable transaction. Clause 11(1) to 11(4) and 11(6) contain rules for particular dutiable transactions. Clause 11(5) states the general rule that the dutiable value of a dutiable transaction is the higher of consideration or the unencumbered

value of the dutiable property or new right the subject of the dutiable transaction.

Clause 12 sets out the rules for determining the consideration for a dutiable transaction. For the Bill consideration takes its usual meaning. Clause 12(1)(a) provides that consideration includes the amount of any liabilities assumed in the transaction. This does not apply to liabilities integral to, or inherent in, the dutiable property transferred, such as liabilities to pay ongoing rent, licence fees or royalties, where the property transferred is subject to these.

Clause 12(1)(b) also includes in consideration the amount or value of a debt to the extent that it is released or extinguished under the transaction. However, it does not include the value of the debt where it has simply been paid out in full in the ordinary course as in these circumstances the debt is discharged as opposed to being released or extinguished. Clause 12(2) provides a special rule that applies where the consideration is paid periodically.

Clause 13 sets out the consideration for a transfer by way of security of dutiable property that is land. The consideration is the unencumbered value of the land determined at the time that liability arises.

Clause 14 provides what is the unencumbered value of property. As it may be necessary to determine the unencumbered value of property generally, these rules apply to all property and not just dutiable property.

For example, under a dutiable transaction, a person may agree to exchange land in Queensland for land in New South Wales. The consideration for the transfer of the Queensland land is the New South Wales land. Clause 14 provides the rules for working out the value of the New South Wales land.

Clause 14(1) provides that the unencumbered value of property is to be determined without regard to any encumbrances. As an anti-avoidance measure, it also provides that in determining the unencumbered value any arrangement between parties who are not dealing at arm’s length and which results in a reduction in the value of the property, or an arrangement the significant purpose of which is the reduction in the value of the property, is disregarded. Clauses 14(2) to 14(4) contain rules for determining the unencumbered value for particular dutiable transactions.

Clause 15 sets out when the unencumbered value of dutiable property is to be determined.

Part 3 Liability for transfer duty

Clause 16 states when liability for transfer duty imposed on a dutiable transaction arises. It links to Schedule 2 of the Bill.

Clause 17 provides who is liable to pay transfer duty. Generally, the parties to the transaction are liable for the payment of duty. Clause 17(1) provides that for a statutory dutiable transaction, the statutory entity is liable for the payment of duty. The terms “statutory dutiable transaction” and “statutory entity” are defined in the Dictionary at Schedule 6 of the Bill.

Clause 18 provides that the parties to a dutiable transaction must make a statement in the approved form for the transaction where it was not effected or evidenced by an instrument. Failure to make the statement is an offence.

Clause 19 sets out when the parties liable to pay transfer duty are required to lodge the instrument or transfer statement made under clause 18 for stamping by the Commissioner. For a statutory entity under a statutory dutiable transaction, clause 19(1) provides that the date is either within 60 days of the liability to transfer duty arising, or if a court decides the amount of compensation payable for the transaction, within 14 days of the amount being decided. For other dutiable transactions, clause 19(3) states that the parties must lodge the instrument or transfer statement for the dutiable transaction together with the relevant Commissioner approved form, if any, within 30 days after the liability arising.

Clause 20 provides that the making of a transfer statement under clause 18 or lodging of the instrument or transfer statement under clause 19 by one party to the dutiable transaction relieves all other parties from those obligations.

Clause 21 provides for the case where a transaction for property falls within more than one category of dutiable transaction or dutiable property. Duty is imposed only once in relation to the transaction. The Commissioner decides the dutiable transaction that is the most applicable. In doing so, the Commissioner must take in to account the provisions of the Chapter and the primary purpose of the transaction. This clause will apply, for example to a trust acquisition that is also a vesting of trust property under a Bill, or, a transfer of an interest in land that is also a transfer of rights under a joint venture agreement. The Commissioner will only impose duty once on the basis of the primary purpose of the transaction, which in these cases is a trust acquisition or a transfer of rights under a joint venture agreement.

Clause 22 ensures that for certain dutiable transactions, duty is not imposed more than once.

Clause 23 states when a credit for lease duty will be allowed in an assessment. It ensures that where, under clause 14(1)(c) the existence of a lease of land has been disregarded in working out the unencumbered value of land that is transferred, the amount of lease duty paid for the lease under Chapter 4 is taken into account in assessing the transfer duty on the transfer of the land.

Clause 24 provides the rates of duty applicable to dutiable transactions. Clauses 24(1) and 24(2) contain the rate applicable to dutiable transactions involving Queensland marketable securities. Clause 24(3) provides a concessional rate of duty for transfers and agreements for the transfer of the rights of holders of particular mortgages, charges, bills of sale or other securities. Clause 24(3)(a) provides that the rate is available for transfers and agreements for the transfer of a mortgage that is solely over land in Queensland. Provided that the mortgage is not over other property, it will be solely over land in Queensland even though it may secure the usual covenants found in mortgages, such as those relating to insurance and incidental profits and rights of the land. Clause 24(3)(b) extends the concessional rate to charges, bills of sale and other securities that are incidental to, and transferred with, the mortgage. This mortgage must be the principal (i.e. the most valuable) security held by the transferor.

Clause 24(4) explains that the general rates of duty are in Schedule 3 of the Bill.

Clause 25 provides for payment of duty by a grantee of a deed of grant issued under the *Land Act 1994.*

Part 4 Apportionment of consideration or unencumbered value for particular dutiable transactions

Clause 26 applies to dutiable transactions that have Queensland business assets as their subject, either directly, as in a transfer of a Queensland business asset, or indirectly, as in an acquisition of a partnership interest in a partnership that owns Queensland business assets. It links to clause 12 for direct transactions, clause 46 for a partnership acquisition and clause 63 for a trust acquisition or surrender. The purpose of the clause is to ensure that double duty is not imposed on business assets where the asset has a connection with another Australian State, because Queensland and another state both seek to impose duty on the transaction. It does this by apportioning either the consideration for a dutiable transaction involving a

Queensland business asset or the unencumbered value of the business asset.

The clause applies where the Queensland business has its head office or principal place of business in Queensland and has made a supply or provision of services to customers outside Queensland or the business asset has been used, exploited or exercised in, or relates to, a place outside Queensland. The clause contains a formula to apportion the consideration or unencumbered value for the dutiable transaction for a direct transaction or the value of the property for a partnership acquisition, trust acquisition or surrender. The apportionment is based upon the amount of supplies of goods or services made by the business in the 3 financial years preceding the transaction. The consideration for the dutiable transaction or the value of the business asset the subject of the dutiable transaction is apportioned to exclude an amount that represents the proportion of supplies of goods or services made by the business to customers in other Australian States.

Clause 26(3) provides that the Commissioner may decide the consideration for a dutiable transaction or the unencumbered value of dutiable property on another basis where the Commissioner considers that basis would be more appropriate.

Clause 27 is similar to clause 26 and applies where the Queensland business has its head office or principal place of business outside Queensland and has made a supply or provision of services to customers in Queensland or the business asset has been used, exploited or exercised in, or relates to Queensland. The consideration for the dutiable transaction or the value of the business asset the subject of the dutiable transaction is apportioned to include only an amount that represents the proportion of supplies of goods or services made by the business to customers in Queensland.

Clause 27(3) provides that the Commissioner may decide the consideration for a dutiable transaction or the unencumbered value of dutiable property on another basis where the Commissioner considers that basis would be more appropriate.

Clause 28 applies to dutiable transactions for, or relating to, existing rights and new rights where the right is exercisable, or relates to the conduct of a business or activity, outside Queensland. It provides for the apportionment of the consideration or the unencumbered value of the existing right or new right to exclude a proportion to the extent that the right is exercisable or relates to the conduct of a business or activity outside Queensland. This ensures that transfer duty is only imposed on the Queensland portion of the consideration or unencumbered value.

Clause 28(3) provides that the Commissioner may decide the consideration for a dutiable transaction or the unencumbered value of the right on another basis where the Commissioner considers that basis would be more appropriate.

Part 5 Dutiable transactions relating to dutiable property

Clause 29 provides when a transaction for a chattel in Queensland is not a dutiable transaction.

Clause 30 provides for the aggregation of dutiable transactions that form, evidence give effect to or arise from what is substantially the one arrangement for the purpose of assessing transfer duty. As transfer duty is imposed at ad valorem rates on the dutiable value of a dutiable transaction, the overall duty imposed can be affected if dutiable transactions are treated as separate and distinct even where they are part of the one agreement. Where dutiable transactions are part of the one transaction, the clause ensures that the appropriate amount of duty is imposed. Further, without such a clause it would also be possible to stage dutiable transactions over a period of time so that they appear unrelated, thereby reducing the overall amount of duty imposed.

Clause 30(3) provides that all relevant circumstances are to be taken into account in deciding whether the dutiable transactions form, evidence give effect to or arise from what is substantially the one arrangement and clause 30(4) lists some of the circumstances that are relevant. Clause 30(5) provides that the transfer duty imposed on the dutiable transactions aggregated under the clause must be assessed on the total of the dutiable values of the dutiable transactions, determined when the liability for transfer duty for each of the dutiable transactions arose, and apportioned between the dutiable transactions as decided by the Commissioner. Clause 30(6) provides that the parties to the dutiable transactions must each provide to the Commissioner the details known to them about all of the dutiable property and the dutiable value of each dutiable transaction that arose from the arrangement. Clause 30(7) provides that the clause does not apply to certain dutiable property or dutiable transactions.

Clause 31 is a special rule for determining the amount of transfer duty imposed on dutiable transactions where property held jointly by persons as joint tenants or tenants in common is transferred or agreed to be transferred to one or more of the persons.

Clause 32 provides for reassessment of duty on dutiable transactions that are a transfer of land by way of security where the land is subsequently

retransferred to the transferor/mortgagor. The effect of the provision is that an amount equivalent to the mortgage duty that would have been payable on the amount secured by the mortgage is imposed as transfer duty. The balance of the transfer duty paid on the original transfer is refunded under the reassessment.

Clause 33 deals with a transfer by way of security of dutiable property that is not land. The effect of the provision is that the transfer is not a dutiable transaction, however, it may be liable for duty as a mortgage. However, if the transferee subsequently gains ownership of the property free of the transferor's interest and it can be said that the acquisition of ownership would have been a dutiable transaction at that time, the transaction under which the transferee subsequently gains ownership is taken to be a dutiable transaction for the whole property. The transfer duty imposed for the transaction must be reduced by the amount of mortgage duty paid on the transfer by way of security.

Part 6 Special provisions about dutiable transactions relating to Queensland business assets

Clause 34 defines what is a "Queensland business asset".

Clause 35 sets out the 9 types of " business assets".

Clause 36 defines what is a "Queensland business". The clause makes it clear that it is not necessary for a business to be physically located in Queensland to be a Queensland business. Where a business is located outside Queensland it will be a Queensland business where it meets the requirements of clause 36(b). Clause 36(c) ensures that it is not possible to avoid characterisation as a Queensland business merely by ceasing to trade.

Clause 37 sets out when transactions for particular business assets are not dutiable transactions.

Clause 38 is an anti-avoidance provision that deals with an arrangement whereby a business asset of a Queensland business is transferred and trading stock of the business is consigned for sale in the business conducted by the new owner of the business asset. Normally, a consignment of trading stock will not be a dutiable transaction. However, where the clause applies the consignment is taken to be a transfer of the trading stock.

Clause 39 is an anti-avoidance provision to counter a technique where, instead of a transfer of a Queensland business asset occurring, the asset is surrendered so that a similar business asset may be granted or obtained by

another person. Normally, the surrender of a Queensland business asset is not a dutiable transaction. Where the clause applies the surrender is taken to be a transfer of the business asset to the person who is granted or who obtains the similar business asset.

Part 7 Dutiable transactions relating to partnerships

Clause 9(1)(h) imposes transfer duty on a partnership acquisition and Part 7 provides the framework for working out the duty which that sub-clause imposes.

The transaction concerns the partners of a partnership. The scheme of taxation is the same as those for trust acquisitions, trust surrenders and corporate trustee duty. It ensures that duty generally applies if a person becomes a partner of a partnership or their partnership interest increases. It is irrelevant how these events occur.

A partnership interest is a percentage. Transfer duty is assessed on the greater of the consideration for, or value of, the acquisition. The value of the acquisition is the amount worked out by applying the partnership interest to the unencumbered value of the dutiable property and any indirect interest in dutiable property held by the partnership.

Additional rules ensure that duty is not imposed twice on what is effectively the same acquisition.

Clause 40 is an interpretation provision for Part 7. Throughout the Part, there are references to a partnership or trust holding property. This terminology is commonly used commercially. However, this clause expresses the correct position at law, namely, that the references are to the holding of property by the partners for the partnership or the trustees on trust.

Clause 41 defines the dutiable transaction that is a partnership acquisition.

Clause 42 defines "partnership interest" as a percentage. The calculation of the percentage varies depending on the nature of the partnership interest.

The general rule in clause 42(1)(c) applies to traditional partnerships where the partners have fixed shares of profits and losses. For example, in an equal partnership between four partners, each partner would have a partnership interest of 25% under clause 42(1)(c) because the partners would be required to make equal contributions to capital and to share profits and losses equally.

Some partners are entitled only to a share of partnership profits. This is common in professional partnerships. These partners will have a partnership interest worked out under clause 42(1)(b) equal to their profit sharing percentage only if they acquired their share for consideration or for a capital contribution.

Modern professional practices commonly adjust profit sharing arrangements annually having regard to partners' fee earning over the previous financial year. Part 7 makes special arrangements for these partnerships to avoid the significant compliance costs involved if duty applied to these annual performance fluctuations. Under clause 42(2), these partners have variable partnership entitlements and their partnership interests are worked out by comparing the value of their entitlements with the value of all partners' entitlements.

Clause 43 defines "indirect interest in dutiable property" for a partnership. The definition enables transfer duty for partnership acquisitions to be calculated by reference to both dutiable property held by the partnership and indirect interests held by the partnership in other dutiable property in sub-partnerships or sub-trusts. The definition allows tracing through partnerships and trusts.

Clause 44 defines "acquire a partnership interest" for determining if there has been a partnership acquisition under clause 41. The two circumstances are-

- a partnership is formed; and
- the person's partnership interest increases.

Clause 44(2) lists some, but not all, of the ways in which these situations may occur.

Clause 44(3) is a special rule for partners having variable partnership entitlements. These are explained in the note to clause 42 above. This provision ensures that there is no increase in the partner's variable partnership entitlement merely because of fluctuations in the entitlement because of the partner's performance as a partner. However, the variation must not have been fixed either as to proportion or consideration. For example, mining or development farm-in arrangements may provide for fixed increases in a partner's share based on certain levels of performance such as the carrying out of exploration or development works. These increases will constitute the acquisition of a partnership interest for clause 44(1).

Clause 45 defines "dutiable value" of a partnership acquisition. Transfer duty is charged on that value by clause 8(2).

Clause 46 explains how to work out the value of a partnership acquisition. This value is used in clause 45 for working out the dutiable value. Detailed tracing and calculation rules are provided in clause 46(2) to (4), and an example for working out the unencumbered value of indirect interests in dutiable property held by the relevant partnership is provided at Schedule 4 of the Bill. Where necessary, in applying the tracing rules in clause 46, the apportionment rules in clauses 26 to 28 apply in determining the unencumbered value of dutiable property held by partnerships and trusts referred to in the tracing rules.

Clause 46(5) is a special rule for working out the value of a partnership interest on formation of a partnership where the partner has contributed dutiable property to the partnership. Excluding that property from the calculation ensures that the partner is not being taxed on property in which they already have an interest.

<u>Example</u>

A owns a property worth $100,000. A forms an equal partnership with B and contributes the property to the firm on formation.

A will acquire a partnership interest of 50% and the value of A's partnership interest under clause 46 would be $50,000 if the property were included. Clause 46(5) ensures that the contributed property is disregarded. However, the property is taken into account for all future partnership acquisitions by A upon an increase in A's partnership interest.

Where the partnership acquisition occurs on an increase in a partnership interest, clause 46(6) ensures that only the increase in the partnership interest is used in working out the value of the acquisition. For example, a partner with a 10% interest in the partnership may acquire a further 15%. The increase in the interest results in the person acquiring a partnership interest under clause 44(1). The partner's partnership interest worked out under clause 42(1)(c) is 25%. However, due to clause 46(6), in working out the value of the partnership acquisition under clause 46(1), the partnership interest is 15%, the increase in the partnership interest.

Clause 47 performs a similar function to clauses 46(5) and 48 in that it ensures that a partner does not pay duty on a partnership acquisition that occurs on the merger of two or more partnerships for dutiable property in which they already have an interest. In the example given in the clause, if this clause did not apply, the value of the partnership acquisition by X in the merged firm would be $4.8M. This value includes 40% of the $2M

property brought across from the old partnership in which X had a 30% interest so that X would be paying duty on property in which X already held an interest.

Clause 48 also performs a similar function to clauses 46(5) and 47 in that it ensures that transfer duty does not apply to the extent that dutiable property transferred or agreed to be transferred to a partner on exiting the partnership includes property in which the partner already has an interest.

Part 8 Dutiable transactions relating to trusts

Chapter 2 imposes transfer duty on the following dutiable transactions concerning trusts-

- clause 9(1)(i) – the creation or termination of a trust of dutiable property; and
- clause 9(1)(j) - a trust acquisition or trust surrender.

Part 8 provides the framework for working out the duty imposed by clause 9(1)(i) and (j).

These dutiable transactions concern the relationships between the trustee, the beneficiaries and the trust property. Dealings by the trustee with third parties in relation to the trust property, such as the purchase, sale, leasing or mortgaging of property, may attract a liability to duty as other dutiable transactions or under other Chapters of the Bill.

The first dutiable transaction concerns the relationship between the trustee and property owned by the trustee. It ensures that duty generally applies where property moves into or out of a trust while continuing to be owned by the same person. It is irrelevant how these events occur.

The second dutiable transaction concerns the beneficiaries of a trust. The scheme of taxation for these transactions is the same as those for partnership acquisitions and corporate trustee duty. It ensures that duty generally applies if a person becomes a beneficiary of a trust, their trust interest increases or their trust interest is surrendered. A surrender of a trust interest may involve actions by other parties such as the redemption by the trustee of units in a unit trust. Again, it is irrelevant how these events occur.

A trust interest is a percentage. Transfer duty is assessed on the greater of the consideration for, or value of, the acquisition or surrender. The value of the acquisition or surrender is the amount worked out by applying the

beneficiary's trust interest to the unencumbered value of the dutiable property and any indirect interest in dutiable property held by the trust.

Clause 49 provides that Part 8 applies to all expressly created trusts and all intentionally created trusts regardless of how they are created. For example, the parties to an oral agreement for the transfer of dutiable property may decide that the vendor should hold the property on trust for the purchaser under the constructive trust arising under the contract rather than transferring the property to the purchaser. Part 8 applies to that trust because it was intentionally created.

Where a trust is expressly created, it is irrelevant that the parties may not have intended to create a trust. Part 8 must be applied to the express terms of the trust.

Special rules apply to trust acquisitions and trust surrenders of a trust interest in a public unit trust. Clause 49 provides that these transactions will not be dutiable transactions unless they are majority trust acquisitions. For example, Part 8 does not apply to a trust acquisition of a trust interest of 10% in a public unit trust. (Duty may apply to that acquisition if the transaction is one of the other types of dutiable transaction in clause 9 such as the transfer of a Queensland marketable security.) On the other hand, Part 8 would apply to a trust acquisition of a trust interest of 60% in a public unit trust if that acquisition satisfied the other conditions of a majority trust acquisition.

Clause 50 provides that joint trustees are treated as a single person for Part 8. This ensures ease of administration.

Clause 51 is an interpretation provision for Part 8. Throughout the Part, there are references to a trust or partnership holding property. This terminology is commonly used commercially. However, this clause expresses the correct position at law, namely, that the references are to the holding of property by the trustees on trust, or the partners for the partnership.

Clause 52 clarifies the duty treatment for Part 8 purposes of property that is under contract at the time of a dutiable transaction to which the Part applies. For example, a person may have acquired a trust interest in a trust, which has entered into an agreement for the transfer of dutiable property to the trust. Under clause 52, the contracted property must be treated as dutiable property of the trust and the relevant purchase agreement is treated as having been completed.

The effect of clause 52 is that transfer duty is calculated on the basis that property being sold by the trustee is taken not to have been sold and that property being purchased by the trustee is already trust property.

If the contracted property subsequently ceases to be trust property, duty must be reassessed on that basis.

Clause 53 defines the dutiable transaction that is the creation of a trust of dutiable property. There are two circumstances, each of which focuses on a change in the capacity in which a person holds dutiable property, where a creation of a trust occurs.

The first circumstance is a change from non-trustee to trustee. For example, this clause would apply if a person who holds dutiable property declares that they hold it on trust. It would also apply to the vendor under the contract mentioned in the note to clause 49.

However, the first circumstance is not concerned with purchases of property by trustees for existing trusts. (These purchases may attract transfer duty as another dutiable transaction under clause 9.) Nor does it apply where property is settled on a person to be held on trust. (Again, the transfer of the settled property to the trustee may attract transfer duty as another dutiable transaction under clause 9.)

A change in capacity from executor or administrator to trustee of the estate of a deceased person will not be dutiable because the exemption provided by clause 123(b) will apply in that instance.

The second circumstance is a change from trustee of one trust to trustee of another trust. Duty only applies if there is a different beneficiary in the second trust or a beneficiary's trust interest for the dutiable property increases under the second trust.

Clause 54 defines the dutiable transaction that is the termination of a trust of dutiable property. Like clause 53, the focus is on a change in the capacity in which a person holds dutiable property, namely, from trustee to non-trustee. The clause requires that the property continue to be held by the person. Consequently, it does not apply to the sale of property by a trustee or the distribution of property to a beneficiary on the winding up of the trust. (The sale and distribution may attract transfer duty as another dutiable transaction under clause 9.)

Clause 55 defines the dutiable transaction that is a trust acquisition.

Clause 56 defines the dutiable transaction that is trust surrender. The term "surrender" is inclusively defined in the Dictionary at Schedule 6 of the Bill.

Clause 57 defines “trust interest”.

Clause 58 defines “indirect interest in dutiable property” for a trustee. The definition enables transfer duty for trust acquisitions and trust surrenders to be calculated by reference to both dutiable property held by the trust and indirect interests held by the trust in other dutiable property in sub-trusts or sub-partnerships. The definition allows tracing through trusts and partnerships.

Clause 59 defines “acquire a trust interest” for determining if there has been a trust acquisition under clause 55. The two circumstances are-

- a person becoming a beneficiary of the trust; and
- being a beneficiary, the person’s trust interest increases.

Examples of the first case include a declaration of trust in favour of the person and the allotment of units in a unit trust to the person.

Examples of the second case are a beneficiary of a unit trust acquiring further units in the trust by allotment or transfer. Alternatively, other units in the trust could be redeemed or cancelled so that the beneficiary has an increased trust interest. In the latter case, transfer duty applies to the increase in the trust interest only if duty has not been paid on the surrender of the trust interest that caused the increase.

In either case, it is irrelevant how the event occurs.

A trust interest that is subject to a prior life interest will increase over time as the life interest reduces. Clause 59(2) ensures that these types of increases in trust interests do not attract transfer duty.

Clause 60 explains that a beneficiary’s trust interest is a percentage. The calculation of the percentage varies depending on the nature of the trust interest.

The general rule is set out in clause 60(1)(c) which compares the beneficiary’s entitlement under the trust to the property held on trust. That entitlement is worked out under clause 60(2) or (3). Clause 60(2) is the usual case. It links the entitlement to the amount of the unencumbered value of the trust property that the beneficiary could receive as a result of the acquisition. For example, a person who acquires 40% of the units in a unit trust where all the units carried the same rights would receive 40% of trust property as a result of the acquisition. The 40% entitlement is determined at the time of the acquisition of the interest but the beneficiary need not be entitled to receive their 40% share of the trust property at that time.

Clause 60 would not apply to the distribution of cash to discretionary objects of discretionary trusts. For these trusts, only takers in default of an appointment by the trustee can have trust interests. Consequently, a distribution of cash to discretionary objects does not result in those objects having a trust interest.

The special rules in clause 60(2)(b) and (3) overcome schemes to avoid transfer duty. For example, a beneficiary's trust interest may be only 10% at the time of the acquisition but there is a power to increase that interest subsequently if certain conditions are met. The subsequent increase in the trust interest could be timed so that there was no dutiable property held on trust so that no further transfer duty was payable on the increase. If the conditions of increase are part of an arrangement having a significant purpose of lessening the beneficiary's trust interest at a particular time, the trust interest is worked out under clause 60(3) as the maximum interest on fulfilment of the conditions.

Where the trust acquisition is a majority trust acquisition, clause 60(4) requires that the beneficiary's entitlement include the entitlement of related persons of the beneficiary.

Clause 61 defines "related person". This is relevant for majority trust acquisitions only.

Clause 62 defines "dutiable value" of a trust acquisition or trust surrender. Transfer duty is charged on that value by clause 8(2).

Clause 63 explains how to work out the value of a trust acquisition or trust surrender. This value is used in clause 62 for working out the dutiable value. Detailed tracing and calculation rules are provided in clause 63(2) to (5), and an example given in Schedule 4, for working out the unencumbered value of indirect interests in dutiable property held by the relevant trust.

Where the trust acquisition occurs on an increase in a trust interest, clause 63(6) ensures that only the increase in the trust interest is used in working out the value of the acquisition. For example, a beneficiary with a 10% interest in the trust may acquire a further 15%. The increase in the interest results in the person acquiring a trust interest under clause 59(1). The beneficiary's trust interest worked out under clause 60(1)(c) and (2)(a) is 25%. However, in working out the value of the trust acquisition under clause 63(1), the trust interest is 15%, the increase in the trust interest, due to clause 63(6).

The rule in clause 63(6) does not apply to majority trust acquisitions. For these acquisitions, the full trust interest is used for clause 63(1) unless the special rules in clause 63(7) and (8) apply.

Clause 64 states who is liable to pay transfer duty on the creation or termination of a trust.

Clause 65 provides for joint and several liability of trustees liable for transfer duty.

Clause 66 eliminates transfer duty for some trust acquisitions and trust surrenders. Clause 66(1) and (3) eliminates overlap of the two dutiable transactions in clause 9(1)(i) and (j). They also preserve the benefit of exemptions from duty by ensuring that transfer duty does not apply to trust acquisitions or trust surrenders where a related trust creation or trust surrender is exempt from duty.

Clause 66(2) covers situations where trusts are created upon the acquisition of property by the trustee, such as where an agent acquires property for a principal.

Clause 67 clarifies the identity of parties to trust acquisitions and trust surrenders. This is relevant for determining who is liable to pay the transfer duty.

Part 8, Division 7 defines five categories of public unit trusts. Trust acquisitions and trust surrenders for these trusts are not dutiable transactions under clause 9(1)(j). An exception is where the trust acquisition is a “majority trust acquisition”. Other trust acquisitions for public unit trusts may attract duty as a transfer of Queensland marketable securities under clause 9(1)(a).

Clause 68 defines “public unit trust”. It establishes five categories of public unit trust.

Clause 69 defines “listed unit trust”, one of the categories of public unit trust.

Clause 70 defines “widely held unit trust”, one of the categories of public unit trust. Clause 70(1) establishes spread of ownership requirements for these trusts. Under clause 70(5), persons and related persons are counted as one for applying these requirements.

Clause 70(2) clarifies that the spread of ownership requirements must be satisfied before and after the trust acquisition or trust surrender, as the case may be.

Clause 70(3) expands the scope of clause 70(2) from single trust acquisitions and trust surrenders to a series of trust acquisitions and surrenders.

Clause 70(4) explains the consequence of non-compliance with the before and after test of clause 70(2). In those cases, for the trust acquisition or trust surrender (or, under clause 70(3), for a series of them) which causes the transition of a unit trust from nonpublic to public or public to non-public, the trust will not be a widely held unit trust. If the trust does not meet the tests for one of the other categories of public unit trust, Chapter 2, Part 8 may apply to the trust acquisition or trust surrender (or the series of them) because the trust will not be a public unit trust.

Clause 71 allows a transition period for trusts to meet the spread of ownership requirements of clause 70(1). This recognises that, particularly for new trusts, a number of allotments of units will be needed to meet those requirements.

Clause 71(2) confers on the Commissioner discretion to treat a unit trust as a widely held unit trust for the start-up period. Before exercising the discretion, the Commissioner must be satisfied that certain future circumstances in relation to the issue of units in the trust will be as described in clause 71(1).

Clause 71(3) sets out the consequences where the discretion in clause 71(2) is exercised but the subsequent circumstances do not conform to clause 71(1). The main consequence is that the trust is taken not to have been a widely held unit trust in the start-up period. Chapter 2, Part 8 may therefore apply to trust acquisitions and trust surrenders in that period and reassessments of duty may be made despite any limitation period on reassessments in the *Taxation Administration Bill 2001*.

Clause 72 defines "wholesale unit trust", one of the categories of public unit trust. Listed trusts are excluded from the definition because they qualify as public unit trusts under clause 69. Clause 72(1) sets out the basic qualifying conditions for these trusts. Where the trust holds land in Queensland, or has an indirect interest in land in Queensland, the additional qualifying conditions set out in clause 72(2) require that the trust be established and continue to be solely for the specified purpose.

Clause 72(3) clarifies the circumstances in which a trust will not be a wholesale unit trust due to failure to satisfy the qualifying conditions. This includes a "before and after" test similar to that applying under clause 70(2).

Clause 72(4) expands the scope of clause 72(3) from single trust acquisitions and trust surrenders to a series of trust acquisitions and surrenders.

Clause 72(5) explains the consequence of non-compliance with the tests in clause 72(3). In those cases, for the trust acquisition or trust surrender (or, under clause 72(4), for a series of them) which causes the transition of a unit trust from nonpublic to public or public to non-public, the trust will not be a wholesale unit trust. If the trust does not meet the tests for one of the other categories of public unit trust, Chapter 2, Part 8 may apply to the trust acquisition or trust surrender (or the series of them) because the trust will not be a public unit trust.

Clause 73 defines “funds manager”. Clauses 73(2) to (6) provide start-up arrangements designed to allow a body corporate to qualify as a funds manager under the definition within 1 year after the first acquisition by a wholesale investor of a trust interest in a unit trust established and managed by the body corporate. This allows unit trusts managed by start-up wholesale funds managers to qualify as public unit trusts provided that the manager grows their wholesale funds management and investment services within the start-up period to the extent required by clause 73(1). If the business does not grow to that extent, provision is made in clause 73(4) for reassessment of duty on trust acquisitions and trust surrenders in the trust during the start-up period. Reassessment will be on the basis that the trust was not a wholesale unit trust because the body corporate is not a funds manager.

Clause 74 defines “wholesale investor”.

Clause 75 defines “pooled public investment unit trust”, one of the categories of public unit trust. This is a residual category of public unit trust. If a trust qualifies as a public unit trust under one of the other categories, it will not be a pooled public investment unit trust. The definition sets out similar “spread of ownership” requirements to those applying for widely held unit trusts. The main differences are that an alternative qualifying condition is provided to units being issued to the public and Subdivision 5 allows tracing through certain unit holders to determine whether the spread of ownership conditions are satisfied for these trusts.

Clause 75(2) clarifies that the qualifying conditions must be satisfied before and after the trust acquisition or trust surrender, as the case may be.

Clause 75(3) expands the scope of clause 75(2) from single trust acquisitions and trust surrenders to a series of trust acquisitions and surrenders.

Clause 75(4) explains the consequence of non-compliance with the before and after test of clause 75(2). In those cases, for the trust acquisition or trust surrender (or, under clause 75(3), for the series of them) which causes the transition of a unit trust from nonpublic to public or public to non-public, the trust will not be a pooled public investment unit trust. Chapter 2, Part 8 will apply to the trust acquisition or trust surrender (or the series of them) because the trust will not be a public unit trust.

Clause 76 defines "qualified holder" and "large qualified holder". These definitions are relevant in applying the tracing provisions of the Subdivision.

Clause 77 specifies the person who is to be regarded as the holder of units in a trust. This clause is applied as the first step of the tracing for pooled public investment unit trusts. For example, this clause ensures that units held for a qualified holder by a custodian are taken to be held by the qualified holder for the purpose of applying the tracing provisions. Similarly, units held by trustees of pooled superannuation funds are taken to be held proportionally by the complying superannuation funds that are members of the pooled fund.

Clause 78 is the main tracing rule for pooled public investment unit trusts. It provides rules for determining who is entitled to units in a trust for the purpose of applying the spread of ownership requirements of the definition of "pooled public investment unit trust". Clause 78 is applied after applying the initial tracing rule in clause 77 to determine who is the holder of units in the trust. Under clause 78(1), members of a large qualified holder are taken to be entitled proportionally to the units held by that holder. For other holders, the person who holds the units is taken to be entitled to the units.

As with clause 70, clause 78(3) requires that persons and related persons be counted as one.

Clause 79 provides for a trust to be declared by regulation to be a public unit trust, one of the categories of public unit trust.

Clauses 80 to 84 set out when a person makes a majority trust acquisition in a land holding trust and how to work out the value of a person's entitlement in a land holding trust. It is only wholesale unit trusts or pooled public investment unit trusts to which the definition can apply. These trusts will generally have relatively few unit holders. Special rules

are therefore necessary to ensure that duty applies at the general rate, rather than the marketable security rate, where a unit holder acquires more than 50% of the trust. These rules do not apply, however, for other public unit trusts (namely, listed unit trusts, widely held unit trusts and declared unit trusts).

These provisions support the operative provisions of Part 8 imposing duty on majority trust acquisitions. These provisions are explained in the earlier notes to the relevant clauses.

Clause 80 defines "majority trust acquisition" in a land holding trust. The term "land holding trust" is defined in the Dictionary at Schedule 6 of the Bill as a wholesale unit trust or a pooled public investment unit trust which holds land in Queensland or has an indirect interest in land in Queensland.

Example 1

Units in the ABC Wholesale Trust are held by nine wholesale investors, none of which are related persons. The fund qualifies as a wholesale unit trust and is a land holding trust because it owns a commercial property in North Queensland. Xco Ltd wishes to become a unit holder in the Trust. It acquires 60% of the units in the Trust in a deal with the three largest investors.

Xco Ltd will make a majority trust acquisition under clause 80(a).

Example 2

Units in the EFG Wholesale Trust are held by 19 wholesale investors, none of which are related persons. The fund is a land holding trust because it has a 20% interest in LMN Trust that owns a commercial office tower in Brisbane. Yco Ltd acquired 30% of the units in the EFG Wholesale Trust in 1999. In July 2002, Yco Ltd acquires a further 25% of the units in the Trust.

Yco Ltd will make a majority trust acquisition under clause 80(b) because the 25% interest acquired in 2002, when aggregated with the 30% interest already held by Investor, is more than 50%. It is irrelevant when the earlier interest was acquired.

Clause 81 prescribes special rules for imposing duty on majority trust acquisitions.

Clause 81(2) ensures that duty on majority trust acquisitions may not be avoided by acquiring indirect interests in the target land holding trust rather than acquiring units directly in the trust.

"Indirect trust interest" is defined in the Dictionary at Schedule 6 of the Bill as a person's interest in the land holding trust through 1 or more corporations, partnerships or trusts, or a combination of any of them. This definition allows tracing up from the land holding trust through one or more tiers of ownership. At each tier of ownership, a person can have an indirect trust interest. Consequently, an indirect trust interest held by a person as trustee may be taken into account in determining whether or not that person has made a majority trust acquisition. So too, the indirect trust interest of a beneficiary of a trust may be taken into account. Similarly, the indirect interest of a company or the indirect interest of its shareholders may be taken into account.

<u>*Example 1*</u>

Units in the QRST Unit Trust are held by 15 wholesale investors, none of which are related persons. The fund is a land holding trust.

1997 ABco Pty Ltd. acquired 50% of the units in Trust A and Trust B which each hold 30% of the units in the QRST Unit Trust.

1999 ABco Pty Ltd acquired 20% of the units in the QRST Unit Trust.

2001 ABco Pty Ltd acquired 100% of the shares in XYZco Ltd. an investment company which holds 15% of the units in the QRST Unit Trust.

1. *The interest acquired by ABco Pty Ltd in XYZco Ltd is an indirect trust interest in the QRST Unit Trust as defined in the Dictionary at Schedule 6 of the Bill. Under clause 83, this indirect trust interest of ABco Pty Ltd is 15%. By clause 81(2), this indirect trust interest is taken to be a trust interest in the QRST Unit Trust.*

2. *The acquisition of that indirect trust interest by ABco Pty Ltd is an indirect trust acquisition as defined in the Dictionary at Schedule 6 of the Bill. By clause 81(5), this indirect trust acquisition is taken to be a trust acquisition in the QRST Unit Trust.*

3. *The interests held by ABco Pty Ltd in Trust A and Trust B are also indirect trust interests in QRST Unit Trust as defined in the Dictionary at Schedule 6 of the Bill. Under clause 83, this indirect trust interest of ABco Pty Ltd is 30%. By clause 81(3), these indirect trust interests (already held by ABco Pty Ltd when it acquired the shares in XYZco Ltd) are taken to be trust interests in the QRST Unit Trust.*

4. *Under clause 81(4), ABco Pty Ltd is taken to be a beneficiary of the QRST Unit Trust by virtue of its indirect trust interests. This clause is necessary because clause 57(1) defines a "trust interest" as a person's interest as a beneficiary of a trust, other than a life interest.*

5. *Under clauses 59(1)(b) and 80(b), ABco Pty Ltd is taken to have acquired a majority trust acquisition in the QRST Unit Trust. This is because ABco Pty Ltd is taken to have acquired a trust interest of 15% in that trust and that this trust interest, when aggregated with the other trust interests already held or taken to be held in the trust (30% and 20%), is more than 50%.*

6. *Under clause 49(2), Chapter 2, Part 8 applies to the majority trust acquisition. Under clause 60(1), the trust interest of ABco Pty Ltd in the trust is 65%.*

It is irrelevant that ABco Pty Ltd may have acquired its trust interests or indirect trust interests (or any of them) as trustee. However, if it did acquire any interest as trustee, the beneficiaries of the trust may also have acquired indirect trust interests in the QRST Unit Trust.

Clause 82 provides a reduction in the duty applicable to a majority trust acquisition to the extent that duty may have been paid or is payable on certain other transactions relating to the majority trust acquisition.

Clause 83 sets out how to work out a person's indirect trust interest. By clause 81(2) or (3), as the case may be, this indirect trust interest is taken to be a trust interest in the land holding trust.

Clause 84 explains how to work out the unencumbered value of a person's entitlement in a land holding trust. This value is used in the calculation required by clause 83.

Part 9 Concessions for homes

The purpose of Part 9 is to provide a concessional rate of duty for the acquisition of a residence by a person. The extent of the concession depends on whether the residence is the home or first home of the acquirer. The benefits of the concessions also reduce to the extent of the proportionate interests of transferees who are not entitled to the benefit of the relevant concession.

Duty continues to apply at the appropriate marginal rate to any other property the subject of the transaction, such as curtilage, that is not used for residential purposes.

Division 2 explains basic concepts about the concessions for homes. These include the meaning of key terms such as "home", "first home", "residence", "occupation date", "transfer date" and the "dutiable value" of residential land.

Clause 85 states the purpose of Part 9.

Clause 86 defines the phrase "home" which has the following elements:

- A residence.
- The person claiming the concession must occupy the relevant residence as their principal place of residence (the person's "occupation date" for the residence) within 12 months of the date of possession for the residential land (the "transfer date" for the land).

"Residential land" is defined in the Dictionary at Schedule 6 of the Bill as land, or that part of land, on which a residence is constructed, including any curtilage attributable to that residence, used for residential purposes. Where the residence is only one unit of a multiple unit dwelling or one of a number of residences on the land, the curtilage will only be that part of the curtilage of the entire property that relates to the residence. For example, if one duplex unit is sold and there are 2 duplex units on the property and the curtilage is $200m^2$ for the entire property, the curtilage attributable to the duplex being sold would be $100m^2$.

The allowance of a period of 12 months for commencement of occupation will allow for circumstances such as protracted renovations of the residence to occur without loss of the concession. No definition of principal place of residence has been provided. Therefore, general legal principles will be used to determine whether a person has commenced occupying the residence as their principal place of residence.

Clause 86(2) defines the phrase "first home". A home will be a person's first home if the person has never before held an interest in residential land. Exceptions are permitted for interests held as lessee, mortgagee or trustee. Further, a person will be able to obtain the concession for a first home if they are acquiring a further interest in their first home.

Clause 87 defines the phrase "residence" in terms of buildings designed for human habitation that are fixed to land and used for residential purposes. In addition, buildings that are not designed for human habitation but are approved by a local government for such use may also qualify as a residence. This is to cater for situations where a building such as a church or warehouse is converted to residential use.

Clause 88 specifies when a person's "occupation date" will be for a residence.

Clause 89 specifies when a person's "transfer date" is for residential land.

Clause 90 clarifies the "dutiable value" of residential land is the part of the dutiable value of the entire transaction that relates to the residential land.

Clause 91 provides the conditions for the concession where the residence will be the home of all transferees. To be eligible, the transferees must satisfy either clause 91(1)(b)(i) or 91(1)(b) (ii).

Clause 91(1)(b)(i) provides that the concession is available where the transferees are all individuals who are not trustees. Clause 91(1)(b)(ii) provides that the concession is available where the transferees are trustees only where the trust is a fixed trust for the benefit of persons under a legal disability and the residence would be the home of all the beneficiaries if they were the transferee. This means that it is the residential status of the beneficiaries and not the trustee that is relevant for the claim. This also means that individual trustees who will occupy a residence as their principal place of residence will not be eligible for the concession.

Clause 91(2), (3) and (4) set out the formula for calculating the amount of duty payable if the concession applies and the value of the property is not more than $250,000. Clause 91(2), (5) and (6) set out the formula for calculating the amount of duty payable if the concession applies and the value of the property is more than $250,000.

Clause 92 provides the conditions for the concession where the residence will be the first home of all purchasers. The requirements are the same as under clause 91, except that the residence must be the first home of the transferees or where the transferee is a trustee, of all the beneficiaries if they were the transferees.

Clause 92(2) sets out the amount of the duty payable if the concession applies. The benefit of the first home concession will be available where the total value of all property acquired exceeds $160,000. The rebate will cut out once the value of the residential land exceeds $160,000.

Clause 93 deals with claims in the following circumstances:

- there is a mixture of home, first home and non-resident purchasers who are individuals;
- there are multiple residences acquired and one or more of the residences is the home or first home of one or more of the purchasers who are individuals;
- there is an acquisition of a part interest in a residence.

Clause 93(4), (5) and (6) set out the formulae for calculating the amount of duty payable if the clause applies.

Clause 94 provides rules that apply to mixed and multiple claims under clause 93 when a trustee of a trust acquires residential land. As for clauses 91 and 92, the concession is not available for trust property unless the residence is held on a fixed trust for the benefit of persons under a legal disability. In these cases, clause 93 is applied as if the beneficiaries of the trust were the transferees of the residence.

Clause 95 states that an application for a concession must be made in the approved form.

Part 10 Concessions for dutiable transactions for particular family businesses

Part 10, Division 1 states that the Part provides concessions from transfer duty where there is a dutiable transaction by way of gift of dutiable property used to carry on certain family businesses including primary production businesses.

Division 1 also sets out the dutiable transactions to which the concessions will apply, and the conditions for the concessions. Concessions are available for transfers, or for agreements for the transfer, of business property. “Business property” is defined to mean land or personal property used to carry on a business of primary production, or a prescribed business. Concessions are not available if the business property is merely capable of being used for primary production purposes or another qualifying business. The property must be actually used for those purposes. Concessions are also available for certain dutiable transactions involving interests in family companies, partnerships, trusts and unit trusts whose property includes business property.

The conditions applying to the concessions require that the transferee or acquirer is to be a descendant of the person disposing of the property, or interest, or directing the transaction, and the business property is to be used to carry on a primary production, or prescribed business, by that person. Further, the descendant must intend to carry on the same business. In addition, the transferee or acquirer must not acquire the property transferred as agent, nominee, or except in limited cases, as trustee.

Division 2 sets out the amount of the concessions available under Part 10. The concessions only apply to the extent that the relevant dutiable transactions are by way of gift. Generally, the amount of the concession

relates to the unencumbered value of the business property to which the transaction relates, but varies according to whether the property is used in a primary production, or prescribed business, and whether there have been previous gifts of business property for a prescribed business.

Clause 96 states the purpose of Part 10.

Clause 97 lists the dutiable transactions to which the concession under Part 10 will apply, if the conditions specified for the particular dutiable transaction are satisfied.

Clause 98 sets out the conditions which must be satisfied if the concession is to apply to a transfer, or agreement for the transfer, of business property.

Clause 99 specifies the conditions that must be satisfied if the concession is to apply to a partnership acquisition where property of the partnership includes business property.

Clause 100 sets out the conditions which must be satisfied if the concession is to apply to a trust acquisition (other than a trust acquisition on the creation of a trust or a trust acquisition for a unit trust) where property of the trust includes business property.

Clause 101 specifies the conditions which must be satisfied if the concession is to apply to either the creation of a trust, or trust acquisition on the creation of a trust, where the trust property is business property, an indirect interest in dutiable property where the dutiable property includes business property, or Queensland marketable securities of a family company that holds business property.

Clause 102 sets out the conditions that must be satisfied if the concession is to apply to a trust acquisition for a unit trust where the property of the trust includes business property.

Clause 103 specifies the conditions which must be satisfied if the concession is to apply to the transfer, or agreement for the transfer, of a marketable security in a corporation where the property of the corporation includes business property.

Clause 104 clarifies when a dutiable transaction will be by way of gift for the purposes of Part 10.

Clause 105 states how transfer duty is assessed under Part 10 on a dutiable transaction to the extent that it is by way of gift.

Clause 106 contains a special provision for assessing transfer duty where total gifts of property used for a prescribed business exceed

$500,000. Clause 106(1) details the dutiable transactions to which this clause will apply. Clause 106(2) specifies the method under which the transfer duty is to be calculated.

Clause 107 specifies the form of the application for concession of transfer duty on a dutiable transaction under Part 10 and when the application must be lodged.

Part 11 Concessions for superannuation

The purpose of the Part is to provide concessional treatment for certain dutiable transactions which are undertaken to effect a merger, splitting, variation or reconstitution of superannuation funds where the superannuation fund or funds will be a complying superannuation fund within one year after the dutiable transaction.

Clause 108 sets out the dutiable transactions to which Part 11 applies.

Clause 109 provides the concession.

Clause 110 sets out the documents that must accompany the application for the concession.

Part 12 Concessions for particular investment schemes

Under the *Corporations Act* certain managed investment schemes are required to appoint a custodian to hold the assets of the scheme. The purpose of Part 12 is to provide a concession from duty for dutiable transactions that are transfer to, or from, these custodians of managed investment schemes.

Clause 111 sets out the dutiable transactions that Part 12 applies to.

Clause 112 sets out the conditions for the concession.

Clause 113 provides the concession.

Clause 114 provides the time limitation for Part 12.

Part 13 Exemptions for transfer duty

Clause 115 provides for an exemption from transfer duty for an agreement for the transfer of dutiable property where the agreement is subsequently cancelled. Clause 115(1) provides that transfer duty is not imposed on an agreement that is ended in one of 4 listed ways. Clause

115(2) sets out what is a resale agreement for the purpose of the clause. Clause 115(3) provides for the reassessment and refund of duty paid on the agreement that has been cancelled.

Clause 116 provides for an exemption from transfer duty for certain dutiable transactions where agreements are entered into on behalf of a company yet to be registered.

Clause 117 provides an exemption from transfer duty for transactions solely to give effect to a change of trustee of a trust.

Clause 118 provides an exemption from transfer duty for trust acquisitions and trust surrenders in family discretionary trusts by a family member or a family company who does not benefit as trustee. In these trusts, takers in default can have a trust interest because of clause 57(2). On the other hand, discretionary objects do not have a trust interest. As a result, changes in the takers in default or in the interests of takers in default can trigger a liability to transfer duty but changes in the discretionary objects will not be dutiable. The exemption in clause 118(1) ensures that, for these trusts, changes in relation to takers in default involving only family members receive the same treatment as changes in the discretionary objects, namely that duty does not apply. Family members can therefore become takers in default or have their existing trust interests as takers in default varied without being liable for transfer duty.

Clause 118(2) provides an exemption for trust acquisitions and trust surrenders in family trusts as a result of a person becoming or ceasing to be a member of a class of beneficiaries comprising children, stepchildren or grandchildren. This would apply, for example, in relation to a trust for the children of X where, after the trust is established, there is the birth of another child or a subsequent marriage by X to a person who has children. These events will not give rise to a liability to duty for the child, or any stepchild, when they automatically become members of the class.

Clause 118(2) also provides an exemption for trust acquisitions and surrenders in family trusts as a result of a member of the family becoming or ceasing to be a member of a class of beneficiaries because of the birth or death of the member. This exemption operates similar to the other exemption contained in clause 118(2), but only applies to changes in the class as a result of the birth or death of the family member.

Modern trust deeds commonly nominate a charity as the beneficiary that takes in the event of the failure of all other trusts in favour of family members. Clause 118(3) ensures that these nominations do not necessarily prevent the trust from consideration as a family trust for the exemptions.

Clause 118(4) defines "family company".

Clause 119 provides an exemption from duty on certain trust acquisitions and trust surrenders in superannuation funds. Clause 119(a) applies where there is a trust acquisition, or surrender, by a member of a superannuation fund, provided that the sole purpose is to provide superannuation benefits for the member. This ensures that duty does not apply upon joining a fund, increasing an investment in a fund or receiving entitlements upon ceasing membership. The qualification on the exemption ensures that the exemption applies for usual superannuation transactions and that the exemption may not be exploited to avoid duty on other commercial arrangements.

Clause 119(b) applies to a trust acquisition or surrender to the extent that it gives effect to a distribution of benefits of a member of a superannuation fund on the member's death. This ensures that duty does not apply where dependents or other beneficiaries of a deceased member may receive a distribution of the deceased member's benefits from the trustee of the superannuation fund.

Clause 120 provides an exemption from duty on trust acquisitions and trust surrenders by members in certain unincorporated associations, provided it is solely as a result of the person becoming a member of the association with the sole purpose of enjoying the benefits of membership and no consideration is paid by the member, other than usual membership fees. The exemption also applies where members cease to belong to the association and no consideration is received by the outgoing member other than a refund of membership fees. Clauses 120(2) and (3) set out the type of unincorporated association to which the exemption applies.

Clause 121 provides an exemption from duty on trust acquisitions and trust surrenders in security trusts. These arrangements are common in syndicated loans. The trustee is usually a special purpose vehicle established by the lending syndicate to lend the jointly provided funds and to hold the security on trust for the members of the syndicate in proportion to their loans. The exemption prevents duty applying to the initial acquisition, fluctuations in interests and exiting the syndicate. However, this exemption is not concerned with trust acquisitions or trust surrenders of mortgage-backed securities or other securitisation schemes.

Clause 122 provides an exemption from transfer duty for a creation of a trust of dutiable property, or a trust acquisition, where these dutiable transactions are required to give effect to the acquisition of a mortgage-backed security. "Mortgage-backed security" is defined in clause 286.

Clause 123 provides an exemption from transfer duty on the distribution of property from a trust to a beneficiary, if certain conditions have been met. The exemption ensures that duty does not apply twice to the acquisition by the beneficiary

of their interest in the property. However, exemption is limited to the extent that duty was paid on the trust creation, or the trust acquisition, referred to in clause 123(2)(b)(i), or to the extent that those transactions were exempt from duty. The following examples illustrate the point.

Example 1

The trustee on the creation of a trust pays duty over Queensland land in favour of beneficiaries including X who has a trust interest in the trust of 30%. The land is subsequently transferred to X. Clause 123(2)(a)(i) and (b)(i) cover this situation. The transfer to X is exempt from transfer duty to the extent of the 30% trust interest held by X.

Example 2

X acquires 30% of the units in a unit trust that holds Queensland land on trust. X pays duty on the trust acquisition of a trust interest of 30%. Later, the land is transferred to X. Clause 123(2)(a)(i) and (b)(i) cover this situation. The transfer to X is exempt from transfer duty to the extent of the 30% trust interest held by X.

Example 3

As for Example 2, except that the land is sold by the trustee and the proceeds of sale are reinvested in another Queensland property that is subsequently transferred to X. Clause 123(2)(a)(ii) and (b)(i) cover this situation. The transfer to X is exempt from transfer duty to the extent of the 30% trust interest held by X.

In each example, duty has been paid on the acquisition by X of the 30% interest for the property. Applying duty again to the transfer to X would mean that transfer duty has applied twice. However, X has paid duty only on a 30% interest but is acquiring the whole property on the subsequent transfer. The exemption in clause 123(1) applies only to the extent of 30% and X will therefore be liable for duty on the additional 70% for which transfer duty has not previously been paid by X.

If the transfer to the beneficiary is a sale of the property rather than a distribution to X by the trustee under the trust, the exemption does not apply.

Clause 123(3) provides special conditions for applying the exemption where a concession for transfer duty under Part 10 (Concessions for dutiable transactions for Particular Family Businesses) has been provided in relation to the dutiable property being distributed.

Clause 124 provides exemption for dutiable transactions in the administration of deceased estates. The exemptions apply only to the extent that the transaction relates to the administration.

Example

A residence owned by the deceased and worth $1,000,000 is left to A and B in the proportions of 60% and 40% respectively. B agrees to purchase A's interest for $600,000 and the trustee of the estate transfers the property directly to B.

The exemption would apply to the extent of $400,000 only and transfer duty would apply on the 60% interest acquired by purchase.

Clause 124 also ensures that duty does not apply where the capacity in which a person holds property in the estate of a deceased person changes from executor, or administrator, to trustee. Similarly, transfers of estate property from an executor, or administrator, to a trustee of the estate will not attract duty.

Clause 125 provides an exemption from transfer duty on certain vestings of property.

Clause 126 provides an exemption from transfer duty on the transfer, or agreement for the transfer of, dutiable property from a trustee to a beneficiary of a trust under section 59 of the *Public Trustee Act 1978,* and on a surrender of a trust interest of the beneficiary as a result of the transfer or agreement for the transfer.

Clause 127 provides an exemption from transfer duty for the creation of a charitable trust or a trust acquisition in a charitable trust.

Clause 128 provides an exemption from transfer duty for the creation of a trust, or a trust acquisition in a trust, for community purpose organisations where the transactions are required so that the details of the trust can be registered under the *Land Title Act 1994*.

Clause 129 provides an exemption from transfer duty for certain transfers of property from a person to a primary custodian for a responsible entity. The exemption will apply only where the transfer is made under an agreement entered into between the person as vendor and the responsible entity as purchaser and the property acquired is scheme property. Further,

transfer duty must have been paid on the agreement between the person and the responsible entity.

Clause 130 provides particular exemptions for transfers, or agreements for the transfer, of scheme property of registered managed investment schemes. Clause 130(1)(a) provides an exemption from transfer duty for transfers, and agreements for the transfer, of scheme property of a managed investment scheme, provided the transfer is from the responsible entity of the scheme to the primary custodian of the scheme.

Clause 130(1)(b) provides an exemption from transfer duty for the transfer, or agreement for the transfer, of scheme property of a managed investment scheme provided the transfer is from the primary custodian of the scheme to the responsible entity of the scheme.

Clause 130(2) requires that any transfer, or agreement for the transfer, of property under clause 130(1) must not be part of an arrangement under which the property ceases to be scheme property, or changes occur in the trust interests of the members.

Clause 131 provides an exemption from transfer duty for the particular dutiable transactions specified in the clause pursuant to the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991.*

Clause 132 provides an exemption from transfer duty on the vesting of lands due to the registration of boundary adjustment plans specified in the clause pursuant to the *Integrated Resort Development Act 1987,* the *Mixed Use Development Act 1993* and the *South Bank Corporation Act 1989* and the registration of stratum boundary adjustment plans specified in this clause pursuant to the *Mixed Use Development Act 1993.*

Clause 133 provides an exemption from transfer duty for transfers or agreements to transfer a lot under a building units or group titles plan pursuant to the *Building Units and Group Titles Act 1980,* or a lot included in a community titles scheme pursuant to the *Body Corporate and Community Management Act 1997*, provided that the requirements specified in the clause are met.

Clause 134 provides an exemption from transfer duty for the dutiable transactions of dutiable property specified in the clause made pursuant to the *Crimes (Confiscation) Act 1989* and the *Drugs Misuse Act 1986.*

Clause 135 provides an exemption from transfer duty for the particular dutiable transactions specified in the clause made pursuant to the *Industrial Relations Act 1999.*

Clause 136 provides an exemption from transfer duty for the particular dutiable transactions specified in the clause made pursuant to the *Land Act 1994.*

Clause 137 provides an exemption from transfer duty for the particular dutiable transactions specified in the clause made pursuant to the *Mineral Resources Act 1989,* the *Offshore Minerals Act 1998*, the *Petroleum Act 1923* and the *Petroleum (Submerged Lands) Act 1982.*

Clause 138 provides an exemption from transfer duty for the particular dutiable transactions involving mobile homes specified in the clause. Clause 138(2) defines the terms "mobile home", "relevant agreement" and "site" for use in this clause.

Clause 139 provides an exemption from transfer duty for dutiable transactions that are either a transfer, or agreement for the transfer, of dutiable property (for which no fee or charge is payable) made pursuant to the *South Bank Corporation Act 1989*, or which is the determination, or partial determination, of a lease made pursuant to the *South Bank Corporation Act 1989.*

Clause 140 provides an exemption from transfer duty for dutiable transactions that are the grant of a water entitlement that replaces represents, or substantially represents, a water entitlement held by the grantee, or an authority to take water held by the grantee, immediately prior to the repeal of the *Water Resources Act 1989.*

Clause 141 provides an exemption from transfer duty for dutiable transactions that are the transfer, or agreement for the transfer, of dutiable property to any of the statutory bodies specified in this clause (Clause 141(1)). Clause 141(2*)* provides an exemption from transfer duty for a dutiable transaction that is a gift of dutiable property to the Council of the Queensland Institute of Medical Research pursuant to the *Queensland Institute of Medical Research Act 1945.*

Clause 142 provides an exemption from transfer duty for the transfer, or agreement for the transfer, of dutiable property to both an exempt institution to conduct an art union, if the prize for the art union is represented wholly or partly by the dutiable property transferred, and for the transfer of dutiable property to the winner of a prize in the art union. Clause 142(2*)* defines the terms "art union" and "exempt institution" for use in this clause.

Clause 143 provides an exemption from transfer duty for a transfer, or agreement for the transfer, of property which changes the registered ownership from joint tenants to tenants in common, or vice versa.

Clause 144 provides an exemption from transfer duty for a dutiable transaction that occurs by operation of law because of the death of a joint tenant. This ensures that duty does not apply where either the interest of the joint tenant is surrendered, or the interest of the remaining owner increases by survivorship.

Clause 145 provides an exemption from transfer duty for a dutiable transaction that is a transfer of land to the State for either public purposes pursuant to the *Acquisition of Land Act 1967*, or community purposes pursuant to the *Land Act 1994*.

Clause 146 provides an exemption from transfer duty for an acquisition of a new right that is a lease of land in Queensland that is exempt from lease duty.

Clause 147 provides an exemption from transfer duty for particular dutiable transactions that are a surrender of a lease of land in Queensland.

Clause 148 provides an exemption from transfer duty for particular dutiable transactions specified in this clause involving marketable securities.

Clause 148(1)(b) provides exemption for transfers, or agreements for the transfer, of corporate debt securities. The term “corporate debt security” is defined in the Dictionary at Schedule 6 of the Bill. The definition covers securities issued for the purpose of trading in a market. This is not altered by the reference to ‘other similar security of a corporation or society’. These words are not intended to change the nature of a security that qualifies as a corporate debt security. Rather, they are aimed at other forms of tradeable securities similar to those listed. Consequently, a mortgage or mortgage debenture, or other instrument securing repayment of borrowings, and which is not ordinarily marketable would not be a corporate debt security.

Clause 149 provides an exemption from transfer duty for a transfer, or agreement for the transfer, of a business asset that is a book debt if the transaction is part of a debt factoring agreement between the parties. Clause 149(2) defines “debt factoring agreement” for use in this clause.

Clause 150 provides an exemption from transfer duty for the transfer, or agreement for the transfer, of particular chattels severed or released and taken by the transferee under a statutory licence, profit a prendre, sharefarming agreement or similar arrangement.

Clause 151 provides an exemption from transfer duty for a transfer, or agreement for the transfer, by way of gift from 1 party to a subsisting marriage or de facto relationship, of an interest in residential land.

Clause 152 provides an exemption from transfer duty for a dutiable transaction to correct an error in a previous dutiable transaction.

Part 14 Reassessments for transfer duty

Part 14 Division 1 provides for reassessments of transactions that have been assessed on the basis of a Part 9 concession.

Clause 153 applies if a transferee takes up occupation of the residential land purchased within 1 year, but then transfers, leases or otherwise grants exclusive possession of part or all of the land, within the next year. In these circumstances, a proportion of the concession benefit received for that transferee is removed. The proportion reflects the extent to which the transferee failed to retain ownership or exclusive possession of the residence for 1 year. The reassessment will not be triggered if the transferee simply leaves the residence vacant for a period of time.

Clause 153(2) sets out the formula for calculating the reassessment.

Clause 154 applies if a transferee transfers, leases or otherwise grants exclusive possession of all or part of the residential land before taking up occupation, or fails to take up occupation within 1 year of the transfer of the land other than because of an intervening event (a natural disaster, a person’s death or incapacity, or other prescribed events). In these circumstances, any concession benefit received for that transferee on the original assessment is removed. Exceptions are permitted under clause 154(2) where the land is leased to the vendor of the land or a sitting tenant prior to occupation by the transferee.

Clause 155 requires a transferee to notify the Commissioner if an event occurs that triggers the reassessment provisions.

Clause 156 provides for reassessment of transfer duty for a dutiable transaction assessed at a concessional rate under clause 109 where the superannuation funds created by the split, merger, variation or reconstitution are not complying superannuation funds at the first anniversary of the dutiable transaction. Clause 156(2) imposes an obligation on the trustees of the superannuation fund to notify the Commissioner that the superannuation fund is not a complying fund as at the first anniversary of the transaction, specifies the time period in which

the notice must be given and provides that the required instruments are to be relodged for reassessment of the transfer duty.

CHAPTER 3—LAND RICH DUTY AND CORPORATE TRUSTEE DUTY

Part 1 Land Rich Duty

Direct transfers of property are generally liable for duty at transfer duty rates of up to 3.75% of the property's full value. However, where property is acquired through the acquisition of shares in the company owning the property, the transfer attracts a lesser rate of duty (0.6%) on the net value of the interest in the company represented by the shares.

Chapter 3, Part 1 addresses this issue by imposing duty on relevant acquisitions of shares in a land rich corporation at the general rates of transfer duty by reference to the land-holdings of the corporation.

Further, the transactions that are subject to this duty may also be subject to transfer duty as acquisitions of Queensland marketable securities. If that is the case, in calculating the amount of land rich duty, a credit is allowed for any transfer duty imposed.

Clause 157 imposes land rich duty on the dutiable value of relevant acquisitions.

Clause 158 explains when a person makes a relevant acquisition. The making of a relevant acquisition in a land rich corporation is the central triggering provision for imposition of land rich duty.

Clause 158(1)(b)(iii) clarifies that land rich duty cannot be avoided by a person acquiring interests in a land rich company through interposed entities, rather than directly.

Only interests that have been acquired and are still held by the relevant person will be able to be aggregated under these provisions. Therefore, if an interest has been acquired and disposed of prior to the time when the aggregation rule is being applied, that interest would not be included for aggregation purposes. Clause 159 also makes this clear as an interest for the purposes of the provisions is one which a person "has".

Clause 158(2) and (3) provide that certain interests are taken to be acquired within the 3 year aggregation period if the interest was acquired under the exercise of an option which itself was granted within 3 years of

the particular acquisition. This provision overcomes any avoidance through use by a person or a related person of options to acquire an interest in a land rich corporation.

Clause 159 provides a definition of an "interest" and a "majority interest" in a corporation.

In cases where a trustee acquires a shareholding in a corporation, it is only the trustee who acquires an interest in the corporation. This is because beneficiaries of the trust do not acquire an entitlement as a shareholder to a distribution of the property of the corporation.

Clause 160 provides the formula for measurement of a person's interest in a corporation.

Clause 161 sets out the way in which the entitlement of a person on a distribution of a corporation's property is to be calculated. Clause 161(1)(b) allows the Commissioner to calculate the entitlement as if all powers and discretions that could maximise the entitlement have been exercised. However, if calculation on the basis of a deemed exercise of powers would be inequitable, the Commissioner may calculate the entitlement on the basis of a distribution carried out under the corporation's constitution and the *Corporation's Act*.

Clause 161(3) clarifies that an application of clause 161(1)(b) in calculating the entitlement of an acquirer and a related person cannot result in a maximised entitlement of more than 100%.

Clause 162 specifies when a person acquires an interest in a corporation.

While entitlement as a shareholder to a distribution of the corporation's property is necessary for an interest, it is not necessary for a person to acquire a shareholding in a corporation to acquire an interest in a corporation. An interest is acquired if the person obtains an interest, or increases their interest, regardless of how this occurs.

By way of example, clause 162(2) sets out some of the ways a person may acquire an interest.

Clause 163 sets out the timing rules for determining when an acquisition of an interest in a corporation is made.

Clause 163(2) addresses the situation where the holder of a security interest later acquires their interest free from the interest or equity of the owner, to ensure that land rich duty is appropriately imposed.

Clause 164 provides a definition of "related person". This definition supports the operation of clause 158, which groups persons and related persons to determine whether a relevant acquisition has been made.

The definition adopted is wide and includes, for individuals, members of the same family. Under the definition of "member" of a person's family in the Dictionary at Schedule 6 of the Bill, persons will be related as family members if they are a nephew, niece, spouse of a nephew or niece, adopted children or certain step-relatives of a person.

Further, as land rich duty only applies at the trustee level in the case of a relevant acquisition by a trustee, the definition of related person includes, in the case of trustees, beneficiaries of the relevant trust, and related persons for those beneficiaries. This approach provides certainty for taxpayers in clarifying the operation of land rich duty in the case of relevant acquisitions by trusts, and removes the possibility of double duty arising.

Clause 164(2) expands the definition of related person to include persons who acquire interests in a corporation under essentially one arrangement. For example, A and B, who are not related persons, acquire, under one agreement, 100% of the shares in Landrichco. Under clause 164(2), A and B will be related persons.

To ensure that anomalies do not result from the adoption of a wide definition of related person, clause 164(3) provides the Commissioner with discretion to not treat those persons who satisfy the criteria as related persons. However, this discretion only applies to persons who are related under clause 164(1) and not under the expanded definition in clause 164(2).

Clause 165 provides a definition of a "land rich corporation". Clause 165 requires that the corporation be tested at two levels. Under clause 165(1), all of the land-holdings of the corporation's subsidiaries are included for determining whether the corporation is land rich. Under clause 165(2), the corporation is retested without the inclusion of the land-holdings of its subsidiaries. If the corporation satisfies the provisions under either of those tests, the corporation will be a land rich corporation.

Clause 166 provides a broad definition of "subsidiary".

Under clause 166(3), any unlisted corporation or trustee that is a subsidiary of a subsidiary of a corporation is taken to be a subsidiary of the corporation. This clause ensures that the definition applies at any level in a chain of relationships for a corporation.

Clause 167 widely defines a corporation's "land-holdings". Clause 167(2) provides that a corporation's land-holdings include the land-holdings of its subsidiaries.

In relation to trust property, clause 167(3) provides that land-holdings held on trust by a corporation will only be included as part of the corporation's land-holdings if the corporation, or one of its subsidiaries, is a beneficiary of the trust. This is in recognition that, unless the corporation or any subsidiary is a beneficiary, the corporation does not have any direct or indirect beneficial interest in the land-holdings.

Clause 168 defines the "property" of a corporation. Clause 168(2) provides that a corporation's property includes the property of its subsidiaries.

Like clause 167, in relation to trust property, clause 168(3) provides that property held on trust by a corporation will only be included as part of the corporation's property if the corporation or one of its subsidiaries is a beneficiary of the trust. Again, this is in recognition that, unless the corporation or any subsidiary is a beneficiary, the corporation does not have any direct or indirect beneficial interest in the property.

Clause 169 outlines the application of Subdivision 3 which applies for determining whether a corporation is a land rich corporation.

Clause 170 provides special rules for working out the value of co-owned land-holdings and ensures that a corporation's land-holdings cannot be diluted by a co-ownership arrangement. However, under clause 170(2), the Commissioner is provided with a discretion to calculate the value on actual interests held by the corporation if there is no intention to avoid land rich duty.

Clause 171 clarifies that the entire unencumbered value of land under a purchase or sale agreement is to be included in working out the value of a corporation's land-holdings.

Clause 172 excludes certain kinds of property from the calculation of the unencumbered value of a corporation's property. This is to ensure that the value of property which may be used to dilute a corporation's land-holdings, or which may have already been taken into account, are to be disregarded for the purposes of determining whether a corporation is land rich.

Clause 173 details how business property which has been taken to have no value under the concession for particular family business in Chapter 2, Part 10, is to be treated for this Part.

Clause 174 sets out when a liability to land rich duty arises.

Clause 175 specifies who is liable to pay land rich duty.

Clause 176 provides that the duty imposed on the dutiable value of a relevant acquisition is to be calculated at the rate of transfer duty applicable to a transfer of land.

Clause 177 provides the requirement to make and lodge a land rich duty statement by the parties liable to pay land rich duty.

Clause 178 deals with the effect of the lodgement of a land rich duty statement by one of the parties.

Clause 179 sets out how to work out the dutiable value of a relevant acquisition.

Clause 180 provides for the aggregation of particular relevant acquisitions. This clause only applies to aggregate acquisitions where the dutiable value has been calculated by reference to an increased interest under clause 179(2). It acts to ensure that land rich duty cannot be minimised by acquiring further interests in a land rich corporation in stages.

Clause 181 clarifies the unencumbered value of Queensland land-holdings to be used in calculating the dutiable value of a relevant acquisition where a corporation is a land rich corporation under clause 165 either with, or without, the land-holdings and property of its subsidiaries.

Clause 182 details how the unencumbered value of a corporation's land-holdings is to be calculated where land-holdings of a subsidiary are included. Clause 182(2) provides that the value to be attributed to the corporation is to be based on the proportion of the subsidiaries' land-holdings that the corporation would be entitled to if they were wound up at the same time and without regard to their liabilities.

Where a subsidiary is a trustee of a trust, clauses 182(3) and (4) provide special rules for determining the entitlement of the corporation on the winding up of all subsidiaries and allows for the maximisation of the entitlement.

Clause 182(5) clarifies that in determining the amount that the corporation could derive under clause 182(3), trust interests held by subsidiaries are to be traced through.

Clause 182(6) clarifies that where there is more than one subsidiary that is a beneficiary of a trust, the maximum amount derived by the corporation

under clause 182(2) must not be more than the whole of the value of the Queensland land-holdings.

Clause 183 sets out when the value of particular land is to be disregarded where that land is transferred for shares in the corporation and the conditions set out in the clause are satisfied.

Clause 184 provides that for working out the dutiable value of a relevant acquisition, only the unencumbered value of the corporation's interest in co-owned land-holdings is to be taken into account. This is to be contrasted with clause 168, which includes the entire value of the co-owned land-holdings for the purposes of determining whether a corporation is land rich.

Clause 185 allows a deduction, in certain circumstances, from the land rich duty that is imposed on a relevant acquisition.

As both land rich duty and corporate trustee duty are imposed on relevant acquisitions of shares, it may be possible that the same acquisition triggers the imposition of both types of duty, which are calculated by reference to the underlying land-holdings or property of the corporation. In these circumstances, any land rich duty payable must be reduced by the corporate trustee duty paid, or payable, for the land, only to the extent that the value of the land was included in working out the dutiable value of the relevant acquisition.

Clause 186 operates in a similar way to clause 185 in relation to a trust acquisition for a non-discretionary trust that is part of the same arrangement as the relevant acquisition. In these circumstances, a deduction is allowed for transfer duty paid, or payable, for the land, only to the extent that the value of the land was included in working out the dutiable value of the relevant acquisition.

Clause 187 allows a deduction for transfer duty paid or payable on particular transactions for marketable securities that also comprise the relevant acquisition. A deduction is also allowed for equivalent duty paid in another State. The formula under which the amount of the deduction is calculated is set out in clause 187(2).

Clause 188 provides for a deduction of mortgage duty paid on certain transfers by way of security, where full ownership of the shares is later acquired, or where the Commissioner is not satisfied the transfer was actually by way of security.

Clause 189 exempts certain acquisitions from land rich duty.

Clause 190 exempts the acquisition of a security interest if the Commissioner is satisfied the acquisition was not made with the intention of avoiding the imposition of land rich duty.

Clause 191 provides an exemption for a relevant acquisition made for the sole purpose of giving effect to a change of trustee. This provision aligns the treatment of relevant acquisitions made for the purpose of giving effect to a change of trustee with the treatment of the transfer of dutiable property for the same purpose under clause 117. However, clause 191 contains the additional condition that the relevant acquisition is not part of an arrangement to avoid the imposition of duty.

Clause 192 exempts particular acquisitions by liquidators.

Clause 193 exempts the acquisition of particular interests resulting from the making of a court-approved compromise or arrangement with creditors under Part 5.1 of the *Corporations Act* where the Commissioner is satisfied there is no intention of avoiding the imposition of land rich duty.

To overcome potential avoidance resulting from the expanded circumstances where members' schemes of arrangement are available, this exemption is limited to creditors' schemes.

Clause 194 provides exemption for a relevant acquisition where transfer duty would not be imposed on the dutiable transaction that is the relevant acquisition because of one of the exemptions listed. This provision aligns the treatment of relevant acquisitions with the treatment of dutiable transactions where they comprise the same transaction.

Clause 195 exempts an acquisition by a person if the land-holdings of the corporation could have been acquired in a way that would be exempt from transfer duty and the Commissioner is satisfied the acquisition would not have been part of an arrangement to avoid the imposition of land rich duty.

However, the exemption does not apply to instances where the transfer duty exemption sought to be used is under the corporate reconstruction provisions contained in Chapter 10, Part 1. This is designed to clarify that in cases where an exemption from land rich duty is available under the corporate reconstruction provisions, that exemption should be applied for, and the associated conditions complied with, in the usual way.

Clause 196 provides that certain interests acquired under an exempt acquisition are to be disregarded for deciding whether a relevant acquisition occurs because of an acquisition of an interest, an aggregation of interests or an increase in an interest.

Clause 197 sets out certain circumstances when the commissioner must make a reassessment of land rich duty. Clause 197(1) and (3) ensure that double duty is not paid in respect of land the subject of a sale or purchase agreement taken into account for imposing land rich duty where the agreement is subsequently completed or not completed. In these circumstances, the Commissioner must reassess the land rich duty payable as though the land was not, at the time of the relevant acquisition, a land-holding of the corporation.

Clause 197(2) and (4) also require the Commissioner to reassess the land rich duty payable for a relevant acquisition if the person's interest is taken to have been acquired under an agreement but the agreement is not completed.

Clause 198 sets out the circumstances where the Commissioner may register a charge over the land-holdings of a land rich corporation, and the procedure for registering the charge.

Clause 199 sets out the procedure for when the Commissioner must release the charge.

Clause 200 sets out the process for when the Commissioner may seek an order of the Supreme Court to sell the land-holdings of a land rich corporation.

Clause 201 sets out the circumstances when the court must grant an order for the sale of the land.

Clause 202 sets out the rules for the application of the proceeds of the sale of the land.

Clause 203 provides for the registration of the transfer of the land made under the order for the sale of the land as if the registered owner had signed it. This provision safeguards the interest of the purchaser of the land under the court-ordered sale.

Clause 204 provides the land rich corporation, or a subsidiary, whose land is sold with a right to recover an amount equal to the proceeds of sale, less any amounts paid to discharge mortgages or other security interests over the land from the persons liable to pay the land rich duty.

Part 2 Corporate Trustee Duty

Trusts are often established with a corporation as trustee. A change in the shareholding of a corporate trustee can give control of the trust property via control of the trustee. A lesser rate of transfer duty (0.6%) would

usually apply to these share transfers as opposed to the general rates of transfer duty which would be imposed on an acquisition of the property itself.

On this basis, an avoidance technique developed which enabled the takeover of trust property for nominal duty. The technique involved acquiring all the shares in the trustee company and becoming a beneficiary of the trust.

Chapter 3, Part 2 addresses this issue by imposing duty on relevant acquisitions of a share interest in a corporate trustee or relevant corporation for a corporate trustee at the general rates of transfer duty by reference to the property of the trust. The provisions only apply to corporate trustees who are trustees of discretionary trusts. Changes in the beneficiaries or dealings with trust interests of other trusts will be taxable under the trust provisions in Chapter 2, Part 8.

Further, the transactions that are subject to this duty may also be subject to transfer duty as acquisitions of Queensland marketable securities. If that is the case, in calculating the amount of corporate trustee duty a credit is allowed for any transfer duty imposed.

Clause 205 imposes corporate trustee duty on the dutiable value of a relevant acquisition.

Clause 206 is an interpretation provision for Part 2. Throughout the Part, there are references to a partnership or trust holding property, particularly in clause 222 when calculating the dutiable value of a relevant acquisition. This terminology is commonly used commercially. However, this clause expresses the correct position at law, namely, that the references are to the holding of property by the partners for the partnership or the trustees on trust.

Clause 207 explains when a person makes a relevant acquisition. The making of a relevant acquisition in a corporate trustee or relevant corporation for a corporate trustee is the central triggering provision for imposition of corporate trustee duty.

A relevant acquisition occurs when a person acquires a share interest in a corporate trustee or a relevant corporation for a corporate trustee. As the provisions are intended to operate where there is an ability to control the corporate trustee via the acquisition of a share interest in the corporate trustee and therefore, control the property of the trust, it is also necessary for the acquisition to be part of an arrangement under which a benefit relating to the trust property is obtained by any person. This benefit can be either direct or indirect.

Clause 208 defines a share interest as the person's interest as a shareholder in a corporate trustee or relevant corporation for a corporate trustee. In cases where a trustee acquires a shareholding in a corporation, it is the trustee only who acquires the interest.

Clause 209 provides a definition of "corporate trustee". The definition ensures that only the property held for the discretionary trust is taken into account for liability for corporate trustee duty.

Clause 210 explains when a corporate trustee has an indirect interest in dutiable property. The provisions enables corporate trustee duty to be calculated by reference to both dutiable property held by the corporate trustee on trust and indirect interests held on trust by the corporate trustee in other dutiable property in sub-partnerships or sub-trusts. The provision allows tracing through partnerships and trusts. This provision is in similar terms to the indirect interest provisions for partnerships and trusts contained in Chapter 2 and therefore ensures consistency of treatment for these interests.

Clause 211 defines a "relevant corporation" for a corporate trustee. This definition ensures that persons cannot avoid the imposition of corporate trustee duty by structuring holdings of share interests through tiers of corporations above the corporate trustee.

Clause 212 specifies when a person acquires a share interest in a corporate trustee or relevant corporation for a corporate trustee. A share interest is acquired if the person becomes a shareholder or their share interest increases.

Clause 212(2) excludes an acquisition of a share interest by a beneficiary in the administration of a deceased person's estate from the operation of Part 2.

Clause 213 clarifies the duty treatment for Part 2 purposes of property that is under contract at the time of a relevant acquisition to which the Part applies. For example, a person may have acquired a share interest in a corporate trustee that has entered into an agreement for the transfer of dutiable property to the trust. Under clause 213, the contracted property must be treated as dutiable property of the trust and the relevant purchase agreement is treated as having been completed.

The effect of clause 213 is that corporate trustee duty is calculated on the basis that property being sold by the trustee is taken not to have been sold and that property being purchased by the trustee is already trust property.

If the contracted property subsequently ceases to be trust property, duty must be reassessed on that basis.

Clause 214 sets out when the liability for corporate trustee duty arises.

Clause 215 specifies who is liable to pay corporate trustee duty.

Clause 216 provides that the rate of duty to be applied to the dutiable value of a relevant acquisition is dependant upon the dutiable property held on trust. This means that where the dutiable property is a Queensland marketable security the rate to be applied is the lower rate (0.6%) rather that the general ad valorem rate for transfer duty.

Clause 217 requires the lodgement of a corporate trustee duty statement by the acquirer under the relevant acquisition.

Clause 218 applies to relevant acquisitions where the property held on trust by the corporate trustee includes, either directly or indirectly, Queensland business assets. The purpose of the clause is to ensure that excessive duty is not imposed on business assets where the asset also has a connection with another Australian State. It does this by apportioning the unencumbered value of the business asset.

The clause applies where the Queensland business has its head office or principal place of business in Queensland and has made a supply or provision of services to customers outside Queensland or the business asset has been used, exploited or exercised in, or relates to, a place outside Queensland.

Clause 218(2) contains the formula to apportion the unencumbered value of the property. The apportionment is based upon the amount of supplies of goods or services made by the business in the 3 financial years preceding the transaction. The unencumbered value of the business asset is apportioned to exclude an amount that represents the proportion of supplies of goods or services made by the business to customers in other Australian States.

Clause 218(3) provides that the Commissioner may decide the unencumbered value of the dutiable property on another basis where the Commissioner considers that basis would be more appropriate.

Clause 219 is similar to clause 218 and applies where the where the Queensland business has its head office or principal place of business outside Queensland and has made a supply or provision of services to customers in Queensland or the business asset has been used, exploited or exercised in, or relates to Queensland. The unencumbered value of the business asset is apportioned to include only an amount that represents the

proportion of supplies of goods or services made by the business to customers in Queensland.

Clause 219(3) provides that the Commissioner may decide the unencumbered value of the dutiable property on another basis where the Commissioner considers that basis would be more appropriate.

Clause 220 applies to relevant acquisitions where the property held on trust by the corporate trustee includes, either directly or indirectly, existing rights and new rights where the right is exercisable or relates to the conduct of a business or activity outside Queensland. It provides for the apportionment of the unencumbered value of the existing right or new right to exclude a proportion to the extent that the right is exercisable or relates to the conduct of a business or activity outside Queensland. This ensures that corporate trustee duty is only imposed on the Queensland portion of the unencumbered value.

Clause 220(3) provides that the Commissioner may decide the unencumbered value of the right on another basis where the Commissioner considers that basis would be more appropriate.

Clause 221 sets out the formula for measurement of the acquirer's share interest in a corporate trustee or relevant corporation for a corporate trustee. In most cases the interest acquired will be the proportion that the number of shares acquired bears to the total issued shares in the trustee. Where a share interest has been acquired in a relevant corporation for a corporate trustee, special rules are set out in clause 221(2)-(5) for measuring the interest.

Example 1 - for a corporate trustee

Q Pty Ltd acquires 2 shares in Trustee Pty Ltd, the trustee of the ABC Discretionary Trust. Because Trustee Pty Ltd holds dutiable property on trust, it is a corporate trustee.

The shares acquired by Q Pty Ltd represent 50% of the total issued shares in Trustee Pty Ltd. Q Pty Ltd acquires a 50% share interest.

Example 2 - for a relevant corporation for a corporate trustee

Q Pty Ltd owns 2 shares in Trustee Pty Ltd, the trustee of the ABC Discretionary Trust. Because Trustee Pty Ltd holds dutiable property on trust, it is a corporate trustee and Q Pty Ltd is the relevant corporation for the corporate trustee. Q Pty Ltd's shares represent 50% of the total issued shares in Trustee Pty Ltd.

Y acquires 4 shares of Q Pty Ltd.

The shares acquired represent 25% of the issued shares of Q Pty Ltd. Y acquires a 12.5% share interest, being 25% of Q Pty Ltd's 50% share interest.

Where the relevant acquisition occurs on an increase in a share interest, clause 221(7) ensures that only the increase in the share interest is used in working out the dutiable value of the acquisition.

Clause 222 sets out how to work out the dutiable value of a relevant acquisition.

The dutiable value is worked out by applying the acquirer’s share interest obtained under clause 221 to the unencumbered value of the dutiable property and any indirect interest in dutiable property held on trust by the corporate trustee at the time of the relevant acquisition.

Clause 222(2) and (3) detail how the unencumbered value of an indirect interest is to be calculated.

An example of how the dutiable value of a relevant acquisition is worked out is provided at Schedule 4 of the Bill.

Clause 223 provides for the aggregation of relevant acquisitions that arise essentially from one arrangement. This clause ensures that corporate trustee duty cannot be minimised by acquiring share interests in a corporate trustee or relevant corporation for a corporate trustee in stages.

Clause 224 provides an exemption for a relevant acquisition made for the sole purpose of giving effect to a change of trustee. This provision aligns the treatment of relevant acquisitions for the purpose of giving effect to a change of trustee with the treatment of the transfer of dutiable property for the same purpose under Chapter 2. Under this provision, the exemption will not be available if, in addition to conditions contained in Chapter 2, the relevant acquisition is part of an arrangement to avoid the imposition of duty.

Clause 225 provides a complementary exemption to that contained in clause 118 for transfer duty. As clause 118 exempts certain changes in trust interests in family discretionary trusts, it is also necessary to provide an exemption for comparable dealings in share interests of a corporate trustee of a family discretionary trust.

Clause 226 provides exemption for a relevant acquisition where transfer duty would not be imposed on the dutiable transaction that is the relevant acquisition because of one of the exemptions listed. This provision aligns the treatment of relevant acquisitions and dutiable transactions that comprise the same transaction.

Clause 227 allows a deduction from the corporate trustee duty imposed, for transfer duty paid or payable for a dutiable transaction relating to the marketable securities which are also the subject of the relevant acquisition. A deduction is also allowed for equivalent duty paid or payable in another State.

Clause 228 allows a deduction from the corporate trustee duty imposed, for transfer duty paid or payable for a trust acquisition that is also the relevant acquisition.

Clause 229 requires the Commissioner to reassess the corporate trustee duty payable for a relevant acquisition if a person's share interest is taken to have been acquired under an agreement but the agreement is not completed.

CHAPTER 4—LEASE DUTY

Chapter 4 imposes duty on a written lease of land in Queensland and an occupancy right of premises in Queensland. Lease duty is imposed on the cost of a lease or occupancy right. Liability arises when the lease is entered into or the occupancy right is granted. This occurs when the lessee (for a lease) or the grantee (for an occupancy right) takes possession of the leased land or premises.

Part 1 Preliminary

Clause 230 states that Chapter 4 imposes duty on instruments that are leases and instruments that are occupancy rights. Lease duty is only imposed on written leases and occupancy rights. The clause further states that lease duty is imposed on the cost of the lease or occupancy right.

Part 2 Some basic concepts about leases and occupancy rights

Clause 231 defines "lease".

Clause 232 defines "occupancy right".

Clause 233 defines "cost" of a lease as the rent payable for the lease. Under clause 233(2) certain items are excluded from the definition. Amounts excluded under clause 233(2)(d)-(f) are not subject to lease duty but may be subject to transfer duty under clauses 11(3) or (4) for certain types of dutiable transactions.

Clause 234 defines “cost” of an occupancy right as the consideration payable for the right. Under clause 234(2) an amount payable for reasonable outgoings is excluded from the definition.

Clause 235 states that if the cost of a lease or occupancy right may vary up to a maximum amount, the cost will be the maximum amount.

Clause 236 states that the cost of a lease or occupancy right shall include the value of any goods or services provided in the cost. Clause 236 (2) provides a way to calculate the value of the goods or services in certain circumstances.

Part 3 Liability for, payment and refunds of lease duty

Clause 237 states when the liability for lease duty on a lease or occupancy right arises. Under clause 237(1) liability arises when the lessee or grantee takes possession of the premises in accordance with the instrument. Clause 237(2) states when liability arises if the lessee or grantee continues in possession of the leased premises after the lease or right ends.

Clause 238 states who is liable to pay the lease duty imposed on a lease or occupancy right.

Clause 239 sets the rate of lease duty imposed on a lease or occupancy right.

Clause 240 requires lodgement of the lease or right. It states who must lodge the instrument and the time within which lodgement of the instrument must be made.

Clause 241 sets out the method for lodgement and payment of lease duty. Clause 241(1) sets out the lessor or grantor’s obligations when the cost, or part of the cost, of a lease or occupancy right is ascertainable when liability for duty arises.

Clause 241(2) and (3) set out the obligations where the cost or a part of it is not ascertainable when liability for duty arises for leases or rights, other than those under clause 237(2). Clause 241(4) and (5) set out the obligations where the cost or a part of it is not ascertainable when liability for duty arises under clause 237(2) for continued possession after the lease or right ends. Clause 241(6) provides that the lessor does not have to comply with clause 241(2) or (4) if the unascertainable amount is less than $10,000.

Clause 241(7) applies when the lease or occupancy right contains an option for a further period. Clause 241(8) applies when the cost of the lease or occupancy right is increased by agreement during the term of the lease or occupancy right. Clause 241(9) explains when the cost of a lease or occupancy right is ascertainable.

Clause 241(10) provides that a statement made by a lessor under clause 241(2) and (4) is taken to be an assessment for the purpose of the *Taxation Administration Bill 2001*.

Clause 242 provides for a refund of lease duty if the lease or occupancy right is terminated early in certain circumstances. Clause 242(1) specifies the circumstances. Clause 242(2) states who can apply for the refund. Clause 242(3) sets out the basis for calculating the refund.

Clause 243 provides for a credit of lease duty if a replacement lease or occupancy right is entered into or granted in certain circumstances. Clause 243(1) specifies the circumstances. Clause 243(2) specifies the credit to be allowed.

Part 4 Exemptions from lease duty

Clause 244 exempts from lease duty leases or agreements in respect of particular residences.

Clause 245 exempts from lease duty leases issued under the *Land Act 1994*.

Clause 246 exempts from lease duty a lease or grant of an occupancy right to The National Trust of Queensland.

CHAPTER 5—MORTGAGE DUTY

This Chapter imposes mortgage duty on written instruments that fall within the definition of mortgage, certain caveats and certain releases of mortgage. Duty is imposed on the amount secured by the mortgage.

To facilitate harmonisation with other jurisdictions which also charge mortgage duty, special provisions dealing with the imposition of duty on multi-jurisdictional mortgages have been included. Duty is calculated on a pro rata basis, being that proportion of the advance that is equal to the proportion of the secured property in Queensland as compared to all property secured by the mortgage. The value of overseas property and

property in non-taxing jurisdictions is excluded from the pro rata calculations. The effect of these provisions is to require duty to have been paid or accounted for on the entire advance. The distribution of mortgage duty according to the relevant jurisdictional proportions is also supported by the introduction of the concept of a mortgage package.

Part 1 Preliminary

Clause 247 imposes mortgage duty on the amount secured by mortgages, certain caveats and certain releases of mortgage. Only instruments of mortgage are liable to duty under this Chapter.

Part 2 Some basic concepts for mortgage duty

Clause 248 provides an exhaustive definition of “mortgage”. To be a dutiable mortgage, the mortgage must secure Queensland property.

Clause 249 defines “advance” exhaustively as the provision or obtaining of funds by way of financial accommodation by a loan or bill facility. The definition of advance for these purposes means that securities for obligations under contracts, leases, chattel leases and accounts current are not dutiable in Queensland unless they secure a loan or bill facility as defined.

Clause 249(3) provides that an advance also includes a contingent liability under clause 249.

Clause 250 defines “loan” for the purposes of an advance under clause 247.

Clause 251 contains rules to assist in determining when secured property is located in Queensland.

Part 3 Liability for mortgage duty

Clause 252 sets out when a liability to mortgage duty arises. Generally, mortgages are liable for mortgage duty at first signing and on the making of advances which result in the amount secured by the mortgage exceeding the amount for which the mortgage has been properly stamped. However, under clause 257, a mortgage may be stamped before an advance.

Clause 252(3) and (4) provide special liability rules for an instrument of security that does not affect property in Queensland when it is first signed, but, which later affects certain property in Queensland, and has not been

stamped with, or is not exempt from, similar duty under a corresponding Bill.

These are anti-avoidance provisions and will apply to impose duty on the security where any property, including land, is specifically identified and under an arrangement is intended to be brought under the security. An additional rule applies for land. Where land, other than a security interest, is brought under the security within 1 year after it is first signed, duty will be imposed on the security.

Clause 253 provides who is liable to pay mortgage duty.

Clause 254 sets the rate of mortgage duty. This rate is to be applied to the amount secured by the mortgage.

Clause 255 sets out the requirements for lodging a mortgage.

Clause 256 clarifies that only one party is required to comply with the lodgement requirements for mortgage duty.

Clause 257 provides for the stamping of a mortgage prior to an advance being made. If this option is chosen, and the mortgage is a multi-jurisdictional mortgage or part of a mortgage package, mortgage duty is calculated on the basis of the property mix at the date of the stamping.

As mortgage duty is calculated on the advances actually secured by the mortgage, this clause facilitates elimination of the need for financiers to upstamp the mortgage on a continuing basis where there are, for example, progressive drawdowns under the loan facility. For multi-jurisdictional mortgages, the need for a financier to consider the property mix at the time of each actual drawdown made until the loan limit is reached may also be eliminated.

Part 4 Amount secured by a mortgage

Clause 258 provides that the amount secured by a mortgage is the amount of advances actually secured by it (including any contingent liabilities) and recoverable under it. This clause provides the meaning for the term "amount secured" for the purposes of this Chapter.

The reference to the amount secured including only those advances that are recoverable under the mortgage recognises that a mortgage may be capped. If the amount of the cap is less than the advances made under and secured by the mortgage, then duty will only be calculated on the amount of the cap.

<u>*Example*</u>

A provision in the mortgage provides as follows:

> *Notwithstanding that this mortgage secures the whole of the secured moneys, the amount recoverable under this mortgage is limited to $100,000.*

If advances in excess of $100,000 were made and secured by this mortgage, it would be stamped only to an amount of $100,000 in recognition of the cap.

The reference to the amount of the advances recoverable under the mortgage refers to the amount recoverable under the provisions of the mortgage instrument and does not require an assessment of the security provider's actual ability to repay the moneys advanced.

Other than the recognition of a capped mortgage, there is no distinction between a limited and unlimited mortgage.

Clause 258(2) clarifies what the amount secured is where there are further advances made under a previously stamped mortgage.

Clause 259 deals with contingent liabilities.

Clause 260 contains special rules for assessing duty on the amount secured by a mortgage where the mortgage secures property in more than one jurisdiction. Mortgage duty is assessed on the dutiable proportion of the amount secured only. The dutiable proportion reflects the proportion that the secured property in Queensland bears to all secured property at the date that the liability to duty arises.

Clause 260(3) provides that the dutiable proportion is to be calculated by reference to property values contained in certain referable points. Under clause 260(4) the referable points that can be used include statements made by the mortgagee based on information provided by the mortgagor and valuations of the relevant property that have been prepared in the ordinary course of business. Clause 260(5) requires that the latest referable point must be used where more than one referable point is in existence at the time of stamping.

Clause 261 sets out the basis for calculating duty where a mortgage is one of package of securities, including one or more interstate securities, which secure an advance. The securities comprising the package are treated as if they were one mortgage, which then allows mortgage duty to be assessed under the dutiable proportion rules set out in clause 260. If any of the instruments that comprise the mortgage package also partly secure

other advances, duty will be imposed in relation to those other advances under the ordinary rules.

Clause 261(2)(a) ensures that all mortgages that are contemplated as security for the same advance are included in the mortgage package and are taken into account when calculating mortgage duty.

Clause 261(2)(b) clarifies that a mortgage executed after a mortgage package was last stamped, and which has been stamped as a collateral mortgage under clause 262, is included as part of the mortgage package at the next liability date. This ensures that the property secured by the collateral mortgage is taken into account when determining the dutiable proportion for stamping at that time.

If there is more than one Queensland mortgage in the package, clause 261(4) provides that one mortgage is to be stamped with the duty paid in Queensland and the others are to be stamped collateral.

Clause 262 clarifies the extent to which a collateral mortgage is not imposed with duty. Mortgage duty will not be required to be paid again if the collateral mortgage secures the same amount as another mortgage or security, on which duty has been paid in Queensland or in another jurisdiction. A mortgage will also be stamped collateral if it secures the same amount as a duly stamped mortgage package. This is to ensure that there is no further liability to duty when further securities are introduced to a mortgage package on which duty has been paid in the absence of a further advance.

Clause 262(2) details when further duty will be required to be paid on a collateral mortgage. As there is no distinction between principal and collateral securities for duty purposes, this provision is designed to ensure that collateral mortgages cannot be used to secure new advances when they no longer secure any part of the amount secured by the mortgage or mortgage package to which the collateral mortgage has been stamped collateral.

Example

Lender advances $100,000 to Borrower. This loan is secured by a mortgage given by Borrower and a guarantee and all-moneys mortgage given by Guarantor. The mortgage given by Borrower is stamped with mortgage duty and the mortgage given by Guarantor is stamped collateral. Six months later, Guarantor approaches Lender and asks that his mortgage no longer act as security for the loan to Borrower (Lender agrees as the mortgage provided by Borrower will provide sufficient security) and that Lender advances $100,000 to Guarantor.

In these circumstances, even though Guarantor's mortgage is stamped for $100,000, as it no longer secures an amount secured by Borrower's mortgage, duty will have to be paid on the $100,000 loan to Guarantor.

Clause 263 addresses the extent to which a mortgage or mortgage package is enforceable if mortgage duty is unpaid.

Clause 263(2) provides special rules for protection of the enforceability of interjurisdictional mortgages and mortgage packages in certain cases. In particular, enforceability of these securities is preserved provided that duty has been paid (or the instrument is exempt) in one or more jurisdictions in respect of the total advances, and the dutiable proportion used to calculate mortgage duty liability in Queensland was based on a referable point and was not incorrect by more than 5%. This provision ensures an interjurisidictional mortgage will only be fully enforceable in any jurisdiction if the correct amount of duty has been paid in all jurisdictions. The 5% error margin also reflects that in these cases, it would not be equitable to jeopardise the enforceability of a lender's security.

Clause 264 limits the extent to which a mortgage that was, but is no longer, part of a mortgage package and no longer secures the same amount as the package may be used to secure other advances. This clause overcomes potential avoidance activity involving reliance on duty paid on a mortgage that formed a package to secure other advances without payment of further duty.

Clause 265 applies where duty is imposed on a multi-jurisdictional mortgage or a mortgage package. It provides that the mortgagor or mortgagee must make a statement in the approved form. The statement may be taken to be the mortgage or mortgage package, and therefore will satisfy lodgement requirements for the duty and may be endorsed with duty instead of the mortgage instrument. Stamping of these statements is intended to streamline processes for taxpayers, by allowing simultaneous stamping in more than one jurisdiction, either by lodgement or by return.

Part 5 Mortgage duty on particular debenture issues, caveats and releases of mortgages

Clause 266 provides special rules for the assessment of mortgage duty on public debenture issues, other than exempt short-term debentures, the repayments of which are secured by a mortgage.

Clause 267 defines "exempt short-term debenture".

Clause 268 sets out specific rules for the assessment of mortgage duty on caveats claiming an interest under a mortgage.

Clause 269 sets out specific rules for the assessment of mortgage duty on releases of mortgages.

Part 6 Concessions for home mortgages and first home mortgages

Clause 270 sets out the purpose of Part 6, which is to provide concessions for mortgage duty on home mortgages and home refinance mortgages.

Clause 271 defines "home mortgage". This provision is the central concept for qualification for a mortgage duty concession in Division 2.

Clause 272 provides definitions of "home" and "first home". These concepts have been aligned with the concept of a home in Chapter 2, Part 9 (Concessions for Homes) with the necessary adjustments.

Clause 273 defines "home borrower" and "first home borrower".

Clause 274 sets out the amount of duty payable if the concession applies. Clause 274(1) applies where all owners of the home are home borrowers. Clause 274(2) applies in all other circumstances. Clause 274(3) ensures that where the concession is calculated by reference to the qualifying amount, the total amount of the concession provided cannot be more than the maximum concessional amount that would otherwise have been available.

Clause 274(4) details how a home borrower's or first home borrower's interest is worked out. Clause 274(5) outlines what the qualifying amount is for clause 274(1) and (2). This provision ensures that the concession is available only to the extent of the advances used to acquire a home or first home. Further, in cases where the mortgage is a multi-jurisdictional mortgage or is part of a mortgage package, the concession must be calculated by reference to the dutiable proportion rather than the whole amount secured. Clause 274(6) deals with calculating the amount of the advances available for the concession where part of the moneys are also used to refinance an existing home mortgage.

Clause 275 provides rules that apply to home mortgage claims under clause 274 where a trustee of a trust gives the home mortgage. Consistent with the concessions in Chapter 2, Part 9 (Concessions for Homes), the concession is not available for trust property unless the residence is held on a fixed trust for the benefit of persons under a legal disability. In these

cases, clause 274 is applied as if the beneficiaries of the trust were the home borrowers under a home mortgage.

Clause 276 defines “home refinance mortgage”. This provision is the central concept for qualification for the mortgage duty concession in Division 3. While the previous mortgage must have been secured on the person’s home, it is not necessary for it to have qualified for the home mortgage concession.

Clause 277 provides a definition of “home”. Again this concept has been aligned with the concept of a home in Chapter 2, Part 9 (Concessions for Homes). However, different occupation rules apply.

Clause 278 defines “home refinance borrower”.

Clause 279 sets out the amount of duty payable if the concession applies. Clause 279(1) applies where all owners of the home are home refinance borrowers. Clause 279(2) applies in all other circumstances. Clause 279(3) ensures that where the concession is calculated by reference to the refinance qualifying amount, the total amount of the concession provided cannot be more than the maximum concessional amount that would otherwise have been available.

Clause 279(4) details how a home refinance borrower’s interest is worked out. Clause 279(5) outlines what the refinance qualifying amount is for clause 279(1) and (2). Again, this provision ensures that the concession is available only to the extent of the advances used to repay the balance outstanding under a previous mortgage over a home. Further, in cases where the mortgage is a multi-jurisdictional mortgage or is part of a mortgage package, the concession must be calculated by reference to the dutiable proportion rather than the whole amount secured.

Clause 279(6) deals with calculating the amount of the advances available for the concession where part of the moneys are also used to finance the acquisition of a home or first home.

Clause 280 provides rules that apply to home refinance mortgage claims under clause 279 where the home refinance mortgage is given by a trustee of a trust. Consistent with the concessions in Chapter 2, Part 9 (Concessions for Homes), the concession is not available for trust property unless the residence is held on a fixed trust for the benefit of persons under a legal disability. In these cases, clause 279 is applied as if the beneficiaries of the trust were the home refinance borrowers under a home refinance mortgage.

Clause 281 sets out particular rules that apply to allow a credit for duty paid on the previous mortgage in certain circumstances. This provision applies when there is a home refinance mortgage claim either on its own or coupled with a home mortgage claim.

Clause 282 states that an application for a concession must be made in the approved form.

Part 7 Exemptions from mortgage duty

Clause 283 provides an exemption from mortgage duty for particular debentures and instruments of trust.

Clause 284 exempts from mortgage duty transfers of land by way of security if transfer duty has been paid on the transfer.

Clause 285 provides exemption from mortgage duty for mortgages given under particular Acts.

Division 2 provides exemption from mortgage duty for the various securities and interests created under land-based mortgage securitisation schemes. The key concepts for the operation of the exemption are found in the definitions of mortgage-backed security, mortgage, pool of mortgages and authorised investment.

Clause 286 provides a definition of “mortgage-backed security”. This definition includes both equity and debt securities created or issued under a securitisation structure. Further, the term ‘security’ used in the definition includes a security that is created or issued without a written instrument.

Under clause 286(1)(b), certain types of securities issued by a corporation (including a corporate trustee), are included if the payments under the security are received by the corporation substantially from a mortgage or pool of mortgages as defined. Clause 286(1)(b)(ii) provides some further flexibility in this requirement by allowing another extent to be prescribed by regulation. Any other extent prescribed under this provision will be of benefit to taxpayers, as it will extend the operation of the exemption.

Clause 287 defines a “mortgage” for the purposes of Part 7, Division 2. This definition limits the exemption so that it only applies to mortgages or charges over land.

Clause 288 defines a “pool of mortgages”. Under this clause, a pool of mortgages must consist solely or substantially of certain mortgages. Clause 288(2) facilitates some flexibility in these provisions by allowing

another extent to be prescribed by regulation. Like clause 286(1)(b)(ii), anything prescribed by regulation under this provision will be of benefit to taxpayers, as it will extend the operation of the exemption.

Clause 289 defines "authorised investment" for a pool of mortgages.

Clause 290 provides an exemption from mortgage duty for mortgage-backed securities. Under clause 290(c) a further class of mortgage to which the exemption applies may be prescribed by regulation. Again, any use of this regulation making power will be for the benefit of taxpayers, as it will extend the exemption. While it provides some flexibility in administration of this exemption, it also provides sufficient certainty as the provision contains a description of the type of instrument that would fit into this class.

Part 8 Reassessments for mortgage duty

Clause 291 provides for reassessments of mortgages that have been assessed on the basis of a Part 6 concession. The provision applies in the following circumstances:

- if a home borrower transfers, leases or otherwise grants exclusive possession of all or part of the residential land before taking up occupation;
- if a home borrower fails to take up occupation within 1 year of the transfer of the land or when the mortgage was first signed other than because of an intervening event (natural disasters, a person's death or incapacity, or other prescribed events);
- if the home borrower takes up occupation of the residential land purchased within 1 year, but then transfers, leases or otherwise grants exclusive possession of part or all of the land within the next year.

Clause 291(3) provides that, in the first two circumstances, any concession benefit received for the relevant home borrower on the original assessment is removed.

Clause 291(4) provides that in the last circumstance, a proportion of the concession benefit received for the relevant home borrower is removed. The proportion reflects the extent to which the home borrower failed to retain ownership or exclusive possession of the residence for 1 year. Clause 291(4) also sets out the formula for calculating the reassessment.

Clause 291(2*)* requires a home borrower to notify the Commissioner if an event occurs that triggers the reassessment provision.

Clause 292 provides for reassessments of mortgages that have been assessed on the basis of an exemption under clause 285(a) and where all or part of the advance is used for a non-complying purpose.

CHAPTER 6—CREDIT BUSINESS DUTY AND CREDIT CARD DUTY

Part 1 Credit Business Duty

Chapter 6, Part 1 imposes duty on businesses that grant credit in the form of loans, discount transactions or credit arrangements if certain jurisdictional links exist. In particular duty is imposed on the following credit transactions:

- loans to a Queensland resident or where any of the negotiations take place in Queensland;
- discount transactions that relate to book debts or other things in action that are enforceable in Queensland; and
- credit arrangements that relate to goods sold or services provided in Queensland.

The same transactions are dutiable regardless of whether or not the credit transaction is entered into by a registered credit provider.

Clause 293 imposes duty on credit transactions. Clause 293(2) states that credit business duty is imposed on the credit amount for a credit transaction.

Clause 294 provides the jurisdictional link for credit transactions. Clause 294(2) clarifies when a person is a Queensland resident. Clause 294(3) excludes certain credit transactions from the application of Chapter 6, Part 1 where there is an insufficient nexus to Queensland.

Clause 295 defines “credit transaction”. The limitation on the range of dutiable credit transactions set out in clause 295(2) applies to all financial institutions and not simply banks.

Clause 296 clarifies what is meant by “loan” for the purposes of Part 1. This provision must be read together with clause 250, which sets out the general meaning of “loan”.

Clause 297 defines “discount transaction”.

Clause 298 defines “credit arrangement”.

Clause 299 defines “credit provider”. Under this provision it is necessary for the person to be carrying on a credit business. That is, it is only those credit transactions that are entered into by credit businesses that are dutiable. Clause 299(2) excludes a licensed pawnbroker from the definition. Clause 299(3) clarifies that while it is necessary for the person to carry on a credit business, it does not matter whether that business is the principal business or is ancillary.

Clause 300 states that a credit transaction may take any form, and that it is immaterial whether a credit transaction is effected or evidenced by an instrument.

Clause 301 states who is liable to pay credit business duty.

Clause 302 sets the rate of credit business duty on credit transactions. Clause 302(1) applies to short-term credit transactions. Clause 302(2) applies to other credit transactions.

Clause 303 defines what is the “credit amount” for a credit transaction. Clause 303(1) applies to loans. Clause 303(2) applies to discount transactions. Clause 303(3) and (4) apply to credit arrangements. Clause 303(5) states that the credit amount does not include the amount of duty payable under the Bill or a corresponding Act.

Clause 304 states that credit providers who carry on business in Queensland must be registered under Chapter 12, Part 1. Clause 304 (1) prescribes a penalty for failure to do so. Clause 304(2) clarifies when a credit provider carries on business in Queensland. Clause 304(3) excludes credit providers who are not liable to credit duty under clause 306 (which sets out the relevant threshold) from this requirement.

Clause 305 sets out the basis on which credit business duty is to be assessed by return for registered credit providers

Clause 306 sets out the conditions to be satisfied and relevant threshold credit amounts that apply so that a credit provider is not liable to credit business duty for a month. Clause 306(2) explains what the total of the credit amounts for the credit arrangements are where the credit provider carries on business in a Commonwealth place.

Clause 307 states what a registered credit provider who has a liability to credit business duty for a month in a return period must do. Clause 307(1) requires lodgement of a return together with payment of the applicable

credit business duty, assessed interest and penalty tax. Clause 307(2) and (3) provide for a reduction in the amount of credit business duty payable under clause 307(1) where a loan was not treated as short-term but later becomes short-term. If these provisions apply, the appropriate reassessment of the duty accounted for, and consequent refund will be made under the provisions of the *Taxation Administration Bill 2001*.

Clause 308 applies to an unregistered credit provider who has a liability to credit business duty for a month. Clause 308(2) states what a credit provider must do in these circumstances.

Clause 309 exempts credit transactions with the Commonwealth or a State government, or an entity prescribed under a regulation, from credit business duty.

Part 2 Credit Card Duty

Chapter 6, Part 2 imposes credit card duty on credit card transactions. Duty is imposed on credit card transactions in each billing period.

Clause 310 imposes credit card duty on credit card transactions in each billing period.

Clause 311 defines “credit card transaction”. Clause 311(2) clarifies that the transaction must be one which involves the giving of credit or relates to credit which has previously been given by the credit card provider. This provision makes it clear that transactions utilising debit cards and which do not involve the giving of credit will not be subject to duty.

Clause 312 defines “credit card holder” and provides the jurisdictional link for imposition of credit card duty.

Clause 313 defines “credit card”.

Clause 314 defines “credit card account”.

Clause 315 defines “credit card provider”. The definition includes a prescribed credit card provider.

Clause 316 defines who is a “prescribed credit card provider”.

Clause 317 defines who is a “merchant”.

Clause 318 defines “billing period”.

Clause 319 provides that the credit card provider is liable for the payment of credit card duty.

Clause 320 sets the rate of credit card duty imposed on credit card transactions. Clause 320(a) sets the rate for prescribed credit card providers. Clause 320(b) sets the rate for other credit card providers.

Clause 321 provides the base on which credit card duty shall be assessed.

Clause 322 states that credit card providers who carry on business in Queensland must be registered under Chapter 12, Part 1, and prescribes a penalty for failure to do so.

Clause 323 states what a registered credit card provider must do if it has a liability to credit card duty for a month in a return period. In that case, the registered credit card provider must lodge a return together with payment of credit card duty, assessed interest and penalty tax.

Clause 324 applies if an unregistered credit card provider has a liability to credit card duty for a month. Clause 324(2) states what a credit card provider must do in these circumstances.

CHAPTER 7—HIRE DUTY

Chapter 7 imposes duty on a hire of goods. Hire duty is imposed on the hiring charges for a hire of goods. Duty is imposed where the goods are solely or predominantly used in Queensland. Goods are predominantly used in Queensland if they are used more in Queensland than any other State. Special rules apply for motor vehicles and goods that are not used solely or predominantly in any particular Australian jurisdiction.

Part 1 Preliminary

Clause 325 imposes duty on a hire of goods. Clause 323(1) sets out what hires of goods attract hire duty. Clause 323(2) states that hire duty is imposed on the hiring charges for the hire of goods.

Clause 326 limits the application of Chapter 7 to a hire of goods that are solely or predominantly used in Queensland during any period for which a liability to hire duty arises. Clause 326(2) and (3) clarify which State a motor vehicle is taken to be used in. Clause 326(4) states that goods are taken to be predominantly used in Queensland if initially delivered in Queensland and not otherwise used solely or predominantly in any particular Australian jurisdiction. Clause 326(5) clarifies the meaning of "predominantly used in Queensland".

Part 2 Some basic concepts for hire duty

Clause 327 defines “goods”.

Clause 328 defines “hire of goods”. Under clause 328(2) certain items are excluded from the definition. Clause 328(3) lists the 3 kinds of hire of goods being a credit purchase agreement, an equipment financing arrangement, and an ordinary hire of goods.

Clause 329 defines “credit purchase agreement”.

Clause 330 defines “equipment financing arrangement”.

Clause 331 defines “hire-purchase agreement”. Clause 331(2) states that a hire-purchase agreement may be constituted by 2 or more agreements none of which by itself constitutes a hire-purchase agreement. Clause 331(3) excludes a particular type of agreement from the definition.

Clause 332 defines “hiring charges”. Clause 332(2), (3) and (4) extend the definition to include certain other payments, fees and charges. Clause 332(5) excludes exempt payments from the definition.

Clause 333 defines “exempt payment”. Clause 333(2) extends the payments that will be treated as an exempt payment in respect of credit purchase agreements and hire-purchase agreements.

Clause 334 defines “commercial hirer”.

Part 3 Liability for hire duty

Clause 335 clarifies who is liable to pay hire duty.

Clause 336 sets the rate of hire duty.

Clause 337 provides for a credit if duty is paid on the hire under a corresponding Act.

Part 4 Obligations of parties to hire of goods

Clause 338 requires a hirer of goods to advise the person who hires out the goods of certain information. Under clause 338(1) a hirer of a motor vehicle under an equipment financing arrangement must advise where the motor vehicle is or will be registered. Under clause 338(2) a hirer of other goods must advise where the goods will be or are intended to be solely or predominantly used. Under clause 338(3) the hirer must advise of any changes to this information within 30 days after the change.

Clause 339 allows a person who hires out goods to rely on information given by the hirer under clause 339(1) or (2). Under clause 339(4) the

Commissioner can assess or reassess hire duty if this information changes or was incorrect.

Part 5 Arrangements applying to commercial hirers

Clause 340 requires a commercial hirer who carries on business in Queensland to be registered under Chapter 12, Part 1 of the Bill.

Clause 341 clarifies what the hire duty is assessed on for a commercial hirer. Clause 341(2) through to clause 341(7) allows the Commissioner to approve a different base for assessment of hire duty in certain circumstances.

Clause 342 states that a commercial hirer is not liable to hire duty in certain circumstances. Clause 342(2) explains what the amount of hiring charges will be where the commercial hirer carries on business in a Commonwealth place.

Clause 343 requires a commercial hirer who is liable to hire duty for a month in a return period to lodge a return and pay hire duty, any assessed interest and penalty tax.

Clause 344 explains what a commercial hirer who is unregistered must do if they are required to be registered and have a liability to hire duty for a month.

Part 6 Arrangements applying to other persons

Clause 345 states that Chapter 7, Part 6 applies to a person other than a commercial hirer who hires out goods under a hire of goods with total hiring charges of at least $1000.

Clause 346 sets out the requirement for the person to lodge the instrument for the hire of goods with the Commissioner.

Clause 347 provides that for imposing duty for Chapter 7, Part 6 a hire agreement for an indefinite period is taken to be a hire of goods for 3 years.

Clause 347(2) provides, on application by the person hiring out the goods, for a reassessment of duty on the basis of the actual period the goods were hired for where the hire of goods ends within 6 months after entry into it.

Part 7 Exemptions for hire duty

Clause 348 exempts certain credit purchase agreements from hire duty.

CHAPTER 8— INSURANCE DUTY

Chapter 8 imposes duty on contracts of general insurance, life insurance and accident insurance. Insurance duty is imposed on the insurance premiums charged under contracts of general insurance, life insurance and on the net premiums charged for accident insurance.

Part 1 Preliminary

Clause 349 specifies that insurance duty is payable on the following

- the premiums of a contract of insurance that effects general insurance;
- the premiums for the insurance or the sum insured (depending on the type of insurance) of a contract of insurance that effects life insurance; and
- the net premiums charged for accident insurance.

Part 2 Some basic concepts for insurance duty

Clause 350 defines “general insurance”.

Clause 351 defines “life insurance”.

Clause 352 defines “accident insurance”.

Clause 353 defines “premium”. Clause 353(3) states that it is immaterial where the amount is paid or where the insurance is effected.

Clause 354 specifies who is a “general insurer”.

Clause 355 specifies who is a “life insurer”.

Clause 356 defines “net premiums charged”.

Part 3 Liability for insurance duty

Clause 357 specifies who is liable to pay insurance duty imposed on general insurance, life insurance and accident insurance.

Clause 358 states when insurance duty on a contract that effects general insurance is payable.

Clause 359 clarifies when the premium is paid in relation to a contract that effects general insurance.

Clause 360 states when insurance duty on a contract that effects life insurance is payable.

Clause 361 states when insurance duty on accident insurance is payable.

Clause 362 provides the rates of insurance duty imposed on a premium for general insurance, a premium for CTP insurance and net premiums charged for accident insurance.

Clause 363 provides the rate of insurance duty imposed on a contract of life insurance that effects temporary or term insurance. Clause 363(2) provides the rate of insurance duty imposed on other contracts of life insurance.

Part 4 Apportionment of premiums

Clause 364 specifies the application of Chapter 8, Part 4, Division 1 to certain contracts of insurance. Clause 364(1) applies to a contract of general insurance that insures property, or relates to a risk, contingency or event about an act that may happen, both inside and outside Queensland. Clause 364(2) applies to a contract of life insurance that insures lives, or relates to a contingency or event dependant on lives where those lives are both inside outside Queensland.

Clause 365 clarifies the purpose of the Division to provide a method of apportionment of premiums for insurance to avoid double duty.

Clause 366 provides that a regulation may state how premiums for insurance are to be apportioned. Clause 366(2) states that a premium or part of a premium must be apportioned under the regulation. Clause 366(3) specifies the circumstances in which the Commissioner may apportion a premium or part of a premium on another basis.

Clause 367 provides that the Commissioner must make a reassessment of insurance duty if the Commissioner is not satisfied that a premium paid for a contract of insurance effecting different types or classes of insurance has been properly apportioned for assessing insurance duty. This clause also states the basis on which the reassessment is to be made.

Clause 368 specifies the circumstances where the Commissioner may apportion part of the total premiums payable with respect to 2 or more policies of insurance.

Part 5 Arrangements applying to general insurers, life insurers and WorkCover Queensland

Clause 369 provides that a general insurer or life insurer must not carry on business in Queensland unless the insurer is registered.

Clause 370 details the obligations of a registered general insurer who has an insurance duty liability for a return period to lodge a return and pay the insurance duty and any assessed interest and penalty tax for which it is liable prior to the return date.

Clause 370(2) details the obligations of a registered life insurer who has an insurance duty liability for a return period to lodge a return and pay the insurance duty and any assessed interest and penalty tax for which it is liable prior to the return date.

Clause 370(3) specifies when an insurer will be entitled to a credit of insurance duty paid.

Clause 370(4) details the obligations of WorkCover Queensland (if WorkCover Queensland has an insurance duty liability for a return period) to lodge a return and pay the insurance duty and any assessed interest and penalty tax for which it is liable prior to the return date.

Part 6 Arrangements applying to other persons

Clause 371 clarifies when Chapter 8, Part 6 will apply. It applies where a person other than a registered general insurer or registered life insurer effects or renews general or life insurance.

Clause 372 details the obligations of the person with respect to the lodgement of a statement and the payment of insurance duty.

Part 7 Exemptions for insurance duty

Clause 373 provides an exemption from insurance duty for a contract of insurance for the physical loss or damage to the hull of a boat used primarily for commercial purposes.

Clause 374 provides an exemption from insurance duty for a contract of insurance for the physical loss or damage to goods in transit or for the loss of freight of goods in transit.

Clause 375 provides an exemption from insurance duty for a contract of insurance entered into in the course of an insurer's health insurance business as defined under the *National Health Act 1953 (Cwlth).*

Clause 376 provides an exemption from insurance duty for a contract of reinsurance between one insurer and another insurer.

CHAPTER 9—VEHICLE REGISTRATION DUTY

Chapter 9 imposes duty on applications to register a vehicle and applications to transfer a vehicle under the *Transport Operations (Road Use Management) Act 1995.* Duty is imposed on the dutiable value of a vehicle where there is an:

- application to register a vehicle if the vehicle is not registered in Queensland; and
- application to transfer the registration of a vehicle if the person in whose name the vehicle is to be registered is different from the person in whose name the vehicle is registered.

Part 1 Preliminary

Clause 377 states that Chapter 9 imposes duty on an application to register a vehicle or to transfer a vehicle. It further states that the vehicle registration duty is imposed on the dutiable value of the vehicle.

Part 2 Some basic concepts for vehicle registration duty

Clause 378 states what the "dutiable value" of a vehicle is. Clause 378(1) explains the dutiable value of a vehicle that has not previously been registered. Clause 378(2) explains the dutiable value of a vehicle that has previously been registered.

Clause 379 defines the term "market value" of a vehicle. The term is mentioned in Clause 379(2) in relation to the dutiable value of a vehicle that has previously been registered.

Part 3 Liability for vehicle registration duty

Clause 380 states who is liable to pay the vehicle registration duty. Clause 380(1) provides it is the applicant who is liable for the duty payable on an application to register a vehicle. Clause 380(2) says it is the transferee and the transferor who are liable for the duty payable on an application to transfer a vehicle.

Clause 381 states that the vehicle registration duty must be paid when the application to register or transfer a vehicle is made.

Clause 382 deems the Commissioner to have made an assessment of vehicle registration duty on the making of an application to register or transfer a vehicle. Clause 382(2) provides that the liability for vehicle registration duty on an application is the amount worked out by applying the rate of vehicle registration duty to the dutiable value of the vehicle stated in the application.

Clause 383 sets the rate of vehicle registration duty imposed on an application to register or transfer a vehicle.

Clause 384 provides for a reduction in the vehicle registration duty calculated under clause 383. Clause 384(1) sets out the conditions that must be satisfied if a reduction is to be made. Clause 384(2) sets out the formula for calculating the amount of the reduction. Clause 384(3) provides that the reduction can not be more than the vehicle registration duty calculated under clause 383.

Part 4 Exemptions for vehicle registration duty

Clause 385 provides an exemption from vehicle registration duty for an application to register a vehicle in certain circumstances. For the exemption contained in this clause to apply, the vehicle must have been previously registered in Queensland with the current applicant being the same person in whose name the vehicle had been registered.

Clause 386 provides an exemption from vehicle registration duty for an application to register a vehicle in certain circumstances. Clause 386(1) states that for this exemption to apply the vehicle must be currently registered in another State or Territory with duty paid in that other State or Territory in respect of registration of the vehicle. Clause 386(2)-(4) qualifies whom the applicant must be for this exemption to apply.

Clause 387 provides an exemption from vehicle registration duty for an application to register certain heavy vehicles.

Clause 388 provides an exemption from vehicle registration duty for an application to register or transfer a vehicle where:

- the vehicle is registered in a business name, either in Queensland or another State;
- duty has been paid on the registration, either in Queensland or the other State; and
- the vehicle is subsequently registered in the names of the owners of the business or the name of another business owned by all the owners.

Clause 389 provides an exemption from vehicle registration duty for an application to register a vehicle in the name of, or transfer a vehicle to, a vehicle dealer if the vehicle is acquired as trading stock or for use as a demonstrator.

Clause 390 provides an exemption from vehicle registration duty for an application to register a vehicle in the name of, or transfer a vehicle to, particular persons and entities. The exemption extends to an application to transfer an interest in a vehicle to particular persons.

Clause 391 provides an exemption from vehicle registration duty for an application to register or transfer a vehicle pursuant to a forfeiture order under the *Crimes (Confiscation) Act 1989* and the *Drugs Misuse Act 1986*.

Clause 392 provides an exemption from vehicle registration duty for an application to register a vehicle in the name of, or transfer a vehicle to, an organisation under the *Industrial Relations Act 1999*.

Clause 393 provides an exemption from vehicle registration duty for an application to register or transfer a vehicle that is being disposed of under certain Acts.

Part 5 Reassessments for vehicle registration duty

Clause 394 provides for reassessment of vehicle registration duty where, within 5 years of an exemption under clause 390(i) being given, a primary producer disposes of a vehicle or starts using the vehicle other than in the business of primary production.

Clause 395 provides for a refund of vehicle registration duty in certain circumstances. A refund must be made if the Commissioner is satisfied that a vehicle is repossessed from a person because the vehicle was stolen before it was acquired by the person, or where the transaction is cancelled.

An application for a refund under this clause must be made within 1 year of the application to register or transfer the vehicle.

Part 6 Miscellaneous provisions

Clause 396 imposes certain obligations on vehicle dealers to keep records and to provide a statement to the purchaser of a certain vehicles. Failure to comply with the obligations is an offence.

CHAPTER 10— GENERAL EXEMPTIONS

Part 1 Exemptions for particular duties for corporate reconstruction

Transfer duty applies, with limited exceptions, to transfers of property from one person to another. In cases of transfers between members of a corporate group, the transfers are often undertaken for the purpose of re-organisations within the corporate group. The most common reasons for undertaking a corporate reconstruction include to:

- align business operations to the relevant legal entity;
- improve the balance sheet of a subsidiary seeking finance;
- respond to structural changes by a foreign parent;
- remove expensive antiquated structures in complex groups;
- merge business operations and legal entities following a takeover; and
- facilitate disposal of an asset or business.

Chapter 10, Part 1 provides relief from transfer duty on transfers of shares and certain property upon a corporate reconstruction. However, relief is not provided where the purpose of the corporate reconstruction is to facilitate the disposal of a particular asset or business.

Clause 397 explains that the purpose of Part 1 is to provide concessions from particular duties for certain transactions carried out for a corporate reconstruction.

Division 2 sets out basic concepts about the exemption for corporate reconstructions including the meaning of key terms such as corporate reconstruction, company, group companies, corporate group, parent company and subsidiary.

Clause 398 provides a definition of "corporate reconstruction". This term is defined so as to relate to a series of transactions, which viewed as a whole, change a corporate structure to make internal adjustments to corporate arrangements. The transactions must not be for an extraneous purpose, or be part of an arrangement where any company involved in the reconstruction ceases to be a member of the group. The conditions contained in the definition apply to all exemptions available under this Part. In particular, the requirement that the transaction is not part of an arrangement where the companies cease to be associated applies to the exemption for interposing a new parent company under clause 405. Unless a transaction is undertaken for a corporate reconstruction as defined, the exemptions will not apply.

Under clause 398(2), a transaction, which is part of a series of transactions, will not fail to give effect to the purpose of a corporate reconstruction if it is undertaken merely because it is necessary for the exemption to apply. While this provision allows some flexibility in satisfying the definition of corporate reconstruction, it does not override the essential requirements set down in clause 398(1)(a) and (c).

Clause 399 provides a definition of "company" which includes companies created by statute.

Clause 400 provides definitions for "group companies", a "group company" and a "corporate group".

Clause 401 provides a definition of a "parent company". A parent company for the purposes of Part 1 is a company that must own at least 90% of the issued shares in the other company and have voting control over the other company.

Clause 402 defines a "subsidiary" for the purposes of Part 1. The definition does not reflect the usual meaning given to a subsidiary under the *Corporations Act* and requires at least 90% of the issued shares of the relevant company to be owned by another company.

The definitions contained in Division 2 ensure that in certain cases companies are grouped if there is sufficient common ownership of the companies (although no direct relationship between them), and therefore transfers of property may occur between them. This will facilitate direct transfers of property between group companies.

Clause 403 notes that Schedule 5 contains an example of the operation of the relevant definitions.

Clause 404 expands the operation of the exemption contained in clauses 406 and 407 by requiring certain instruments and transactions to be treated as a transfer or agreement for the transfer of dutiable property. The parties to each of these transactions are also taken to be the transferee or transferor as the case may be. This enables the conditions attaching to the exemption to be applied for these dealings.

Clause 405 sets out the exemption and the conditions for the exemption for interposing a company between existing companies and their shareholders. The exemption allows the interposition of a shelf company or a company incorporated for another purpose provided it has not been active since incorporation.

Clause 405(4) contemplates the interposition of the same new parent company between more than one existing company and their shareholders. In these cases, it is necessary for the same shareholders to have owned at least 90% of the issued shares in and had voting control of each of the existing companies.

Clause 406 exempts the transfer, or agreement for the transfer, of dutiable property carried out for a corporate reconstruction from the imposition of transfer duty and vehicle registration duty. Clause 406(2) sets out the conditions that must be complied with to obtain the benefit of the exemption. These conditions are the gatekeeper to the availability of the exemption. Recognition is given in clause 406(2)(c)(ii) and (3) that funds for payment of the consideration may be obtained from a financial institution on ordinary commercial terms or under an offer and sale of shares to the public in the circumstances mentioned in 412(4)(b).

The condition contained in clause 406(2)(d) requires that the property transferred under the transaction be, at the time of the transfer, group property.

Clause 407 sets out when property is "group property". Clause 407(1)(a) and (b) sets out particular circumstances where property will be group property if the companies have been group companies prior to the property being owned by a group member. Under these provisions it is necessary for this association test to be satisfied in relation to either the entire property or an interest of at least 90% in the property. The 90% test refers to the actual ownership of, or interest held in, the property being transferred and is to be applied to each individual asset being transferred under the transaction or series of transactions.

Example

*The following properties are transferred under a corporate reconstruc*tion.

	% post-association property	*Total value of property ($m)*	*Post-association value of property ($m)*
Transfer 1	*100*	*120*	*120*
Transfer 2	*100*	*100*	*100*
Transfer 3	*100*	*80*	*80*
Transfer 4	*85*	*180*	*153*
Transfer 5	*80*	*140*	*112*
Total	***465***	***620***	***565***

Transfers 1, 2 and 3 would satisfy the group property test and be exempt from duty. Transfers 4 and 5 would not satisfy the test and transfer duty would be imposed on these.

Under the "group property" definition, an exemption is also available for transfers of pre-association property in certain circumstances. These circumstances include where:

- the transferee is the parent company of the transferor and land rich duty was paid in Queensland when they became grouped in this way;
- the transferee is the parent company of the transferor and at least 70% of the transferor's shares were acquired by way of a takeover bid; or
- the companies have been group companies for 3 years.

In these circumstances, it is recognised the transfers are occurring for genuine commercial reasons rather than to minimise transfer duty on the acquisition of property.

Further, for determining whether property is post-association property and therefore able to be transferred exempt from duty, regard may be had to the time when a group company paid transfer duty to first acquire the

property, regardless of whether that duty was paid in Queensland or another jurisdiction.

Clause 408 specifies the limited circumstances where exemption will be available for transactions involving trust property. Corporate reconstruction relief is not available for transfers of trust property by a trustee of a discretionary trust.

Clause 409 provides an exemption from land rich duty in circumstances where the transfer or agreement for transfer is exempt from transfer duty under these provisions and the transaction is also a relevant acquisition under Chapter 3, Part 1.

The exemption provided is only available to the extent of the interest acquired by the new parent company or transferee under the relevant dutiable transaction. In circumstances where there is a relevant acquisition because of the aggregation of interests acquired by related persons, the relevant acquisition will only be exempt to the extent of the interest acquired directly by the transferee. Land rich duty will continue to be payable in relation to the interests acquired by the related persons in the transaction, unless they qualify for exemption themselves under these or other provisions.

Clause 410 provides a company that is proposing to transfer dutiable property with the ability to obtain an advance private ruling from the Commissioner as to whether the transfer will be exempt from duty under the corporate reconstruction provisions. The clause also sets out the process for applying for a private ruling.

Clause 411 sets out the process for applying for an exemption under the corporate reconstruction provisions and when the Commissioner is bound by a private ruling previously obtained.

Clause 412 sets out the circumstances in which a transaction that has been assessed on the basis of an exemption under Part 1 will be reassessed. A reassessment will occur if the relevant companies have ceased to remain group companies for 3 years or any part of the consideration for the transaction has been provided or received in contravention of the conditions set out in clause 406.

Exceptions to reassessment apply where:

- one of the companies has been deregistered under the Corporations Act. However, if the deregistration has occurred under an arrangement to avoid the 3 year association test, a reassessment will still occur;

- one of the companies, or a new parent company interposed between the transferee and transferor, has been floated to the public and listed on a recognised stock exchange within 1 year after the public offer; or
- less than 5% of the property of the company that has ceased to be a group company is dutiable property.

These limitations on reassessments recognise that in these circumstances, the transfers are occurring for genuine commercial reasons rather than to minimise transfer duty on the disposal of property outside of the group.

Clause 413 requires the parties to the transaction to give notice to the Commissioner if an event requiring reassessment happens within 3 years after the exemption was granted.

Part 2 Exemptions for particular duties for exempt institutions

Chapter 10, Part 2 provides exemptions from duty for particular institutions. These institutions are those that are registered as exempt institutions under Chapter 12, Part 4.

Clause 414 provides the exemption for exempt institutions from duty for particular transactions and instruments. The exemptions are only available where the institution complies with certain use requirements.

Clause 415 sets out the use requirements for exempt institutions. To comply with the requirements, the property acquired, leased, insured by, held on trust for, or an advance to an exempt institution must be used solely or almost solely for a "qualifying exempt purpose" as defined in the clause. Clause 415(2) provides that the property or advance will not be used for a qualifying exempt purpose where it is used or made for an employee's or officer's salary package.

Clause 416 sets out the timing rules for the start of the use requirements under clause 413 and the duration period of use.

Clause 417 permits the Commissioner to extend the start date and duration period in certain circumstances.

Clause 418 provides for reassessment of duty where duty has been imposed because when the transaction occurred or the instrument was entered into it was expected that the use by the exempt institution would not comply with the use requirements under Part 2, Division 2. Clause 418(2) provides that on application by the exempt institution, where the

Commissioner is satisfied that the use requirements have been complied with, the Commissioner must make a reassessment on the basis of compliance with the requirements.

Clause 419 is the corollary to clause 418 and provides for reassessments where an exemption was allowed on the basis of compliance with the use requirements and the exempt institution does not comply with those requirements. Under clause 419(2) the exempt institution is required to give the Commissioner notice of the non-compliance. Under clause 419(3) the Commissioner must make a reassessment to impose duty as if the exemption had never applied.

Part 3 Exemptions for matrimonial and de facto relationship instruments

Chapter 10, Part 3 provides exemptions for particular transfers of property on breakdown of a marriage or a de facto relationship.

Clause 420 lists the instruments which provide for the transfer of matrimonial property from one party to a marriage to the other party to the marriage and which are defined as “matrimonial instruments”. An instrument will not be a matrimonial instrument if it provides for the transfer of property to or from someone other than a party to the marriage.

Clause 421 defines “matrimonial property”.

Clause 422 defines “de facto relationship instrument” as an instrument that provides for the transfer of de facto relationship property from one de facto spouse of a de facto relationship to the other de facto spouse of the de facto relationship. An instrument will not be a de facto relationship instrument if it provides for the transfer of property to or from someone other than a party to the de facto relationship.

Clause 423 defines “de facto relationship property”.

Clause 424 provides an exemption from duty on a transaction to the extent that the transaction gives effect to a matrimonial instrument or a de facto relationship instrument.

Clause 425 provides for a reassessment of duty and refund where duty has been paid on a transaction to the extent that the transaction gave effect to an instrument for the transfer or agreement for the transfer of either matrimonial property (from one party to a marriage to the other party) or de facto relationship property (from one de facto spouse to the other). It applies where the duty was assessed on the basis that the instrument was either not a matrimonial instrument or a de facto relationship instrument

(as the case may be) and the instrument was actually either a matrimonial instrument or de facto relationship instrument at the time the duty was paid, or the instrument became a matrimonial instrument or de facto relationship instrument after the duty was paid.

The reassessment is made on application by a party to the marriage or one of the de facto spouses. Clause 425(3) specifies the time period in which the application for a reassessment of duty must be lodged.

Part 4 Other exemptions

Clause 426 provides an exemption from liability to pay duty to the State (subject to certain provisions of the Bill).

Clause 427 provides an exemption from duty for an instrument or transaction for a vesting of property in an incorporated association under the *Associations Incorporation Act 1981*.

Clause 428 provides an exemption from duty on specified transactions under the *Gas Pipelines Access (Queensland) Act 1998.*

Clause 429 provides an exemption from duty for certain transactions entered into or made by the Queensland Housing Commission under the *State Housing Act 1945*.

Clause 430 provides an exemption from duty for specified transactions under the following legislation.

- *Anzac Square Development Project Act 1982;*
- *Government Owned Corporations Act 1993;*
- *Ipswich Trades Hall Act 1986;*
- *Local Government Act 1993;* and
- *River Improvement Trust Act 1940*.

Clause 431 provides an exemption from duty for a transaction or instrument entered into or made by the Queensland Investment Corporation established under the *Queensland Investment Corporation Act 1991.*

CHAPTER 11—AVOIDANCE SCHEMES

Chapter 11 is a general anti-avoidance chapter that operates to deter artificial, blatant and contrived schemes that are designed to obtain duty benefits by taking advantage of the provisions of the Bill in circumstances other than those intended.

The Chapter allows the Commissioner to make any such scheme ineffective where it is concluded that the scheme was entered into or carried out for the sole or dominant purpose of an entity obtaining a duty benefit. Where the Chapter applies the Commissioner may disregard a duty benefit arising from such a scheme.

Clause 432 sets out the purpose of Chapter 11 to deter artificial, blatant or contrived schemes to reduce liability to duty.

Clause 433 sets out the requirements for the application of Chapter 11. There are 3 requirements as follows.

Requirement 1: there must be a scheme entered into after the commencement of the Bill (clause 433(1)(a)). "Scheme" is defined in the Dictionary at Schedule 6 of the Bill.

Requirement 2: an entity (the avoider) must get a duty benefit not attributable to an exemption or concession under the Bill (clause 433(1)(a) and (1)(b))

Requirement 3: the purpose of the scheme was to obtain a duty benefit (clause 433(1)(c)).

Clause 433(2) provides that the fact that any part of the scheme was entered into or carried out outside Queensland or that the duty benefit obtained is not the same kind of benefit sought to be obtained under the scheme does not matter.

Clause 434 sets out when a duty benefit is obtained and the amount of a duty benefit.

Clause 435 sets out the matters to be taken into account in coming to a reasonable conclusion under clause 433(1)(c) about an entity's purpose in entering into or carrying out a scheme. For the purposes of the test, the entity whose purpose is being determined need not be the entity that obtained the duty benefit. There are 10 matters to be considered as follows

- the way in which the scheme was entered into or carried out. (clause 435(1)(a))

- the form and substance of the scheme. (clause 435(1)(b)) This includes the legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme. Both of these issues will be important for considering the purpose of the scheme.
- when the scheme was entered into and the length of the period during which the scheme was carried out. (clause 435(1)(c))
- the purpose of the Bill or a provision of the Bill. As benefits derived under avoidance schemes are contrary to the purpose of the law, the purpose of the law is a relevant consideration. (clause 435(1)(d))
- the effect that the Bill would have on the scheme apart from Chapter 11. (clause 435(1)(e))
- any change in the avoider's financial position where the change has or will or could be expected to result from the scheme. (clause 435(1)(f))
- any change in the financial position of any person who has had a connection with the avoider where the change has or will or could be expected to result from the scheme. (clause 435(1)(g))
- any other consequences for the avoider or a person mentioned in clause 435(1)(g). (clause 435(1)(h))
- the nature of the connection between the avoider and a person mentioned in clause 435(1)(g). This will include whether any dealing between them was at arm's length. (clause 435(1)(i))
- the circumstances surrounding the scheme. This ensures that any relevant matter not otherwise covered is taken into account (clause 435(1)(j).

Clause 435(2) provides that the matters apply to parts of a scheme in the same way as they apply to a scheme.

Clause 436 provides that where an avoider has obtained a duty benefit from a scheme the Commissioner may decide the amount of the duty benefit is payable as duty. The Commissioner may also decide what type of duty the duty benefit is payable as. Under clause 436(2) the Commissioner is required to give notice of the decision, including the reasons for it, to the avoider and to make an assessment of duty on the basis of the decision. An assessment will include a reassessment.

Clause 436(3) and (4) provide that where the Commissioner has made an assessment under clause 436(2) for an avoider, and is satisfied another person is liable to duty that would not have been assessed if the scheme had not been entered into or carried out, he must make a reassessment for that other person on the basis that the amount, or part of the amount, of duty is not payable where it would be fair and reasonable that the amount should not have been assessed.

CHAPTER 12—REGISTERED PERSONS

Chapter 12 deals with registration of persons. Persons may be registered to carry on a particular business, be registered as self-assessors, or be registered as exempt institutions. Chapter 12 also deals with returns and reassessments for self-assessors who are parties to the transactions or instruments and self-assessors who are agents of the parties. In addition, Chapter 12 deals with suspension and cancellation of the registration of registered persons.

Part 1 Registration of persons carrying on particular businesses and their registration as self assessors

Clause 437 allows persons to apply for registration, in the approved form, to carry on business as a credit provider, credit card provider, general or life insurer, or as a commercial hirer.

Clause 438 states that any person whose application to carry on a business is approved by the Commissioner must be registered to carry on the business.

Clause 439 requires any person registered to carry on a business to also be registered as a self assessor for duty on instruments or transactions to which it is or becomes a party for carrying on the business.

Clause 440 states that the Commissioner must give a person notice of the person's registration to carry on a business and as self assessor. Also, it sets out the requirements for the contents of this notice.

Part 2 Registration of parties to instruments and transactions as self assessors

Clause 441 allows a person who is or becomes a party to instruments or transactions to apply for registration, in the approved form, as a self assessor for the duty on those instruments or transactions.

Clause 442 requires any application made for registration as a self-assessor by a person who is or becomes a party to instruments or transactions to be either approved or refused by the Commissioner.

Clause 443 states that any person whose application for registration as a self assessor for duty on instruments or transactions to which the person is or becomes a party is approved by the Commissioner must be registered as a self assessor.

Clause 444 allows the Commissioner to give notice to a person of registration as a self assessor for duty on instruments or transactions to which the person is or becomes a party without application being made.

Clause 445 states that the Commissioner must give a person notice of the person's registration as a self assessor for duty on instruments or transactions to which the person is or becomes a party. Also, it sets out the requirements for the contents of this notice.

Clause 446 requires the Commissioner to give an information notice for any decision to refuse an application for registration as a self assessor by a person that is or becomes a party to instruments or transactions.

Clause 447 provides that where a registered person has been required under the notice of registration to lodge returns for particular instruments or transactions, the person must not lodge instruments or transactions of that type with the Commissioner for assessment. However, this provision is subject to the provisions contained in the *Taxation Administration Bill 2001* dealing with the circumstances where the Commissioner will make an assessment for these types of instruments.

Part 3 Registration of agents as self assessors

Clause 448 allows a person who, in the ordinary course of business, acts as agent for parties to instruments or transactions to apply for registration, in the approved form, as a self assessor for duty on those instruments or transactions.

Clause 449 requires any application for registration as a self assessor by a person who acts as agent for parties to instruments or transactions to be either approved or refused by the Commissioner.

Clause 450 states that a person who acts as agent for parties to instruments or transactions that is approved to be registered as a self assessor must be registered as a self assessor.

Clause 451 allows the Commissioner to give notice of registration as a self assessor to a person who acts as agent for parties to instruments or transactions on which duty is imposed without application being made.

Clause 452 states that a person who acts as agent for parties to instruments or transactions on which duty is imposed that is registered as a self assessor must be given notice of its registration by the Commissioner. Also, it sets out the requirements for the contents of this notice.

Clause 453 requires the Commissioner to give an information notice for any decision to refuse an application for registration as a self assessor by a person who acts as agent for parties to instruments or transactions on which duty is imposed.

Clause 454 provides that where a registered person has been required under the notice of registration to lodge returns for particular instruments or transactions, the person must not lodge instruments or transactions of that type with the Commissioner for assessment. Again, this provision is subject to the provisions contained in the *Taxation Administration Bill 2001* dealing with the circumstances where the Commissioner will make an assessment for these types of instruments.

Part 4 Returns and reassessments by self assessors

Clause 455 imposes requirements on self assessors who are parties to a transaction or instrument or are agents for parties to a transaction or instrument. The requirements are to lodge returns; pay duty, interest and penalty tax; and endorse instruments. An offence is committed for non-compliance. Directions on how to endorse the instruments are given in clause 455(2). Pursuant to clause 455(3), self assessors who are agents are exempted from the requirements if the self assessor has not received payment of the duty and any assess interest and penalty tax from the person liable to pay it.

Clause 456 sets out the circumstances under which a self assessor is permitted to make reassessments.

Part 5 Registration of exempt institutions

Clause 457 allows an institution to apply to be registered as an exempt institution. It also sets out how the application is to be made and what information must be provided.

Clause 458 requires any application made to be registered as an exempt institution to be either approved or refused by the Commissioner.

Clause 459 clarifies when the Commissioner may register an institution as an exempt institution. Descriptions of the types of institution that the Commissioner can and cannot register as exempt institutions are set out in clause 459(2) to (5).

Clause 460 states the Commissioner must register an institution as an exempt institution if its application is approved.

Clause 461 requires the Commissioner to give an information notice for any decision to refuse an application for registration as an exempt institution.

Clause 462 allows the Commissioner, where he has refused an application, to state a later date when he will reconsider the application on the facts and circumstances known at the later date. Under clause 462(2), if the Commissioner is satisfied at the later date that the institution is entitled to be registered, then he must approve the application. Clause 462(3) sets out the date of registration.

Clause 463 states that an exempt institution must be given notice of its registration. Also, it sets out the requirements for the contents of this notice.

Part 6 Amendment, suspension and cancellation of registration of self assessors and exempt institutions

Clause 464 allows for amendment of a self assessor's registration by notice. Under clause 462(2) the notice must state the particulars of amendment.

Clause 465 sets out the grounds on which a self assessor's registration can be suspended or cancelled.

Clause 466 states that the Commissioner may give a show cause notice to a self assessor if it is believed that a ground exists to suspend or cancel the self assessor's registration. Clause 466(2) sets out requirements for the contents of the show cause notice. Clause 466(3) sets a show cause period of at least 21 days.

Clause 467 allows a self assessor to make representations about the show cause notice during the show cause period. It defines written representations as "accepted representations". Clause 467(2) requires the Commissioner to consider all accepted representations.

Clause 468 sets out what happens if, after considering all accepted representations, the Commissioner no longer believes grounds exist to suspend or cancel the self assessor's registration. Under clause 468(2) the Commissioner must not take any further action about the show cause notice. Under clause 468(3) the Commissioner must give notice that no further action is to be taken about the show cause notice.

Clause 469 sets out what happens if, after considering all accepted representations, or if there were no accepted representations, the Commissioner still believes a ground exists to suspend or cancel the self assessor's registration and believes suspension or cancellation of the self assessor's registration is warranted. If the action stated in the show cause notice was to suspend the self assessor's registration, the Commissioner can suspend the self assessor's registration pursuant to clause 469(3)(a). If the proposed action stated in the show cause notice was to cancel the self assessor's registration, the Commissioner can suspend or cancel the self assessor's registration pursuant to clause 469(3)(b). Under clause 469(4) the Commissioner must give an information notice for the decision. Clause 469(5) states when the decision to suspend or cancel is to take effect.

Clause 470 deals with what a self assessor registered under Chapter 12, Part 1 or 3 must do if it ceases to carry on the business for which it was registered. Under Clause 468(2) the self assessor, within 14 days of cessation, must give notice to the Commissioner in the approved form. Under clauses 470(3) and (4) the Commissioner must then give notice of cancellation of the self assessor's registration effective from the day stated in the notice. The day stated in the notice shall be the return date for the return period in which the Commissioner received notice.

Clause 471 provides for the cancellation of an exempt institution's registration where the exempt institution has ceased to exist, has ceased to be entitled to be a registered person or was registered due to a materially false or misleading representation or declaration. A note to the clause provides that if an assessment is made because of the decision to cancel the exempt institution's registration, the institution may object against the decision as part of an objection against the assessment.

CHAPTER 13—REVIEWS AND APPEALS

Chapter 13 provides a process for the review and appeal of certain decisions of the Commissioner made under Chapter 12 relating to registered persons and self-assessors.

The Chapter provides for the review of original decisions, being a decision of the Commissioner to:

- refuse an application to register a person as a self-assessor;
- amend, suspend or cancel a self assessor's registration; or
- require a self-assessor to pay a penalty amount.

The Commissioner may confirm the decision or set aside the decision and substitute another decision. The delegate who made the original decision must not decide the application. The Commissioner must give written notice of the review decision and the notice must state the reasons for the decision and the rights of appeal.

The Chapter further provides an appeal process for original decisions where an applicant for review is dissatisfied with the review decision.

Part 1 Reviews

Clause 472 provides that a dissatisfied person may apply for a review of an original decision. It sets out the time limits and processes for making such an application. The clause notes that objections and appeals against assessments of duty are dealt with in the *Taxation Administration Bill*.

Clause 473 clarifies the powers of the Commissioner in deciding a review application. Where a delegate of the Commissioner made the original decision that is the subject of the review application, the clause prevents that delegate from deciding the application.

Clause 474 requires the Commissioner to notify an applicant of the decision on the review application and their appeal rights.

Part 2 Appeals

Clause 475 provides that an applicant who is dissatisfied with the Commissioner's decision on a review application may appeal against the decision.

Clause 476 sets out the procedure for starting an appeal against the Commissioner's decision on a review application. Such appeals will be to the Magistrates Court nearest the place where the application for review was lodged.

Clause 477 limits the grounds of appeal to the Magistrates Court to the grounds of the relevant application for review, unless the Court orders to the contrary.

Clause 478 prescribes the procedures that apply to the Magistrates Court hearing an appeal against the Commissioner's decision on a review application. In hearing an application, the Court is not bound by the rules of evidence and may hear the appeal in court or in chambers

Clause 479 sets out the powers of the Magistrates Court in deciding an appeal against the Commissioner's decision on a review application. The Court may confirm the decision, set aside the decision and substitute another decision, or set aside the decision and return the issue to the Commissioner with the directions it considers appropriate. If the Court substitutes the decision, the substituted decision is taken to be a decision of the Commissioner.

CHAPTER 14—ENFORCEMENT AND LEGAL PROCEEDINGS

Chapter 14 is comprised of various offences, provisions regarding use of instruments in legal proceedings and administrative penalty provisions.

Clause 480 creates an offence for a self assessor to endorse an instrument unless the stamp duty and assessed interest and penalty tax have either been paid to the Commissioner or received by the self assessor.

Clause 481 creates an offence for a person other than a self assessor or an officer or employee of a self assessor to endorse an instrument.

Clause 482 imposes an obligation on a person acting on an instrument that has not been properly stamped to immediately give notice to the Commissioner and creates an offence if the notice is not given. Clause 480(2) provides that the offence does not apply if the person can prove that he or she did not know and could not have reasonably been expected to know that the instrument or transaction was liable to duty or that the instrument was not properly stamped.

Clause 483 creates an offence for a person to record in a register of interests in property, a transaction or instrument that effects or evidences the transaction which has not been properly stamped.

Clause 484 creates an offence for a person to enter into the records of a corporation or society, an instrument effecting or evidencing a dutiable transaction of a share or a right relating to a share, or a relevant acquisition under Chapter 3, Part 1 or 2, which has not been properly stamped.

Clause 485 creates an offence for a trustee or responsible entity of a unit trust to enter into the trust's records, an instrument effecting or evidencing a trust acquisition or trust surrender of units in a unit trust which has not been properly stamped.

Clause 486 clarifies that the right or title of a subsequent holder of a marketable security is not invalidated if the instrument effecting or evidencing a transaction relating to a share or a right relating to a share which has not been properly stamped, has been entered into the records of a corporation or society. Similarly the right or title of a transferee is not invalidated if an instrument effecting or evidencing a trust acquisition or trust surrender of units in a unit trust (other than a public trust unit) which has not been properly stamped, has been entered into the trust's records.

Clause 487 provides that an instrument that has not been properly stamped is not available for use at law or in equity and cannot be received in evidence in legal proceedings (other than criminal proceedings). Clause 487(2) sets out the circumstances in which a Court may receive in evidence an instrument that has not been properly stamped. Clause 487(3) sets out the circumstances when a Court may receive in evidence an unsigned copy of an instrument imposed with duty or which effects or evidences a transaction that is imposed with duty.

Clause 488 creates the following offences:

- for a self assessor not to lodge a return;
- for a self assessor to fail to pay any duty, assessed interest and penalty tax to the Commissioner upon lodgement of the return;
- for a self assessor to provide a return to the Commissioner which contains false or misleading information; and
- for a person to give the Commissioner false and misleading information about the dutiable value of a motor vehicle when making an application for registration or transfer of registration.

Clause 488(2) states that the Commissioner may, by notice, require the payment of a penalty for the offences created under this clause. Clause 488(4) provides that the Commissioner must give the person required to pay the penalty amount an information notice. Clause 488(5) allows the Commissioner to enter into arrangements for instalment payments of the penalty for the offences created under this clause. Clause 488(7) provides that this provision only applies to self assessors registered under Chapter 12, Part 2 or 3.

Clause 489 provides that if proceedings are commenced against any of the following:

- a self assessor who does not lodge a return;
- a self assessor who fails to pay any duty, assessed interest or penalty tax to the Commissioner upon lodgement of a return;
- a self assessor who provides a return to the Commissioner containing false or misleading information; or
- a person who gives the Commissioner false and misleading information about the dutiable value of a motor vehicle when making an application for registration or transfer of registration,

the self assessor or the person is not liable to pay a penalty.

Clause 489(3) provides that if a self assessor or person has paid a penalty and proceedings are subsequently commenced, the penalty shall be refunded. Clause 489(4) provides that if the Commissioner withdraws the proceedings, the self assessor or the person again becomes liable for a penalty.

CHAPTER 15—SIGNING AND STAMPING OF INSTRUMENTS

Chapter 15 explains when an instrument is first signed, when an instrument is properly stamped and the ways particular instruments can be stamped.

Clause 490 defines when an instrument is “first signed”.

Clause 491 defines when an instrument is “properly stamped”.

Clause 492 states the manner in which the Commissioner must stamp instruments in the following situations:

- where duty (and any assessed interest or penalty tax) is payable;
- where duty is not payable because of an exemption; and
- where duty is not payable for a reason other than the reason that an exemption is applicable to the instrument.

Clause 493 clarifies the manner in which an instrument or transaction is to be stamped where the duty imposed on that instrument or transaction is dependant on the payment of duty imposed on another instrument or transaction.

Clause 494 sets out the circumstances in which a copy of an instrument may be imposed with liability and stamped in the same way and manner as the original instrument.

Clause 495 provides that if the Commissioner receives an instrument that is not properly stamped, the Commissioner is to retain the instrument until the duty, assessed interest and penalty tax on the instrument is paid. Clause 495(3) states that where an instrument is lodged for a decision on whether the transaction or instrument is liable for duty and the transaction or instrument is not liable for duty, the Commissioner must keep the instrument until the fee imposed by the regulations has been paid. Clause 495(4) details the circumstances where the fee prescribed by the regulations may be waived.

CHAPTER 16—MISCELLANEOUS PROVISIONS

Chapter 16 contains various miscellaneous provisions that apply to all types of duty under the Bill.

Clause 496 states that if an instrument is lodged which does not contain all of the facts and circumstances affecting the liability of the instrument to duty, a statutory declaration stating the facts and circumstances is required to be lodged with the instrument. Clause 496(3) provides that the Commissioner is required to take the facts and circumstances in the statutory declaration into account when assessing the liability for duty on the instrument.

Clause 497 sets out the manner in which regard will be had to any duty previously paid or payable for transactions involving Commonwealth places if regard to such duty is required under the Bill.

Clause 498 provides that for the purposes of Chapters 2 and 3, the reference to property in Queensland or dutiable property includes shares in

a land rich corporation (Clause 498(1)) and shares in a corporate trustee or relevant corporation for a corporate trustee (Clause 498(4)) if the provisions contained in this clause are satisfied. Clause 498(2) details the manner in which the value of the shares in the land rich corporation will be calculated, if required. Clause 498(5) details the manner in which the value of the shares in the corporate trustee or relevant corporation for the corporate trustee will be calculated, if required.

Clause 499 sets out the situations in which a person is entitled to a reassessment of the duty paid on an instrument or a transaction effected or evidenced by an instrument where the conditions set out in the clause are satisfied. Clause 499(5) states the time period in which the application for a reassessment of the duty must be lodged.

Clause 500 provides for the application of the *Taxation Administration Bill* to particular decisions under the Bill. The purpose of the provision is to ensure that a taxpayer can seek review of certain decisions by the Commissioner not to make a reassessment in the taxpayer's favour.

Clause 501 contains rules for determining the value of consideration for instruments or transactions. In particular, it states that it does not matter whether consideration for an instrument or transaction has been paid or given or is required to be paid or given.

Clause 502 provides that, where the consideration payable under an instrument or transaction is contingent on a particular thing happening or not happening, duty will be paid on the highest amount payable on the instrument or transaction regardless of whether or not the particular thing has happened.

Clause 503 states that if an amount in an instrument or transaction is stated in a foreign currency, for the imposition of duty, the amount is to be converted into Australian dollars. The clause details the manner in which the amount is to be converted into Australian dollars.

Clause 504 provides an aggregate minimum value of $800 for the issued capital of a corporation or society.

Clause 505 states the manner in which the Commissioner can obtain a valuation of property or require evidence of the value of property when determining whether a person is liable for duty or a person's liability for duty. Clause 505(3) allows the Commissioner to recover the cost of the valuation from the person liable for the duty. Clause 505(4) allows the Commissioner to assess duty on the basis of the valuation or evidence of value obtained by the Commissioner.

Clause 506 provides a requirement to keep particular records. Clause 506(1) requires the trustee of a unit trust to keep an instrument that effects or evidences an acquisition or disposition of a unit in the trust. Clause 506(2) requires a corporation or society to keep an instrument that effects or evidences certain share transactions in the corporation or society.

Clause 507 provides that the Commissioner may approve forms for use under the Bill. In particular, under clause 507(2) a combined form for use under the Bill or another Bill may be approved.

Clause 508 provides that the Governor in Council may make regulations under the Bill.

CHAPTER 17—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

Chapter 17 deals with transition from the *Stamp Act 1894* to the *Duties Bill 2001.*

Firstly, the Chapter repeals the *Stamp Act 1894*. However, to ensure that the *Stamp Act 1894* continues to apply to instruments and transactions signed or entered into before the repeal, a savings provision is contained in Chapter 17 to that effect. Delegations are to continue in force for this purpose.

Secondly, the Chapter fixes commencement for the *Duties Bill 2001* by applying the Bill to instruments and transactions signed or entered into on or after the commencement day for Part 2 of Chapter 17.

Where transactions begin and end either before, or on or after, the commencement day and are unrelated, one or other of the *Stamp Act 1894* or *Duties Bill 2001* will apply. For example, the liability for duty of a instrument of transfer signed before the commencement day will be determined under the *Stamp Act 1894* while the *Duties Bill 2001* will apply to transactions that are transfers that occur on or after that day. However, there are many transactions and circumstances that straddle the commencement date. For example,

- transactions may commence before, and finish after, the commencement day;
- several transactions may occur, some before and some after the commencement day, which need to be taken into account together in working out stamp duty and duty;

- exemptions may be obtained before the commencement day which are conditional on something happening or not happening after the commencement day;
- an entitlement to a refund or adjustment of stamp duty paid under the *Stamp Act 1894* may arise after the commencement day.

Chapter 17 therefore contains savings and transitional provisions explaining how the *Stamp Act 1894* and the *Duties Bill 2001* apply in these cases. In most cases, one of the Acts will apply. In others, both may apply to different aspects of the overall transaction or circumstances.

While each case is governed by the relevant transitional provision, the general approach is as follows. The Stamp *Act 1894* applies to all elements of an overall transaction if liability first arose for the transaction under that Act. Examples are-

- agreements signed before the commencement day giving rise to a liability to conveyance or transfer stamp duty and transfers or other dealings relating to the agreement occurring after that day;
- a series of dispositions of units in a public unit trust which commence before the commencement day and which cause the trust to lose its public unit trust status after the commencement day;
- a conditional exemption obtained before the commencement day where disqualifying conditions arise after the commencement day.

The *Duties Bill 2001* applies where the liability first arises after the commencement day. However, it limited circumstances it will have application to transactions that occur before the commencement day. Examples are:

- transactions both before and after the commencement day may be taken into account in applying aggregation provisions, such as clause 29 and rich duty and corporate trustee duty provisions, if certain conditions are met;
- refunds or credits for stamp duty paid under the *Stamp Act 1894* may be allowed in an assessment of liability for certain transactions and instruments where a refund or credit entitlement would have arisen under the *Stamp Act 1984* after the commencement day if it had not been repealed;

- references in the Bill to certain transactions, events or payments can include those occurring before the commencement day.

Chapter 17 also eliminates unnecessary compliance costs by providing that taxpayer registrations under the *Stamp Act 1894*, such as registration for accounting for duty by returns, are effective for the purposes of the *Duties Bill 2001.* These provisions ensure that it is not necessary for taxpayers that are registered for various purposes under the *Stamp Act 1894* to seek re-registration under the *Duties Bill 2001.*

Part 1 Repeal of the Stamp Act 1894

Clause 509 repeals the *Stamp Act 1894*.

Part 2 Savings and transitional provisions

Clause 510 defines “commencement day”.

Clause 511 sets out the application of the *Duties Bill 2001*.

Clause 512 provides for the continued application of the *Stamp Act 1894* to instruments signed or transactions entered into before the commencement day.

Clause 513 provides that a delegation in force under the *Stamp Act 1894* immediately before the commencement day continues in force.

Clause 514 provides for the continued operation of section 54 of the *Stamp Act 1894* in relation to a contract or agreement for sale entered into before the commencement day. It deals with two situations, first where the transfer of the property to the transferee under the contract or agreement occurs on or after the commencement day for the *Duties Bill 2001.* The second situation is where the transferee under the contract or agreement is acting as agent for a person and the transfer to that person occurs on or after the commencement day for the Bill.

Clause 515 provides for the continued operation of the *Stamp Act 1894* in relation to a transfer by way of security of property (other than land) entered into before the commencement day where on or after the commencement day the transferee or their assignee acquires ownership of the property free from any interest of the transferor.

Clause 516 provides for the continued operation of section 54AD of the *Stamp Act 1894* in relation to a surrender or relinquishment of a statutory licence by its holder, or an agreement of the holder not to apply for an

extension of the licence entered into before the commencement day where on or after the commencement day the licence or an extension or a renewal or a fresh licence is granted. The clause provides that the *Stamp Act 1894* applies to the extension, renewal or grant.

Clause 517 provides for the continued operation of section 56B the *Stamp Act 1894* in relation to an agreement to dispose of units in a unit trust scheme entered into before the commencement day where the disposition of the units under the agreement is made on or after the commencement day. The clause provides that the *Stamp Act 1894* applies to the disposition.

Clause 518 provides for the aggregation of transactions under clause 30 of the *Duties Bill 2001* where one of the instruments was made or entered into before the commencement day. The instrument must be one within the meaning of section 53(1) of the *Stamp Act 1894* for the clause to apply. The effect of the clause is that clause 30 of the *Duties Bill 2001* may apply to aggregate a dutiable transaction that occurs on or after the commencement day with an instrument made or entered into before the commencement day that was dutiable under the *Stamp Act 1894* if the transaction and the instrument together form, evidence, give effect to or arise from what is substantially one arrangement.

Clause 519 provides that clause 32 of the *Duties Bill 2001* applies in relation to a retransfer of land where before the commencement day there was a transfer of the land by way of security to the transferor under the retransfer.

Clause 520 ensures that transfer duty under Chapter 2 of the *Duties Bill 2001* is not imposed on a transfer of property made for carrying into effect any distribution under a will or intestacy that occurs on or after the commencement day where stamp duty has been paid under the *Stamp Act 1894* on an agreement to convey or transfer property made for carrying into effect any distribution under a will or intestacy. This provision is needed because the exemption for transfer duty under the *Duties Bill 2001* has wider application than the equivalent exemption under the *Stamp Act 1894.*

Clause 521 applies where a unit trust is taken to be a public unit trust under section 56B of the *Stamp Act 1894* because it satisfies the spread of ownership requirements under that section and a disposition of a unit under that trust which is part of a series of transactions is not chargeable with duty. If a trust acquisition or trust surrender that is also part of the series is made on or after the commencement day which causes the trust to no longer satisfy the spread of ownership requirements, the provisions of the *Stamp Act 1894* will apply to the trust acquisition or surrender.

Clause 522 provides for the continued operation of the *Stamp Act 1894* in relation to the issue of units in a public unit trust scheme within the meaning of section 56B of the *Stamp Act 1894* during a start up period where that start up period ends on or after the commencement day and the disqualifying circumstances set out in clause 71(3) apply.

Clause 523 ensures that only interests that may have been aggregated under the prescribed provisions under the *Stamp Act 1894* are available for aggregation under Chapter 3, Part 1. Clause 523(3) provides that the operation of clause 158(1)(b)(iii) of the *Duties Bill 2001* is limited to only aggregate interests of persons who became related persons on or after the commencement day. This is to ensure that there is no retrospective taxing effect to this provision. Clause 521(4) provides for the Bill to apply in relation to options to acquire interests in land rich companies where the option is exercised on or after the commencement day.

Clause 524 provides that for Chapter 3, Part 1 of the *Duties Bill 2001* a reference to a land rich corporation includes a reference to a corporation to which the prescribed provisions under section 56F of the *Stamp Act 1894* apply and a reference to a majority interest in a corporation includes a reference to a majority interest in a corporation under section 56FN of the *Stamp Act 1894.*

Clause 525 provides for clause 163(2) that a reference to an exempt acquisition under clause 190 of the *Duties Bill 2001* includes a reference to a transfer by way of security mentioned in section 56FA definition of “acquire” paragraph (e) of the *Stamp Act 1894.*

Clause 526 provides for the application of Chapter 3 Part 1 of the *Duties Bill 2001* to an acquisition of shares where, before the commencement day, stamp duty was paid under the *Stamp Act 1894* for a transfer of shares by way of security and the Commissioner ceases, on or after the commencement day, to be satisfied of the matters in clause 190 of the *Duties Bill 2001.*

Clause 527 provides for the application of Chapter 3 Part 1 Division 7 of the *Duties Bill 2001* to an amount of outstanding stamp duty or penalty where the Commissioner has before the commencement day requested registration of a charge under section 56FD(1) of the *Stamp Act 1894.*

Clause 528 provides for the continued operation of the *Stamp Act 1894* in relation to a disposition of shares in a company to which section 56C of the *Stamp Act 1894* applies made after the commencement day where stamp duty is chargeable on an agreement to dispose of the shares.

Clause 529 provides that an acquisition of shares occurring before the commencement day and chargeable under section 56C of the *Stamp Act 1894* is taken to be a relevant acquisition for clause 223 of the *Duties Bill 2001*. For clause 223 a reference to the dutiable value of the relevant acquisition is taken to be a reference to the value of the acquisition on which duty was calculated under the *Stamp Act 1894.*

Clause 530 provides for the continued operation of the *Stamp Act 1894* in relation to a lease entered into on or after the commencement day where the lease is in substantial conformity with an agreement for lease for which stamp duty has been paid under the *Stamp Act 1894*.

Clause 531 provides for a credit to be allowed under the *Duties Bill 2001* for stamp duty paid under the *Stamp Act 1894* for a lease where, on or after the commencement day, a fresh lease is entered into which is in substantial conformity with that lease and which relates to the exercise of an option for a further period contained in the lease.

Clause 532 provides for a credit or refund for leases or agreements for lease, a transaction mentioned under section 54AB(1)(b) of the *Stamp Act 1894* or a contract of agreement mentioned in section 64D of the *Stamp Act 1894,* where, before the commencement day, stamp duty was paid and, on or after the commencement day, the lease, transaction or contract or agreement is terminated. The clause provides that clause 242 of the *Duties Bill 2001* applies to the termination as if it were the termination of a lease or occupancy right and clause 243 applies on any replacement lease or right.

Clause 533 provides for liability for mortgage duty where on or after the commencement day an advance or further advance is made which exceeds the amount for which a mortgage, entered into before the commencement day has been duly stamped under the *Stamp Act 1894*. The clause provides that clause 261 of the *Duties Bill 2001* applies as if a reference to liability arising under the Bill included a reference to a liability arising under the *Stamp Act 1894.*

Clause 534 provides a credit where before the commencement day stamp duty is paid on an agreement to grant a mortgage and under the agreement a mortgage as defined in clause 248 is first signed on or after the commencement day. In assessing the mortgage duty for the mortgage a credit is allowed for the stamp duty paid on the agreement to grant a mortgage.

Clause 535 provides for the imposition of mortgage duty under the *Duties Bill 2001* on a mortgage first signed before the commencement day

but which has not been duly stamped under the *Stamp Act 1894* immediately before the commencement day. The mortgage is taken to be imposed with mortgage duty under Chapter 5 of the *Duties Bill 2001*. Clause 535(2) provides that if the mortgage is over property partly within Queensland and partly outside Queensland, mortgage duty is worked in the stamp duty under the *Stamp Act 1894* would have been worked out.

Clause 536 provides that Chapter 7 of the *Duties Bill 2001* does not apply to a hire of goods entered into before the commencement day. Hire duty for hires of goods by commercial hirers is imposed on the total hiring charges received in a month. This clause clarifies the position in relation to hires of goods entered into before the commencement day but for which hiring charges are paid on or after the commencement day. The *Stamp Act 1894* will continue to apply to hiring charges received under such hires of goods even though the charges are received after the commencement day.

Clause 537 provides for a reduction in vehicle registration duty where, before the commencement day, stamp duty was imposed under the *Stamp Act 1894* on an instrument and the stamp duty was worked out including the value of a vehicle and an application to transfer the vehicle is made on or after the commencement day.

Clause 538 provides for continued operation of the *Stamp Act 1894* in relation to a conveyance, transfer or assignment of property made on or after the commencement day where the conveyance transfer or assignment occurs under an agreement for, or in connection with, the transfer of shares, or for conveying, assigning or transferring a beneficial interest in property which was exempted under section 49C(1) or (2) of the *Stamp Act 1894*.

Clause 539 provides for references in the *Duties Bill 2001* provisions for corporate reconstruction to include references to equivalent terms under section 49C(1) of the *Stamp Act 1894*.

Clause 540 provides that a person who immediately before the commencement day was an approved person under section 13A of the *Stamp Act 1894* is taken to be a self assessor approved under the applicable Part of Chapter 12 of the *Duties Bill 2001*.

Clause 541 provides that a person who immediately before the commencement day was registered under section 35A of the *Stamp Act 1894* to carry on a credit or rental business is taken to be a registered credit provider or commercial hirer and as a self assessor under Chapter 12, Part 1 of the *Duties Bill 2001*.

Clause 542 provides that a cardholder’s bank that carried on business in Queensland immediately before the commencement day and that was

registered under section 42 of the *Stamp Act 1894* to lodge returns is taken to be a registered credit card provider and a self assessor under Chapter 12, Part 1 of the *Duties Bill 2001*.

Clause 543 provides that a person who immediately before the commencement day was an approved insurer under section 46F of the *Stamp Act 1894* is taken to be a registered general insurer (if carrying on a business as a general insurer) or a registered life insurer (if carrying on a business as a life insurer) and a self assessor approved under the applicable Part of Chapter 12 of the *Duties Bill 2001*.

Clause 544 provides that for a person taken to be registered under Chapter 12 Parts 1 to 3 their registration day is the commencement day and the matters required to be stated in their notice of registration are taken to be the matters applying to the person immediately before the commencement day.

Clause 545 provides that an institution that received an exemption from stamp duty under the *Stamp Act 1894* as an exempt charitable institution is taken to be an exempt institution. The date of registration of such an institution as an exempt institution is the commencement day. The clause ensures that exempt charitable institutions do not have to apply to be registered as exempt institutions under the *Duties Bill 2001*.

Clause 546 applies where, under sections 59E(8), 69A(2) or 72(4) of the *Stamp Act 1894,* the Commissioner had given notice to an institution stating a later time to decide whether an instrument would be exempt under the *Stamp Act 1894* and the later time is after the commencement day. The Commissioner may register the institution as an exempt institution under Chapter 12, Part 5 of the *Duties Bill 2001* at the later time if the Commissioner is satisfied that the institution is an exempt institution.

Clause 547 provides that a reference in the *Duties Bill 2001* to a related person of another person is taken to be a reference to a related person within section 56FA(3) of the *Stamp Act 1894* where it is necessary to take into account a transaction or other arrangement entered into before the commencement day.

Clause 548 provides that an instrument stamped under the *Stamp Act 1894* is taken to be properly stamped under the *Duties Bill 2001*.

Clause 549 provides for the references in Acts or documents to the *Stamp Act 1894* to be taken to be a reference to the *Duties Bill 2001* if the context permits. It similarly provides that a reference to stamp duty may be taken to be a reference to the applicable duty under the *Duties Bill 2001* or generally to duty under the *Duties Bill 2001* and a reference in the *Duties*

Bill 2001 to duty includes a reference to stamp duty under the *Stamp Act 1894*. Where a reference to stamp duty in an Act or document may include a reference to stamp duty other than under the *Stamp Act 1894*, the context will permit a partial reference to duty under the *Duties Bill 2001*.

Clause 550 provides for a regulation to make provision about a matter necessary to achieve the transition from the operation of the *Stamp Act 1894* to the *Duties Bill 2001* and the *Taxation Administration Bill 2001* where the *Duties Bill 2001* does not make provision or sufficient provision. The clause further provides that such a regulation may have retrospective operation, must declare that it is a transitional regulation and that the clause and any transitional regulation expire 5 years after the commencement day.

CHAPTER 18— AMENDMENTS OF ACTS

Clause 551 provides that Schedule 1 of the *Duties Bill 2001* amends the Acts mentioned in it.

SCHEDULES

Schedule 1 provides for amendments of various Acts required as a consequence of the enactment of the Bill.

Schedule 2 sets out the rules for deciding when liability under Chapter 2 for transfer duty arises. It links to clause 16 of the Bill.

Schedule 3 specifies the rates of:

- transfer duty on dutiable transactions;
- landrich duty for relevant acquisitions under Chapter 3 Part 1; and
- corporate trustee duty for relevant acquisitions under Chapter 3 Part 2.

It links to clauses 24(4), 176 and 216 (b) respectively.

Schedule 4 gives an example for working out the value of an indirect interest for partnership and trust acquisitions and relevant acquisitions for corporate trustees. It links to clauses 46, 63 and 226.

Schedule 5 gives an example for the corporate reconstruction exemption in Chapter 10, Part 1. It links to clause 403.

Schedule 6 is the Dictionary that contains all defined terms used in the Bill.

© State of Queensland 2001