

Revenue and Other Legislation Amendment Bill (No. 2) 2008

Explanatory Notes

General Outline

Policy Objectives

To amend the:

- *Duties Act 2001*, the *First Home Owner Grant Act 2000*, the *Fuel Subsidy Act 1997*, the *Land Tax Act 1915*, the *Pay-roll Tax Act 1971*, and the *Taxation Administration Act 2001*, to give effect to revenue measures announced in the 2008-09 State Budget and other changes;
- *Electricity Act 1994* to ensure that if a decision on notified prices is set aside (for whatever reason), the decision will continue to apply until such time as the pricing entity makes a replacement decision and it takes effect
- *Government Owned Corporations Act 1993* and the *South East Queensland Water (Restructuring) Act 2007* by devolving appointment responsibility of senior executive officers to Government owned corporations boards and new State water entity (water entity) boards and to give effect to two other changes in respect to water entities;
- *Liquor Act 1992* and the *Liquor and Other Acts Amendment Act 2008* to clarify sections in the *Liquor and Other Acts Amendment Act 2008* and to resolve anomalies that have emerged since the drafting of the passage of the Liquor Act Amendment Bill;
- *Petroleum and Gas (Production and Safety) Act 2004* to provide confidentiality protection for commercially sensitive information provided by petroleum producers;
- *Racing Act 2002* to ensure that those whose revenue is derived from wagering on Queensland racing make a contribution to the cost of conducting racing in Queensland, and to clarify requirements for the

- taking and dealing with samples from licensed animals for drug control purposes;
- *South Bank Corporation Act 1989* and *South Bank Corporation By-law 2004* to ensure consistency with the *Liquor Act 1992*;
 - *Statutory Authorities (Superannuation Arrangements) Act 1994* to make a technical amendment;
 - *Superannuation (State Public Sector) Act 1990* to close the defined benefit arrangements to new members (from the day the Bill is introduced into the House) and to satisfy Commonwealth regulatory requirements in preparation for QSuper's move into Commonwealth regulation;
 - *State Development and Public Works Organisation Act 1971* to allow the Coordinator-General to charge proponents a fee for the undertaking of the EIS process under Part 4 and recoup any costs incurred by the Coordinator-General during the EIS process and introduce and extend current enforcement and offence provisions to facilitate the Coordinator-General's role in regulating development and also provides the Coordinator-General with the power to delegate under a works regulation to facilitate the Major Hospitals Project Office; and
 - *Integrated Planning Act 1997* to resolve inadvertent impacts of the *Queensland Heritage and Other Legislation Amendment Act 2007* (QHOLAA) which commenced on 31 March 2008.

Reasons for the Bill

Duties Act 2001

The *Duties Act 2001* provides for the imposition of a range of duties such as transfer duty, insurance duty and land rich duty. To implement revenue measures announced in the 2008-09 State Budget and other changes, the Bill amends the *Duties Act 2001* as follows:

- retrospectively extend to vestings of land pursuant to a statute or court order on or after 18 June 2007, the benefit of the provision which excludes the value of improvements made at the transferee's expense in determining the unencumbered value of property;
- retrospectively amend the trust provisions with effect from 10 September 2007 to allow the Commissioner to approve foreign

entities as qualified holders for determining whether a trust is a pooled public investment unit trust;

- strengthen land rich duty, corporate trustee duty and transfer duty provisions so that a suspension on dealings of marketable securities can not be used as part of an arrangement to avoid duty;
- retrospectively amend the first home concession provision to ensure that it operates as intended in relation to transfers for less than unencumbered value with effect from 1 September 2008;
- retrospectively correct an anomaly in the calculation of the vacant land first home concession with effect from 1 January 2007;
- ensure a home transfer concession and home mortgage concession will not be lost if applicants fail to satisfy the occupation requirements due to a natural disaster, death or incapacity or another intervening event prescribed under a regulation;
- retrospectively extend the home concession for transfer and mortgage duty to residents of retirement villages who enter into particular occupancy arrangements, with effect from 26 July 2002;
- tighten the family trust exemptions to ensure the exemption is only available where the trust is both established and continues to be maintained primarily for the family's benefit;
- extend the vehicle registration duty exemptions relating to previously registered vehicles, interstate registered vehicles and vehicles used for the transport of a person who has lost the use of one or both legs;
- insert a new reassessment provision for vehicle registration duty relating to the exemption for vehicles acquired as trading stock or demonstrators by vehicle dealers;
- amend the general anti-avoidance provisions to ensure they cover artificial, blatant or contrived schemes to obtain an exemption or concession, and that a purpose of obtaining a non-Queensland tax benefit may be disregarded in determining the sole or dominant purpose of a scheme;
- align the provisions relating to exempt institutions in the *Duties Act 2001* with the previous provisions in the *Stamp Act 1894* to ensure that they apply as intended;
- insert a provision requiring an exempt institution to give notification to the Commissioner where changes have been made to its

constitution which would disentitle the institution to be registered as exempt;

- amend the agent self assessor provisions to provide that where an instrument or transaction has been self assessed by an agent self assessor, the taxpayer's liability to pay an amount of duty, assessed interest and penalty tax to the Commissioner is not discharged until the amount has been paid to the Commissioner; and
- make minor technical amendments by inserting reference notes, correcting cross references and amending certain provisions to reflect current drafting practices.

First Home Owner Grant Act 2000

The Bill amends the *First Home Owner Grant Act 2000* as follows:

- limit payment of a grant to eligible transactions valued under \$1 million as announced in the 2008-09 State Budget;
- clarify an investigation power to facilitate the efficient investigation of potential breaches of the *First Home Owner Grant Act 2000* by allowing the Commissioner to issue a single notice requiring a person to provide information, produce documents and/or attend for examination;
- provide guidance to the court in relation to the prosecution of certain offences under the Act to allow the Commissioner to seek an order for repayment of the grant and to allow the court to impose penalties if it is satisfied the circumstances of the contravention form part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to a grant;
- tighten the confidentiality provisions to ensure that all information held by the Commissioner under the Act is regarded as confidential information, to only permit the disclosure of confidential information in legal proceedings under that Act, and to ensure that a person engaged in the administration or enforcement of that Act can not be compelled to disclose confidential information to a court in a proceeding or to a party to the proceeding that is not a proceeding under the *First Home Owner Grant Act 2000*; and
- allow the Commissioner to disclose confidential information to the Queensland Police Service or the Australian Federal Police for an investigation or proceeding relating to a particular offence or suspected offence; and

- implement the First Home Owners Boost announced by the Commonwealth Government on 14 October 2008 which supplements the Queensland Government funded first home owner grant scheme.

Fuel Subsidy Act 1997

The Bill amends the *Fuel Subsidy Act 1997* as follows:

- tighten the confidentiality provisions to prohibit the disclosure of confidential information held by a person in performing functions or exercising powers under the Act and ensure a person cannot be compelled to disclose confidential information to a court in a proceeding or to a party to the proceeding except a proceeding for the administration or enforcement of the Act; and
- allow the Commissioner to disclose information to the Queensland Police Service or the Australian Federal Police for an investigation or proceeding relating to a particular offence or suspected offence.

Land Tax Act 1915

The Bill amends the *Land Tax Act 1915* as follows:

- provide, as announced in the 2008-09 State Budget a new land tax exemption for land on which an aged care facility is located;
- introduce, as announced in the 2008-09 Budget, amendments to allow land to be taken to be used as a person's principal place of residence (PPR) in certain circumstances despite the person being absent if the absence is due to the person being in hospital, an aged care facility or residing with a carer;
- provide that land tax will not be assessed upon a subdivision of a person's PPR where the land has been the person's PPR for more than five years and the land is not being subdivided into more than 5 parcels. To reduce tax avoidance opportunities by staged subdivisions, further subdivisions by the owner within the next five years will be considered when determining whether more than 5 parcels are created; and
- allow the Commissioner to disclose information to the Queensland Police Service or the Australian Federal Police, for an investigation or proceeding relating to a particular offence or suspected offence.

Pay-roll Tax Act 1971

The Bill makes minor technical amendments to the *Pay-roll Tax Act 1971* to remove obsolete references.

Taxation Administration Act 2001

The Bill amends the *Taxation Administration Act 2001* as follows:

- tighten the confidentiality provisions to ensure all information held by the Commissioner under the Act is regarded as confidential information; and
- allow the Commissioner to disclose information to the Queensland Police Service or the Australian Federal Police for an investigation or proceeding relating to a particular offence or suspected offence.

Liquor Act 1992 and the Liquor and Other Acts Amendment Act 2008

Miscellaneous amendments are to be included to clarify sections in the *Liquor and Other Acts Amendment Act 2008* and to resolve anomalies that have emerged since the drafting of the passage of the Liquor Act Amendment Bill.

A further amendment is included to clarify the position of supplying and consuming alcohol in car parks of licensed premises following a determination of an appeal against a decision of the chief executive in the Commercial and Consumer Tribunal.

Amendments to South Bank Corporation Act 1989 and South Bank Corporation By-law 2004

Amendments to the *South Bank Corporation Act 1989* and the *South Bank Corporation By-law 2004* are required to ensure consistency with the *Liquor Act 1992*.

Government Owned Corporations Act 1993 and the South East Queensland Water (Restructuring) Act 2007

The proposed amendments to the *Government Owned Corporations Act 1993* and the *South East Queensland Water (Restructuring) Act 2007* (Restructuring Act) devolve appointment responsibility of senior executive officers to Government owned corporations boards and the board of new State water entities (water entities) as defined under section 6 of the Restructuring Act. The proposed amendments to the Restructuring Act also involve a minor amendment to amend the name of an entity and the insertion of a new clause to allow responsible Ministers to make a decision

on behalf of a water entity's board if all the board members are prevented from making a decision due to a conflict of interest.

Amendments to the Racing Act 2002

The New South Wales (NSW) Government enacted legislation that requires all wagering operators, including TABs to apply for approval to publish NSW race information and to pay a fee of up to 1.5% of turnover on NSW races from 1 September 2008. The Victorian Government has enacted, and other States are proposing to enact, corresponding legislation.

As a result of the enactment or intended enactment of corresponding interstate legislation, control bodies will no longer supply race information free of charge to their counterparts in other states and territories for on-sale to TAB operators. Instead, wagering operators must obtain an authority and pay the requisite fee to use race information.

Under commercial arrangements between UNiTAB Limited and the Queensland control bodies (Queensland Racing Limited, Queensland Harness Racing Limited and Greyhounds Queensland Limited), UNiTAB Limited deducts the cost of obtaining and using interstate race information from the monies that it pays to the control bodies. These costs are significant and have had a considerable impact on the control bodies. The proposed legislation will enable the Queensland control bodies to charge a fee that will require those whose revenue is derived from wagering on Queensland racing to make a contribution to the cost of conducting racing in Queensland.

Significantly, the proposed amendments provide that a control body must have regard to criteria, prescribed under a regulation, when deciding an application for a race information authority and when deciding the conditions of the authority. It is foreseen that regulations will require that a control body must not take into account where in Australia an applicant is licensed or conducts business when making its decisions. The purpose of this is to ensure that a control body's decisions do not offend against section 92 of the Commonwealth Constitution.

Amendments are also required as a result of a number of decisions that have held that a certificate issued under section 147(3) of the Racing Act could not be relied on because there had been non-compliance with one of the steps in the Sample Collection Procedures (the Procedures), developed by the Racing Animal Welfare and Integrity Board (the Integrity Board) under section 115(3) of the Racing Act.

As a consequence, licensed trainers have received no conviction or penalty, notwithstanding the results of analysis showing that a drug or code substance was in a sample taken from a licensed animal under the control of the trainer.

Amendments to the Superannuation (State Public Sector) Act 1990 and the Statutory Authorities (Superannuation Arrangements) Act 1994

In response to the current global market situation and to ensure the State can maintain the current level of benefits for QSuper members, it is proposed to close the defined benefit arrangements to new members from the day the Bill is introduced into the House.

In order for the State Public Sector Superannuation Scheme (QSuper) to progress its application to opt into Commonwealth regulation, Commonwealth Treasury and the Australian Prudential Regulation Authority (APRA), the regulators of the superannuation industry in Australia, have requested that amendments be made to the QSuper Act. The amendments align the QSuper Act with Commonwealth superannuation legislation.

The Bill also makes a technical amendment to the *Statutory Authorities (Superannuation Arrangements) Act 1994*.

Amendments to the Petroleum and Gas (Production and Safety) Act 2004

A confidentiality clause amendment is required to align the *Petroleum and Gas (Production and Safety) Act 2004* with the *Mineral Resources Act 1989* which under section 334 provides legislative protection for certain information provided by mining producers pertaining to royalties.

Amendments to the Electricity Act 1994

An amendment is required to provide a mechanism for maintaining regulated retail tariffs in the event that a decision on notified retail electricity prices for a particular tariff year is set aside.

Amendments to the Integrated Planning Act 1997 (IPA) and the State Development and Public Works Organisation Act 1971 (SDPWO Act)

The Bill amends the SDPWO Act in relation to the exercising of the Coordinator-General's powers relating to charging for services and recouping costs, compliance and offence provisions and the delegation of powers under a works regulation to facilitate the Major Hospitals Project Office.

Declaration of a project as a ‘significant project’ under section 26(1)(a) of the SDPWO Act empowers the Coordinator-General to provide a whole-of-Government response to a proposed development. Through the environmental impact statement (EIS) process under Part 4 of the SDPWO Act, the Coordinator-General assesses complex projects of environmental, economic and social significance to the State.

The number, urgency and complexity of significant projects has increased markedly in the last three years and is expected to continue through the current ‘extended resources boom’. This has resulted in the total significant projects workload increasing substantially over a three year period and this has not been accompanied by any significant increase in staff resources to undertake the work.

To offset these costs and to provide additional resources to administer significant projects, the Bill amends the SDPWO Act to introduce charges on all significant project proponents. The Bill also provides the Coordinator-General with the power to recoup from proponents costs incurred in the exercise of powers under significant project declarations.

There are deficiencies in the Coordinator-General’s ability to administer the development assessment role under the SDPWO Act. For conditions relating to a significant project, the Coordinator-General can commence enforcement proceedings in the Planning and Environment Court under the *Integrated Planning Act 1997* (IPA) to remedy or restrain a breach of a condition imposed by the Coordinator-General under section 54 of the Act. However, there are no corresponding powers to initiate enforcement proceedings for breaching conditions imposed on development in a State Development Area. In addition, there is no ability for the Coordinator-General to issue an enforcement notice to put a proponent on notice to remedy a breach.

Currently there is also no sanction for providing false or misleading information to the Coordinator-General and no general requirement of company officers to ensure that their companies abide by the SDPWO Act in relation to the use of land in a State Development Area.

The amendments in the Bill address these deficiencies in the SDPWO Act.

Under the SDPWO Act the Coordinator-General is currently unable to delegate his powers for a works regulation to persons who are employed under section 110 (Appointment of senior executive) or 122 (Contract for a fixed term) of the *Public Service Act 2008*. The Bill amends the SDPWO

Act to remove this obstacle and thereby facilitate the work of the Major Hospitals Project Office.

The *Queensland Heritage and Other Legislation Amendment Act 2007* (QHOLAA) has impacted on development in two ways:

- upon commencement of the QHOLAA on 31 March 2008, heritage places identified by local councils became ‘local heritage places’ under the *Queensland Heritage Act 1992*; and
- the *Integrated Planning Act 1997* (IPA) was also amended so that all aspects of development on a local heritage place, other than development mentioned in Schedule 9 of IPA, constituted assessable development for which development approval must be therefore be sought (even where it had previously been exempt from the need to seek a development approval).

The effect of these provisions has meant that all developments are now required to seek development approval if they involve a local heritage place. This has consequently, now captured significant State works which had previously been exempt from this requirement. Further, the QHOLAA did not effect transitional provisions, which has meant that development applications lodged and approved, or lodged and not yet approved prior to 31 March 2008, have been required, retrospectively, to seek development approval for works relevant to a local heritage place.

Legislative amendment is now required to Schedule 8 of the *Integrated Planning Act 1997* (IPA) to make:

- significant State works that involve a local heritage place exempt from having to seek development approval from local councils, with effect from 31 March 2008; and
- private development applications exempt that were lodged and had or had not received approval, before the commencement of the *Queensland Heritage and Other Legislation Amendment Act 2007* on 31 March 2008

Coordinator-General’s costs of environmental coordination process under the *State Development and Public Works Organisation Act 1971*

Declaration of a project as a ‘significant project’ under section 26(1)(a) of the *State Development and Public Works Organisation Act 1971* (SDPWO Act) empowers the Coordinator-General to provide a whole of government response for State government interests relating to a proposed

development. The number of proponents seeking significant project declarations has increased significantly in the past three years.

The Bill introduces charges on all significant project proponents. It also allows the Coordinator-General to recoup from proponents costs incurred in the exercise of powers under significant project declarations. The amount of the fees have been calculated based on activity-based costings of several recently completed EIS processes.

Enforcement and general offences under the *State Development and Public Works Organisation Act 1971*

The current lack of enforcement ‘tools’ in the Act is inconsistent with contemporary regulatory legislation. The effect is that the only methods that can be utilised by the Coordinator-General or a nominated entity in attempting to gain the proponent’s compliance with conditions is a written letter and, for significant projects with imposed conditions, the undertaking of enforcement proceedings in court.

The Bill extends the application of current enforcement and offence provisions in the SDPWO Act in order to facilitate the effective monitoring and enforcement of conditions imposed by the Coordinator-General under the SDPWO Act. The Bill will ensure the SDPWO Act is consistent with contemporary legislation dealing with development assessment and approval and regulatory matters.

Facilitation of Major Hospitals Project Office

The current drafting of section 111 of the SDPWO Act is overly restrictive as it means that the powers of the Coordinator-General for a works regulation cannot be delegated to members of the senior executive service or persons who have been entrusted with delivering Government projects unless they are the chief executive of a department. This makes the efficient facilitation of major projects difficult. The Bill amends section 111 to allow the Coordinator-General’s powers under a works regulation to be delegated thereby facilitating the work of the Major Hospitals Project Office.

Amendment to IPA to exempt specific development applications from assessment for local heritage places

To rectify inadvertent affects of the QHOLAA which took effect from 31 March 2008, IPA amendments will re-institute exemption status for significant State works; and development applications for local heritage places already approved, or lodged but not yet approved, at the time of commencement of the QHOLAA.

This will address a situation that has created inequity and uncertainty for applicants of development permits who did not know their applications would have to be assessed against conditions associated with a local heritage place at the time the development applications were lodged. The proposed provisions will apply immediately, with retrospective effect from 31 March 2008.

Achievement of the Objectives

Duties Act 2001

Improvements made by a transferee

The *Duties Act 2001* imposes transfer duty on the dutiable value of a dutiable transaction. Under section 14(4), for transfers or agreements to transfer dutiable property, the unencumbered value of the transaction excludes the value of improvements made at the transferee's expense. The *Duties Act 2001* is to be amended with effect from 18 June 2007 to extend the benefit of the provision to transactions that are a vesting of property pursuant to statute or court order.

Extension of the definition of “qualified holder” of units in a pooled public investment unit trust

The existing definition of ‘qualified holder’ in the pooled public investment unit trust provisions in the *Duties Act 2001* does not recognise foreign investors holding units in a unit trust in a capacity corresponding to one of the capacities listed in section 76(1). The *Duties Act 2001* is to be amended with effect from 10 September 2007 to facilitate recognition of foreign investors as qualified holders where the Commissioner is satisfied they are comparable with a qualified holder under section 76(1).

Suspended securities

Land rich duty, corporate trustee duty and transfer duty are not imposed on dealings of marketable securities that are quoted on a recognised stock exchange. Securities that are suspended from quotation continue to be treated as quoted for duty purposes because they remain approved for quotation. To address the potential for duty avoidance, the *Duties Act 2001* is to be amended to provide that securities suspended from trading will not be regarded as quoted if the suspension is part of an arrangement to avoid duty. A note referencing this new amendment will be inserted in particular provisions of the *Duties Act 2001*.

First home concession – transfer for less than unencumbered value

From 1 July 2008, the *Duties Act 2001* was amended to implement measures announced in the 2008-09 State Budget to increase the cap for the home and first home transfer duty concessions to \$350,000, and then to increase the cap for the first home transfer duty concession to \$500,000 from 1 September 2008.

From 1 July 2008, if a first home is acquired for less than the unencumbered value, a first home transfer duty concession is available if the home value does not exceed \$350,000. However, an amendment is required to increase the value to \$500,000 from 1 September 2008 in line with the increase to the concession. The Bill amends the *Duties Act 2001* with effect from 1 September 2008 to correct this anomaly.

First home vacant land concession calculation

The *Duties Act 2001* provides a concession for transfer duty on transfers or agreements for the transfer of vacant land upon which a first home is to be constructed. Section 93A sets out how the first home vacant land concession is calculated where for example, there are multiple transferees and the residence, when built, will be the first home of only some of them. The current method of calculation results in higher duty being payable than intended in some cases. The Bill amends the *Duties Act 2001* with effect from 1 January 2007 to correct the anomalous calculation.

Home concession clawback

Under the *Duties Act 2001* where the home transfer and home mortgage concessions have been allowed and the occupancy requirements have not been met due to the disposal of the home, the concessions are lost and duty is reassessed. To ensure applicants are not unfairly treated where circumstances beyond their control preclude compliance with the conditions for the concessions, the *Duties Act 2001* will be amended to provide that the concessions will not be lost if the disposal of the home is due to an intervening event such as a natural disaster, death or incapacity or another intervening event prescribed in a regulation. This will align with the current provision which provides that the concessions will not be lost if the transferee's failure to occupy the home within the required time is due to an intervening event.

Extension of home concessions to certain acquisitions and mortgages of freehold premises in retirement villages

Certain retirement village schemes registered under the *Retirement Villages Act 1999* require a purchaser (resident) to purchase the freehold title to a unit, lease the unit back to the village operator and occupy the unit under a sublease. These arrangements result in the loss of the transfer and mortgage duty home concessions as the resident has disposed of the home by leasing it, despite occupying the unit as their principal place of residence under the sublease. As announced in the 2008-09 State Budget, the *Duties Act 2001* will be amended retrospectively from 26 July 2002 to extend the home concessions to these particular acquisitions and mortgages of freehold premises in retirement villages. The *Duties Act 2001* will also be amended so that duty reassessments for these retirement village arrangements which fall outside the 5 year limitation period imposed by the *Taxation Administration Act 2001* can be made.

Family trust exemption

For a trust to be eligible for the family trust exemptions, the Commissioner must be satisfied that the trust is established primarily for the benefit of the members of a particular family or family company. There is no requirement for the trust to actually be operated or maintained for the family's benefit after it is established. As a result, the family trust exemptions may be available even though the trust is no longer primarily for the family's benefit. The *Duties Act 2001* will be amended to tighten the exemptions to ensure they are available only where the trust is both established and continues to be maintained primarily for the family's benefit.

Extension of the vehicle registration duty re-registration exemptions

Exemptions from vehicle registration duty apply where a vehicle which has previously been registered, including in another state, is the subject of an application for registration in Queensland. To ensure the relevant provisions operate equitably, the *Duties Act 2001* will be amended to extend the exemption from vehicle registration duty to an application made in the name of a relative of the person in whose name the vehicle was registered immediately before the expiry or cancellation of the vehicle's registration, including an application by the relative jointly with the former registered owner. The *Duties Act 2001* will also be amended to align with the previous exemption in the *Stamp Act 1894* to provide that duty will not be imposed on an application to register a vehicle where the vehicle was

previously registered interstate in the past but is not currently registered in that State.

Exemption for registration of vehicle by a person who has lost one or both legs

For persons who have lost the use of one or both legs the *Duties Act 2001* provides an exemption from vehicle registration duty when the vehicle is used for transport to and from the person's place of employment because the person can not use public transport. The *Duties Act 2001* will be amended to extend the exemption retrospectively from 29 August 2007, to include vehicles used for transport to and from the person's place of education if that education is for the purpose of obtaining employment and where the person can not use public transport because of their disability.

Reassessment of vehicle registration duty where vehicle dealer exemptions have applied

The *Duties Act 2001* does not contain provision for reassessment of duty where, subsequent to a vehicle dealer obtaining a vehicle registration duty exemption on the basis that the vehicle was acquired as trading stock or for use as a demonstrator, the vehicle ceases to be trading stock or a demonstrator other than by sale in the ordinary course of business. The absence of a reassessment provision is inconsistent with the conditions applying to most other concessions and exemptions where duty is reassessed if the required use of property ceases. The *Duties Act 2001* will be amended to require vehicle dealers to notify the Commissioner within 28 days of a vehicle ceasing to be trading stock or a demonstrator other than by sale in the ordinary course of business and enable a reassessment of duty on the basis that the vehicle dealer exemption did not apply. To provide certainty, a provision will be included to provide that a vehicle acquired as trading stock or as a demonstrator will be taken to have ceased to be trading stock or demonstrator after the prescribed period. The prescribed period is a period after acquisition of one year, or a period prescribed under a regulation of at least one year.

General anti-avoidance provisions - exemptions and concessions

The *Duties Act 2001* contains general anti-avoidance provisions to deter artificial, blatant and contrived schemes to obtain duty benefits which are not attributable to an exemption or concession under the Act. The Bill amends the *Duties Act 2001* to extend to artificial, blatant or contrived schemes to obtain an exemption or concession, the operation of the general anti-avoidance provisions.

The general anti-avoidance provisions apply where it can be established that a scheme is entered into or carried out for the sole or dominant purpose of obtaining a duty benefit. In some cases, there may be other tax minimisation or avoidance purposes of the scheme and it may be argued that obtaining the duty benefit was not the sole or dominant purpose. The *Duties Act 2001* will therefore be amended to provide that other tax benefit purposes be disregarded in determining whether the sole or dominant purpose of the scheme was to obtain a duty benefit.

Exempt institutions - Principal object or pursuit

Under the *Duties Act 2001*, an institution can be registered as exempt if it has a principal object or pursuit of the fulfilling of a charitable object or promotion of the public good, and does not have an object or pursuit involving a leisure, recreational, social or sporting activity. The *Duties Act 2001* will be amended to require that the relevant object or pursuit be the institutions' principal object or pursuit.

Exempt institutions - Notification of failure to satisfy registration criteria

Changes to, for example, the constitution or objects or pursuits of an exempt institution may disentitle it to be registered as exempt. The *Duties Act 2001* will be amended to require an exempt institution to notify the Commissioner within 28 days of the date when it ceases to be entitled to be registered as exempt.

Liability for payment on instruments or transactions assessed by agent self assessors

Duty is assessed under the *Duties Act 2001* by either the Commissioner or self assessors registered to lodge returns with the Commissioner. A taxpayer (liable party) who chooses to have an instrument or transaction assessed by a self assessor registered under Chapter 12 Part 3 (agent self assessor), is required to give the self assessor all required documents and pay the amount of tax on or before the due date for lodgement of the self assessor's return. The agent self assessor is then required to lodge the return and documents, pay the monies to the Commissioner and stamp the instrument by endorsing it in the way prescribed. The *Duties Act 2001* will be amended to provide that in relation to an instrument or transaction that has been self assessed by a self assessor, the liability of a liable party to pay an amount of duty, assessed interest and penalty tax to the Commissioner is not discharged until the amount is paid to the Commissioner.

Minor technical amendments

Minor technical amendments will be made to the *Duties Act 2001* to insert notes referencing the application of section 498 which contains special provisions in relation to shares in a land rich corporation or a corporate trustee.

Minor technical amendments will also be made to the *Duties Act 2001* to correct cross references to legislative provisions and repealed and renamed legislation. Minor amendments will also be made to certain provisions to reflect current drafting practices.

First Home Owner Grant Act 2000

Introduction of cap on value of eligible transaction

The *First Home Owner Grant Act 2000* will be amended with effect from 1 January 2009 to limit payment of a grant to eligible transactions valued under \$1 million as announced in the 2008-09 State Budget. To support this change a provision will be inserted to give the Commissioner power to require evidence of value, and to recover the cost of a valuation from the applicant in circumstances where the valuation is obtained by the Commissioner. A new provision will also be inserted to ensure that where a grant is paid in advance of completion of the eligible transaction on the basis that the Commissioner is satisfied the value of the transaction will be under \$1 million, the applicant will be required to notify the Commissioner and repay the grant within 28 days of completion if the value of the transaction is not under \$1 million.

First Home Owners Boost

The *First Home Owner Grant Act 2000* will be amended to implement the First Home Owners Boost announced by the Commonwealth Government on 14 October 2008 to apply on and from that date. First home buyers who purchase an established home will receive an additional \$7,000 to double the grant to \$14,000. First home buyers who purchase a new home or owner builders who construct a new home will receive an additional \$14,000 to increase the grant to a total of \$21,000. The boost is only available to contracts entered into on or after 14 October 2008 and before 1 July 2009. For homes to be built, time periods for commencement and completion of building works will apply.

Changes to power to require a person to provide information, produce documents and/or attend for examination

The Commissioner has the power under the *First Home Owner Grant Act 2000* to issue a notice to a person requiring them to provide information or documents, or attend for examination. The section may be capable of interpretation as only allowing the Commissioner to require the applicant to take one action per notice. The *First Home Owner Grant Act 2000* will be amended to clarify that the Commissioner may issue a single notice requiring a person to provide information, produce documents and/or attend for examination.

Inclusion of enforceable court order provisions to provide more guidance to the court

The *First Home Owner Grant Act 2000* will be amended to insert a provision giving guidance to the court in relation to the prosecution of particular offences to allow the Commissioner to seek an order for repayment of the grant and to allow the court to impose penalties if it is satisfied the circumstances of the contravention form part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to a grant.

First Home Owner Grant Act 2000, Fuel Subsidy Act 1997 and Taxation Administration Act 2001

The Bill amends provisions of the *First Home Owner Grant Act 2000* and the *Taxation Administration Act 2001* to ensure that all information held by the Commissioner under these Acts is regarded as confidential information for the purposes of the confidentiality provisions of the Acts.

The *Fuel Subsidy Act 1997* will be amended to prohibit the disclosure of information concerning someone else's affairs gained or held by a person in performing functions or exercising powers under the *Fuel Subsidy Act 1997*.

The *First Home Owner Grant Act 2000* will also be amended to only permit the disclosure of confidential information in legal proceedings under that Act. The *First Home Owner Grant Act 2000* and the *Fuel Subsidy Act 1997* will be amended to ensure that a person engaged in the administration or enforcement of those Acts can not be compelled to disclose confidential information to a court in a proceeding or to a party to the proceeding where the proceeding is not under the relevant Act.

First Home Owner Grant Act 2000, Fuel Subsidy Act 1997, Land Tax Act 1915, and Taxation Administration Act 2001

The *First Home Owner Grant Act 2000*, the *Fuel Subsidy Act 1997*, the *Land Tax Act 1915* and the *Taxation Administration Act 2001* prohibit the disclosure of confidential information except in limited circumstances. These Acts will be amended to give the Commissioner a specific power to allow the Commissioner to disclose personal confidential information to the Queensland Police Service or the Australian Federal Police for an investigation or proceeding relating to a particular offence or suspected offence.

Land Tax Act 1915

New land tax exemption for aged care facilities, new principal place of residence provisions and limiting retrospective reassessment of land tax on subdivision of PPR

It was announced in the 2008-09 State Budget that a new land tax exemption would be provided for land used for the purposes of an aged care facility by an approved provider within the meaning of the *Commonwealth Aged Care Act 1997*. The *Land Tax Act 1915* will be amended to insert this new exemption.

The 2008-09 State Budget also announced amendments to allow land to be taken to be used as a person's principal place of residence (PPR) in certain circumstances despite the person being absent if the absence is due to illness or inability to reside on the land unassisted. To implement this measure, the *Land Tax Act 1915* will be amended to allow a PPR concession to be claimed despite a temporary absence in certain circumstances.

Where land for which a PPR concession has been claimed is subsequently subdivided other than as a result of a compulsory acquisition, land tax is reassessed to remove part of the concession for each financial year for up to the previous five years. As announced in the 2008-09 State Budget, the *Land Tax Act 1915* will be amended to provide that land tax will not be retrospectively reassessed where land has been the person's PPR for more than five years and the land is not being subdivided into more than 5 parcels. To address avoidance opportunities by staged subdivisions, further subdivisions by the owner within the next five years will be considered in determining whether more than 5 parcels are created.

Pay-roll Tax Act 1971

Minor technical amendments will be made to the *Pay-roll Tax Act 1971* to remove obsolete references to repealed taxation legislation.

Liquor Act 1992 and Liquor and Other Acts Amendment Act 2008

Miscellaneous amendments are to be included to clarify sections in the *Liquor and Other Acts Amendment Act 2008* and to resolve anomalies that have emerged since the drafting of the passage of the Liquor Act Amendment Bill.

An amendment is proposed to address an anomaly arising from the licence type and fee restructure which could substantially limit sales of Queensland wine. Currently some licensees hold a wine licence under the *Wine Industry Act 1994* and a special facility licence under the *Liquor Act 1992* over the same premises, to allow for the sale of liquor other than wine at facilities such as a restaurant on the premises and for the sale of take away liquor.

A provision is proposed to allow licensees to sell wine for consumption off the premises if the licensee is the holder of a commercial other licence under the *Liquor Act 1992* and a licence under the *Wine Industry Act 1994*.

Section 140 of the *Liquor Act 1992* provides for the closure of unsafe or unhealthy premises. The chief executive is currently authorised to close an entire premises until a licensee has complied with an order requiring work to be undertaken, even when the concern is restricted to part of the premises. For flexibility, it is proposed to enable the chief executive to allow for part of licensed premises to be closed through an order in circumstances where the order requiring work to be undertaken states that only part of the licensed premises is affected.

A further amendment is included to clarify the position of supplying and consuming alcohol in car parks of licensed premises following a determination of an appeal against a decision of the chief executive in the Commercial and Consumer Tribunal. An amendment is proposed to address an anomaly arising from the licence type and fee restructure which could substantially limit sales of Queensland wine. Currently some licensees hold a wine licence under the *Wine Industry Act 1994* and a special facility licence under the *Liquor Act 1992* over the same premises, to allow for the sale of liquor other than wine at facilities such as a restaurant on the premises and for the sale of take away liquor.

Under the new structure, commercial special facility licensees will pay the highest base fee. This is likely to force wine producers to move from this category to the less expensive commercial other licence category, which does not allow for the sale of take away liquor except where the principal activity of the business is the provision of meals. In these circumstances, sales are restricted to one (1) opened and one (1) unopened bottle of wine to each adult consumer eating a meal. To address this conflict, a provision is proposed to allow licensees to sell wine for consumption off the premises if the licensee is the holder of a commercial other licence under the *Liquor Act 1992* and a licence under the *Wine Industry Act 1994*.

Section 140 of the *Liquor Act 1992* provides for the closure of unsafe or unhealthy premises. The chief executive is currently authorised to close an entire premises until a licensee has complied with an order requiring work to be undertaken, even when the concern is restricted to part of the premises. For flexibility, it is proposed to enable the chief executive to allow for part of licensed premises to be closed through an order in circumstances where the order requiring work to be undertaken states that only part of the licensed premises is affected.

Amendments to South Bank Corporation Act 1989 and South Bank Corporation By-law 2004

South Bank is proposed to be prescribed under a regulation to enable the application of section 173B of the *Liquor Act 1992* (Consumption of liquor in certain public places prohibited). Amendments to section 129 of the *South Bank Corporation Act 1989* and section 6 of the *South Bank Corporation By-law 2004* are included to ensure consistency with the *Liquor Act 1992*.

Amendments to the Racing Act 2002

The proposed amendments provide that a licensed wagering operator must not use Queensland race information unless the operator has obtained an authority from the relevant Queensland control body to do so. A control body may impose conditions on an authority, including the requirement for the holder of an authority to pay a fee.

The Bill provides that substantial compliance with the Procedures is sufficient, provided that any non-compliance has not adversely affected the integrity of the analysis.

Amendments to the Superannuation (State Public Sector) Act 1990 and the Statutory Authorities (Superannuation Arrangements) Act 1994

The Bill achieves the policy objectives set out above by amending the *Superannuation (State Public Sector) Act 1990* to:

- close the defined benefit arrangements to new members from the day the Bill is introduced into the House
- reinforce the State's obligation to meet its defined benefit superannuation liabilities;
- remove the provision which exempts the Board and the fund from any State taxation liabilities;
- amend the powers of the Parliamentary Benefits Committee (PBC), removing its present decision making capacity;
- clarify that the procedure for the removal of a disqualified trustee is consistent with those in Commonwealth superannuation legislation; and
- provide for the Treasurer to request units of the State Public Sector to make lump sum payments to QSuper in order to fund benefits payable under the fund.

The Bill also amends the *Statutory Authorities (Superannuation Arrangements) Act 1994* to correct a reference to repealed Commonwealth legislation.

Amendments to the Petroleum and Gas (Production and Safety) Act 2004

Confidentiality protection for petroleum producers

The confidentiality clause amendment aligns the *Petroleum and Gas (Production and Safety) Act 2004* with the *Mineral Resources Act 1989*.

Amendments to the Electricity Act 1994

The Electricity Act will be amended to provide that if, for whatever reason, the decision on notified retail electricity prices for a particular tariff year is set aside, that decision will continue to apply until a new tariff schedule takes effect.

Amendments to the Integrated Planning Act 1997 (IPA) and the State Development and Public Works Organisation Act 1971 (SDPWO Act)

Coordinator-General's costs of environmental coordination process under the State Development and Public Works Organisation Act 1971

The Bill achieves its objectives by setting out fees that are payable for the relevant stages of the EIS process and introducing a provision to allow the Coordinator-General to recover from the proponent any additional costs incurred by the Coordinator General in undertaking the EIS function.

Enforcement and general offences under the *State Development and Public Works Organisation Act 1971*

The Bill achieves its objective by introducing a new part containing enforcement and general offence provisions. It provides the Coordinator-General with the power to issue an enforcement notice to secure compliance with a condition imposed by the CG under the SDPWO Act and introduces an offence provision if compliance with an enforcement notice is not achieved. It also extends the current power to commence enforcement proceedings in court to remedy or restrain a breach of a condition imposed on a use in a State Development Area. The Bill extends the application of the existing executive officer liability provision to apply to offences committed in relation to the use of land in State Development Areas. The Bill also introduces an offence provision for the provision of false or misleading information to the Coordinator-General.

Facilitation of Major Hospitals Project Office

The Bill amends the SDPWO Act to allow the Coordinator-General to delegate his power under a works regulation to a member of the senior executive service and a person appointed to a term contract under section 122 of the *Public Service Act 2008*, where that person is employed at a level that is at least equivalent to an officer of the senior executive service. This amendment will facilitate the work of the Major Hospitals Project Office.

Amendment to IPA to exempt specific development applications from assessment for local heritage places

The Bill amends IPA ensure that only particular development applications made since 31 March 2008 are captured by the new local heritage provision in the *Queensland Heritage and Other Legislation Amendment Act 2007* (QHOLAA). The policy intent of QHOLAA was that development to a local heritage place would be assessable development, other than development mentioned in schedule 9 and development which was already self assessable, designated or exempt. Transitional provisions to exempt applications made (whether decided or not) prior to 31 March 2008 are also included.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Implementation costs relating to the amendments to the revenue legislation are not expected to be significant. These costs relate to client education activities, changes in publications, documents, website and systems, staff training and managing enquiries through the implementation period.

There is no administrative cost to Government in implementing the remaining amendments contained in the proposed Bill.

Consistency with Fundamental Legislative Principles

The Bill raises a number of fundamental legislative principles (FLP).

Amendments to the Duties Act 2001

The following amendments to the *Duties Act 2001* are proposed to be retrospective:

- extend to transactions that are vestings of land pursuant to statute or court order occurring on or after 18 June 2007, the application of the provision excluding the value of improvements made at the transferee's expense in determining the unencumbered value of property;
- amend the trust provisions to allow the Commissioner to approve certain foreign entities or types of entities as qualified holders for determining whether a trust is a pooled public investment unit trust;
- amend the first home residential land concession to ensure that it operates as intended in relation to transfers for less than unencumbered value;
- correct the method of calculating transfer duty in cases of partial claims for the vacant land first home concession;
- extend the transfer and mortgage duty home concessions to residents of retirement villages who enter into particular lease and sublease occupancy arrangements; and

- extend the vehicle registration duty exemption relating to vehicles used for the transport of a person who has lost the use of one or both legs.

All these amendments are considered appropriate as they are beneficial to taxpayers and in most cases have been publicly announced and are currently operating under administrative arrangements pending passage of the necessary legislative amendments.

The amendment to the *Duties Act 2001* to extend the benefit of the public unit trust provisions to foreign investors to be approved as qualified holders will allow the Commissioner to cancel or vary an approval with effect from the time when a condition of the approval was no longer being satisfied or there was a material change in the circumstances existing when the approval was given. The amendment is considered appropriate as it will ensure that equity between foreign investors and existing eligible Australian entities is maintained. The decision to cancel or vary an approval may be reviewed as part of an objection to an assessment which may be made as a result of the cancellation.

The new reassessment provision relating to the exemption for vehicles acquired as trading stock or demonstrators by vehicle dealers provide that a vehicle is taken to stop being trading stock or used as a demonstrator one year after its registration in the name of, or transfer to, the dealer or another period of at least one year prescribed by regulation. This may raise an FLP issue concerning whether it is appropriate to regulate such a matter. The regulation making power is considered appropriate as it will enable the one year period to be extended if a longer period is more appropriate.

The amendment to the agent self assessor provisions in the *Duties Act 2001* to provide that the liability of a taxpayer to pay an amount of duty, assessed interest and penalty tax is not discharged until the amount is paid to the Commissioner is considered appropriate as taxpayers may choose whether or not to have an instrument or transaction assessed by a self assessor. Further, the self assessor is agent for the taxpayer for the transaction generally so that payment to the self assessor is not payment to the Commissioner. If a taxpayer has paid tax to an agent self assessor who defaults in paying the monies to the Commissioner, the taxpayer will have a right of action against the self assessor.

Amendments to First Home Owner Grant Act 2000

The First Home Owners Boost was announced by the Commonwealth Government on 14 October 2008 to take effect on and from that date. The

amendments are considered appropriate as they are beneficial for home buyers, have been publicly announced and are operating under an administrative arrangement.

The amendment to the *First Home Owner Grant Act 2000* to allow the court to order a person who has been convicted of particular offences under the Act to repay the grant and pay twice the grant amount may raise FLP issues regarding the rights and liberties of individuals as it could be argued that the consequences of the contravention are not proportionate to the nature of the offence. The amendments are considered appropriate as it only gives the court the option to impose the extra penalty if it is satisfied the circumstances of the contravention form part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to a grant.

As part of the amendments to the *First Home Owner Grant Act 2000* to limit payment of a grant to homes valued under \$1 million, a new provision will be inserted to allow the Commissioner to recover the cost of obtaining a valuation from an applicant or former applicant where the Commissioner is not satisfied with the evidence of value provided and has obtained another valuation. The amendment may raise FLP issues regarding the rights and liberties of individuals. The amendment is considered appropriate as the Commissioner will usually only seek a further valuation in cases where he considers on reasonable grounds that the valuation provided by the applicant may not be accurate. Further, the amendment is consistent with a similar provision in the *Duties Act 2001*.

Amendments to First Home Owner Grant Act 2000, Fuel Subsidy Act 1997, Land Tax Act 1915 and Taxation Administration Act 2001

The amendments to the confidentiality provisions of the *First Home Owner Grant Act 2000*, the *Fuel Subsidy Act 1997*, the *Land Tax Act 1915* and the *Taxation Administration Act 2001* to include a specific power for the Commissioner to disclose information to the Queensland Police Service or the Australian Federal Police may raise FLP issues concerning the rights and liberties of individuals. The amendment is considered appropriate as the Commissioner may only disclose confidential information if, from information obtained or held the Commissioner becomes aware of a particular offence or suspected offence. The amendment complements the Commissioner's existing power to disclose information under the general power of administration of revenue legislation.

Amendments to Land Tax Act 1915

The proposed retrospective amendment to insert a new land tax exemption for aged care facilities is considered appropriate as it is beneficial to taxpayers.

The remaining provisions of the Bill amending the *Duties Act 2001*, *First Home Owner Grant Act 2000*, *Fuel Subsidy Act 1997*, *Land Tax Act 1915*, *Pay-roll Tax Act 1971* and *Taxation Administration Act 2001* are not considered to raise FLP issues.

Amendments to the Racing Act 2002

Consideration was given to the appropriate method of reviewing decisions of a control body in relation to applications for an authority to use Queensland race information. The Racing Appeals Tribunal (the Tribunal) is a specialist tribunal with expertise in hearing appeals under the rules of racing. It is considered that the jurisdiction of the Tribunal is not appropriate for appeals from decisions of a control body about applications for race information authorities. It is considered that the most appropriate method of reviewing such decisions of a control body is judicial review under the *Judicial Review Act 1991*.

Clause 90 of the Bill provides that if a licensed wagering operator applies to a control body for a race information authority and the operator has used Queensland race information for the conduct of the applicant's wagering business for the code of racing at any time during the period 1 September 2008 to the date of issue of the authority to the applicant, the control body may impose a condition that requires the payment of a fee for the use during that period. The retrospective operation of a new provision, section 113E(4) from 1 September 2008, is necessary to enable the control bodies to charge interstate wagering operators a fee for the use of Queensland race information from 1 September 2008 in line with other jurisdictions.

Amendments to the Integrated Planning Act 1997 and the State Development and Public Works Organisation Act 1971

Coordinator-General's costs of environmental coordination process under the *State Development and Public Works Organisation Act 1971* (SDPWO Act)

The proposed amendments to the SDPWO Act prevent proponents from seeking judicial review under the *Judicial Review Act 1991* (JRA) of decisions of the Coordinator-General relating to significant projects under Part 4 of the SDPWO Act.

Previously the Coordinator-General's decisions under Part 4 have not been subject to the JRA as there were no final decisions of an administrative character that would attract the operation of the JRA. As the amendments to include fees have introduced a formal application and decision stage for significant project declarations and change proposals, in order to maintain the status quo it is necessary to exclude these decisions from the jurisdiction of the JRA.

Section 4(3)(b) of the Legislative Standards Act 1992 provides that legislation should be consistent with principles of natural justice. Natural justice principles are derived from the common law and includes the right to be heard, an absence of bias and procedural fairness.

In relation to the question of natural justice under the fundamental legislative principles it is important to note that:

- A decision of the Coordinator-General to refuse to make a significant project declaration does not affect the ability of the proponent to progress the project under primary legislation. For example, a proponent is not prevented from lodging a development application under the IPA and going through the standard IDAS (Integrated Development Assessment System) process. What the proponent will not be able to do is to take advantage of the modified assessment rules afforded by the EIS (environmental impact statement) process that follows from a 'significant project' declaration under the SDPWO Act. Given that the decision to declare a project to be a 'significant project' is a procedural entitlement only, it is not considered that a Coordinator-General's decision to refuse to make a significant project declaration should be subject to the JRA.
- the Coordinator-General's decisions in relation to a declared significant project are not determinative for a project and do not oust natural justice rights, including rights to appeal, under primary legislation. For example, while the Coordinator-General's Report may direct an assessment manager to refuse a development application under the *Integrated Planning Act 1997* (IPA) the proponent is not prevented from lodging an appeal against the assessment's manager's refusal. This principle applies equally to any conditions the Coordinator-General imposes in a Coordinator-General's Report. Given that full natural justice rights are maintained under the primary legislation it is not considered necessary for the Coordinator-General's decisions to be subject to the JRA.

- The proposed amendments require the Coordinator-General to provide reasons to a proponent whose application for a significant project declaration, or change proposal, is refused. This will ensure that appropriate administrative processes are applied to the Coordinator-General's decisions under Part 4. In addition the proposed provisions only remove the right to judicial review under the JRA. They do not affect the Supreme Court's inherent jurisdiction. As such, the proposed provisions do not exhaust the proponent's right to request a review of a decision. The requirement to provide the reasons for a refusal will facilitate any action that a proponent may wish to take in the Supreme Court.

The purpose of 'significant project' declarations is to identify projects of particular economic or environmental importance or significance to the State and to provide an alternative assessment methodology that recognises the complex issues that arise with such projects.

Before making a 'significant project declaration' the Coordinator-General must consider a wide range of issues under section 27 of the SDPWO Act including:

- detailed information about the project given by the proponent in an initial advice statement;
- relevant planning schemes or policy frameworks, including those of a relevant local government or of the State or the Commonwealth;
- the project's potential effect on relevant infrastructure;
- the employment opportunities that will be provided by the project;
- the potential environmental effects of the project;
- the complexity of local, State and Commonwealth requirements for the project;
- the level of investment necessary for the proponent to carry out the project;
- the strategic significance of the project to the locality, region or the State.

When evaluating an EIS, submissions and other material about a project and preparing the Coordinator-General's Report, the Coordinator-General considers the broad, and often competing, State interests affected by the project and delivers a whole of government evaluation of the project.

It is considered that the nature of these decisions are not readily susceptible to the limited scope of inquiry afforded by judicial review under the JRA. Such review is more appropriately undertaken under primary legislation once the Coordinator-General's recommendations have been implemented by the decision maker under the primary legislation.

The balance of the proposed amendments to the SDPWO Act do not breach any of the fundamental legislative principles in the *Legislative Standards Act 1992*.

Amendment to IPA to exempt specific development applications from assessment for local heritage places

There are no fundamental legislative principle issues with the IPA amendments. The amendments restore the exempt status of specific development and allow for transitional provisions for development applications submitted (whether approved or not yet decided) prior to the commencement of *Queensland Heritage and Other Legislation Amendment Act 2007* (QHOLAA) on 31 March 2008.

Consultation

Amendments to Duties Act 2001, First Home Owner Grant Act 2000, Fuel Subsidy Act 1997, Land Tax Act 1915, Pay-roll Tax Act 1971 and Taxation Administration Act 2001

The Bill largely gives effect to State Budget as well as recent announcements by the Commonwealth Government announcements, public consultation was not necessary. It also gives legislative effect to existing administrative arrangements in place through the Office of State Revenue that are know to the public.

Government consultation of the amendments was undertaken.

Amendments to the Racing Act 2002

The Department of the Premier and Cabinet and the Department of Justice and Attorney-General were consulted on the Bill. Consultation was also undertaken with Queensland Racing Limited, Queensland Harness Racing Limited, Greyhounds Queensland Limited and the Queensland Bookmakers' Association.

Corresponding legislation has been enacted by the NSW and Victorian Governments and is proposed to be enacted in South Australia and Tasmania. The purpose of each State's legislation is to provide that a

wagering operator must not use that State's race information unless the operator has obtained an approval/authority from the relevant control body in that State to do so. The legislation provides that a control body may impose conditions on an approval/authority, including the requirement for the payment of a fee.

Amendments to the Petroleum and Gas (Production and Safety) Act 2004

The amendment to provide protected status for information included in royalty returns provided to the Department by petroleum producers under the *Petroleum and Gas (Production and Safety) Act 2004* aligns this Act with the *Mineral Resources Act 1989*. Feedback from industry was positive regarding these amendments.

Amendments to the Electricity Act 1994

The Department of the Premier and Cabinet, Treasury Department and the Department of Mines and Energy have been consulted on this matter.

Amendments to the Integrated Planning Act 1997 and the State Development and Public Works Organisation Act 1971

The *Integrated Planning Act 1997* amendments to address *Queensland Heritage and Other Legislation Amendment Act 2007* (QHOLAA) issues has been raised by the Urban Development Institute of Australia in relation to a number of community development applications and approvals which have been inadvertently affected by the retrospectivity that has become evident under the QHOLAA.

Consultation has occurred with key government departments that may have an interest in the Bill.

Notes On Provisions

Part 1 Preliminary

Clause 1 cites the short title of the Bill.

Clause 2 states the dates on which various provisions of the Bill commence.

Part 2 Amendment of *Duties Act 2001*

Clause 3 states that Part 2 and the schedule amends the *Duties Act 2001*.

Clause 4 inserts a new Division 4 in Chapter 2, Part 9 and a new section 95A in the *Duties Act 2001*. The new section extends transfer duty and mortgage duty home concessions to “retirement village leasing arrangements” in respect of accommodation units in retirement villages, as announced in the 2008-09 State Budget. The provisions apply retrospectively to liabilities for transfer duty and mortgage duty incurred by the resident on or after 26 July 2002. Mortgage duty was abolished from 1 July 2008, and is only payable where the liability to mortgage duty arose before 1 July 2008.

The new subsection 95A(1) ensures that the concession applies to arrangements where but for the lease and sublease arrangement the resident would have been entitled to the home concession. Conditions contained in the new section limit the concession to a retirement village leasing arrangement. Retirement village leasing arrangement will be defined in the Dictionary in Schedule 6 to mean an arrangement between an owner of an accommodation unit and the scheme operator under the *Retirement Villages Act 1999* whereby the owner occupies the unit as the resident’s principal place of residence under a lease and sublease arrangement, and the arrangement was the only arrangement under which the owner could occupy the accommodation unit. New subsection 95A(2) clarifies that for this section, the owner of the residence in section 88 includes an owner occupying a unit under a sublease.

Clause 5 amends section 153 of the *Duties Act 2001* which provides for the reassessment of transfer duty where a home concession under sections 91, 92, 93 or 93A has been claimed and, within the year after the transferee commences occupation of the land, the transferee disposes of it. A new section 153(1B) is inserted to ensure that a retirement village leasing arrangement of an accommodation unit in a retirement village under a registered retirement village scheme does not result in a reassessment of duty by providing that the arrangement is not a disposal of the land.

Clause 6 amends section 154 which provides for the reassessment of transfer duty where a home concession under sections 91, 92, 93 and 93A has been claimed and the land is disposed of before the transferee commences occupation of it or other than because of an intervening event, the transferee fails to commence occupation of the land within the specified time. A new section 154(2B) is inserted to ensure that a retirement village leasing arrangement does not result in a reassessment of duty by providing that the arrangement is not a disposal of the land.

Clause 7 amends section 155(3) of the *Duties Act 2001* to provide that the requirement to give notice for a reassessment because a notifiable event, such as the transfer, lease or otherwise granting of exclusive possession of the land, happens, does not include a lease or sublease entered into as part of a retirement village leasing arrangement.

Clause 8 amends section 291 of the *Duties Act 2001* which provides for the reassessment of mortgage duty where a home mortgage concession has been claimed and either, before the occupation date the home borrower disposes of the land, or other than because of an intervening event, the home borrower's occupation date for the land is not within the specified time, or the land is disposed of within the year following the home borrower's occupation of the land. A new section 291(1AB) is inserted to ensure that a retirement village leasing arrangement does not result in a reassessment of duty by providing that the arrangement is not a disposal of land.

Clause 9 inserts transitional provisions in a new Part 11 in Chapter 17 of the *Duties Act 2001*.

- New section 608 defines the meaning of “commencement day” for the purposes of this part.
- New section 609 provides that the limitation period for a reassessment of duty does not apply to the duty imposed before the commencement date in relation to a retirement village leasing arrangement in respect of accommodation units in a retirement village.

Clause 10 amends the Dictionary in Schedule 6 of the *Duties Act 2001* to insert new definitions for “accommodation unit”, “resident”, “retirement village”, “retirement village leasing arrangement” and “scheme operator”.

Clause 11 inserts a revised method for the calculation of the first home vacant land concession in sections 93A(5) and 93A(6). The revised calculation ensures that where there are mixed and multiple claims for the

concession by individuals, a concession proportionate to the interest of the transferee or transferees who satisfy the first home eligibility is provided. The amendment commences from 1 January 2007.

Clause 12 amends section 76(1) of the *Duties Act 2001* to include new sections 76(1)(e) and 76(1)(f) to extend the list of entities that may be a “qualified holder” to include a person of a class approve under new section 76A or a person approved under new section 76B.

Clause 13 inserts new sections 76A, 76B, 76C and 76D in the *Duties Act 2001*. The existing list of qualified holders is extended to recognise foreign investors the Commissioner is satisfied hold units in a unit trust in a capacity corresponding to one of the capacities listed in section 76(1) under the law of a foreign country or external Territory. The new provisions take effect from 10 September 2007.

- Section 76A outlines the process for approval of a class of persons as qualified holders under new section 76(1)(e).
- Section 76B outlines the process for approval of unit holders as qualified holders under new section 76(1)(f). Section 76B sets out the requirement for an application in the approved form, the circumstances under which the Commissioner may approve an application, and the requirement for the applicant to pay the Commissioner’s reasonable costs of obtaining advice that is reasonably required to determine an application. The Commissioner may either approve or reject the application and must give the applicant advice of the decision and of any conditions applying to an approval. Section 76B(7) confirms that an objection to the Commissioner’s decision to cancel or vary an approval may be made as part of an objection to an assessment. An approval is to take effect on the day it is given or a later day stated in the notice.
- New section 76C requires a person approved under section 76B to notify the Commissioner within 28 days of any material change in the circumstances that existed at approval and creates an offence for a failure to provide that notification.
- New section 76D provide conditions under which the Commissioner may cancel or vary an approval under section 76B. The cancellation or variation has effect on the day stated in the notice. Section 76D(3) provides for the date of effect of the cancellation or variation. Section 76D(4) confirms that an objection to the Commissioner’s decision to

cancel or vary an approval may be made as part of an objection to an assessment.

Clause 14 amends section 14(4) of the *Duties Act 2001* by extending its application to transactions that are vestings of dutiable property by statute law or a court order as defined by section 9(1)(d) of the *Duties Act 2001*. The amendment commences retrospectively from 18 June 2007.

Clause 15 amends section 390 to extend the exemption for vehicle registration duty to an application to register a vehicle in the name of, or an application to transfer a vehicle to, a person who has lost the use of 1 or both legs if the vehicle is for use for transport to and from the person's place of education because the person can not use public transport, and the education is for the purpose of obtaining employment. The amendment commences retrospectively from 29 August 2007.

Clause 16 amends subsection 92(1)(c)(i)(A) of the *Duties Act 2001* by increasing the cap for a first home concession for residential land where a first home is acquired for less than the unencumbered value to \$500,000. The amendment commences with effect from 1 September 2008 and aligns with the first home concession threshold for residential land where the consideration for the transfer of the land is at least the unencumbered value.

Clause 17 inserts a new section 610 to ensure that the transitional and anti-avoidance provisions in section 607 apply to the amendment to section 92.

Clause 18 amends section 10 of the *Duties Act 2001* by inserting a note referencing section 498 of the *Duties Act 2001* and its application to dutiable property.

Clause 19 amends section 41 of the *Duties Act 2001* by inserting a note referencing section 498 of the *Duties Act 2001* and its application to dutiable property in partnership acquisitions.

Clause 20 amends section 53 of the *Duties Act 2001* by inserting a note referencing section 498 of the *Duties Act 2001* and its application to dutiable property in creation of a trust.

Clause 21 inserts a note in section 69 referring to section 498A which is a provision about when the quotation of securities is suspended.

Clause 22 amends section 83 of the *Duties Act 2001*, by inserting a note referencing section 498 of the *Duties Act 2001* and its application to

dutiable property held through an indirect trust interest in land holding trusts.

Clause 23 amends section 118 of the *Duties Act 2001* to provide that the exemption from transfer duty for a trust acquisition or surrender in family trust is only available where the Commissioner is satisfied that the trust is both established and maintained primarily for the benefit of the members of a particular family or family company.

Clause 24 amends sections 225(1)(a) and 225(3) of the *Duties Act 2001* to provide that the exemption from corporate trustee duty for a relevant acquisition in a family trust is only available where the Commissioner is satisfied that the trust is both established and maintained primarily for the benefit of the members of a particular family or family company.

Clause 25 inserts a new section 379A in the *Duties Act 2001*. The new section sets out for vehicle registration duty, a definition for the term 'relative'. The definition reproduces the list of persons in section 390(2) who are provided to be relatives of a registered operator. The list in section 390(2) is to be omitted.

Clause 26 amends section 385(c) of the *Duties Act 2001* to extend the exemption to an application made in the name of a relative of the person in whose name the vehicle was registered immediately before the expiry or cancellation of the vehicle's registration. This will include also an application by the relative jointly with the former registered owner.

Clause 27 amends the heading of section 386 of the *Duties Act 2001* to include vehicles previously registered in another state and amends section 386(1)(a) to extend the exemption to an application to register a vehicle that was registered in another State but which registration has expired or was cancelled. The meaning of 'relative' in section 386(4) is omitted and a definition for the term, "registered operator" is inserted to provide that it means the person in whose name the vehicle was registered immediately before the expiry or cancellation of the registration.

Clause 28 amends section 390(2) to provide that the vehicle registration duty exemption for an application to transfer a vehicle by way of gift applies to a relative of the registered operator. This replaces a list specifying the various types of relatives to which the provision applies. The term "relative" is defined in the new section 379A.

Clause 29 inserts a new section 393A in Chapter 9, Part 5 of the *Duties Act 2001* to provide for the reassessment of vehicle registration duty where an

exemption under section 389 has been claimed by a vehicle dealer on the basis the vehicle is acquired as trading stock or for the dealer's use as a demonstrator. Duty will be reassessed where the vehicle stops being trading stock or being used as a demonstrator, other than because of a sale of the vehicle in the ordinary course of business. This may occur, for example where the vehicle is being used for personal use by the dealer, the dealer's staff or dealer's family or for other purposes such as rental. The vehicle dealer must give notice to the Commissioner in the approved form within 28 days of the vehicle ceasing to be trading stock or a demonstrator other than by sale in the ordinary course of business. Failure to give notice is an offence under the *Taxation Administration Act 2001*. The Commissioner must reassess and impose duty as if the exemption had never applied. Unpaid tax interest and penalty tax may also apply. It is also provided that vehicles acquired as trading stock or demonstrators are taken to stop being trading stock or being used as a demonstrator after the prescribed period after the vehicle is registered or transferred, unless the vehicle is sold in the ordinary course of business before that day. Prescribed period is defined to mean the period of at least 1 year prescribed under a regulation, or if no period is prescribed, 1 year.

Clause 30 inserts a note in section 407 referring to section 498A which is a provision about when the quotation of securities is suspended.

Clause 31 inserts a note in section 412 referring to section 498A which is a provision about when the quotation of securities is suspended.

Clause 32 amends section 433 of the *Duties Act 2001* to tighten the general anti-avoidance provisions in Chapter 11 in relation to schemes in which a duty benefit attributable to an exemption or concession under the Act is obtained. New section 433(3) provides that Chapter 11 will not apply in relation to a duty benefit attributable to an exemption or concession under the Act unless an entity entered into or carried out a scheme or part of a scheme for the sole or dominant purpose of creating a circumstance or state of affairs to which the exemption or concession would apply. Section 433 is also amended to provide that in determining whether the sole or dominant purpose of the scheme was to obtain a duty benefit in Queensland, any purpose relating to eliminating, reducing or postponing a liability of a foreign tax is to be disregarded. Foreign tax is defined to mean a tax, duty or other impost imposed under a law of another State, the Commonwealth or a jurisdiction outside Australia.

Clause 33 amends section 459(3) of the *Duties Act 2001* to align it with the previous provision under the *Stamp Act 1894* to ensure that it apply as

intended to provide that an institution may be registered as an exempt institution if its principal object or pursuit is fulfilling a charitable object or promoting the public good and is not a leisure, recreational, social or sporting object or pursuit.

Clause 34 inserts a new section 463A in the *Duties Act 2001* to require an exempt institution to give written notice to the Commissioner within 28 days after the institution ceases to be entitled to be registered under section 459. Failure to give notice is an offence under the *Taxation Administration Act 2001*. An institution may cease to be entitled to be registered under section 459 due to, for example, changes to its constitution or objects or pursuits. This new section complements section 471(1)(b) of the *Duties Act 2001* which allows the Commissioner to cancel an exempt institution's registration if he is satisfied the institution has ceased to be entitled to be registered.

Clause 35 inserts a new section 471EA in the *Duties Act 2001* to provide that a liable party's liability to pay an amount of duty, assessed interest or penalty tax is not discharged until the amount is paid to the Commissioner.

Clause 36 inserts a new section 498A in the *Duties Act 2001* which provides that securities quoted on the market operated by a recognised stock exchange that are suspended from trading may be regarded as not quoted if the suspension is part of an arrangement to avoid duty. "Security" is defined to include a share and a unit in a unit trust.

Clause 37 inserts transitional provisions in Part 11 Chapter 17 of the *Duties Act 2001*.

- New section 611 clarifies that the provisions of new section 393A of the *Duties Act 2001* do not apply to applications to register or transfer a vehicle made before the commencement date.
- New section 612 clarifies that new section 471EA of the *Duties Act 2001* does not apply to a liability to pay an amount of duty, assessed interest or penalty tax that arose before the commencement date.

Clause 38 amends the Dictionary in Schedule 6 of the *Duties Act 2001* to insert a definition for "relative" for chapter 9 and to insert notes in the definitions of 'Queensland marketable security' and 'unlisted corporation' referring to section 498A which is a provision about when the quotation of securities is suspended.

Clause 39 amends section 153(1)(b) of the *Duties Act 2001* to provide for when transfer duty will not be reassessed if the disposal was because of an intervening event.

Clause 40 amends section 154 of the *Duties Act 2001* which provides for the reassessment of transfer duty where a home concession under sections 91, 92, 93 and 93A has been claimed and the land is disposed of before the transferee commences occupation of it or other than because of an intervening event, the transferee fails to commence occupation of the land within the specified time. Section 154 is amended to provide that transfer duty will not be reassessed if the disposal of the land is because of an intervening event.

Clause 41 amends section 291 of the *Duties Act 2001* which provides for the reassessment of mortgage duty where a home mortgage concession has been claimed and either, before the occupation date the home borrower disposes of the land, or other than because of an intervening event, the home borrower's occupation date for the land is not within the specified time, or the land is disposed of within the year following the home borrower's occupation of the land. Section 291 is amended to provide that mortgage duty will not be reassessed if the disposal of the land was because of an intervening event.

Clause 42 amends the Dictionary in Schedule 6 of the *Duties Act 2001* to amend the definition of "intervening event" to ensure it applies to section 153.

Part 3 Amendment of *Electricity Act* 1994

Clause 43 states that Part 3 amends the *Electricity Act 1994*.

Clause 44 inserts new section 91AA in chapter 4, part 2, division 2, to provide a mechanism for maintaining regulated retail tariffs in the event that a decision on notified retail electricity prices for a particular tariff year is set aside. The new section specifies that in such circumstances, the decision continues to apply until such time as a replacement decision is made and new notified prices gazetted.

Part 4 **Amendment of *First Home Owner Grant Act 2000***

Clause 45 states that Part 4 amends the *First Home Owner Grant 2000*.

Clause 46 amends section 5 of the *First Home Owner Grant Act 2000* to provide that a transaction is not an eligible transactions if:

- the consideration for the transaction is \$1 million or more;
- in relation to a contract mentioned in section 5(1)(a), the total of the unencumbered value of the home and the unencumbered value of the relevant interest in the land on which the home is built or to be built at the commencement date is \$1 million or more; or
- in relation to a comprehensive home building contract mentioned in section 5(1)(b), the total of the consideration and the unencumbered value of the land at the commencement date is \$1 million or more;
- in relation to the building of a home mentioned in section 5(1)(c), the total of the consideration for the transaction and the unencumbered value of the land at the commencement date is \$1 million or more.

Clause 47 inserts a new section 8A in the *First Home Owner Grant Act 2000*. The new section defines the term “unencumbered value” for the purpose of determining the value of a home, land or an interest in land. Section 8A(1) provides that the unencumbered value of property is to be determined without regard to any encumbrances or arrangements which results in a reduction in the value of the property, or the significant purpose of which is the reduction in the value of the property. In relation to property held by a person on trust for persons under a legal disability, section 8A(2) provides that the unencumbered value must be determined without considering the liabilities of the trust including the liability to indemnify the trustee. Section 8A(3) defines the term “property” for the section.

Clause 48 inserts a new section 22A in the *First Home Owner Grant Act 2000* to provide for the repayment of a grant which had been paid before completion of a relevant transaction and after completion, the relevant consideration or unencumbered values total \$1 million or more. The commissioner may pay a grant before the completion of an eligible transaction under the general provision in section 19. New section 22A provides that if a grant was paid before the completion of a contract or

transaction mentioned in sections 5(1)(b), 5(1)(c) or 5(2)(b) and on completion the unencumbered value of the home or consideration for the transaction results in the transaction not being an eligible transaction under sections 5(7), (8) or (9), the applicant must within 28 days notify the Commissioner in writing and repay the grant. Failure to do so is an offence. Section 22A(3) provides that for a joint application, each applicant is individually liable to comply with the requirements to notify the Commissioner and repay the grant. Section 22A(4) defines the term “relevant transaction” for the section.

Clause 49 omits Part 3, Division 5 and inserts a new Part 3, Division 5 in the *First Home Owner Grant Act 2000*.

- New section 25A contains a definition of ‘new home’.
- New section 25B contains a definition for ‘special eligible transaction’ and outlines the requirements that must be satisfied for an applicant to be eligible for the first home owners boost. While the eligibility criteria for an eligible transaction will continue to apply, further requirements will need to be satisfied for an eligible transaction to be a special eligible transaction.

Section 25B(2) addresses contracts to purchase a new home “off the plan” which are purchases of a new home prior to registration of a plan of subdivision of the land on which the home is to be situated. There are specific construction completion requirements for these contracts.

In the case of contracts to build a new home, there are construction commencement and completion requirements. Construction completion requirements also apply to owner builders.

Section 25B(3) provides that if the Commissioner is satisfied that a contract is part of a scheme to avoid any limitations or requirements relating to the eligibility requirements for a special eligible transaction, it will not be a special eligible transaction.

Section 25B(4) provides that unless satisfied to the contrary, a scheme to avoid limitations or requirements relating to the eligibility requirements for a special eligible transaction will be presumed if a contract which is made on or after 14 October 2008 replaces one made before 14 October 2008 and the contract is one to purchase or build the same or a substantially similar home.

New section 25C specifies the amount of the grant for a special eligible transaction. The section also ensures that, where the consideration for a

special eligible transaction for an existing home is less than \$14,000, or for a new home is less than \$21,000, the amount of the grant for that transaction will be equal to the amount of the consideration for the transaction. Section 20 will continue to apply if an eligible transaction is not a special eligible transaction.

Clause 50 amends subsection 32(1) of the *First Home Owner Grant Act 2000* to clarify that in carrying out an authorised investigation, the Commissioner may by way of a single written notice require a person to give information, attend before the Commissioner to answer questions, produce documents or do any or all of these requirements.

Clause 51 inserts a new section 51A in the *First Home Owner Grant Act 2000* to give guidance to the court in relation to ordering repayment of a grant and imposing penalties where a person has been convicted of an offence under sections 22(5), 22A(2), 23(4), 42(1) or 43(1). In those cases, the court may order the repayment of a grant and, may order payment of twice the grant amount if it is satisfied the circumstances of the contravention form part of a scheme to circumvent limitation on, or requirements affecting, eligibility or entitlement to a grant. However, the provision does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

Clause 52 amends section 68 which provide for offences in relation to the disclosure of confidential information.

- Section 68(2) is amended by replacing the reference to 'subsection (3)' with 'subsection (3) or (4)'.
- Section 68(3)(d) is amended to ensure that disclosure is only permitted for a legal proceeding under the Act.
- Sections 68(3A) and 68(7) are renumbered as sections 68(6) and (7).
- New section 68(4) allows the Commissioner to disclose confidential information to a member of the Queensland Police Service or the Australian Federal Police for an investigation or proceeding about a particular offence or suspected offence, whether against the Act or another law, if the Commissioner becomes aware of the offence or suspected offence from information obtained or held by him in the course of administration of the Act.
- New section 68(5) provides that a person can not be compelled to disclose to a court or to a party for a proceeding other than a legal proceeding under the Act, confidential information, or whether or not

the person has received particular confidential information or the identity of the source of particular confidential information.

- The definition of “confidential information” in the renumbered section 68(7) is omitted and replaced to ensure that it includes all information held by the Commissioner that relates to a particular application for a first home owner grant.

Clause 53 inserts a new section 69B in the *First Home Owner Grant Act 2000* to state the manner in which the Commissioner may require evidence of value, cause a valuation to be made or rely on a valuation for determining the value of an eligible transaction. Section 69B(2) provides that where the Commissioner is not satisfied with a valuation or the evidence provided, the Commissioner may obtain a valuation or rely on a valuation. Section 69B(3) allows the Commissioner to recover the cost of the valuation from the person applying for the grant. Section 64B(4) defines the terms “property”, “registered valuer”, and “relevant person” for the purposes of the section.

Clause 54 inserts transitional provisions in a new Part 8 in the *First Home Owner Grant Act 2000*.

- New section 73 provides that the Act as if it had not been amended by Part 4 of the *Revenue and Other Legislation Amendment Act (No. 2) 2008* other than sections 49, 50 and 52, continues to apply to applications for a grant in relation to an eligible transaction the commencement date of which is before 1 January 2009.
- New section 74 provides that upon the first publication in the gazette of an approved form for an application for a grant for a special eligible transaction, the publication is taken to have been effective on and from 14 October 2008 so that the application forms used from 14 October 2008 will be valid.

Clause 55 amends the Dictionary in the Schedule by inserting definitions for the terms “new home”, “special eligible transaction” and “unencumbered value”

Part 5 **Amendment of *Fuel Subsidy Act 1997***

Clause 56 provides that Part 5 amends the *Fuel Subsidy Act 1997*.

Clause 57 amends section 141 of the *Fuel Subsidy Act 1997* to:

- clarify in section 141(1) that a person must also not disclose information concerning someone else's affairs held by the person in performing functions or exercising powers under the Act;
- renumber sections 141(3A) and (4) as section 141(5) and (6); and
- insert new section 141(4) to allow the Commissioner to disclose confidential information to a member of the Queensland Police Service or the Australian Federal Police for an investigation or proceeding about a particular offence or suspected offence, whether against the Act or another law, if the Commissioner becomes aware of the offence or suspected offence from information obtained or held by him in the course of administration of the Act.

Clause 58 inserts a new section 141A in the *Fuel Subsidy Act 1997* to provide that a person can not be compelled to disclose to a court or to a party for a proceeding other than a proceeding for the administration or enforcement of the Act, confidential information, or whether or not the person has received particular confidential information or the identity of the source of particular confidential information. "Information" is defined to include a document.

Part 6 **Amendments to the *Government Owned Corporations Act 1993***

Clause 59 provides that Part 6 amends the *Government Owned Corporations Act 1993* (GOC Act).

Clause 60 replaces section 146 of the GOC Act to provide that senior executives of a GOC are to be appointed by a GOC's board, as such removing the requirement to receive prior shareholding Ministers' approval for such appointments.

Part 7 **Amendment of the *Integrated Planning Act 1997***

Clause 61 provides that Part 7 amends the *Integrated Planning Act 1997*.

Clause 62 outlines insertion of a new chapter 6, part 9 to provide transitional provisions to exempt applications made prior to 31 March 2008 from development assessment for local heritage places. These include applications whether they had or had not been decided before 31 March 2008. Applications made after this date will remain assessable development for local heritage places.

Clause 63 amends schedule 8 to clarify development that is exempt from development assessment for local heritage places. This re-exempts development that was previously exempt prior to introduction of development assessment for local heritage places on 31 March 2008.

Part 8 **Amendment of *Land Tax Act 1915***

Clause 64 provides that Part 8 amends the *Land Tax Act 1915*.

Clause 65 amends section 4A of the *Land Tax Act 1915* by renumbering certain provisions and inserting new section 4A(3) to allow the Commissioner to disclose confidential information to a member of the Queensland Police Service or the Australian Federal Police for an investigation or proceeding about a particular offence or suspected offence, whether against the Act or another law, if the Commissioner becomes aware of the offence or suspected offence from information obtained or held by him in the course of administration of the Act.

Clause 66 amends section 3 of the *Land Tax Act 1915* by inserting definitions for the terms “residential care” and “residential care service”.

Clause 67 amends section 3E to insert new sections 3E(1A) into the *Land Tax Act 1915*. Section 3E(1A) provides that section 3E(1)(a) applies subject to section 3EAA

Clause 68 inserts a new section 3EAA in the *Land Tax Act 1915* which sets out circumstances under which land not occupied continually for residential purposes as required in section 3E(1)(a), is taken to have been used for residential purposes. Section 3EAA(3) provides that subject to section 3EAA(4), land will not be taken to be used for residential purposes if income has been derived from the use of the land during the previous year. Section 3EAA(4) sets out the circumstances that income may be derived from the use of the land. Section 3EAA(5) provides that the maximum period that a person may be taken to use land as the person's principal place of residence is 6 years.

Clause 69 amends subsection 13 of the *Land Tax Act 1915* to insert a new exemption for land tax for land on which an aged care facility is located. Definitions for "aged care facility" and "approved provider" are inserted in section 13(5).

Clause 70 amends section 26C of the *Land Tax Act 1915* which provides for the liability on a reassessment of owners who subdivide certain land. New sections 26C(1A) provides for circumstances where land tax will not be reassessed under section 26C(1). Section 26C(1) will not apply if the land has been used by the owner for the relevant period and the land is not being subdivided into more than 5 allotments. Sections 26C(1B) and (1C) are anti-avoidance provisions to minimise the scope for abuse of the amendment by staged subdivisions.

Clause 71 inserts a new section 62A in Part 8 of the *Land Tax Act 1915* to provide for the commencement dates for various amendments.

Part 9 Amendments to the *Liquor Act 1992*

Clause 72 provides that Part 9 amends the *Liquor Act 1992*.

Clause 73 amends section 140 (Closure of unsafe or unhealthy premises). Currently a closure order can only apply to the entire premises. This amendment will enable the chief executive to issue an order to close part of licensed premises in circumstances in where a licensee is required to comply with an order relating to a fire safety or health matter that relates to only part of the licensed premises.

Clause 74 amends section 142AE in relation to the application of Division 6 by adding licensed premises at the Queensland Performing Arts Centre to premises to which section 142AG (conditions relating to crowd controllers) does not apply.

Clause 75 inserts a new section 153A that applies to licensed premises that include a car park. Section 153A(2) provides that a licensee must not, without the chief executive's approval, sell or supply liquor, or allow liquor to be consumed in the car park. A maximum penalty of 25 penalty units applies to a breach of section 153A(2).

Clause 76 omits section 215A which provides for the refunds of fees. Prior to 1997, licensees paid fees on the basis of a percentage of liquor purchases. Section 215A ensured that any refund relating to a licence was distributed amongst parties who contributed to payment of the fee. This section is not longer relevant under the new fee regime.

Part 10 Amendments to the *Liquor and Other Acts Amendment Act 2008*

Clause 77 provides that Part 10 amends the *Liquor and Other Acts Amendment Act 2008*.

Clause 78 amends section 13 (Replacement of pt 4 of the Liquor Act 1992 (Licences and Permits)) to correct administrative errors in sections 76(2) and 80(2) by omitting the term "primary purpose" and replacing it with "principal activity".

Clause 79 amends section 14 (Amendment of s 105 of the Liquor Act 1992 (Requirements for applications)) by inserting a new subsection (f) which provides for an application by a licensee for an approval to sell or supply liquor, or allow liquor to be consumed in a car park of the licensed premises.

Clause 80 amends section 23 (Insertion of new pt 5, div 4A of the Liquor Act 1992) to correct an administrative error by omitting section 141C(2) '(1)(c)' and inserting '(1)(b)'.

Clause 81 omits section 37 (Amendments of section 215A of the Liquor Act 1992 (refund of fees-general)) which provided for the refund of fees to

parties who contributed to payment of the fee under the superseded fee regime.

Clause 82 amends schedule 1 (Consequential and other amendments of Acts) by omitting amendments 33 and 41. A new amendment 41 inserts a new section 162 which provides for taking liquor onto or away from premises subject to a subsidiary on-premises licence.

Section 162(1) provides that a person must not take liquor onto premises to which a subsidiary on-premises licence relates for consumption on the premises unless the premises are mentioned in section 67A. A maximum penalty of 25 penalty units applies to a breach of section 162(1).

Section 162(2) provides that subject to subsections (3) to (5), a person must not take liquor from premises to which a subsidiary on-premises licence relates. A maximum penalty of 25 penalty units applies to a breach of section 162(2).

Section 162(3) provides that subsection (2) does not apply if the premises are premises mentioned in section 67A and either, if the liquor is wine, the wine was supplied to the person on the premises lawfully under the licence as authorised under section 67A(2)(b); or the person brought the liquor onto the premises.

Section 162(4) provides that subsection (5) applies to premises to which a subsidiary on-premises licence relates that is used for the conduct of a business selling wine by a person who also holds a licence under the *Wine Industry Act 1994*. Section 162(5) provides that despite subsection (2), a person may take wine sold to the person under the authority of the wine licence off the premises.

The purpose of sections 162(3) to 162(5) is to correct an anomaly arising from the introduction of the new licence type and fee restructure. It will enable the holder of a wine licence under the *Wine Industry Act 1994* who also held a former special facility licence under the *Liquor Act 1992* to continue with the same authority in relation to the sale of liquor for consumption off the premises if they change to a commercial other licence.

Part 11 **Amendment of *Pay-roll Tax Act 1971***

Clause 83 provides that Part 11 amends the *Pay-roll Tax Act 1971*.

Clause 84 amends section 9(1) of the *Pay-roll Tax Act 1971* to omit redundant sections 9(1)(c) and 9(1)(d) which refer to repealed Commonwealth legislation.

Clause 85 amends the Dictionary in the Schedule of the *Pay-roll Tax Act 1971* to omit redundant definitions which refer to repealed Commonwealth legislation.

Part 12 **Amendments to the *Petroleum and Gas (Production and Safety) Act 2004***

Clause 86 provides that Part 12 amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Clause 87 provides for confidentiality of royalty related information given to the department by a petroleum producer, and restricts the disclosure of such information through the imposition of penalties. This essentially aligns confidentiality and disclosure provisions, which previously did not exist in this Act, with those contained in the *Mineral Resources Act 1989*.

Part 13 **Amendment of *Racing Act 2002***

Clause 88 provides that part 13 amends the *Racing Act 2002*.

Clause 89 amends section 34(1) by inserting a new subsection (i) that empowers a control body to issue race information authorities under section 113E(1).

Clause 90 inserts a new part 6 in chapter 3 entitled ‘Use of Queensland race information’.

A new section 113A is inserted which contains definitions for part 6.

A new section 113B is inserted which defines a betting exchange.

New section 113C is inserted which provides that it is an offence for a licensed wagering operator to use Queensland race information unless authorised to do so under a race information authority. Substantial maximum penalties are provided which are comparable with the penalties for unlawful bookmaking offences currently under the Racing Act. This section will commence on a date that is after the date of commencement of the other provisions of the Bill. This will allow time for licensed wagering operators to apply for approval to use Queensland race information and for the control bodies to consider and decide applications before the offence provision commences.

A licensed wagering operator is defined as a bookmaker, betting exchange, totalisator or person who otherwise conducts a wagering business and is licensed or authorised under the law of a State or a foreign country or by a control body or principal racing authority to conduct a wagering business.

A new section 113D is inserted. Subsection 1 of section 113D provides that a licensed wagering operator wishing to use Queensland race information must apply to the control body for the relevant code of racing for a race information authority.

Subsection 2 of section 113D provides that an application for a race information authority must be made in the way prescribed under a regulation, accompanied by an application fee and documents prescribed under a regulation. The amount of the application fee is to be decided by the control body. The purpose of this fee is to cover, or partly cover, the cost of processing and assessing the application. In determining the amount of the application fee, a control body must have regard to section 35 of the Racing Act which provides that a fee charged by a control body for a service must reflect the reasonable cost to the control body of providing the service.

Subsection 3 of section 113D provides that the control body must either grant or refuse to grant the application.

Subsection 4 of section 113D provides that a control body must have regard to criteria prescribed under a regulation in deciding an application.

Subsection 5 of section 113D states that prescribed criteria may state the matters that a control body must and must not take into account when deciding an application. It is foreseen that regulations will require that a control body must not take into account where in Australia an applicant is licensed or conducts its business when making its decisions. The purpose of this is to ensure that a control body's decisions do not offend against section 92 of the Commonwealth Constitution.

A new section 113E is inserted. Subsection 1 of section 113E provides that if a control body grants an application, it must issue a race information authority to the applicant.

Subsection 2 of section 113E provides that if a control body refuses to grant an application, it must provide written reasons for its decision.

Subsection 3 of section 113E provides that a control body may impose a condition on a race information authority which requires the holder of the authority to pay a fee for the use of Queensland race information. The amount of the fee and how the fee is to be calculated are to be determined by the control body. Other conditions that a control body may impose on an authority are to be prescribed by regulation.

Subsection 4 of section 113E states that the prescribed criteria may state the matters that a control body must not take into account when imposing conditions on an authority. It is foreseen that regulations will require that a control body must not take into account where in Australia an applicant is licensed or conducts its business when imposing conditions. The purpose of this is to ensure that the conditions imposed by the control body do not offend against section 92 of the Commonwealth Constitution.

Subsection 5 of section 113E enables a control body to impose a condition on an authority that the holder of the authority must pay a fee for the use of Queensland race information during the period 1 September 2008 to the day of issue of the authority.

Subsection 6 of section 113E provides that when determining the amount of fees that a licensed wagering operator is required to pay for the use of Queensland race information, a control body must take into consideration the monies that are paid to it by that licensed wagering operator under any other agreement. This supports the purpose of the proposed amendments, which is to ensure that those whose revenue is derived from wagering on Queensland racing make a contribution to the cost of conducting racing in Queensland. For example, UNiTAB Limited currently pays the control bodies monies under an agreement referred to as the 'Product and Program

Agreement'. Having considered this, the control bodies could decide the fee payable by UNiTAB Limited under subsection 3 of clause 113E is calculated by deducting the monies already payable by UNiTAB Limited under the 'Product and Program Agreement' from the fees which would otherwise be imposed under subsection 3.

Subsection 7 of section 113E clarifies that a condition to pay a fee imposed by a control body on a race information authority under subsection (3)(a) does not need to reflect the reasonable cost to the control body of providing the service as required by section 35(2) of the Racing Act.

New section 113F is inserted which provides that a control body may cancel a race information authority on a ground prescribed under a regulation. The control body must provide reasons for the cancellation.

New section 113G is inserted which authorises conduct regarding the collection of fees for the use of Queensland race information that may otherwise contravene the *Trade Practices Act 1974* (Cth) or the Competition Code of Queensland.

Clause 91 inserts a note in section 143(3) to refer to section 352A. The purpose of the note is to clarify that section 352A is the core provision and that section 143(3) is subject to section 352A.

Clause 92 inserts new section 352A which provides that if a control body relies on a certificate signed by an accredited analyst under section 147(3) of the Racing Act in taking disciplinary action relating to a licence under its rules of racing, it is sufficient for it to be satisfied that there was substantial compliance with the Integrity Board's procedures under section 115(3) of the Racing Act. The Integrity Board's procedures provide a detailed process that must be followed in taking and dealing with samples for analysis. The amendment recognises that in following detailed processes, there is the potential for procedural mistakes to be made that do not adversely affect the integrity of the analysis.

If an appeal is lodged from a decision of a control body to an appeal committee or to the Tribunal, it is sufficient for the appeal committee or the Tribunal to be satisfied that there was substantial compliance with integrity board's procedures under section 115(3) of the Racing Act provided the integrity of the analysis has not been adversely affected.

In making a decision as to whether substantial compliance with the Integrity Board's procedures has not adversely affected the integrity of the analysis, the control body, an appeal committee, or the Tribunal must have

regard to the evidence of an accredited analyst or an accredited veterinary surgeon.

Part 14 Amendments to the *South Bank Corporation Act 1989*

Clause 93 provides that Part 14 amends the *South Bank Corporation Act 1989*.

Clause 94 inserts a new part 11, division 4 (Transitional provision for Revenue and Other Legislation Amendment Act (No.2) 2008). Section 129 clarifies that the amendment of the *South Bank Corporation By-law 2004* by the *Revenue and Other Legislation Amendment Act (No.2) 2008* does not affect the power of the Governor in Council to approve any further amendment of the by-law, or the repeal of the by-law, by the corporation.

Part 15 Amendments to the *South Bank Corporation By-law 2004*

Clause 95 provides that Part 15 amends the *South Bank Corporation By-law 2004*.

Clause 96 omits section 6 (Site notices-controlling drinking, entry to a place and other activities). A new section 6 (Site notice-controlling entry to a place and activities, etc.) is inserted. Section 6(1) provides that for the purposes of the Act, the corporation may, by site notice, indicate the entitlement of persons to enter a place on the site; or control the activities, conduct or behaviour of persons on the site. Section 6(2) provides that a person must comply with a site notice under subsection (1) unless the person has a reasonable excuse. A maximum penalty of 4 penalty units applies to a breach of section 6(2).

South Bank is proposed to be prescribed under a regulation to enable the application of section 173B of the *Liquor Act 1992* (Consumption of liquor in certain public places prohibited). Section 6 has been replaced to ensure consistency with the *Liquor Act 1992*.

Part 16 **Amendment of *South East Queensland Water (Restructuring) Act 2007***

Clause 97 provides that the Bill amends the *South East Queensland Water (Restructuring) Act 2007* (Restructuring Act).

Clause 98 amends section 26 of the Restructuring Act by allowing responsible Ministers to make a decision on behalf of a water entity's board if all the board members are prevented from making a decision due to a conflict of interest.

Clause 99 amends section 33 of the Restructuring Act to provide that senior executives of a water entity are to be appointed by a water entity's board, as such removing the requirement to receive prior responsible Ministers' approval for such appointments.

Clause 100 amends section 65 by making a minor correction to the name of the *South East Queensland (Gold Coast) Desalination Company Pty Ltd*.

Part 17 **Amendment of *State Development and Public Works Organisation Act 1971***

Clause 101 provides that Part 17 amends the *State Development and Public Works Organisation Act 1971*.

Clause 102 amends the section 2 reference to the schedule to be a reference to schedule 2 of the Act. This will allow for the insertion of a new schedule 1 to set out the fees for Part 4.

Clause 103 inserts a new division 1A into Part 4 and introduces a number of new sections to facilitate the proposed charging regime.

Section 25A provides that fees, as set out in the new schedule 1, are payable to the Coordinator-General at a number of stages during the environmental coordination process and that the Coordinator-General's obligations under part 4 are suspended until the relevant fee is paid for the particular stage.

Section 25B allows the Coordinator-General to recover the additional costs of any services or advice the Coordinator-General considers necessary to decide an application or take other action under part 4. An example of a cost that the Coordinator-General may seek to recover from the proponent is the costs associated with commissioning an independent report into a particular aspect of the project proposal that the Coordinator-General considers is necessary in order to evaluate the EIS for the project. Costs of public notification incurred by the Coordinator-General during any stage of the environmental coordination process would also be recoverable from the proponent under this section.

Clause 104 inserts a new part 4 division 2 subdivision 1 heading.

Clause 105 inserts a new subdivision 2 and subdivision 3 heading in part 4 division 2.

Section 27AA provides that a proponent can apply to the Coordinator-General for a significant project declaration; this reflects the current practice. It also clarifies that the Coordinator-General can, of the Coordinator-General's own initiative, declare a project under section 26(1) to be a significant project.

Section 27AB sets out the requirements of an application for declaration. This formalises the current practice.

Section 27AC provides for the Coordinator-General's decision on an application to declare a project and requires that written notice, including reasons, must be given if the Coordinator-General decides not to make the declaration.

Section 27AD provides that the Coordinator-General's decisions relating to significant projects under Part 4 will not be subject to the *Judicial Review Act 1991* (JRA). Previously the Coordinator-General's decisions under Part 4 have not been subject to the JRA as there were no final decisions of an administrative character that would attract the operation of the JRA. As the amendments to include fees have introduced a formal application and decision stage for significant project declarations and change proposals, in order to maintain the status quo it is necessary to exclude these decisions from the jurisdiction of the JRA. Other inserted provisions into this Act require the Coordinator-General to provide reasons to a proponent whose application for a significant project declaration, or change proposal, is refused. This will ensure that appropriate administrative processes are applied to the Coordinator-General's decisions under Part 4. In addition the proposed provisions only remove the right to judicial review under the

JRA. They do not affect the Supreme Court's inherent jurisdiction or the right of a proponent to lodge an appeal under primary legislation (e.g. The right of appeal under the IPA). As such, the proposed provisions do not exhaust the proponent's right to review of a decision.

Clause 106 omits sections 35C and 35D and replaces them with a new section 35C which requires proponents to apply to the Coordinator-General to evaluate a proposed change to the project. This amendment ensures consistency of language with the new sections 25A and 27AA and makes the fees set out in the relevant row of schedule 1 payable with the application to the Coordinator-General.

Clause 107 amends section 35E to ensure consistency of language and application processes for a Coordinator-General's Change Report with the new sections 25A and 27AA relating to the EIS process.

Clause 108 amends section 35F(1) to replace "notice" with the word "application".

Clause 109 amends section 35G to clarify that the Coordinator-General must decide whether or not to require the public notification of a proposed change to a project. This formalises the current practice. It also provides that the Coordinator-General must advise the proponent in writing of this decision and, if a decision to require public notification is made, how the public notification is to be made. A decision notice requiring public notification must be given before the evaluation is made.

Section 35G is expanded to provide further direction in the case where public notification is not required. The subsections should be read in conjunction with Part 2 of Schedule 1. The section provides that if the Coordinator-General thinks that the proposed change may be approved without taking any action under section 35I(2) (amending or imposing conditions or recommendations), then the Coordinator-General may defer the giving of the decision notice on public notification until the Coordinator-General provides the proponent with the Coordinator-General's Change Report evaluating the change. The effect of this would be that only the application fee is payable for the evaluation of proposed change. However, it is envisaged that such a decision would only be made in relation to minor, insubstantial changes to a project. It is expected that the large majority of proposed changes will require amendments to existing conditions or recommendations or the imposition of further conditions or recommendations under section 35G(2), and that

fees for the evaluation of the proposed change will be payable, in accordance with Schedule 1.

Clause 110 amends section 35I to clarify that the Coordinator-General may refuse to allow a proposed change to a project. Currently, the Act is not specific in this regard and the addition of this section clarifies the existing position that the Coordinator-General can refuse to allow a proposed change. A requirement to provide reasons for such a refusal is also provided.

Clause 111 omits section 111(2)(b) and replaces it with a new subsection to enable the Coordinator-General to also delegate powers to any person who, under the *Public Service Act 2008*, is a chief executive, a senior executive or appointed to a term contract where the remuneration of that person is equivalent to, or more than, that of a senior executive. Given the experience and seniority of members of the senior executive service and the responsibility given to persons appointed to term contract positions under the *Public Service Act 2008*, it is appropriate that powers under a works regulation are able to be delegated to them, provided they are the equivalent of an officer of the senior executive service.

Clause 112 inserts a new Part 7A including new sections relating to enforcement and general offences.

The Coordinator-General can impose conditions under a number of provisions of the Act. Where conditions are not complied with the Coordinator-General needs to be able to legally require people and businesses to comply with the condition. In such cases, an enforcement notice can be used. The introduction of this provision brings the Act into line with contemporary legislation dealing with planning and development, such as the *Integrated Planning Act 1997* (s. 4.3.11 Giving enforcement notice) and the *Environmental Protection Act 1994* (s.358 When order may be issued).

Section 157A sets out the type of conditions certain enforcement action can be taken in relation to as 'enforceable conditions'. An enforceable condition is any condition:

- a condition mentioned in section 35(4)(b) or (d) (Coordinator-General's Report evaluating an EIS), 35I(2) (Coordinator-General's Change Report), 62 (infrastructure coordination plan) or 71 (Governor in Council approval of prescribed project);

- a requirement recommended under section 35I(2)(b) (Coordinator-General's Change Report) or 43 (community infrastructure designation) that has been included in a designation as community infrastructure under the *Integrated Planning Act 1997*);
- a stated condition recommended under section 35I(2)(b) (Coordinator-General's Change Report) or section 52 (application of Coordinator-General's report to other approval process that has become part of an approval under another Act mentioned in part 4, division 7 (a relevant approval));
- a condition imposed under section 76O (prescribed project) or 84 (use of land in a State Development Area).

It clarifies that an enforceable condition includes any conditions mentioned above that are amended under this Act or another Act (where that condition is part of a relevant approval).

Section 157B provides that an enforcement notice can be given in circumstances where the Coordinator-General reasonably believes a person to whom an enforceable condition applies has contravened or is contravening the condition. The enforcement notice may require the person to comply with the condition or undertake certain measures stated in the enforcement notice that the Coordinator-General considers are reasonably necessary to ensure compliance with the condition. There is also provision for an enforcement notice to require the recipient to notify the Coordinator-General when the recipient has complied with the enforcement notice.

Section 157C sets out the requirements of an enforcement notice. These requirements are consistent with the requirements of similar notices issued under the *Integrated Planning Act 1997* (s. 4.3.14 General requirements of enforcement notices) and the *Environmental Protection Act 1994* (s.360 Form and content of order).

Section 157D provides that the recipient of an enforcement notice may appeal to the Planning and Environment Court against the decision to give the notice. Section 4.1.2 (1) of the *Integrated Planning Act 1997* provides that the Planning and Environment Court has the jurisdiction given to it under any Act and sets out the procedure for the appeal process of the Court.

Section 157E provides that a stay of an enforcement notice can only be granted by the Court on application. This reflects the position under the

common law and the *Environmental Protection Act 1994*. It does however differ from the position under the *Integrated Planning Act 1997* that provides for an ‘automatic’ stay on the operation of an enforcement notice once an appeal is lodged. Given the broad nature of issues addressed by conditions under a Coordinator-General’s Report it is not considered that an automatic stay of an enforcement notice following the lodging of an appeal would be appropriate.

Section 157F inserts an offence provision relating to enforcement notices. The maximum penalty for a breach of an enforcement notice is 1665 penalty units. This is the same penalty as that prescribed for similar offences under other legislation. For example, the breach of an enforcement notice under the *Integrated Planning Act 1997* and the breach of an environmental protection order under the *Environmental Protection Act 1994* both prescribe a maximum penalty of 1665 penalty units.

Section 157G provides that prospective buyers of the land or business to which an enforcement notice relates, must be informed in writing of the existence of the enforcement notice. This allows potential buyers to investigate any consequent financial implications before entering into the contract of sale. It also allows the buyers to rescind a contract to purchase if the sellers have failed to disclose the existence of the enforcement notice.

Section 157H provides that the agreement to dispose of the business or land may be rescinded if the above provision is not complied with by the seller.

Section 157I introduces Division 2 that relates to the seeking of enforcement orders in the Planning and Environment Court. Under this section the circumstances in which the Coordinator-General can currently seek an enforcement order in the Planning and Environment Court are extended to include a contravention of an enforceable condition, as defined in division 1 of the Part. This includes a past, current or threatened contravention of an enforceable condition.

Section 157J provides that the court may make an interim enforcement order. This is consistent with the powers of the court in relation to making interim orders under the *Integrated Planning Act 1997* and *Environmental Protection Act 1994*.

Section 157K sets out the circumstances in which the court may make an enforcement order. This includes a past, current or threatened contravention of an enforceable condition.

Section 157L sets out the kind of things an enforcement order may require. This is consistent with the powers of the court in relation to making orders under the *Integrated Planning Act 1997* and *Environmental Protection Act 1994*.

Section 157M provides for the courts powers in relation to enforcement orders. This is consistent with the powers of the court in relation to making orders under the *Integrated Planning Act 1997* and *Environmental Protection Act 1994*.

Section 157N inserts an offence provision in relation to enforcement orders. The maximum penalty for not complying with an enforcement order is 3000 penalty units or two years imprisonment. The penalty reflects the seriousness of the offence and must be higher than the penalty for the breach of an enforcement notice. This is the same penalty as for the breach of a court order under the *Integrated Planning Act 1997*.

Section 157O provides a new Division 3 in relation to general offences. It inserts an offence provision in relation to the giving of a document containing information the person knows is false or misleading to the Coordinator-General. The Coordinator-General relies upon information supplied by proponents and other persons to make decisions and take actions under the Act. For this reason it is crucial that the information supplied to the Coordinator-General is not false or misleading. The inclusion of this section and the penalty imposed is consistent with contemporary legislation dealing with development assessment and approval and regulatory matters, such as the *Integrated Planning Act 1997*.

Section 157P extends the application of the existing executive officer liability provisions to include further offences under the Act. It requires that executive officers of a corporation must ensure that their corporation complies with particular sections of the Act. If they fail to ensure this then they are deemed to have committed the offence of failing to ensure the corporation complies with this Act. It is a defence for an executive officer to prove that: if in a position to do so, all reasonable steps were taken to ensure the corporation complied with the Act; or, that the officer was not in a position to influence the conduct of the corporation in relation to the offence. This provision ensures that those individuals who were actually responsible for an offence, can be punished in their personal capacity for the offence and ensures executive officers cannot hide behind the 'corporate veil.' Consistent with similar contemporary regulatory legislation, the penalty is the penalty for the contravention of the provision by an individual.

Section 157Q replaces section 170 of the Act and expands its application to the offences introduced. The purpose of this provision is to clarify which offences under the Act are summary offences, and which are misdemeanours.

Section 157R provides that a proceeding for a summary offence against this Act may be brought only by the Coordinator-General or a person acting for the Coordinator-General.

Clause 113 omits section 170 (mode of prosecution).

Clause 114 inserts a new division 3.

The new Division 3 details transitional provisions for the introduction of the amendments. Under these provisions the fees to be imposed under the new section 25A will not apply to a significant project declared before the commencement of that division, with one exception. Therefore any projects that were declared significant projects prior to the commencement of the division will not be required to pay the fees for environmental coordination under the schedule 1. However, the exception to this is in the case where a proponent seeks the Coordinator-General's evaluation of a proposed change to the project under division 3A of part 4 after the commencement of the division, the fees under section 25A for the evaluation of the proposed change will apply regardless of whether the Coordinator-General's evaluation of the project under section 35 was completed before or after the commencement of division 1A.

Section 182 provides the transitional provisions in relation to enforcement notices and orders under part 7A. It provides that such notices and orders can be given in relation to enforceable conditions that existed prior to the commencement of the part, however the contravention of the enforceable condition must have occurred after the commencement of the relevant section (and therefore includes continuing contraventions at commencement).

Clause 114 also inserts Schedule 1 which sets out the fees for part 4 of the Act. Part 1 of the schedule sets out when the fees are payable, provides that the fees will be adjusted for CPI each year and that the Coordinator-General must publish on the department's website the relevant fees for the year. Part 2 contains the table of fees.

Clause 115 includes amendments to the dictionary contained in schedule 2 of the Act, that relate to the new and amended provisions.

Part 18 **Amendments to the *Statutory Authorities (Superannuation Arrangements) Act 1994***

Clause 116 provides that Part 18 amends the *Statutory Authorities (Superannuation Arrangements) Act 1994* (Statutory Authorities Act).

Clause 117 removes an obsolete reference to *Occupational Superannuation Standards Act 1987* (OSSA) (Cwlth) and replaces it with a reference to the *Occupational Superannuation Standards Regulations Application Act 1992* (Cwlth).

Part 19 **Amendments to the *Superannuation (State Public Sector) Act 1990***

Clause 118 provides that Part 19 amends the *Superannuation (State Public Sector) Act 1990* (QSuper Act).

Clause 119 inserts a paragraph into section 6A to clarify that the process for removing a disqualified person from the QSuper Board is consistent with Commonwealth superannuation legislation.

Clause 120 amends section 28 to allow the Treasurer to request units of the State Public Sector to make lump sum payments in addition to the current periodic payments.

Clause 121 removes sections 27 and thereby provides that the QSuper Board and the QSuper fund are not exempt from any State taxes.

Clause 122 amends section 29 to reinforce the State's obligation to meet its defined benefit superannuation liabilities.

Clause 123 removes sections 32J and thereby provides that the QSuper Board and the QSuper fund are not exempt from any State taxes.

Clause 124 amends section 32K (6) to alter the role of the Parliamentary Benefits Committee from a decision making role to one advising the QSuper Board in regard to an MP's cessation of Parliamentary service.

Clauses 125 inserts a new part 5B to close the defined benefit arrangements to new members from the day the Bill is introduced into the House -

- new section 32M inserts definitions relevant to the new Part;
- new section 32N provides that membership of the defined benefit category will only be open to current active DB members;
- new section 32O provides a mechanism to accept an application for DB membership for a period of 6 months. Such an application to be considered by the Government Superannuation Officer, a statutory position, with an appeal right to the Chief Executive;
- new section 32P provides that where a current active DB member changes public sector employment they can recommence in the DB category providing the break in service is less than 1 month.

Part 20 Amendment of *Taxation Administration Act 2001*

Clause 126 provides that Part 20 amends the *Taxation Administration Act 2001*.

Clause 127 amends section 111 in the *Taxation Administration Act 2001* by renumbering certain provisions and inserting new section 111(3) to allow the Commissioner to disclose confidential information to a member of the Queensland Police Service or the Australian Federal Police for an investigation or proceeding about a particular offence or suspected offence, whether against the Act or another law, if the Commissioner becomes aware of the offence or suspected offence from information obtained or held by him in the course of administration of the Act

Clause 128 amends the Dictionary in Schedule 2 of the *Taxation Administration Act 2001* to omit and replace the definition of “confidential information” to ensure it includes information held by an official under or in relation to a tax law.

Schedule Minor amendments of the *Duties Act 2001*

The Schedule makes minor amendments to the *Duties Act 2001* to correct cross references to legislative provisions and repealed and renamed legislation. Minor amendments are also made to certain provisions to reflect current drafting practices.

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