REVENUE AND OTHER LEGISLATION AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

To amend the *Debits Tax Act 1990* to strengthen an anti-avoidance provision following abolition of the tax in New South Wales from 1 January 2002.

To amend the *Duties Act 2001* to:

- extend exemption from transfer duty to recognised cohabitation agreements and recognised separation agreements and instruments executed under these agreements entered into by de facto couples and remove unintended consequences in related definitions;
- provide an exemption for certain transactions and instruments which give effect to, or which are part of, a financial or other arrangement entered into by the Queensland Treasury Corporation and to provide that a regulation may exempt transactions and instruments entered into by a statutory body in relation to a financial arrangement under the *Statutory Bodies Financial Arrangements Act 1982;* and
- put beyond doubt that the *Duties Act 2001* applies to certain mortgages executed prior to 1 March 2002.

To amend the *First Home Owner Grant Act 2000* to:

- ensure that an applicant permanently separated from their de facto spouse is treated consistently with a married claimant who has permanently separated from their spouse; and
- give effect to the announced Commonwealth changes to the additional grant scheme for new homes.

To amend the *Fuel Subsidy Act 1997* to:

- extend entitlement to the bulk end user subsidy to incidental use of diesel in relation to the on-road travel of a diesel engine road vehicle;
- provide that the provisional subsidy for licensed retailers for August in any given year will be the provisional subsidy in the previous June;
- clarify that more than one adjustment may be made to retailer provisional subsidies;
- clarify the operation of provisions which enable the Commissioner to defer payment of provisional subsidies to, and subsidy claims by, retailers in limited cases so that the subsidy is effectively paid in arrears and to provide for non-payment of a provisional subsidy in those cases where appropriate;
- waive the requirement for licensed bulk end users to lodge annual returns if no subsidy has been claimed during the year;
- pay an annual provisional subsidy in advance to licensed bulk end users in certain circumstances;
- relax the conditions for a licensed bulk end user to apply to the Commissioner to claim a subsidy more frequently than every three months;
- allow bulk end users within a class to be prescribed by regulation to claim the subsidy more frequently than every three months;
- require bulk end users to notify the Commissioner of cessation of operations or use of a storage site and to make provision for advancing the date of lodgement of the annual return in the former case; and
- enable the Commissioner to enter into a written agreement with a subsidy recipient as to the amount of a subsidy or an amount to be paid by the person to the Commissioner.

To amend the *Gaming Machine Act 1991* to include two transitional amendments to deal with those applications which are able to be assessed notwithstanding the state-wide cap on the number of gaming machines in hotels.

To amend the *Government Owned Corporations Act 1993* to alter the process of determining dividends for Government Owned Corporations ("GOCs"), to ensure that final dividends as approved by shareholding

Ministers are reflected in the audited financial statements of GOCs in the financial year to which the dividends relate.

To amend the *Local Government (Aboriginal Lands) Act 1978* to alter the date for finalising a report on a review of Part 6 of this Act.

To amend the *Pay-roll Tax Act 1971* to implement measures announced in the 2001-02 State Budget to have effect from 1 July 2002, namely, to-

- include certain termination payments within the definition of "wages";
- reduce the rate of pay-roll tax from 4.8% to 4.75%; and
- impose pay-roll tax on the gross value of fringe benefits.

Reasons for the Bill

Following abolition of debits tax in New South Wales from 1 January 2002, there is an incentive for accounts to be opened in that State to avoid debits tax which would otherwise be payable under the *Debits Tax Act 1990*. An existing antiavoidance provision in the *Debits Tax Act 1990* ensures that the account holder would remain liable for the tax if the account was operated to avoid the tax in Queensland. The *Debits Tax Act 1990* will be amended to extend liability in these cases also to the financial institution with which the account is kept if it promoted the establishing and keeping of the account outside Queensland for the sole or dominant purpose of avoiding the tax. The proposed amendment is to discourage financial institutions from actively promoting avoidance of Queensland debits tax.

The *Duties Act 2001* requires amendment to extend the current exemptions for transfers on breakdown of a de facto relationship so that de factos are treated consistently with married persons. The amendments are necessary following extension by the Commonwealth of duty exemptions for married couples. The *Duties Act 2001* will also be amended to remove unintended consequences in related definitions.

The *Duties Act 2001* also requires amendment to provide an exemption for certain transactions and instruments which give effect to, or which are part of, a financial or other arrangement entered into by the Queensland Treasury Corporation and to provide that a regulation may exempt transactions and instruments entered into by a statutory body in relation to a financial arrangement under the *Statutory Bodies Financial Arrangements Act 1982*.

Also, the application of the *Duties Act 2001* to mortgages executed prior to its commencement date of 1 March 2002 where there is a dutiable further advance secured by that mortgage after 1 March 2002 will be confirmed to put beyond doubt that the *Duties Act 2001* applies to these instruments.

Amendment of the *First Home Owner Grant Act 2000* is required to ensure there is consistent treatment of applicants who are separated and living apart from their spouses, regardless of whether the applicant and the ex-spouse were previously in a de facto relationship or married, and to give effect to the announced Commonwealth changes to the additional grant scheme for new homes.

The following amendments to the *Fuel Subsidy Act 1997* improve the fuel subsidy scheme by reducing paperwork for claimants, providing earlier access to the bulk end user subsidy in certain cases and simplifying administration of the scheme.

- Entitlement to the bulk end user subsidy will be extended to cover the incidental use of diesel in relation to the on-road travel of a diesel engine road vehicle.
- The provisional subsidy for licensed retailers for August in any given year will be the provisional subsidy in the previous June. This will allow time for the provisional subsidy for the year to continue to be paid to the retailer pending determination of the monthly provisional subsidy for the year following lodgment of the annual return.
- Waive the requirement for licensed bulk end users to lodge annual returns if no subsidy has been claimed during the year. This will eliminate unnecessary paperwork.
- Provide for payment of an annual provisional subsidy in advance to licensed bulk end users in certain circumstances. For the 2001-02 financial year, the provisional payment scheme has operated under an administrative arrangement and applied to claimants whose subsidy entitlement in respect of bulk end user fuel used on or between 1 October 2000 and 30 June 2001 did not exceed $375. This amount is intended to be increased to $1,000 for fuel used during the full 2002-03 financial year. The majority of bulk end users who make a claim benefit from the scheme which provides earlier access to the subsidy and reduces paperwork by eliminating the need for quarterly claims.

- The conditions for a licensed bulk end user to claim a subsidy more frequently than every three months will be relaxed to expand the range of licensees who may apply to the Commissioner for application of the provision.

- Provide for certain classes of claimant, such as local councils, to claim the subsidy more frequently than every three months. The classes will be prescribed by regulation.

- Make provision for the Commissioner to enter into a written agreement with a subsidy recipient as to the amount of a subsidy or an amount to be repaid to the Commissioner by the person in appropriate cases such as where it is impracticable to work out the exact amount. This will improve the administration of the scheme in these cases. Because the person will have agreed to the amount, their right to seek a review for the amount will be removed.

The following amendments to the *Fuel Subsidy Act 1997* will clarify the operation of certain provisions of the Act and ensure the integrity of the scheme.

- Clarify that adjustments may be made to retailer provisional subsidies more than once in a financial year to ensure that the payments match, as closely as possible, the anticipated subsidy of any given retailer for the month.

- Amend the provisions enabling the Commissioner to defer the payment of a provisional subsidy and associated claims in limited cases to:

  - clarify that they enable payment of provisional subsidies and the making of claims to be suspended; and

  - enable the non-payment of a provisional subsidy for a month, so that claims may effectively be paid in arrears.

- Amend the provisions to require bulk end users to notify the Commissioner of cessation of operations, or of a storage site, and make consequential amendments to the annual return obligations to enable the Commissioner to require repayment of any overpaid provisional subsidy upon cessation of operations. This will ensure that adjustment of the provisional subsidy occurs as soon as possible after cessation rather than following lodgment of the next annual return.

The amendments to the *Gaming Machine Act 1991* are needed to enable certain applications to continue to be dealt with by the Queensland Gaming Commission despite the state-wide cap on gaming machines in hotels. Consideration of some applications able to be made pursuant to s.399 of the *Gaming Machine Act 1991* have been delayed by matters beyond the applicants' control. Consequently, the amendment is needed to automatically extend to 31 December 2002, the period in which the Commission must deal with such applications. In addition, the amendment will correct an anomaly under the existing transitional arrangements which prevented applications for a gaming machine site licence being lodged from the very small number of sites which are entitled, under section 238A of the *Liquor Act 1992,* to continue with an application for the removal of a liquor licence to new premises, despite such sites generally complying with the transitional policy framework in other respects.

The amendment to the *Government Owned Corporations Act 1993* is required to alter the process of determining dividends for Government Owned Corporations ("GOCs"). The amendments are largely of a technical nature consequential to changes to the *Financial Administration and Audit Act 1977* ("FA&A Act") and to the Australian Accounting Standards. Pursuant to amendments to the FA&A Act, GOCs are essentially obliged to prepare and lodge financial statements with the Auditor-General by a date agreed with the Auditor-General, which will allow the audit of the statements to be completed within 3 months of the end of the financial year. Amendment is necessary as a result of the current timing of the dividend consultation process extending beyond the amended timing of the financial statement audit process. Currently, as recommended dividends may be different to final dividends approved or directed by shareholding Ministers, any differential between the recommended dividends and the final or directed dividends is accounted for as revenue by the State in the subsequent financial year. The first set of transitionary amendments will ensure those final dividends as approved or directed by shareholding Ministers are reflected in the audited financial statements of GOCs for the 2001-02 financial year. The Government will then be able to account for the full amount of the final dividends as revenue in the financial year to which the dividends relate ie. 2001-02.

The second set of permanent amendments will ensure that GOCs comply with recent amendments to the Australian Accounting Standards and allow the Government to account for the full amount of GOC final dividends as revenue in the financial year to which the dividends relate for all financial years post 2001-02.

The amendment to the *Local Government (Aboriginal Lands) Act 1978* relates to the timing of a review to establish whether a community based approach to controlling the possession and consumption of alcohol in the Aurukun Shire in Cape York continues to be appropriate and effective. The amendment defers the requirement for the report on the review to be tabled in the Legislative Assembly to 31 December 2002, instead of by 30 June 2002. This deferment will allow sufficient time for Aboriginal communities in Cape York (including at Aurukun Shire) to be fully cognisant of the related report of the Cape York Justice Study before being consulted on a draft report on the review of the *Local Government (Aboriginal Lands) Act 1978.*

In the 2001-02 State Budget, it was announced that the rate of pay-roll tax is to be reduced from 4.8% to 4.75% on and from 1 July 2002. It was also announced that, on and from 1 July 2002, the concessions involving certain termination payments and the grossing up of fringe benefits would be removed. The *Pay-roll Tax Act 1971* is to be amended to give effect to these announcements.

Achievement of Objectives

Debits Tax Act 1990

Debits tax is imposed on certain debits to accounts that have a cheque-drawing facility kept with a financial institution in Queensland. Both the account holder and financial institution with which the account is held are liable for the tax. Also, the *Debits Tax Act 1990* contains an anti-avoidance provision which imposes tax in relation to an account kept in another State or Territory that does not impose debits tax where the account holder resides in Queensland, but only if the account was used for the purposes of avoiding Queensland debits tax. In these circumstances, only the account holder is currently liable. Debits tax legislation in other States and Territories contains similar provisions.

This anti-avoidance provision is to be amended so that both the Queensland resident account holder and the financial institution with which the account is held will be liable for the tax payable on debits made to the account in these cases. However, the financial institution will only be liable for the tax in this case if it actively promoted the establishment and keeping of the account for the sole or dominant purpose of avoiding Queensland debits tax.

Example 1

A financial institution advertises to its Queensland resident customers or to Queensland residents generally that debits tax can be saved by opening accounts in, or transferring accounts to, New South Wales. A customer acts on this promotion and arranges with the financial institution to transfer their Queensland account to New South Wales. If section 4(1)(c) of the Debits Tax Act 1990 applies to impose debits tax on the debits to the New South Wales account, both the financial institution and the customer would be liable to pay the tax.

Example 2

An account holder initiates the establishment of an account outside Queensland without first having been encouraged or advised by the financial institution to take that action to avoid debits tax. The amendment would not apply to render the financial institution liable for debits tax on the account. Whether or not the customer would be liable for debits tax would depend on the circumstances.

Duties Act 2001

Additional exemption from duty for de facto couples

For married couples, the *Family Law Act 1975 (Cwlth)* provides a duty exemption for instruments executed under a Family Court order, a maintenance agreement and an instrument made under a maintenance agreement in relation to the breakdown of the relationship. For de facto couples, the *Duties Act 2001* provides a similar exemption for instruments executed under a Court order made under the *Property Law Act 1975.*

In December 2000, the *Family Law Act 1975* (Cwlth) was amended to allow parties to a marriage to enter into binding agreements dealing with the property and financial affairs on breakdown of the marriage. Under the *Family Law Act 1975 (Cwlth)*, the agreements are exempt from stamp duty.

Similarly, the *Property Law Act 1974* enables de facto couples to enter into cohabitation and separation agreements to deal with their property on the breakdown of the relationship.

Following the December 2000 amendments to the *Family Law Act 1975 (Cwlth),* the *Duties Act 2001* is to be amended to extend the existing exemption for de facto relationships to exempt from duty recognised cohabitation agreements and recognised separation agreements and instruments executed under them entered into by de facto couples.

Amendment to related definitions for duty exemption on breakdown of a de facto relationship

Under the *Stamp Act 1894*, relief from stamp duty applied to certain instruments relating to the breakdown of a de facto relationship. The related exemption in the *Duties Act 2001* is to be amended as follows to remove unintended consequences of the present drafting.

- The present limitation of the exemption to listed items of de facto relationship property is to be removed so that the exemption applies to all property of the relationship.
- The present requirement that the transfer be between the parties to the de facto relationship is to be removed so that the exemption will apply if the instrument satisfies the requirements of the definition of "de facto relationship instrument".

Exemptions from duty for transactions and instruments to effect financial or other arrangements under the Queensland Treasury Corporation Act 1988 and financial arrangements under the Statutory Bodies Financial Arrangements Act 1982

The *Queensland Treasury Corporation Act 1988* and the *Statutory Bodies Financial Arrangements Act 1982* provided the Governor in Council may exempt transactions, arrangements or instruments or that a regulation may provide that exemption. The *Duties Act 2001* is therefore to be amended to provide an exemption for certain transactions and instruments which give effect to, or which are part of, a financial or other arrangement entered into by the Queensland Treasury Corporation and to provide that a regulation may exempt transactions and instruments entered into by a statutory body in relation to a financial arrangement under the *Statutory Bodies Financial Arrangements Act 1982.*

Application of the Duties Act 2001 to mortgages executed prior to 1 March 2002 where there is a further advance secured by that mortgage after 1 March 2002

The *Duties Act 2001* commenced on 1 March 2002 and applies to instruments signed and transactions entered into after that date. The *Stamp Act 1894* was repealed on 1 March 2002 but continues to apply to instruments signed and transactions entered into prior to that date. The *Duties Act 2001* contains transitional provisions dealing with the interaction of these two Acts.

An issue has been raised regarding whether the *Duties Act 2001* applies to mortgages executed prior to 1 March 2002 where there is a dutiable further advance secured by that mortgage after 1 March 2002. While the provisions of the *Duties Act 2001* apply so that these advances are dutiable under that Act rather than under the *Stamp Act 1894*, an amendment is proposed for the avoidance of doubt.

The *Duties Act 2001* is therefore to be amended to confirm that the *Duties Act 2001* applies to mortgages executed prior to 1 March 2002 where there is a dutiable further advance secured by that mortgage after 1 March 2002. This amendment is to take effect from the date of commencement of the *Duties Act 2001*, namely 1 March 2002.

First Home Owner Grant Act 2000

Prior relevant interests held by a former de facto spouse

Under the *First Home Owner Grant Act 2000*, an applicant for the first home owner grant ("the grant") is ineligible for the grant if their spouse has received an earlier grant or holds, or has held, an interest in residential property. A "spouse" is defined as a person who is married or a de facto spouse.

However, where the Commissioner is satisfied that an applicant for the grant is married, but is living apart from the person to whom the applicant is married, and they have no intention of again living together as a couple, the person to whom the applicant is married is not regarded as the applicant's spouse. This ensures that, where the applicant has permanently separated from their marital partner, the applicant is not rendered ineligible for the grant by their ex-partner's interest in residential property or receipt of a prior grant.

In contrast, a "de facto spouse" is defined as one of two persons who are living or have lived together as a couple for at least two years. As a result, even where a de facto couple has permanently separated, one of them may still be rendered ineligible for the grant by their ex-partner's interest in residential property or receipt of a prior grant. The *First Home Owner Grant Act 2000* is therefore to be amended to ensure that an applicant permanently separated from their de facto spouse is treated consistently with a married claimant who has permanently separated from their spouse. Where, however, a separated de facto couple intend to again live together, they may still be regarded as spouses.

Changes to the additional grant scheme for new homes

The grant was introduced on 1 July 2000 to assist home buyers with the purchase or construction of their first home through the provision of a $7,000 grant. On 9 March 2001, the Commonwealth announced an additional $7,000 grant for the purchase or construction of a new home where the conditions of eligibility for the basic grant were satisfied. Additional eligibility conditions were introduced for construction of new homes, requiring construction to commence within 16 weeks and to be completed within 12 months. Also, the additional grant was to be available only for contracts executed (or, in the case of owner builders, for construction commencing) on and between 9 March 2001 and 31 December 2001.

Effective from 9 October 2001, the Commonwealth extended the additional grant from 1 January 2002 to 30 June 2002 but at a reduced amount and also extended the construction time requirements for the additional grant. The *First Home Owner Grant Act 2000* is to be amended to implement these changes.

Fuel Subsidy Act 1997

Extension of eligible use of diesel in relation to incidental usage

Under the *Fuel Subsidy Act 1997*, a subsidy is payable for diesel only if the diesel is used to propel a diesel engine road vehicle on a public road. A diesel engine road vehicle is defined as a vehicle that has a diesel engine and is designed solely or principally for transporting persons, goods or animals by road. However, diesel is sometimes used as an incidental and necessary part of using diesel engine road vehicles on a public road (for example, to run the refrigeration unit of a refrigerated delivery truck). Similarly, where necessary for the vehicle to access a public road, diesel may be used to propel a diesel engine road vehicle on another road.

The *Fuel Subsidy Act 1997* is to be amended to provide entitlement to the subsidy for diesel used in these circumstances.

Provisional payment of subsidy to licensed retailers in August in any given year

Licensed retailers are paid a provisional subsidy monthly in advance for anticipated sales of retail fuel in a month, at least five days before the beginning of the month to which the payment relates. For example, a

provisional subsidy is paid to a licensed retailer in late October in respect of retail fuel expected to be sold by the retailer during November.

Licensed retailers are required to lodge an annual return for each financial year, before 1 August in the next financial year. This return contains information which assists with the calculation of the anticipated annual subsidy for the next financial year. However, as the annual return must be lodged before 1 August in any given year and the provisional subsidy for August must be paid in late July, it will not always be possible to use the information in the annual return to calculate the monthly provisional subsidy for August.

The *Fuel Subsidy Act 1997* is to be amended to enable the provisional subsidy for August to be determined according to the provisional subsidy paid for the preceding June. The Act presently provides the same approach for determining the provisional subsidy for July.

Commissioner's ability to decide anticipated annual subsidy

The provisional subsidy paid in advance to licensed retailers is determined having regard to the anticipated annual subsidy. The anticipated annual subsidy for a licensed retailer for a financial year is based on the quantity of retail fuel sold by the retailer in the previous financial year. However, the Commissioner may decide the anticipated annual subsidy in another manner, whether requested to do so by a licensed retailer or otherwise. This ensures that the amount of the monthly provisional subsidy may be adjusted from time to time so that it is a current estimate of the subsidy to which the licensed retailer will be entitled for the month.

The *Fuel Subsidy Act 1997* is to be amended to remove any doubt as to the Commissioner's ability to decide the anticipated annual subsidy, and the ability of licensed retailers to request the Commissioner to do so, more than once in a financial year.

Clarification of the Commissioner's ability to decide different dates for payment to, and lodgement of claims by, licensed retailers and to pay the subsidy in arrears in certain cases

The *Fuel Subsidy Act 1997* provides that the Commissioner may, in limited cases, decide a different date for paying the monthly provisional subsidy to a retailer and, in these circumstances, may also require a retailer to lodge a claim form by a different date as chosen by the Commissioner. This may be considered appropriate, for example, where the Commissioner is not satisfied as to a licensed retailer's entitlement to the subsidy or the

retailer has not fulfilled conditions attaching to their retailer's licence. This arrangement could continue, for example, until the licensed retailer has satisfied all of their licence conditions and ensures that the subsidy is not payable where a licensee's eligibility for the subsidy is suspect.

The existing provisions for deferring payment of the provisional subsidy and the making of a claim are intended to enable the subsidy to be paid in arrears in certain cases to protect the integrity of the scheme. The Act is to be amended to clarify the operation of these provisions by putting beyond doubt that they apply to defer or remove a retailer's entitlement to a provisional subsidy for a month so that subsidies are effectively claimed in arrears.

Non-lodgement of returns by dormant licensed bulk end users

The *Fuel Subsidy Act 1997* requires a person who was a licensed bulk end user ("BEU") for a financial year or part thereof to lodge a return shortly after the end of the financial year. However, where a licensed BEU has not claimed a subsidy during a financial year, the requirement to lodge an annual return for that financial year is unnecessary. The *Fuel Subsidy Act 1997* is to be amended so that licensed BEUs need only lodge an annual return when a claim is lodged for a financial year.

Provisional payment in advance for certain licensed BEUs

Under the *Fuel Subsidy Act 1997*, licensed BEUs may lodge a claim for the subsidy to which the BEU is entitled, based on the BEU fuel that is used during the claim period. The claim period is 3 months, unless decided otherwise by the Commissioner. Before deciding a claim period of less than 3 months, the Commissioner must be satisfied that certain conditions are met. Licensed BEUs are also required to lodge an annual return.

The *Fuel Subsidy Act 1997* is to be amended to allow the payment of a provisional subsidy annually in advance to BEUs who satisfy certain qualifying criteria. One of the conditions is that the BEU's entitlement to a subsidy for the previous year must not exceed an amount to be prescribed by regulation. The amount to be prescribed will reflect the fact that the provisional payment scheme is intended to assist BEUs with smaller subsidy entitlements.

Licensed BEUs who meet the criteria for the provisional subsidy scheme will automatically receive payments under that scheme. They may, however, elect not to participate in the provisional subsidy scheme for a year, and continue under the payment in arrears arrangements. Provision is

also to be made for switching from the provisional subsidy in advance scheme to the payment in arrears scheme, subject to conditions.

A provisional subsidy for a financial year must be paid to eligible BEUs by 1 October in that financial year. This results in the subsidy for the first three months of the financial year being paid in arrears, with the balance of the subsidy for the year being paid in advance. The amount of the provisional subsidy is equivalent to the licensee's subsidy entitlement for the previous financial year but the Commissioner has power to adjust the amount in limited cases to take into account changes in the BEU's circumstances. However, the provisional subsidy must not exceed the prescribed amount.

Eligible licensees need not lodge claims for the year but will still be required to lodge an annual return by 1 September each year, reconciling the provisional payment received in respect of a financial year with the licensee's subsidy entitlement based on the BEU fuel actually used during that year. Any necessary adjustment for an overpaid or underpaid provisional payment will generally be offset when the next provisional subsidy is paid. This is similar to the provisional scheme which applies for retailers.

Removal of requirement that cost of BEU fuel be a significant proportion of total operating costs when requesting claim period variation

A licensed BEU claims the subsidy to which the user is entitled, based on the BEU fuel that is used during the claim period. The claim period is three months, unless decided otherwise by the Commissioner. The Commissioner may only decide a claim period of less than three months if satisfied that certain conditions are met, including that the cost of BEU fuel is a significant proportion of the total cost in conducting the licensed bulk end user's enterprise. The *Fuel Subsidy Act 1997* is to be amended to remove this requirement.

Allowing certain BEUs to claim subsidy more frequently than every three months

Under the *Fuel Subsidy Act 1997*, licensed BEUs are allowed to lodge a claim on a three monthly basis for the subsidy to which the user is entitled, based on BEU fuel used during the claim period. However, the Commissioner may decide a claim period of less than three months if certain conditions are satisfied, including that the amount of BEU fuel likely to be used in the next twelve months is at least 300,000 litres.

It is proposed to amend the Act to allow certain classes of BEU to apply to the Commissioner to claim more frequently than every three months, even where the usage condition is not satisfied. The classes are to be prescribed by regulation.

Cessation of operation of a storage site, or of using BEU fuel, by a BEU

Licensed BEUs who receive a provisional subsidy in advance for BEU fuel expected to be used during a financial year are required to reconcile their actual subsidy entitlement with the provisional subsidy received shortly after the end of the financial year to which the provisional subsidy relates.

However, if a BEU ceases operation of a storage site part-way through a financial year, it may be appropriate to adjust the provisional subsidy. Similarly, if a person ceases operation as a BEU part-way through a financial year, the Commissioner must be able to require payment of any overpaid provisional subsidy amount within a reasonable time of the BEU ceasing operations, rather than waiting until after the end of the financial year. The *Fuel Subsidy Act 1997* is therefore to be amended to require BEUs to notify the Commissioner in these circumstances.

Payment of an estimated amount

Under various provisions of the *Fuel Subsidy Act 1997*, the Commissioner is required to work out a person's entitlement to a subsidy or an amount payable by a person to the Commissioner. Cases arise where it would be more efficient and less costly for both the subsidy recipient and the Commissioner to agree an estimated amount rather than having to establish exactly the amount involved. These cases are where it is difficult or impracticable to properly work out the exact amount of the subsidy or the amount payable because of a complexity, uncertainty or some other reason. For example, there may be insufficient records to accurately determine the amount.

The *Fuel Subsidy Act 1997* is therefore to be amended so that it applies as if the amount of the subsidy or the amount payable by the person were the estimated amount provided the Commissioner and the person concerned enter into a written agreement to that effect. The estimated amount must be worked out by the Commissioner on the basis of information and records reasonably available to the Commissioner. As the subsidy recipient must agree to the estimated amount, their right to seek a review of the Commissioner's decision to request repayment of the estimated amount is to be removed.

An agreement will cease to have effect if the Commissioner reasonably believes that the information or records relied on in working out the amount are false or misleading or the person failed to disclose material information to the Commissioner.

Gaming Machine Act 1991

In recognition of concerns about matters beyond applicants' control, the *Gaming Machine Act 1991* is amended to automatically extend to 31 December 2002, from 30 June 2002, the period in which the Queensland Gaming Commission must deal with unresolved applications for gaming machines in hotels. The amendment also corrects an existing anomaly by enabling an application for gaming machines to be made by a person who is entitled under s.238A of the *Liquor Act 1992,* to continue with an application for the removal of a liquor licence to new premises or a person who is the holder of a liquor licence for premises to which the liquor licence was removed on or after 11 April 2002 as the result of an application for removal of the liquor licence. Such an applicant must apply for gaming machines by 1 October 2002 and the Queensland Gaming Commission must deal with the application by 31 January 2003, otherwise the application will lapse. If the Commission is satisfied that there are exceptional circumstances to warrant a deferment, the Commission can extend the lapsing date to no later than 30 June 2003.

Government Owned Corporations Act 1993

The transitionaly amendments to the *Government Owned Corporations Act 1993* will alter the timing of the dividend process so that a GOCs dividend recommendation for the 2001-02 financial year must be given within three (3) weeks of the end of the financial year, and the shareholding Minister's direction or approval within a further three (3) weeks. The transitionary amendments will also confirm that the financial statements submitted by a GOC to the Auditor-General must contain the final dividend information (as directed or approved by shareholding Ministers), and cannot be finalised without this information. This will mean that the dividends can be finalised before the financial statements are given to the Auditor-General. The Government will then be able to account for the full amount of the final dividends as revenue in the financial year to which the dividends relate ie. 2001-02.

The permanent amendments to the *Government Owned Corporations Act 1993* will alter the timing of the dividend process so that a GOCs dividend recommendation for all financial years after 2001-02 must be given to shareholding Ministers between the 1st of May and the 16th of May of each financial year. This recommendation is to be based on the latest information held by a GOCs board in relation to the estimated actual operating result for the financial year. Shareholding Minister's direction or approval will then be required by the 30th of June of each financial year so that GOCs will be able to recognise final dividends in the financial statements of the year to which the dividends apply in accordance with revised Australian Accounting Standards. The Government will then be able to account for the full amount of final dividends as revenue in the financial years to which the dividends relate.

Local Government (Aboriginal Lands) Act

Part 6 of the *Local Government (Aboriginal Lands) Act 1978* provides for community controls in relation to possessing and consuming alcohol in Aurukun Shire in Cape York. While Aurukun Shire is a local government under the *Local Government Act 1993*, all of its councillors and most of its population are Aboriginal people. Part 6 establishes the Aurukun Alcohol Law Council as a group with membership from traditional Aboriginal groups, with statutory powers to make declarations prohibiting or controlling the possession and consumption of alcohol in areas within the Shire. The Police Service has powers to enforce these declarations.

Under the *Local Government (Aboriginal Lands) Act 1978*, a review (the Act Review) is to be carried out to determine whether Part 6 remains appropriate and relevant. A report on the outcome of the Act Review must be tabled in the Legislative Assembly before 30 June 2002.

The Government had also commissioned the Cape York Justice Study to report on a wider investigation of alcohol and substance abuse in Cape York indigenous communities and associated social disruption and violence.

Deferring the timetable for tabling a report on the Act Review to 31 December 2002, will ensure that the community at Aurukun is given the fullest opportunity to become aware of the implications of the Cape York Justice Study, before being asked to consider their responses to a draft report on the Act Review.

Pay-roll Tax Act 1971

Inclusion of termination payments

Currently, pay-roll tax payable under the *Pay-roll Tax Act 1971* only applies to a payment made upon the termination of an employee if the payment represents a reward for service to which the employee has an enforceable right. It does not apply to payments made to an employee on termination of employment where the payment is made gratuitously or does not otherwise represent a reward for service.

The 2001-02 State Budget announced that the pay-roll tax concession involving termination payments will be removed.

The *Pay-roll Tax Act 1971* is to be amended so that, from 1 July 2002, pay-roll tax will be payable on assessable ETPs (eligible termination payments) under the *Income Tax Assessment Act 1936 (Cwlth),* other than a death benefit ETP within the meaning of the Commonwealth Act. The advantage of adopting this approach is the substantial alignment of pay-roll tax and income tax arrangements, making it easier for employers to work out which termination payments are liable to pay-roll tax.

Reduction of the pay-roll tax rate

It was announced in the 2001-02 State Budget that the rate of pay-roll tax would be reduced from 4.8% to 4.75% on and from 1 July 2002. The *Pay-roll Tax Act 1971* is to be amended to reflect this change.

Change in taxable value of fringe benefits

Currently, pay-roll tax payable under the *Pay-roll Tax Act 1971* is imposed on the taxable value of fringe benefits under the *Fringe Benefits Tax Assessment Act 1986 (Cwlth)*. However, the Commonwealth fringe benefits tax is imposed on the taxable amount of fringe benefits. The taxable amount is the taxable value after application of a gross-up formula.

This means that Queensland pay-roll tax is charged on the net (or after tax) value of the fringe benefit in the hands of the employee while Commonwealth fringe benefits tax applies to the gross (or before tax) value of the benefit.

The 2001-02 State Budget announced that this pay-roll tax concession on fringe benefits will be removed from 1 July 2002. The *Pay-roll Tax Act 1971* is therefore to be amended to provide that the value of fringe benefits will be the fringe benefits taxable amount, that is, the grossed up amount.

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

Duties Act 2001

The amendment to the *Duties Act 2001* extending the existing exemption from duty for de facto couples will commence retrospectively from the date of commencement of the *Duties Act 2001*, namely 1 March 2002. Retrospective application is appropriate to ensure that all affected taxpayers receive the same beneficial duty treatment from the date of commencement of the *Duties Act 2001*. The amendment is beneficial to taxpayers and does not therefore raise any fundamental legislative principle issues.

Retrospective application is appropriate with respect to the amendment to the *Duties Act 2001* to remove the unintended consequences in the related definitions to ensure the proper operation of the *Duties Act 2001* from the date of its commencement. As the amendments widen the scope of the exemptions currently stated in the *Duties Act 2001*, they are beneficial to taxpayers and are not considered to raise any fundamental legislative principle issues.

With respect to the amendment to the *Duties Act 2001* to confirm that the Act applies to mortgages executed prior to 1 March 2002 where there is a dutiable further advance secured by that mortgage after 1 March 2002, the amendment confirms the current assessing practice of the Commissioner under the *Duties Act 2001*. That practice was published in a Practice Direction on the date of commencement of the Act and was confirmed in public presentations on the new legislation. The current provisions of the *Duties Act 2001* support the assessing practice and the amendment is being made only to remove any uncertainty as to the operation of the relevant provisions in the Act and for the avoidance of doubt. Consequently, taxpayers will not be adversely affected by the amendment and it is not considered to raise any fundamental legislative principle issues.

First Home Owner Grant Act 2000

Similarly, the amendments to the *First Home Owner Grant Act 2000* to give effect to the changes announced by the Commonwealth in relation to the additional grant for new homes will commence retrospectively from the dates on which the Commonwealth intended the changes to take effect. The changes were publicly announced by the Commonwealth and the Commissioner and were widely publicised in the media and by financial institutions both before and after 9 October 2001. Applications have been made and dealt with by other States and Territories on the basis of the announced changes.

As was the case prior to 1 January 2002, the same rights and obligations are to apply to the additional grant as for the existing grant. For this reason, the same rights and obligations will be retrospectively applied to payments of the additional grant made prior to enactment of the *Revenue and Other Legislation Amendment Bill 2002*. For example, where the additional grant has been paid to a first home buyer in respect of a contract for the construction of a new home in contemplation of the applicant taking up residence within 12 months of completion of the transaction, the additional grant must be repaid where the residence requirement is not satisfied.

However, the provision of the additional grant is beneficial for new home buyers and is not, therefore, considered to raise any fundamental legislative principle issues.

Fuel Subsidy Act 1997

The amendments to the *Fuel Subsidy Act 1997* to give effect to previously approved administrative arrangements will commence retrospectively from the dates on which the arrangements came into effect.

The administrative arrangements are beneficial to licensees in that they expand the circumstances in which a subsidy entitlement might arise or the frequency with which a claim for the subsidy may be made, or they reduce compliance costs. In addition, details of the administrative arrangements have, where appropriate, been publicised by way of Information Bulletins issued publicly by the Commissioner. Also, the proposed provisional subsidy scheme for bulk end users was publicly announced and received media coverage. For these reasons, the relevant amendments are not considered to raise any fundamental legislative principle issues.

The amendment to the *Fuel Subsidy Act 1997* enabling the Commissioner to enter into a written agreement with a subsidy recipient as to the repayment of an estimated overpaid amount will remove a subsidy

recipient's right to seek a review of the Commissioner's decision as to the amount. It would be inappropriate to allow a recipient to seek a review where the recipient agrees with the estimated amount. Similarly, where the Commissioner decides that an agreement as to an estimated overpaid amount was formed in reliance on information or records provided by the recipient that are false or misleading, or in the absence of material information being provided by the recipient, the agreement ceases to have effect. In these circumstances, whether or not a subsidy recipient has a right of review of the Commissioner's decision to require payment of an overpaid amount upon cessation of the agreement will be determined under the relevant provision of the Act that would have originally applied had the agreement not been formed. As a result, this amendment is not considered to raise any fundamental legislative issues.

Sufficient regard to the institution of Parliament

The amendment to the *Duties Act 2001* to provide an exemption by regulation for transactions or instruments for a financial arrangement entered into by a statutory body under the *Statutory Bodies Financial Arrangements Act 1982* reinstates a provision contained in the *Statutory Bodies Financial Arrangements Act 1982* which was omitted by the *Duties Act 2001*. The power is limited by the definitions for financial arrangements and statutory bodies as set out in the *Statutory Bodies Financial Arrangements Act 1982*. For this reason it is not considered to raise any fundamental legislative principle issues.

Other provisions

The remaining amendments included in the *Revenue and Other Legislation Amendment Bill 2002* are not considered to raise any fundamental legislative principle issues.

Consultation

The amendments which make beneficial changes to the *Fuel Subsidy Act 1997* were developed in response to submissions by subsidy claimants and industry groups seeking improvements to the scheme.

The amendments to the *Government Owned Corporations Act 1993* do not have any direct impact on the public and therefore consultation with the public was not required. However, the Office of Government Owned Corporations will inform all Government Owned Corporations of the amendments in writing to ensure that they are aware of the change in the timing of dividend reporting.

The proposed alteration to the timetable for the review report on the *Local Government (Aboriginal Lands) Act 1978* has been discussed with representatives from the Aurukun Shire Council and the Aurukun community.

There has been no consultation on other amendments in Bill. However, the amendments are either beneficial or, in the case of the amendments to ensure the integrity of the fuel subsidy scheme and debits tax, inappropriate.

NOTES ON PROVISIONS

Clause 1 cites the short title of this Act.

Clause 2 specifies the dates on which various provisions in this Act have commenced, or will commence.

Clause 3 states that Part 2 of the Act amends the *Debits Tax Act 1990*.

Clause 4 amends section 7 of the Act so that a financial institution which promotes the establishment and keeping of an account outside Queensland for the sole or dominant purpose of encouraging the avoidance of debits tax will be liable for the debits tax payable in respect of debits made to the account, in addition to the account holder. This will only apply, however, where the account holder is liable for debits tax under section 4(1)(c) of the *Debits Tax Act 1990.*

Clause 5 updates a cross-reference in Schedule 2 of the Act to reflect the amendments made to section 7.

Clause 6 states that Part 3 of the Act amends the *Duties Act 2001*.

Clause 7 amends the definition of "de facto relationship instrument" in section 422 of the Act to include a recognised cohabitation agreement and recognised separation agreement and an instrument executed under either of these agreements. In addition, the definition of "de facto relationship instrument" is amended to remove the requirement that the transfer of assets under the de facto relationship instrument be between the de facto spouses.

Clause 8 amends the definition of "de facto relationship property" in section 423 of the Act so that the term refers to any assets owned by the de facto spouses or either de facto spouse.

Clause 9 inserts a new section 431A into the Act to provide for an exemption from the imposition of duty for a financial or other arrangement entered into by the Queensland Treasury Corporation or an affiliate of the Queensland Treasury Corporation. The exemption is provided for transactions and instruments which give effect to, or which are part of, such financial or other arrangements. Clause 431A (3) sets out the conditions for the exemption. For the exemption to be available, the Queensland Treasury Corporation or an affiliate must be a party to at least one of the instruments or transactions that give effect to, or which are part of, the financial or other arrangement, but this transaction or instrument need not be the transaction or instrument for which an exemption is provided under the clause. In addition, the Treasurer is required to certify that the arrangement has as its objective one of three listed matters.

Clause 10 amends section 508 to provide that a regulation may exempt from the imposition of duty a transaction or instrument for a financial arrangement entered into under the *Statutory Bodies Financial Arrangements Act 1982* or another Act, by a statutory body as defined in the *Statutory Bodies Financial Arrangements Act 1982.*

Clause 11 amends the transitional provision to put beyond doubt that the *Duties Act 2001* applies to mortgages signed prior to 1 March 2002 that secure further advances made after 1 March 2002 where the amount of the further advance results in the amount secured by the mortgage exceeding the amount on which stamp duty has previously been paid either under the *Stamp Act 1894* or a corresponding Act.

Example

An all monies mortgage over Queensland property is signed on 1 July 1995 and has been stamped on the highest amount advanced of $1 million. On 2 April 2002 (that is, after commencement of the Duties Act 2001 on 1 March 2002), further advances are made under the mortgage so that the total amount secured is $1.5 million.

The Duties Act 2001 applies to impose mortgage duty on the sum of $500,000 because there is a transaction (the further advance) after commencement of the Duties Act 2001; see s.511(1). The instrument is a mortgage for the purposes of the Act; see s.248(1) and new s.533(1A) (which removes any doubt as to that conclusion). The liability date is 2 April 2002.

Clause 12 states that Part 4 of the Act amends the *First Home Owner Grant Act 2000.*

Clause 13 amends section 9 of the Act so that the definition of "spouse" for a de facto spouse does not extend to de facto couples who are living

apart. However, the amendment also ensures that, for separated de facto couples who intend to again live together, they will be regarded as each other's spouse.

Clause 14 amends section 25B of the Act to alter the conditions relating to the time periods for commencement and completion of a new home.

Clause 15 amends section 25B of the Act to extend the period within which special eligible transactions may occur and to alter the completion date in certain cases.

Clause 16 amends section 25C of the Act to ensure that, for contracts for the purchase or construction of a new home executed (or, for owner builders, construction commenced) on or between 1 January 2002 and 30 June 2002, the total amount of the grant payable will be the lesser of $10,000 or the consideration paid for the purchase or construction.

Clause 17 retrospectively omits section 25D of the Act, to ensure the ongoing operation of Part 3, Division 5 of the Act from 1 January 2002.

Clause 18 omits Part 7 of the Act, which is not required because Part 3, Division 5 of the Act does not expire.

Clause 19 states that Part 5 of the Act amends the *Fuel Subsidy Act 1997*.

Clause 20 amends section 8 of the Act to exclude certain use of certain diesel from being use of diesel for an off-road purpose. The exclusions are the use of diesel incidental to propelling a diesel engine road vehicle on a public road, or to propelling a diesel engine road vehicle on another road where it is incidental to gaining access to a public road.

Example 1

Where a diesel engine road vehicle is a refrigerated truck, and diesel is used to propel the truck on a public road and to run the truck's refrigeration equipment, the diesel used to run the refrigeration equipment is incidental to the use of the truck on a public road. Consequently, that diesel will not be used for an off-road purpose and may attract the subsidy.

Example 2

In delivering farm produce to town, a primary producer must drive the delivery truck along the farm track to access the public road into town. The use of the diesel to drive the truck along the farm track will not be used for an off-road purpose and may attract the subsidy as it is incidental to the vehicle's use on the public road and undertaken to enable the vehicle to access that road.

Clause 21 amends section 19 of the Act to provide that the provisional subsidy payable to licensed retailers in August of a year is the subsidy paid in the preceding June. The amendment also clarifies that the Commissioner may decide, with or without a request from the retailer, a licensed retailer's anticipated annual subsidy more than once in a financial year.

Clauses 22 and 23 amend sections 20 and 22 of the Act, to clarify that, in certain cases, the Commissioner may-

- defer payment of a provisional subsidy to a licensed retailer;
- defer payment of a provisional subsidy to, and the time for lodgement of a claim by, a licensed retailer; or
- decide not to pay a provisional subsidy to a licensed retailer so that the retailer must claim the subsidy to which they are entitled in arrears.

Clause 24 inserts a new section 22A to allow a licensed retailer to claim the subsidy to which the retailer is entitled on a monthly basis, where the Commissioner has decided not to pay the retailer a provisional subsidy for a month.

Clause 25 amends section 23 so that it will operate whether or not a provisional subsidy was paid to the retailer for the month.

Clause 26 amends section 24 of the Act to ensure that the Commissioner may request the repayment of an overpaid provisional subsidy amount, rather than offset the overpayment against the next provisional subsidy, where the Commissioner reasonably believes that another provisional subsidy will not be paid to a licensed retailer, or where the Commissioner has decided to defer payment of, or not to pay, the next provisional subsidy payment.

Clause 27 amends section 25 of the Act to put beyond doubt that the Commissioner must pay to a licensed retailer any underpaid provisional subsidy amount within a reasonable time, provided that the Commissioner is satisfied that the retailer has complied with the licence conditions.

Clause 28 inserts a new Division 1 in Chapter 3, Part 2 of the Act to provide for the payment of an annual provisional subsidy to certain bulk end users ("BEUs").

- *New section 34A* provides that Division 1 will apply to a BEU for a financial year where the conditions in subsection (1) are satisfied. However, a BEU may request that the Division not apply to the BEU. Also, the Commissioner may decide that

Division 1 will apply to a BEU, even if the BEU lodges their annual return for the previous financial year later than the due date. The Commissioner may also decide that Division 1 will not apply to a BEU where the Commissioner reasonably believes that the BEU has not complied with its licence conditions.

- *New section 34B* sets out the Commissioner's obligations in relation to payment of a provisional subsidy to a licensed BEU.
- *New section 34C* specifies how the provisional subsidy is worked out.
- *New section 34D* requires the Commissioner to pay to a licensed BEU the amount of the subsidy to which the Commissioner is satisfied the BEU is entitled following lodgement of a return under section 38, having regard to the amount of the provisional subsidy and any claims already paid.
- *New section 34E* applies where the provisional subsidy for a financial year is more than the user's subsidy for the year and sets out how the excess is to be paid to the Commissioner.
- *New section 34F* applies where the provisional subsidy for a financial year is less than the subsidy for the year and sets out how the shortfall is to be paid by the Commissioner to the licensed BEU.
- *New section 34G* allows the Commissioner to decide that a BEU can convert from the provisional subsidy scheme to the payment in arrears scheme part-way through a financial year on certain conditions.

Example

A BEU receives a provisional subsidy payment of $700 in September 2002, in respect of BEU fuel expected to be used in the 2002-03 financial year. However, by mid-January 2003, the BEU has already used BEU fuel to the extent that the BEU is entitled to a subsidy of $700 for the fuel used. Further, the BEU can provide evidence that suggests that the BEU's full subsidy entitlement is likely to be $1,500 by the end of the financial year.

On 31 January 2002, the BEU lodges:

- *a written request to the Commissioner asking to claim the subsidy in arrears under Chapter 3, Part 2, Division 2;*

- *a subsidy claim in respect of BEU fuel used on and between 1 July 2002 and 31 January 2003; and*
- *evidence substantiating the BEU's claim that its fuel subsidy entitlement is likely to significantly exceed the provisional subsidy amount.*

If the Commissioner decides that Chapter 3, Part 2, Division 1 of the Act no longer applies to the BEU, the Commissioner would offset the provisional subsidy ($700) against the claim ($700) and the BEU would subsequently be able to lodge claims in accordance with the Act for the remainder of the financial year. These claims would be paid in arrears.

- *New section 35AA* states that Chapter 3, Part 2, Division 2 of the Act applies for a financial year to a licensed bulk end user to which Chapter 3, Part 1, Division 1 of the Act does not apply, or where the Commissioner has made a decision under section 34G that Division 1 no longer applies.

Clause 29 inserts a new Chapter 3, Part 1, Division 1, Subdivision 6 as follows.

- *New section 34H* requires a person to notify the Commissioner when ceasing to use BEU fuel.
- *New section 34I* requires a licensed BEU to notify the Commissioner when ceasing to operate a storage site stated in their BEU's licence.

Clause 30 amends section 35 of the Act as follows.

- To remove the requirement that the cost of BEU fuel is a significant proportion of the total cost in conducting a licensed BEU's enterprise, from the criteria required to be satisfied before a BEU may apply to claim the subsidy more frequently than every three months.
- To enable the Commissioner to permit a prescribed class of BEUs to claim the subsidy more frequently than every three months, regardless of whether or not the criteria in section 35(4)(a) have been satisfied.
- To enable the Commissioner to decide a claim period of less than three months if considered appropriate to align the BEU's claiming cycle with the end of a financial year.

Clause 31 substitutes a new section 38 into the Act which limits the requirement for licensed BEUs to lodge an annual return to those BEUs who have either received a provisional subsidy for the year or who have lodged a claim for a subsidy during the year.

Clause 32 amends section 38 of the Act from assent to allow the Commissioner to require the lodgement of an annual return within a reasonable time of being notified that a person has ceased to use BEU fuel part-way through the financial year to which the return relates.

Clauses 33 and 34 insert references to the new section 34E in sections 109 and 114 of the Act, respectively.

Clause 35 inserts a new section 132A into the Act to enable the Commissioner and a person to enter into a written agreement that the Act applies as if the amount of a subsidy or amount payable by the person were an amount estimated by the Commissioner. The new section sets out other conditions of its operation.

Clauses 36 and 37 correct a drafting error relating to the headings in Chapter 7 of the Act.

Clause 38 inserts a new Chapter 9 into the Act as follows.

- *New section 155* clarifies the operation of new section 34A and Chapter 3, Part 2, Division 1 of the Act for the 2001-02 financial year, given that the current BEU fuel subsidy scheme only applied for 9 months of the previous financial year. (The scheme commenced on 1 October 2000.)
- *New section 156* provides for the calculation of a BEU's provisional subsidy for the 2001-02 financial year, with reference to the BEU's subsidy entitlement for the period from 1 October 2000 to 30 June 2001, inclusive.
- *New section 157* deems the Commissioner to have issued an information notice on the date on which this Act receives Royal Assent, in respect of decisions made under new Chapter 3, Part 2, Division 1 of the Act prior to that date which require the giving of an information notice..

Clause 39 inserts a new section 158 to ensure that a criminal liability will not be imposed retrospectively in relation to an offence under new section 38 of the Act.

Clause 40 amends Schedule 1, Part 2 of the Act, to ensure that licensees have appropriate rights of review of decisions made by the Commissioner upon the commencement of the amendments made by this Act.

Clause 41 amends the definitions of "provisional subsidy" and "subsidy", and inserts a definition of "prescribed subsidy amount", in Schedule 2 of the Act, to reflect the amendments made by this Act.

Clause 42 provides that part 6 amends the *Gaming Machine Act 1991*.

Clause 43 inserts a new divisional heading and two new transitional sections. The first transitional provision will automatically extend to 31 December 2002, the period in which the Queensland Gaming Commission must finalise its consideration of applications for gaming machines in hotels which are currently under its consideration, pursuant to section 399 of the Act. If the Commission does not decide such applications by 31 December 2002, the applications will lapse and, due to the state-wide cap on the number of gaming machines in hotels, the applicants will be unable to lodge a new application.

The second transitional amendment will enable an application for a gaming machine licence to be made by a person who is entitled under section 238A of the *Liquor Act 1992* to continue with an application for the removal of a liquor licence to new premises or a person who is the holder of a liquor licence for premises to which the liquor licence was removed on or after 11 April 2002 as the result of an application for removal of the liquor licence. The applicant must apply for a gaming machine licence by 1 October 2002 and the Queensland Gaming Commission must deal with the application by 31 January 2003, otherwise the application lapses. An extension to the lapsing date may be granted if the applicant applies for a deferral of the lapsing by 31 December 2002 and the Commission is satisfied, on material provided by the applicant, that there are exceptional circumstances surrounding the application. The maximum period for which lapsing is able to be deferred is until 30 June 2003, after which the application will lapse if it has not been decided by the Commission.

Clause 44 provides that Part 7 amends the *Government Owned Corporations Act 1993*.

Clause 45(1) omits sections 159(1) to (3) of the *Government Owned Corporations Act 1993* and inserts new sections 159(1) to (3) which ensure that:

1. The Board of each GOC recommends to the shareholding Ministers that the GOC pay a specified dividend, or not pay a dividend, within 3 weeks of the end of the financial year;

2. The Board consults with the shareholding Ministers during the deliberations surrounding the dividend recommendation; and

3. The Board's recommendation is accompanied by an indication of the net operating profit after tax for the GOC.

Clause 45(2) amends section 159(4) of the *Government Owned Corporations Act 1993* such that shareholding Ministers will have 3 weeks after receiving GOC Board dividend recommendations to either approve the recommendation or direct the payment of a specified dividend.

Clause 46(1) amends section 159(1) of the *Government Owned Corporations Act 1993* such that the Board of each GOC is required to recommend to the shareholding Ministers that the GOC pay a specified dividend, or not pay a dividend, between the 1st of May and the 16th of May of each financial year.

Clause 46(2) amends section 159(3) of the *Government Owned Corporations Act 1993* in order to define the term estimated profits which is referred to elsewhere in section 159.

Clause 46(3) amends section 159(4) of the *Government Owned Corporations Act 1993* to ensure that before the end of each financial year, the shareholding Ministers must either:

- Approve the recommendation made pursuant to section 159(1); or
- Direct the payment of a specified dividend or a different specified dividend, as the case requires.

Clause 46(4) amends section 159(5) of the *Government Owned Corporations Act 1993* to ensure that the definition of profit is consistent with section 159(3).

Clause 47 inserts a new section 159A into the *Government Owned Corporations Act 1993*. Section 159A provides that the financial statements given to the Auditor-General by GOCs must contain the amount of the dividend which is payable to the Government in accordance with shareholding Ministers approval or direction pursuant to section 159(4).

Clause 48 states that Part 8 of the Act amends the *Local Government (Aboriginal Lands) Act 1978.*

Clause 49 amends section 109(2) by requiring a report on the outcome of a review of the operation of Part 6 of the Act be tabled in the Legislative Assembly by 31 December 2002 instead of by 30 June 2002.

Clause 50 provides that Part 9 amends the *Pay-roll Tax Act 1971*.

Clause 51 amends the definition of "wages" contained in section 3(1) of the *Pay-roll Tax Act 1971* to include, on and from 1 July 2002, a taxable ETP as defined.

Clause 52 amends section 7 of the *Pay-roll Tax Act 1971* to reduce the rate of pay-roll tax from 4.8% to 4.75% for wages paid or payable on and from 1 July 2002.

Clause 53 amends section 8A(2) of the *Pay-roll Tax Act 1971* so that, on and from 1 July 2002, the value of taxable wages that are fringe benefits is the taxable amount of that fringe benefit under the *Fringe Benefits Tax Assessment Act 1986* (Cwlth).