REVENUE AND OTHER LEGISLATION AMENDMENT BILL (No.2) 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

To amend the:

- *Fuel Subsidy Act 1997* to address certain administrative and operational issues;
- *Land Tax Act 1915* to modify a concession, clarify objection and appeal obligations and make minor amendments;
- *Stamp Act 1894* to clarify and improve the operation of the legislation, remove avoidance opportunities, make transitional arrangements for changes to Commonwealth regulation of managed investments and make minor amendments; and
- *Pay-roll Tax Act 1971*, *Debits Tax Act 1990* and *Commonwealth Places (Mirror Taxes Administration) Act 1999* to make minor amendments.

Amendments are also being made to State taxing laws to give effect to arrangements with the Commonwealth following the High Court's *Allders* decision.

Reasons for the Bill

The *Fuel Subsidy Act 1997* has now been operating for over 18 months and, during that time, certain administrative and operational issues have been identified relating to the scheme's operation. Amendments are necessary to ensure the continuing efficient and effective operation of the Act.

The *Fuel Subsidy Act 1997* therefore requires amendment to:

- clarify the meaning of “bulk end user”;
- specify the period for which records are required to be retained;
- clarify and extend the obligations for the repayment of subsidies; and
- permit the disclosure of information to the Australian Customs Service.

Following a recent judicial decision, amendment of the *Land Tax Act 1915* is necessary to modify the circumstances in which a certain concession is available. Amendments are also required to clarify the operation of the Act.

The *Land Tax Act 1915* is therefore to be amended to:

- modify the concession available where a building is owned and occupied by a society, club or association which is not carried on for pecuniary profit;
- require a person lodging an objection with the Commissioner to set out fully the grounds of objection;
- require service of notice of an appeal on the Commissioner; and
- make minor amendments.

Following judicial decisions, it is necessary to clarify and improve the operation of the *Stamp Act 1894.* It is also necessary to provide exemptions following changes to Commonwealth regulation of managed investments, remove avoidance opportunities and improve administration.

The *Stamp Act 1894* is therefore to be amended to:

- provide exemptions for managed investment schemes undertaking transactions for transition to the *Managed Investments Act 1998* (Cwlth) regulatory regime;
- modify the operation of the unit trust provisions as a consequence of changes made to the *Corporations Law* by the *Managed Investments Act 1998* (Cwlth);
- modify the operation of the unit trust provisions for starting up public unit trusts;

- remove uncertainty as to the operation of the power to amend assessments;
- ensure that conveyance duty cannot be avoided on the acquisition of majority interests and further interests in a landrich company through the use of various arrangements and improve valuation powers;
- allow the concessional principal place of residence rate of duty where a person acquires a further interest in a principal place of residence;
- clarify the circumstances in which credit card duty and mortgage duty are payable in relation to credit card facilities; and
- make minor amendments.

Following the enactment of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth), which gives effect to the arrangements agreed by the Commonwealth and the States following the High Court's *Allders* decision, the *Stamp Act 1894* and the *Pay-roll Tax Act 1971* are to be amended to ensure that a person's tax liability remains unchanged. A notice under section 8 of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) to amend the Commonwealth applied *Debits Tax Act 1990* and the *Stamp Act 1894* is also to be made and notified in the Commonwealth Gazette as part of these arrangements.

Finally, minor amendments are to be made to the *Pay-roll Tax Act 1971, Debits Tax Act 1990* and *Commonwealth Places (Mirror Taxes Administration) Act 1999*.

Achievement of Objectives

Fuel Subsidy Act 1997

<u>Interstate Off-Road Diesel Consumers</u>

Section 4 of the *Fuel Subsidy Act 1997* defines a "bulk end user". The intention of the definition is to ensure that certain persons who purchase bulk fuel from a place in Queensland, where those persons do not use bulk diesel for off-road purposes, may receive the Queensland fuel subsidy. The *Fuel Subsidy Act 1997* is to be amended to clarify that interstate off-road diesel consumers cannot qualify as Queensland bulk end users.

Retention of records

The *Fuel Subsidy Act 1997* requires the retention of certain records but does not currently specify retention periods. An amendment will therefore be made to specify that these records are to be retained for five years from the date that they were made.

Repayment of Overpaid Fuel Subsidies

The *Fuel Subsidy Act* 1997 requires a fuel seller to sell at a price which is net of the excise surcharge where a purchaser holds a licence under the Act. However, there are some cases where the purchaser may subsequently receive reimbursement for the excise imposed by the Commonwealth on the fuel.

Where that reimbursement includes the excise surcharge for which the person has already received the benefit of a subsidy under the *Fuel Subsidy Act 1997* through reduced fuel costs, a double benefit results. Accordingly, the *Fuel Subsidy Act 1997* will be amended to require the repayment of an amount received in relation to the surcharge.

Amendments are also being made to sections 165 and 166 to clarify the time when a repayment obligation arises under those sections.

Disclosure to the Australian Customs Service

As part of the administration of the *Fuel Subsidy Act 1997*, it is necessary to ensure that subsidies are being correctly claimed. Liaison with the Australian Customs Service ("Customs") is important as part of this process as Customs is responsible for the collection of the customs and excise fuel surcharges for which subsidies may be payable.

The Australian Customs Service is permitted to disclose information to the Office of State Revenue pursuant to section 16(3) of the *Customs Administration Act 1985* (Cwlth), which facilitates identification of persons who may be abusing the subsidy arrangements. However, section 193 of the *Fuel Subsidy Act 1997* does not permit the reciprocal disclosure of information by the Commissioner. The Commissioner may, however, disclose information to the Commissioner of Taxation for similar purposes.

To facilitate the effective administration of the *Fuel Subsidy Act 1997* through the sharing of information with relevant bodies, section 193 of the *Fuel Subsidy Act 1997* is to be amended to allow the disclosure of information gained in the course of administering the Act to the chief executive officer of Customs under the *Customs Administration Act 1985* (Cwlth) or delegate.

Land Tax Act

Section 13—Land exempted from tax

Section 13(1)(g)(i) of the *Land Tax Act 1915* provides an exemption from land tax for all land owned by or in trust for any person or society and used or occupied by that person or society solely for certain qualifying purposes.

One of the qualifying purposes is that land be used or occupied as a site for a building which is owned and occupied by a society, club or association which is not carried on for pecuniary profit.

In *Tattersall's Club v Commissioner for Land Tax*, the Queensland Court of Appeal interpreted the words "as a site for" in section 13(1)(g)(i) as extending to vacant land on which a building was to be constructed for a non-profit association. Similar exemptions exist for land held in trust by any person or society as a site for other specified facilities including a public library, museum, show ground, public cemetery, public road or fire station.

Previously, the exemption had been allowed only where a building existed and was used for the relevant purpose. Intention to use the site for one of these facilities was insufficient. Section 13(1)(g) is therefore being amended to ensure that, to qualify for the land tax concession, the site must be being used or occupied for one of the purposes set out in that section. Intention to so use the land will be insufficient.

Other amendments

Section 26D of the *Land Tax Act 1915* is being amended to clarify that, when lodging an objection against an assessment with the Commissioner, a taxpayer must fully set out in writing the grounds of the objection.

Section 27 of the *Land Tax Act 1915* provides that a taxpayer may appeal against an assessment in certain circumstances. In addition to lodging notice of the appeal with the Land Court, the taxpayer will be required to serve a copy of the notice of appeal on the Commissioner to start the appeal.

Stamp Act 1894

Section 55A—Acquisition of a further part interest in a principal place of residence

Conveyance stamp duty is payable on the acquisition of real property in Queensland. Stamp duty concessions are however provided where a transaction relates to the acquisition of a person's principal place of residence or first principal place of residenc

Section 55A(2AB) provides that a co-owner acquiring a partial interest in a principal place of residence pays the concessional principal place of residence rate of duty on the interest being acquired. While the provision applies to the initial purchase of a property by the co-owner, it does not extend to the further acquisition of a partial interest by a co-owner. To overcome the anomaly, an administrative arrangement was approved to allow the concessional rate to apply to a co-owner acquiring a further interest in a principal place of residence.

To give legislative effect to this arrangement, section 55A(2AB) is being amended to allow the concessional principal place of residence rate of duty to apply to any acquisition by a co-owner of a further interest in a principal place of residence, including where the co-owner becomes the sole owner of the property as a result of the acquisition of the further interest.

Section 56B—Public unit trusts

Section 56B provides for dispositions of units in unit trust schemes, other than public unit trust schemes, to attract full ad valorem conveyance duty on that part of the property held under the unit trust scheme represented by the unit. For public unit trust schemes, transfers of units attract stamp duty at the lower marketable security rate on the net value of the unit.

Section 56B(1) defines public unit trust schemes as those listed on a stock exchange or which have an approved deed under the *Companies (Queensland) Code* (or *Corporations Law*) or which have a deed of a class approved by order in council. In the case of a unit trust scheme with an approved deed, there are further spread of ownership criteria which must be met. Such a unit trust scheme will therefore not be regarded as a public unit trust scheme where no units have been issued to the public or where fewer than 50 persons are beneficially entitled to units under the scheme or 20 or fewer persons are beneficially entitled to 75% or more of the total issued units in the scheme.

The *Managed Investments Act 1998* (Cwlth) amended the *Corporations Law* from 1 July 1998 so that unit trust schemes will no longer have approved deeds. Unit trust schemes offering investments to the public must instead generally be registered with the Australian Securities and Investments Commission as managed investment schemes. The qualifying criteria for these public unit trust schemes are therefore to be updated to conform with the new Commonwealth requirements.

In addition to satisfying the spread of ownership test, schemes will need to either have an approved deed or be registered schemes in order to be public unit trust schemes. After the end of the transitional period (as defined in section 90 of the *Stamp Act 1894* proposed by the Bill), the approved deed qualification will no longer apply. Schemes which have approved deeds will need to meet one of the other qualifying conditions to retain their public unit trust status. For most schemes, that will mean registration. Unit trusts listed on a stock exchange, or which have deeds approved by regulation, will continue to maintain their public unit trust scheme status.

Section 56B(1A)—deemed public unit trusts

Section 56B(1A) provides for a unit trust to be taken to be a public unit trust where the Commissioner is satisfied that units will be issued to the public to the extent required by the spread of ownership test within one year of the establishment of the trust and that no other units will be issued during the start up period. This ensures that a new trust will be treated as a public unit trust during the start up period when a number of initial allotments are needed before the trust meets the spread of ownership test. However, the Act is silent on the taxpayer’s liability where the Commissioner has expressed satisfaction in the above terms but the spread of ownership test is not subsequently met or other units are issued.

To provide certainty, prevent avoidance and align these circumstances with the approach adopted for similar stamp duty concessions, sections 56B(1AA) to (1AI) are to be enacted. Under subsection (1AA), where the units are not issued to the public to the required extent by the end of the one year period, or other units are issued, the scheme is taken not to have been a public unit trust scheme. Consequently, section 56B may apply so that duty may be payable on dispositions of units including previous dispositions which may not have attracted duty under section 56B because of section 56B(1A).

Section 56FA to 56FO—Landrich provisions

Sections 56FA-FO ("the landrich provisions") impose conveyance duty on the acquisition of majority interests and further interests additional to majority interests in a company where 80% of its assets comprise land of which Queensland land is valued at least at $1M. The anti-avoidance provision was introduced to prevent loss of duty through land buyers purchasing a company rather than buying land owned by the company, thereby paying duty at the lower marketable security rate rather than at the general conveyance duty rate.

A majority interest is defined by reference to the acquirer's entitlement as a shareholder to participate in the distribution of property of the company on winding up, aggregated with such entitlements of persons related to the acquirer. Generally, that entitlement is obtained at the time that the shares are acquired.

Last year, the Queensland Supreme Court in *MIM Holdings Limited v The Commissioner of Stamp Duties* held that an arrangement involving the acquisition of shares subject to certain conditions avoided the operation of the landrich provisions. A critical aspect of the arrangements was that MIM did not, at the time of acquiring the shares, become entitled to any distribution on winding up. The entitlement was deferred under the Articles of Association until the shares were paid up to a certain amount. Although the shares were subsequently paid up and the shareholder then became entitled to more than 50% of the company's property on a winding up, the Court held that the provisions did not apply because no shares had been acquired at that time.

The landrich provisions are being amended to overcome the Court's decision by ensuring that the provisions apply whenever and however the relevant winding up entitlement is acquired. The manner of acquisition of an interest in a corporation is irrelevant in determining whether or not those provisions apply. The combined effect of the amendments is that the focus of the definitions of *acquire* and *interest* will extend beyond the acquisition of a shareholding to include changes in a person's entitlement to participate on a winding-up under a shareholding, regardless of how they may occur.

A new definition of *interest* will be inserted in section 56FN(4). The definition links a person's interest to the person's proportionate entitlement to share in the distribution of the company's property on winding up.

For example, a corporation's rules may provide that entitlement to participate in a distribution of the property on a winding up does not arise until partly paid shares are fully paid up. An allotment of partly paid shares representing 60% of all issued share capital may not be the acquisition of an interest. The payment up of the shares would be the acquisition of an interest by the shareholder. Under section 56FN(1), the person would, after payment up, have an interest in the corporation as the person then has a shareholding entitling the person to participate on a winding up. Under section 56FN(4), the interest is 60%.

The person would have acquired that interest under paragraph (ca) of the definition of *acquire* in section 56FA(1) as the payment up of the shares was a circumstance where there was an increase, from no interest to 60%.

In the previous example, the shareholder's interest (60%) was also a majority interest under section 56FN(2). Had the example involved two related persons holding 30% each after the payment of the unpaid capital, each would have an interest of 30% under section 56FN(4) but there will also have been an acquisition of a majority interest because of the aggregation of their entitlements by section 56FN(2).

In addition to the MIM situation, another avoidance opportunity has been identified in circumstances where a person contracts to acquire a company which is not landrich at the date of the contract but becomes landrich by the date of completion. This can occur where the corporation either buys land or disposes of non-land assets after the acquirer has entered into the contract but before the contract is completed.

Because the date of acquisition under the landrich provisions is the date of entering into the contract, such a purchase is not within the provisions. The provisions are therefore to be amended so that the date of acquisition in these cases is taken to be the date of completion of the contract. The date of the agreement to acquire the shares will apply to other cases.

Finally, the Stamp Act 1894 is being amended to ensure that the Commissioner can obtain appropriate evidence of value of property to determine the application of the landrich provisions.

Section 80 - Reassessments

Section 80 of the *Stamp Act 1894* provides for the amendment of assessments, whether or not duty has been paid. Section 80(2) specifies the circumstances in which a reassessment may be made to increase liability. However, two conflicting Queensland Court of Appeal decisions have created uncertainty regarding the circumstances in which this power may be exercised.

In *Healthcorp Ltd v Commissioner of Stamp Duties (Qld)*, which supports the wider reassessment power, the Court held that the Commissioner's power was limited only by the two year time limit in which the Commissioner may reassess. The Court therefore concluded that the Commissioner was entitled to reassess where an error had been made in the initial assessment which resulted in duty being assessed at an insufficient amount, regardless of the reason for the error. This meant that, where there was any error in the assessment, the assessment may be amended within two years of the instrument being lodged for assessment. Where the error arose because a relevant fact was not known to the Commissioner at the time of making the initial assessment, that assessment could be amended within two years of the Commissioner becoming aware of the previously unknown fact.

In *Quetel Pty Ltd v Commissioner of Stamp Duties (Qld),* the Court's interpretation was that the Commissioner would only be entitled to reassess within two years of becoming aware of a fact that was previously unknown at the time of the original assessment rather than in any case where the original assessment was incorrect.

To remove the uncertainty and to ensure the effective operation of the *Stamp Act 1894*, the Act is being amended to clarify that the Commissioner's power to reassess duty under section 80(2) applies whenever the Commissioner ascertains that the prior assessment was incorrect. Where the assessment was made for an insufficient amount because the Commissioner had incorrect or insufficient information to make the correct assessment, the reassessment must be made within two years of the Commissioner obtaining the information. Incorrect or insufficient information includes information about future circumstances. If the circumstances which ultimately arise differ from those expected at the time of assessment, the information at the assessment time is taken to be incorrect. Those cases usually involve concessions or exemptions granted on the basis that events will or will not happen in the future.

Where the assessment was made for an insufficient amount for any other reason, other than where a court decides the assessment was for an insufficient amount, the reassessment must be made within two years of the duty becoming due and payable.

Taxpayers' rights of objection and appeal are unaffected by these amendments

Amendments in relation to the Managed Investments Act 1998 (Cwlth)

From 1 July 1998, the *Managed Investments Act 1998* (Cwlth) amended the *Corporations Law* to introduce a new managed investment regulatory scheme, which replaced the existing provisions relating to prescribed interests. Under section 1454 of the *Corporations Law*, existing prescribed interest schemes have until 30 June 2000 or such further time as the Australian Securities and Investments Commission may allow to convert their structures and documentation from the old regime to the new managed investment regime.

To obtain registration under the *Corporations Law* as a registered scheme it will be necessary to vary the trust deed of an existing prescribed interest scheme to bring it into terms consistent with the *Managed Investments Act 1998* (Cwlth). Section 61B of the *Stamp Act 1894* provides that concessional duty is payable on an instrument amending the deed of a public unit trust as defined. This definition will apply to most, but not all, prescribed interest schemes which will be seeking to become registered schemes under the new managed investment regime. It will not apply to prescribed interests that do not have an approved deed because all issues of units that have been made have been excluded issues within the meaning of the *Corporations Law* when they were made.

The *Stamp Act 1894* is being amended to provide that section 61B will apply to such prescribed interest schemes where the changes to the trust deed are being made in the context of the conversion of a prescribed interest to a registered scheme, and the changes are made on or before the last day of the managed investment transitional period provided for by section 1454 of the *Corporations Law*. The prescribed interest scheme must also convert to a registered scheme prior to, by an instrument executed before, the end of the transitional period.

Section 61B is also being amended to include a reference to registered managed investment schemes in the definition of public unit trust scheme, to reflect the changes in the *Corporations Law* regulatory regime.

The *Corporations Law* previously provided that the property of a prescribed interest scheme be held by a trustee and managed by a manager. A major change brought about by the *Managed Investments Act 1998* (Cwlth) is the replacement of these two bodies by a single responsible entity which both holds the property on trust for the unitholders/investors and manages the investments on their behalf. For existing prescribed interest schemes, the change to the new structure may involve the retirement of the existing trustee and the appointment of a new responsible entity.

Paragraphs (3)(v) and (4)(v) under the ‘Conveyance or transfer’ heading in schedule 1 of the *Stamp Act 1894* provide an exemption from conveyance or transfer duty in respect of a conveyance or transfer made for the sole purpose of effecting the retirement of a trustee or appointment of a new or additional trustee. Additionally, the ‘Declaration of Trust’ heading in schedule 1 of the *Stamp Act 1894* provides that concessional duty of $4 is payable under the ‘Declaration of Trust’ heading in the same circumstances.

A requirement of subparagraphs (3)(v)(a) and (4)(v)(a) of the ‘Conveyance or transfer’ heading in schedule 1, and paragraph (b) of the ‘Declaration of Trust” heading in schedule 1 of the *Stamp Act 1894* is that, at the time of the change of trustee, it must not be intended to alter the terms of the trust at any future time. This will be the case where the change of trustee to enable an existing prescribed interest scheme to convert to a registered scheme occurs after the changes to the trust deed made to comply with the requirements of the managed investment regime. It will not be the case where the change of trustee occurs before the changes to the trust deed. In the context of a transition of a prescribed interest scheme to a registered scheme, and where the other requirements for the exemption or concession are met, it is not relevant in what order the transactions occur.

The *Stamp Act 1894* is therefore being amended to provide that subparagraphs (3)(v)(a) and (4)(v)(a) of the ‘Conveyance or transfer’ heading in schedule 1, and paragraph (b) of the ‘Declaration of Trust’ heading in schedule 1, apply where the change of trustee occurs before the changes to the trust deed in circumstances where:

- if the instrument which effects the changes to the trust deed is a settlement or declaration of trust, section 61B as amended by this Bill applies to the instrument; and
- the changes to the trust deed are being made in the context of the conversion of a prescribed interest scheme to a registered scheme; and
- the instruments of retirement of the trustee and appointment of the responsible entity as trustee are executed on or before the last day of the managed investment transitional period provided for by

section 1454 of the *Corporations Law*, to implement the conversion of a prescribed interest scheme to a registered scheme; and

- the members of the registered scheme have the same beneficial interest in the property of the scheme immediately before the instruments are executed as they had immediately after the instruments were executed.

Section 601FB of the *Managed Investments Act 1998* (Cwlth) provides that an agent known as a custodian may be appointed to hold the property of the registered scheme for the responsible entity. In some circumstances, this will be required as a matter of law and in others the regulatory authority, the Australian Securities and Investments Commission, will require that a custodian be appointed. The appointment of a custodian may involve a transfer of the scheme property by the responsible entity to the custodian who will then declare that the property is held on trust for the responsible entity. These transactions are dutiable as a conveyance and a declaration of trust respectively.

The *Stamp Act 1894* is being amended to provide that concessional duty will be payable under the 'Conveyance or transfer' heading and 'Declaration of Trust' heading in schedule 1 for these transactions if certain conditions are met. The conditions are that:

- the conveyance or declaration of trust is made to implement the conversion of a prescribed interest scheme to a registered scheme;
- the instrument of conveyance or declaration of trust is executed prior to the end of the managed investment transitional period provided by section 1454 of the *Corporations Law*; and
- the members of the registered scheme have the same beneficial interest in the property of the scheme immediately before the instruments were executed as they have immediately after the instruments were executed.

In some cases, the existing trustee of a prescribed interest scheme may be appointed to act as the custodian of the scheme when it is converted to a registered scheme. Where this occurs, there will be a change in the trustee's capacity as it will no longer hold the scheme property on trust for the unitholders but will hold that property on trust for the responsible entity. Sections 54AB and 54AC of the *Stamp Act 1894* may apply to impose conveyance duty upon the transaction by which the trustee's capacity is changed.

The *Stamp Act 1894* is being amended to provide that sections 54AB and 54AC do not apply where the trustee of a prescribed interest scheme commences to hold the trust property as custodian for the responsible entity where:

- the transaction effecting the change in capacity occurs on or before the last day of the managed investment transitional period provided for by section 1454 of the *Corporations Law*,
- the transaction occurs in the context of implementation of the conversion of a prescribed interest scheme to a registered scheme, and
- the members of the registered scheme have the same beneficial interest in the property of the scheme immediately before the instruments were executed as they had immediately after the instruments were executed.

Duty on credit card facilities

Under section 42B of the *Stamp Act 1894,* stamp duty is payable each month on credit card transactions at the rate of 10 cents per merchant or transaction in the month depending upon the type of card. This total duty is then reduced by 10 cents.

A person who wishes to obtain a credit card is usually required to complete an application for credit. If an application is approved, the customer is issued with a credit card and advised of the available credit limit. Depending upon the way the credit card facility is documented, credit card facilities may also attract mortgage duty, which is imposed at the rate of .4% of the amount secured.

It is not intended that usual unsecured credit card facilities attract mortgage duty. The Mortgage, bond, debenture and covenant heading of schedule 1 is therefore being amended to ensure that mortgage duty is usually not payable on a credit card facility. Mortgage duty could apply, however, to a security for the facility.

It is necessary to ensure that the exemption is not used to avoid mortgage duty on significant loans or advances which would usually be structured in a manner that would otherwise be subject to mortgage duty. Transactions of this type are not normally carried out as credit card transactions. Therefore, the exemption will not apply where the application relates to a loan or advance exceeding $100,000 for any one transaction within one year of establishing the facility and which is contemplated by the applicant and the bank at the time of the application.

Allders Arrangements

Following a High Court decision in *Allders International Pty Ltd v. Commissioner of State Revenue* (1996) 186 CLR 630 ("*Allders*"), which held that the imposition of stamp duty on a lease of an airport was a law with respect to a Commonwealth place and invalid under section 52(i) of the *Commonwealth Constitution*, the Commonwealth put in place safety net arrangements to ensure the continued application of taxation laws at Commonwealth places in each State equivalent to the State taxing laws. It did this through enactment of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) which, for Queensland, applies as Commonwealth law Queensland's stamp duty, pay-roll tax and debits tax legislation to the extent to which those laws would be invalid by virtue of section 52(i) of the *Commonwealth Constitution*. These Commonwealth laws are referred to as applied laws.

The applied laws for Queensland will commence on the making of an arrangement by the Governor and the Governor-General pursuant to section 9 of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) and section 4 of the *Commonwealth Places (Mirror Taxes Administration) Act 1999*, and will then have retrospective effect to 6 October 1997.

A person's total taxation liability under these arrangements is intended to be the same as it would be if the Commonwealth places in Queensland were not Commonwealth places. In some cases this will require amendment of the State taxing laws to ensure that liability thresholds operate properly where a transaction has a connection with a Commonwealth place and a non-Commonwealth place. The amendments will also ensure that, in determining a person's liability under the *Stamp Act 1894*, proper recognition is given to duty paid under the corresponding applied law where that duty would have been recognised if the Commonwealth places in Queensland were not Commonwealth places at the time that the liability under the applied law arose.

The *Pay-roll Tax Act 1971* and the *Stamp Act 1894* are to be amended to achieve these objectives.

Although these amendments will be automatically reflected in the Commonwealth applied laws by virtue of section 6 of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth), there are some cases where modification of the applied laws will be necessary to ensure that a person's tax liability remains unchanged under these arrangements. To achieve this, the Commonwealth has delegated to State Treasurers the power to modify the applied laws in accordance with procedures and within parameters specified in the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth). Modifications are to be made to the *Debits Tax Act 1990* and the *Stamp Act 1894* under section 8 of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth).

The notice specifying the amendments, which is delegated legislation under the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth), will be notified in the Commonwealth Gazette. These modifications will commence in the same manner as the amendments to the State taxing laws and will, amongst other things, ensure that higher effective rates of duty apply under the applied stamp duty law in specified cases for instruments of conveyance.

Alternatives to the Bill

The policy objectives require statutory amendment to give them ongoing effect.

Estimated Cost for Government Implementation

Any additional administrative costs are not expected to be significant.

Consistency with Fundamental Legislative Principles

Retrospective Operation of Amendments

As noted, the *Allders* related amendments will commence on the making of an arrangement by the Governor and Governor-General under section 9 of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) and section 4 of the *Commonwealth Places (Mirror Taxes Administration) Act 1999*, and will then have retrospective effect to 6 October 1997.

This retrospective operation is essential as the Commonwealth applied laws will also commence on the same date on the making of the arrangement. If it were otherwise, the Commonwealth applied laws and the State taxing laws would not operate effectively together and taxpayers may either be advantaged by being able to split transactions and liability between Acts, or be disadvantaged by being unable to claim a credit for tax previously paid under the applied laws where the State taxing laws now apply (e.g. where a Commonwealth place was sold between 6 October 1997 and the date of the making of the arrangement by the Governor and Governor-General). The retrospective operation of these amendments therefore ensures that a person's taxation liability is unchanged by the *Allders* arrangements.

The intention to impose Commonwealth taxes in relation to Commonwealth places was well publicised by the Commonwealth at the time that the arrangements came into effect and taxpayers have, in the main, been acting on the basis that the arrangements apply by continuing to meet their taxation obligations as they did prior to the *Allders* decision.

Other Matters

The amendments to section 56B of the *Stamp Act 1894* include an offence provision which provides that executive officers of a corporation are also guilty of the same offence committed by the corporation. However, it is a defence for an executive officer to prove that, if the officer was in a position to influence the conduct of the corporation, the officer exercised reasonable diligence to ensure that the corporation complied with its obligations. It is also a defence for an executive officer to show that the officer was not in a position to influence the corporation's conduct. This ensures that any executive officer who diligently undertakes the officer's duties will not be guilty of an offence while also providing an appropriate degree of incentive to ensure that the corporation's obligations are fulfilled. If it were otherwise, it would be an easy matter for a corporation to avoid its taxation obligations, with consequent revenue implications.

The amendments to section 56FC of the *Stamp Act 1894* enable the Commissioner to require a valuation from a person whom the Commissioner considers on reasonable grounds is required to lodge a statement under the landrich provisions. The "reasonable grounds" requirement means that the Commissioner would have a basis for believing that a person had acquired a majority or further interest in a landrich company. As the landrich provisions are an anti-avoidance measure, it is essential that the Commissioner be empowered to determine whether or not a person is liable. Of course, if a statement so lodged reveals that a majority interest or further interest was not acquired, there would be no liability to duty

Other provisions

The remaining amendments included in the *Revenue and Other Legislation Amendment Bill (No.2) 1999* are not considered to raise fundamental legislative principle issues.

Consultation

The Office of State Revenue consulted with industry in relation to the drafting instructions for the stamp duty amendments dealing with conversion transactions required by the *Managed Investments Act 1998* (Cwlth). The proposed amendments reflect those drafting instructions. There has also been public consultation in relation to Revenue Ruling Stamp Duty - 40.1 issued by the Office of State Revenue. This Revenue Ruling relates to administrative arrangements that give prior effect to the proposed amendments.

The stamp duty amendments dealing with unit trust schemes, the landrich provisions and credit card/mortgage duty are either beneficial to taxpayers or designed to overcome avoidance opportunities and protect the revenue base. Consultation on these issues is considered inappropriate or unnecessary.

As the intention of the *Allders* amendments is to ensure the seamless operation of these arrangements, so that taxpayers may continue to act as they did prior to the *Allders* decision, consultation is not considered necessary.

Consultation is also considered to be unnecessary for the other amendments.

NOTES ON PROVISIONS

Clause 1 cites the short title of this Act.

Clause 2 specifies the commencement dates for provisions of the Act.

Clause 3 provides that Part 2 amends the *Fuel Subsidy Act 1997*.

Clause 4 provides that a person who, under a corresponding law, is similar to an off-road diesel consumer under the *Fuel Subsidy Act 1997*, is not a bulk end user and will therefore not be entitled to a subsidy under the *Fuel Subsidy Act 1997* as such.

Clause 5 omits the definition of corresponding law. The definition is now included by clause 17 of the Bill in the dictionary in Schedule 3.

Clauses 6-11 provide that the records required to be kept under sections 39, 40, 68, 69, 104 and 105 are to be kept for five years from the date that the record is made.

Clause 12 requires the Commissioner to notify a person by written notice of a requirement to repay an overpaid subsidy or an incorrect payment penalty referred to in section 165 of the *Fuel Subsidy Act 1997* and to specify the time, being not less than seven days, within which the payment must be made. The amount becomes a debt owing to the Commissioner at the end of that time.

Clause 13 specifies the period for repayment of the incorrect subsidy amount and any incorrect benefit penalty payable referred to in section 166 of the *Fuel Subsidy Act 1997*. The amount becomes a debt owing to the Commissioner at the end of that time.

Clause 14 requires the repayment of a subsidy received where a subsidy recipient receives an amount in respect of the surcharge for that fuel other than under the *Fuel Subsidy Act 1997* or a corresponding law. This section does not apply to any amount received under a corresponding law as section 9 makes provision for such cases. The section would, for instance require a person who has received the benefit of a subsidy under the *Fuel Subsidy Act 1997* and who then receives reimbursement for the excise or customs duty, including the surcharge, in relation to that fuel under a Commonwealth Act, to repay the amount received in relation to the surcharge within seven days of receipt. At the end of that time, the amount is a debt owing to the Commissioner and interest accrues under section 190.

Clause 15 clarifies when information notices are required for certain decisions and includes new section 167A as a prescribed section.

Clause 16 allows disclosure to the chief executive officer of customs, or a delegate, of information which was obtained under the *Fuel Subsidy Act 1997* and which concerns someone else's affairs.

Clause 17 amends Schedule 3 by inclusion of a definition for "corresponding law".

Clause 18 provides that Part 3 amends the *Land Tax Act 1915.*

Clause 19 ensures that, to be eligible for a land tax exemption under section 13(1)(g), the site must be being used or occupied for one of the purposes set out in section 13(1)(g). Intention to so use the land will be insufficient. For instance, vacant land held by a person or society with an intention of erecting a building for a purpose under section 13(1)(g)(i) will not be eligible for an exemption until the building has been erected and is used for the required purpose.

Clause 20 clarifies that objections must be in writing, state the grounds of the objection and be lodged with the Commissioner.

Clause 21 specifies the method for starting an appeal.

Clause 22 provides that Part 4 amends the *Pay-roll Tax Act 1971.*

Clause 23 amends the definition of "corresponding law" to give effect to the *Allders* arrangements. The definition ensures that, for the purposes of determining what wages are interstate wages, any taxable wages under the *Pay-roll Tax Act 1971,* as applied under the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth), are taken into account when determining a person's entitlement to a deduction. For instance, if a sole Australian employer pays taxable wages of $500,000 in relation to a Commonwealth place in Queensland and $400,000 in taxable wages in relation to non-Commonwealth places in Queensland, the employer would receive the benefit of a $370,370 deduction under section 11A of the *Pay-roll Tax Act 1971*.

The effect of this amendment in the *Pay-roll Tax Act 1971* as applied by the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) is that the employer would receive the benefit of a $462,962 deduction under the applied pay-roll tax law.

Clause 24 provides that Part 5 amends the *Stamp Act 1894.*

Clause 25 amends section 55A(2AB) to provide that a person acquiring an interest or a further interest in a principal place of residence or first principal place of residence can claim the concessional principal place of residence rate in respect of that interest being acquired, including where the acquisition results in the person then having a 100% interest in the property.

Clause 26 amends the definition of *public unit trust scheme* in section 56B(1). The definition replaces the condition relating to approved deeds with the new requirement of the *Corporations Law* that most managed investment schemes be registered. For the transitional period mentioned in the proposed section 90 (inserted by clause 33), the new definition ensures that public unit trust schemes with approved deeds will continue to qualify as such until the end of that period. After that time, those schemes will need to be registered to maintain their status as public unit trust schemes.

The clause also includes subsections (1AA) to (1AI) which apply to a unit trust scheme where the Commissioner was satisfied that the matters referred to in section 56B(1A) would occur. Where subsection (1A) has applied, the scheme is taken to be a public unit trust scheme so that section 56B would not apply to dispositions of units. Under the amendments, however, if these matters do not occur, the scheme is taken not to have been a public unit trust scheme under section 56B(1A). As a consequence, section 56B may apply to any dispositions of units in the trust including previous dispositions. Any duty payable as a result may also attract interest.

The trustee of the trust must also notify the Commissioner within 28 days of the disqualifying circumstances. Failure to give this notice is an offence by the trustee. If the trustee is a corporation which commits this offence, each executive officer of the corporation may also commit an offence of failing to ensure the corporation’s compliance. It is a defence that the officer was either not in a position to influence the corporation’s conduct or exercised reasonable diligence to ensure compliance.

As an alternative to prosecuting the corporation, the Commissioner may impose a penalty.

Clauses 27(1) and (3) to (6) update section 56FA for changes in the *Corporations Law* by replacing references to “memorandum and articles of association” with “rules” and changing the reference to “subscriber to a memorandum”.

Clause 27(2) expands the definition of *acquire* to include any circumstance where there is an increase in an interest in a corporation, including from no interest, irrespective of whether this involves an acquisition of a shareholding. An initial acquisition of an interest will therefore be an increase in an interest.

Clause 28 modifies the Commissioner's powers under section 56FC in relation to valuations for the purposes of the prescribed provisions. Because those provisions involve valuations of both land and other property, references to *land* have been replaced with *property*. Also, the Commissioner may request valuation evidence from a person whom the Commissioner believes, on reasonable grounds, should lodge a statement under the provisions.

Clause 29 amends section 56FH(3) and (7) to replace the reference to an acquisition of a shareholding in a corporation with a reference to an acquisition of an interest in a corporation, consistent with the amendments to the definition of "acquire" and to section 56FN(1), (2) and (3).

Clause 30(1), (2) and (5) amend the definitions of *interest*, *majority interest* and *further interest* in section 56FN(1), (2) and (3) respectively by removing the reference to the acquisition of a shareholding and further shareholding. The definitions now focus on the entitlement which a person, or the person and any related person, has in relation to a shareholding.

Clause 30(3) makes a consequential amendment to section 56FN(1A) to clarify that the timing rule in that subsection applies only where an interest is acquired under an agreement. The rule does not apply if the interest is acquired some other way.

Clause 30(4) inserts a new subsection (1D) in section 56FN which provides that the time of acquisition of an interest under an agreement is the time of completion if the corporation is land rich at that date but was not land rich at the time of making the agreement.

Clause 30(6) inserts a new subsection (4) in section 56FN which provides that a person's interest in a corporation is the person's entitlement calculated under section 56FA(5) and expressed as a percentage of the value of all the distributable property of the corporation if the corporation were to be wound up immediately. Section 56FN(1), (2) and (3) provide for the aggregation of this interest with the entitlement of related persons to determine whether the person has an interest, majority interest or further interest in a corporation for the purposes of the prescribed provisions.

Clause 31 amends section 61B to extend the concessional duty that is available under that section for instruments amending a trust deed constituting a public unit trust deed, by extending the concept of a public unit trust for the purposes of the section.

The new definition of public unit trust scheme replaces the condition relating to approved deeds with the new requirement of the *Corporations Law* that managed investment schemes be registered within a transitional period. For the transitional period, public unit trust schemes will also continue to qualify as such. After that time, those schemes will need to be registered schemes to maintain their status as public unit trusts.

The concessional duty is also extended to instruments amending the trust deed of a unit trust scheme that it is not required to have an approved deed, because all of the issues of interests in the scheme were excluded issues within the meaning of the *Corporations Law* at the time they were made. The concession is only available for these unit trusts if the amendment is made for the purposes of the transition of the unit trust scheme to a registered managed investment scheme, and the amendment and the transition are made before the end of the transitional period that is permitted for such transitions in the *Corporations Law.*

Clause 32 amends section 80(2) to specify the circumstances in which the Commissioner may reassess duty assessed at an insufficient amount. New subsection (2A) provides that the Commissioner may reassess the duty for an incorrect assessment, within 2 years after the making of a court's decision, within two years of obtaining information necessary to make a correct assessment or, in any other case, within 2 years from the date on which the duty became due and payable. Section 80(2A)(b) makes it clear that, where an assessment has been made on the basis of information relating to future circumstances and those circumstances subsequently change in a way that affects liability, a reassessment may be made within 2 years of the Commissioner obtaining the necessary information to make the correct assessment.

For instance, where the Commissioner has formed a satisfaction under section 56B(1A) but section 56B(1AA) subsequently applies, the Commissioner may, where duty was previously assessed at an insufficient amount, make a reassessment of duty within 2 years of becoming aware of the circumstances mentioned in section 56B(1AA) and obtaining sufficient information to enable the duty to be correctly assessed.

The Commissioner may demand and recover the additional duty arising from the reassessment.

Clause 33 inserts a new provision, section 90, to provide concessional duties in respect of certain instruments that are executed to facilitate the transition of a prescribed interest scheme to a registered managed investment scheme.

New subsection 2 specifies the respective concessional duties that will be payable in relation to conversion instruments if the conversion conditions are met.

Subsection 3 specifies the conversion conditions that must be met if only the nominal duties in section 90 are to be payable in relation a conversion instrument.

Subsection 4 removes the concessional duties 1 year after the transitional period that is permitted for the conversion of prescribed interest schemes to registered managed investment schemes, when all transitions of prescribed interest schemes to registered managed investment schemes that qualify for the concessional duties will have been completed.

New subsection 5 inserts definitions for “conversion instrument”, “custodian”, “managed investment scheme”, “prescribed interest scheme”, “registered scheme”, “responsible entity” and “transitional period”.

Clause 34 amends the Mortgage, bond, debenture and covenant heading in schedule 1 by providing an exemption from any mortgage stamp duty which may be payable under provisions (1)(b) or (1)(c) of that heading for applications for unsecured credit card facilities. The exemption will not apply where the credit card facility is used within one year of its establishment for any one transaction exceeding $100,000 and such use of the credit card was contemplated by the cardholder and the cardholder’s bank at the time of making the application.

For example, a person may decide to purchase land valued at $120,000 and advises the person’s financial institution of that intention. The loan from the financial institution for that amount is structured as a credit card facility. The credit card is used to purchase the land within one year of establishing the facility. As the transaction exceeds $100,000, the transaction has occurred within one year of establishing the facility and the person and the financial institution contemplated the use of the credit card in this way, the application will not fall within the exemption.

Clauses 35-37 which are included in Division 3 of Part 5, specify the amendments necessary to the *Stamp Act 1894* to give effect to the *Allders* arrangements. The intention of all of the provisions included in this Division is to ensure that a person's tax liability and the person's obligations and entitlements under the *Stamp Act 1894* remain the same as they would have if the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) did not apply for a matter because the relevant Commonwealth place in the State was not a Commonwealth place. That is, a person is not to be taken to have any greater or lesser liability, obligation or entitlement than the person would have had if there were no Commonwealth places in the State.

Clause 35 includes a definition of "Commonwealth place" in Schedule 2.

Clause 36 ensures that, for the purposes of determining whether section 35B(1)(a) and (b) apply, where a person carries on a rental business in a Commonwealth place in the State and a non-Commonwealth place in the State, the total amount received by the person for the rental business carried on in those places shall be taken into account in determining whether or not the total amount received in respect of the rental business during the preceding 12 months exceeded $100,000.

Similarly, for the purposes of determining whether section 35B(1)(a) and (b) applies, where a person carries on credit business at a Commonwealth place and a non-Commonwealth place in the State, the sum of the total amounts debited and the total amounts of all forbearances in relation to the credit business (the "total credit amounts") carried on in both places shall be taken into account in determining whether or not the total credit amounts received during the preceding 12 months exceeded $400,000.

This will ensure that a person who carries on a rental business or a credit business in a Commonwealth place and a non-Commonwealth place in the State cannot avoid an obligation to lodge statements and pay duty merely because the amount in relation to the rental business or credit business is less than $100,000 or $400,000 respectively in the preceding 12 months for the Commonwealth place or the non-Commonwealth place but the total amount in relation to all places in the State exceeded those amounts.

Clause 37 ensures that a person's liability to stamp duty will be unaffected by the *Allders* arrangements as any duty paid under the *Stamp Act 1894* as applied by the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) will be taken into account in determining a person's liability under the *Stamp Act 1894* in the same way that the duty would have been taken into account if the applied stamp duty law did not apply to the transaction because the relevant Commonwealth place was not a Commonwealth place.

This provision will apply where the applied law has ceased to operate in relation to a transaction because the relevant Commonwealth place is no longer a Commonwealth place and the *Stamp Act 1894* now applies for the matter. The provision will also apply where the applied law and the *Stamp Act 1894* apply for a matter and duty paid under the applied law should be recognised in determining liability under the *Stamp Act 1894*.

For instance, where 3 year lease with a 3 year option has previously been stamped for six years under section 64A(2) of the applied stamp duty law and that applied law has now ceased to operate in relation to that lease because the relevant Commonwealth place has ceased to be a Commonwealth place, an offset of duty would be allowed against the duty assessed on the option where that option is now liable for duty under the *Stamp Act 1894*. This places taxpayers in the same position as that in which they would have been if the lease was liable under the one stamp duty law initially and when the option was exercised.

This provision will be automatically incorporated in the applied law and, as modified by a notice under section 8 of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth), will ensure that any duty paid under the *Stamp Act 1894* is appropriately recognised under the applied law. For instance, where a business operating solely at a Commonwealth place in Queensland has been acquired such that duty is assessable under section 54A of the applied stamp duty law, and the assets acquired include motor vehicles which are liable for duty under the *Stamp Act 1894* on the application for transfer of registration, the duty paid on the applications for transfer of registration will be allowed as a refund or offset of duty under the applied stamp duty law pursuant to section 57A(6A).

Clause 38 provides that Part 6 makes minor amendments, including updating references and definitions in various State revenue Acts, replacing references to orders in council with references to regulations in the *Stamp Act 1894* and including an attachment to the *Stamp Act 1894* providing a dictionary of definitions in the *Corporations Law*.