

Revenue and Other Legislation Amendment Bill 2006

Explanatory Notes

General Outline

Policy Objectives

To amend the *Community Ambulance Cover Act 2003*, the *Duties Act 2001*, the *Fuel Subsidy Act 1997*, the *Land Tax Act 1915* and the *Taxation Administration Act 2001* to give effect to revenue measures announced in the 2006-07 State Budget, the 2006 election and other revenue measures.

To amend the *Government Owned Corporations Act 1993* and the *Financial Administration and Audit Act 1977* to extend the mandate of the Queensland Auditor-General to provide for an independent assessment of the relevance of the published measures used by public sector entities to assess their performance.

Reasons for the Bill

Amendments to the *Community Ambulance Cover Act 2003* will provide for exclusion by Regulation for ancillary, administrative processes, from the requirement for Commissioner approval of subcontracts for the performance of functions or parts of functions of an electricity retailer under the Act. Consequential amendments will ensure appropriate treatment of subcontractor arrangements. In addition, amendments will extend the existing exemptions from the Community Ambulance Cover levy for electricity sale arrangements relating to water pumps and farming sheds, to certain amenity horticulture activities.

Amendments to the *Duties Act 2001* will give effect to the abolition of hire duty, and duty on transfers of and certain other transactions relating to Queensland marketable securities, from 1 January 2007. Amendments will also extend the first home transfer duty concession to certain circumstances where a first home is acquired for less than its unencumbered value, provide a new first home transfer duty concession for certain acquisitions of vacant land as announced in the 2006-07 State Budget and the 2006

election, amend the current first home transfer duty concession for acquisitions of established homes as announced in the 2006 election, modify the mortgage duty provisions to reflect the abolition of mortgage duty in Tasmania, clarify the operation of the duty exemption for the correction of errors in previous dutiable transactions and effect a minor amendment to the provisions relating to exempt institutions.

Amendments to the *Financial Administration and Audit Act 1977* and the *Government Owned Corporations Act 1993* will extend the mandate of the Queensland Auditor-General to provide for an independent assessment of the relevance of the published measures used by public sector entities to assess their performance from 1 January 2007.

The *Fuel Subsidy Act 1997* will be amended to expand the definition of fuel and also extend the Queensland Fuel Subsidy to diesel used for on-road travel by certain equipment-type vehicles (such as concrete pumping trucks), but not vehicles that are conditionally registered or of the type that would be eligible for conditional registration in Queensland.

Amendments to the *Land Tax Act 1915* will ensure that all absentees (whether Australian or non-Australian citizens) are ineligible for a land tax deduction for primary production land, and clarify relevant factors for determining eligibility for a principal place of residence concession.

An amendment will also be made to the *Taxation Administration Act 2001* purpose provisions, to clarify the application of that Act to other jurisdictions' revenue legislation in the context of interjurisdictional revenue investigations.

Achievement of Objectives

Community Ambulance Cover Act 2003

Subcontractor Arrangements

The *Community Ambulance Cover Act 2003* imposes a levy on certain electricity sale arrangements that are in place for the supply of electricity in Queensland by electricity retailers. Under the Act, electricity retailers act as agents of the Commissioner of State Revenue for collection of the levy and related functions. The Act specifies the functions that electricity retailers must undertake in collecting the levy. These functions, together with other functions, are also specified in administration agreements made between the Commissioner, the State of Queensland and certain electricity retailers.

Under the Act, electricity retailers may contract with a person (an authorised subcontractor) to perform some or all of these functions, but must not do so without the written approval of the Commissioner. In addition, changes to the *Community Ambulance Cover Act 2003* by the *Energy Assets (Restructuring and Disposal) Bill 2006* will provide that functions or parts of functions of an electricity retailer under the Act may be subcontracted to further tiers of subcontractors with the additional requirement of obtaining the Commissioner's written approval for each such contract.

To avoid unnecessary administrative burden upon electricity retailers and subcontractors, certain processes that relate to the carrying out of electricity retailer functions under the Act could be subcontracted without the requirement of Commissioner approval. This type of exclusion is appropriate where the processes involved are ancillary, administrative processes, and do not involve the carrying out of key elements in the performance of functions by electricity retailers under the Act. Processes of this kind are routinely out-sourced by businesses generally, such as printing and mailing services.

Consequently, this Bill introduces a further amendment to the *Community Ambulance Cover Act 2003*, allowing exclusions from the requirement for Commissioner approval to subcontract arrangements to be specified by Regulation for ancillary, administrative processes. Parties to these subcontracts will be entitled to seek approval for the contract from the Commissioner, should they wish. Consequential amendments will ensure appropriate treatment of subcontractor arrangements are maintained under the Act, depending on whether or not Commissioner approval is in fact obtained.

Subcontractors performing processes for which Commissioner approval is not required will have reduced powers under the *Community Ambulance Cover Act 2003* compared to other subcontractors performing processes for which Commissioner approval is required. In particular, they will not be entitled to further subcontract the relevant processes, be party to an administration agreement, or receive documents on behalf of the Commissioner. However where Commissioner approval for the contract is obtained in these circumstances, the subcontractor will be entitled to further subcontract, but will still not be entitled to be a party to an administration agreement, or to receive documents on behalf of the Commissioner. The amendment will take effect from the date of Royal Assent to this Bill, or Royal Assent to the *Energy Assets (Restructuring and Disposal) Bill 2006*, whichever is later.

Extension of pump and farming shed exemptions

The *Community Ambulance Cover Act 2003* provides an exemption from the Community Ambulance Cover levy for electricity sale arrangements that relate only to a water pump or farming shed used in primary production. The definition of primary production in the *Community Ambulance Cover Act 2003* includes horticulture, other than amenity horticulture. Water pumps and farming sheds used for amenity horticulture activities are therefore ineligible for the exemptions.

Amenity horticulture is not defined in the *Community Ambulance Cover Act 2003*. In practice, amenity horticulture has been given a broad interpretation. As a result, the production of non-food horticultural products such as cut flowers and turf, and associated non-food retail and service activities such as indoor plant hire and landscaping, have been considered amenity horticulture and have therefore been ineligible for the water pump and farming shed exemptions.

In recognition of the changing nature of this industry sector, the 2006-07 State Budget announced that non-food production activities previously considered amenity horticulture (such as cut flower production, turf production and wholesale nurseries) would be considered to be primary production with effect from 29 May 2006. As a result, electricity accounts for pumps and sheds used solely for these purposes may now qualify for exemption from the Community Ambulance Cover levy. However, retail activities and provision of other associated services for non-food horticultural products (such as retail nurseries, indoor plant hire and landscaping) are still considered amenity horticulture and therefore continue to be ineligible for exemption. The change is operating under an administrative arrangement pending legislative amendment.

The farming shed exemption will continue to apply only where the shed is used *solely* for primary production purposes. The exemption will not apply where a shed is used for both production and retail activities (e.g. cutting and packing flowers and also selling the flowers to the public).

To legislate the terms of the arrangement, the *Community Ambulance Cover Act 2003* will be amended to provide that, for the purposes of the water pump and farming shed exemptions, primary production includes amenity horticulture to the extent that it comprises the commercial production or wholesale selling of horticultural products. The amendment will have retrospective effect from 29 May 2006, when the administrative arrangement commenced.

Duties Act 2001

Abolition of hire duty

As announced in the 2005-06 State Budget, the *Duties Act 2001* will be amended to abolish hire duty on and from 1 January 2007. Hire duty liabilities arising before 1 January 2007 will continue to be payable. Similarly, rights in relation to hire duty which have accrued before 1 January 2007 will continue to be enforceable after that date, such as a taxpayer's right to object against an assessment. Particular hire duty provisions will continue to apply after 1 January 2007 to allow for the winding up of outstanding matters.

Chapter 7 of the *Duties Act 2001* imposes hire duty on the hire of goods in Queensland at the rate of 0.43% of the total hiring charges for the goods. Where a commercial hirer hires out goods under a hiring arrangement other than a credit purchase agreement, hire duty is payable at the end of each return period (usually monthly or annually, depending on the hirer) based on the hiring charges relating to that period. For these arrangements, no hire duty liability will arise in relation to hiring charges payable for a period on or after 1 January 2007.

However, for certain other hiring arrangements, hire duty is payable up-front when the arrangement is entered into based on the total hiring charges over the full term of the arrangement, namely where:

- a commercial hirer hires out goods under a credit purchase agreement; or
- a person other than a commercial hirer hires out goods for total hiring charges of \$1,000 or more.

In these cases, no hire duty liability will arise where the arrangement is entered into on or after 1 January 2007. However, for arrangements entered into before 1 January 2007, no refunds will be payable for hire duty paid up-front in respect of the unexpired term of the arrangement on or after 1 January 2007.

Abolition of transfer duty on transactions concerning Queensland marketable securities

The 2005-06 State Budget also announced the abolition of duty on the transfer of unquoted Queensland marketable securities on and from 1 January 2007.

Chapter 2 of the *Duties Act 2001* imposes transfer duty on dutiable transactions, including transfers and certain other transactions relating to

Queensland marketable securities. Queensland marketable securities are most commonly shares in an unlisted Queensland company, but also include shares in a foreign company and rights of a beneficiary under an unlisted public unit trust where the register is kept in Queensland. (Duty was abolished on transfers of shares and units in listed entities in 2001.) Transfer duty is generally imposed at progressive rates which increase with the value of the property transferred. However, a lower flat rate of transfer duty (0.6%) applies to transfers of Queensland marketable securities.

Transfer duty will be abolished on transactions entered into on or after 1 January 2007 to the extent they relate to Queensland marketable securities. Transfer duty liabilities relating to Queensland marketable securities arising before 1 January 2007 will continue to be payable. Similarly, rights in relation to transfer duty on Queensland marketable securities which have accrued before 1 January 2007 will continue to be enforceable after that date, such as a taxpayer's right to object against an assessment. Particular transfer duty provisions will continue to apply to transactions concerning Queensland marketable securities after 1 January 2007 to allow for the winding up of outstanding matters.

Chapter 3 of the *Duties Act 2001* imposes land rich duty and corporate trustee duty on certain dealings with shares in unlisted corporations. Abolition will not extend to these types of duty as they are revenue protection provisions. Chapter 3 will therefore continue to apply after 1 January 2007.

Extension of first home transfer duty concession to first homes acquired for less than unencumbered value

Under the *Duties Act 2001*, transfer duty is imposed on the transfer, or agreement for transfer, of land in Queensland. Duty is generally charged on the greater of the consideration paid for, or the unencumbered value of, the land.

Currently, a concessional transfer duty rate of \$1 for each \$100 or part of \$100 applies to the first \$320,000 of the consideration for, or value of, a home (that is, a principal place of residence). The general rates of duty apply to the excess consideration or value over \$320,000.

In addition, for buyers purchasing their first home valued at \$250,000 or less, a first home transfer duty concession of \$2,500 applies so that no transfer duty is payable. This concession reduces by \$100 for every \$10,000 above \$250,000 and cuts out completely for first homes with a dutiable value of \$500,000 or more.

Currently, the *Duties Act 2001* provides that the first home transfer duty concession is only available where the buyer is paying at least the unencumbered value for their home. Consequently, under the *Duties Act 2001*, first home buyers purchasing their home for less than its unencumbered value, or acquiring the home by way of a full or partial gift, will be entitled to the home transfer duty concession, but not the first home concession.

Under an approved administrative arrangement with effect from 1 May 2004, the first home transfer duty concession has been extended to circumstances where the home is not acquired for its unencumbered value, so long as the unencumbered value of the home is \$250,000 or less. Where the unencumbered value is more than \$250,000, at least the unencumbered value must be paid to qualify for the first home concession. The *Duties Act 2001* will be amended to give legislative effect to this arrangement, with retrospective effect from commencement of the administrative arrangement on 1 May 2004.

From 1 January 2007, the \$250,000 threshold will increase to \$320,000 consistent with amendments contained in this Bill which, as announced in the 2006 election, extend the benefit of the first home transfer duty concession.

New first home transfer duty concession for certain vacant land acquisitions

Currently under the *Duties Act 2001*, the first home transfer duty concession applies to transfers or agreements to transfer an established first home, but not the acquisition of vacant land followed by construction of a first home (except in the case of a house and land package under a single transaction to acquire a completed home).

As announced in the 2006-07 State Budget, the *Duties Act 2001* will be amended with effect from 1 January 2007 to provide a new first home transfer duty concession for the acquisition of vacant land for construction of a person's first home, after allowing for changes to the new concession as announced in the 2006 election. As a 2006-07 State Budget initiative, it was announced that the new concession would apply so that for vacant land purchases valued up to \$100,000, a first home transfer duty concession of \$2,350 would apply so that no transfer duty would be payable. This concession would progressively reduce as the value of the vacant land increased so that once the value of the land reached \$250,000, the concession would cut out completely and full transfer duty would be payable.

During the 2006 election, it was also announced that the new first home transfer duty rebate for certain vacant land acquisitions would increase, from the rebate's commencement on 1 January 2007, from \$100,000 to \$150,000 with a reduction in the transfer duty payable for first home vacant land acquisitions valued over \$150,000 and less than \$300,000. Once the value of the vacant land reaches \$300,000, the concession will cut out completely and full transfer duty will be payable.

No transfer duty concession will be provided for acquisitions of vacant land where the home to be constructed will not be the buyer's first home.

Example

A person buys vacant land and subsequently builds a residence on the land which is the person's principal place of residence. The person has previously owned a residence on other land. The new residence is not the person's first home, and therefore no concession is available. Transfer duty is payable on the dutiable value of the vacant land at the general transfer duty rates in Schedule 3 of the *Duties Act 2001*.

The first home transfer duty concession for vacant land is to be provided on condition that the owner must construct their first home and commence occupation within two years after becoming entitled to possession of the vacant land. The eligibility criteria for the concession are aligned with the existing first home transfer duty concession for established homes.

Similar to the existing provisions dealing with mixed and multiple concession claims for constructed residences, a proportionate first home transfer duty concession will be available for acquisitions of vacant land in the following circumstances:

- there are multiple transferees of the land and the residence, when constructed, will be the first home of one or more, but not all, of the transferees; or
- there is only one transferee who acquires a part interest in the vacant land and the residence, when constructed, will be the transferee's first home.

Where the transferee is the trustee of a fixed trust, all of the beneficiaries of which are under a legal disability, these proportionate concession provisions apply as if the beneficiaries were the transferees of the vacant land.

No concession will be available where multiple residences are to be constructed on the vacant land.

To maintain consistency, the time allowed for construction of a residence under the existing mortgage duty concessions for vacant land will be extended from one year to two years after the date the mortgage is first signed.

Extension of first home transfer duty concessions for acquisition of established homes

Under the *Duties Act 2001*, transfer duty is imposed on the transfer, or agreement for transfer, of land in Queensland. Duty is generally charged on the greater of the consideration paid for, or the unencumbered value of, the land.

Currently, a concessional transfer duty rate of \$1 for each \$100 or part of \$100 applies to the first \$320,000 of the consideration for, or value of, a home (that is, a principal place of residence). The general rates of duty apply to the excess consideration or value over \$320,000.

In addition, for buyers purchasing their first home valued at \$250,000 or less, a first home transfer duty concession of \$2,500 applies so that no transfer duty is payable. This concession reduces by \$100 for every \$10,000 above \$250,000 and cuts out completely for first homes with a dutiable value of \$500,000 or more.

During the 2006 election, the Government announced that the first home transfer duty rebate threshold for first home acquisitions would be increased from \$250,000 to \$320,000 so that no duty would be payable by a person purchasing a first home valued up to \$320,000.

Also announced was a reduction in the transfer duty payable for first home buyers purchasing a home valued over \$320,000 but less than \$460,000 so that when compared to the level of duty relief that is currently available, less duty will be payable for first homes valued above \$320,000 and less than \$460,000. The amount of duty relief available for first homes valued between \$460,000 and less than \$500,000 will remain the same.

Mortgage duty changes for multi-jurisdictional mortgages to reflect abolition of mortgage duty in Tasmania from 1 July 2007

Mortgage duty is currently imposed in all States except Victoria, which abolished mortgage duty in 2004. In Queensland, mortgage duty under the *Duties Act 2001* applies to a mortgage instrument over property wholly or partly in Queensland. The duty is on the amount secured by the mortgage.

For a mortgage that secures property in Queensland and elsewhere (a “multi-jurisdictional mortgage”), mortgage duty is charged on a proportion of the amount secured by the mortgage. The proportion is worked out by

comparing the value of all property secured, other than property in the Australian Capital Territory, Northern Territory, Victoria and outside Australia. That is, property located in a Territory, Victoria or outside Australia is disregarded.

Example

Before 1 July 2007, a mortgage is executed securing property in Victoria, Tasmania and Queensland. The property in each jurisdiction is of equal value. Upon the making of an advance of \$1 million secured by the mortgage, Queensland duty would be payable on \$500,000.

From 1 July 2007, mortgage duty will be abolished in Tasmania. The *Duties Act 2001* will be amended to treat secured property in Tasmania in the same way that property in the Australian Capital Territory, Northern Territory, Victoria and outside Australia is treated for calculating Queensland mortgage duty on a multi-jurisdictional mortgage over Queensland and Tasmanian property. That is, Tasmanian property will be disregarded in working out the proportion of the amount secured that will be subject to Queensland mortgage duty. This will ensure consistent treatment of property located in any jurisdiction that does not impose mortgage duty.

Consequential amendments are also to be made to ensure that Tasmanian stampings before 1 July 2007 may be taken into account when determining the extent to which a mortgage or mortgage package has been properly stamped, protect the Queensland mortgage duty revenue base in relation to the stamping of a mortgage or mortgage package in advance and prevent the avoidance of Queensland mortgage duty through the use of collateral mortgages.

Exemption for correction of error in a previous dutiable transaction

The *Duties Act 2001* provides a transfer duty exemption for dutiable transactions which correct an error in a previous dutiable transaction, on certain conditions. Previous published Office of State Revenue practice limited the exemption to correction of clerical errors in the dutiable transaction itself, for example, transferring the wrong property title or misnaming the transferee.

This practice was recently challenged in the Queensland Supreme Court matter of *Pryke & Ors v Commissioner of State Revenue* [2006] QSC 226, which held the exemption could apply to transactions which are necessary to achieve a legal effect which the parties to the transaction mistakenly believed an earlier transaction would achieve.

The *Duties Act 2001* is to be amended to reinstate existing interpretation and practice regarding the exemption by clarifying the exemption is limited to the correction of clerical errors and does not extend to errors by the parties as to whether the earlier dutiable transaction is appropriate to achieve an intended legal result.

Exempt institutions – agricultural colleges

Agricultural colleges, as defined in the *Agricultural Colleges Act 1994*, are entitled to register as exempt institutions under the *Duties Act 2001*. Exempt institutions are entitled to exemptions from a number of duties, subject to certain conditions.

On 1 July 2005, the *Agricultural Colleges Act 1994* was repealed and replaced by the *Agricultural College Act 2005*, which established the Australian Agricultural College Corporation (AACC).

The *Agricultural College Act 2005* provides that the AACC represents the State and also vests the AACC with all assets and liabilities of the existing agricultural colleges. That Act also provides for the dissolution of the agricultural colleges and removes the mechanism for establishment of agricultural colleges.

As the AACC represents the State, it benefits from the general duty exemption afforded to the State and its representatives under section 426 of the *Duties Act 2001*. Consequently, the provision entitling agricultural colleges to register as exempt institutions is now redundant. The *Duties Act 2001* will be amended to remove the entitlement of agricultural colleges, as defined under the *Agricultural Colleges Act 1994*, to register as exempt institutions.

Financial Administration and Audit Act 1977

At present, section 80 of the *Financial Administration and Audit Act 1977* provides that the Queensland Auditor-General may conduct an audit of performance management systems of a public sector entity.

The Bill will extend the mandate of the Queensland Auditor-General to ensure that appropriate levels of independent scrutiny of the performance of Government departments and agencies contributes to improved service delivery to the community. This will be achieved by inserting an additional subsection in section 80 which enables the Queensland Auditor-General to undertake an assessment of the relevance of the published measures used by public sector entities to assess their performance.

The Bill inserts a transitional provision into the *Financial Administration and Audit Act 1977* to ensure that the Queensland Auditor-General is able to consider a public sector entity's published performance measures that were in place prior to the introduction of the extended mandate.

These amendments will ensure that the extended mandate can be implemented at the discretion of the Queensland Auditor-General and will apply to all public sector entities, thereby retaining consistency with the current performance management system audit arrangements. The extended mandate will be introduced from 1 January 2007.

Fuel Subsidy Act 1997

Expansion of definition of fuel

Queensland's Fuel Subsidy Scheme provides an 8.354 cent per litre subsidy to Queensland road users for eligible fuel purchases where the fuel is used on-road. Under the *Fuel Subsidy Act 1997*, fuel is defined as "motor spirit and diesel of the type ordinarily sold by a retailer". This definition targets the subsidy to fuels with market acceptance rather than uncommonly used fuels or blends. As a result, subsidies have been paid for leaded and unleaded petrol and diesel, but not for new products entering the market for the period when they are not of the type ordinarily sold by a retailer. This position changes when the new products gain market acceptance.

In light of the increasing interest in the manufacture, sale and use of new fuel types, the 2006-07 State Budget announced that the Fuel Subsidy Scheme is to be extended to apply to certain emerging forms of motor spirit and diesel fuels. This will be achieved by expanding the definition of fuel in the *Fuel Subsidy Act 1997* to include motor spirit and diesel:

- of the type ordinarily sold by a retailer (i.e. the current definition); or
- of the type that can be used in a vehicle as a replacement for motor spirit or diesel of the type ordinarily sold by a retailer, and is the subject of a Commonwealth fuel standard.

This new definition will continue the subsidisation of fuel types such as unleaded petrol and E-10 while also extending the subsidy to certain new fuel types, such as biodiesel, which can be directly substituted in a vehicle for currently subsidised fuel types and are subject to a Commonwealth fuel standard. However, the definition does not include LPG, which has not previously been subsidised, or products such as leaded racing fuel which

may be legally supplied in limited circumstances but are not for general on-road use.

The amendment will commence on the first day of the month after the Bill receives Royal Assent.

Extension of fuel subsidy to on-road diesel use by equipment-type vehicles, but not conditionally registered vehicles

Currently under the *Fuel Subsidy Act 1997*, diesel must be used to propel a diesel engine road vehicle on a public road (or for an incidental purpose) to qualify for the fuel subsidy. A diesel engine road vehicle is one designed solely or principally for transporting persons, goods or animals by road. Consequently, equipment-type vehicles such as concrete pumping trucks, mobile cranes, elevating work platforms, street sweepers, backhoes and harvesters do not qualify for subsidy under the *Fuel Subsidy Act 1997*, even though some of their diesel may be used for on-road travel, because they are not designed for this purpose.

An administrative arrangement was announced on 1 June 2006, and subsequently in the 2006-07 State Budget, extending the fuel subsidy to diesel used for on-road travel in all vehicles, except vehicles conditionally registered or of a kind that would be eligible for conditional registration in Queensland. Under the administrative arrangement, retail purchasers are required to keep records of diesel used for off-road purposes (which continues to be ineligible for subsidy) to enable the amount of their subsidy entitlement to be ascertained.

This extension extends the subsidy to diesel used for on-road travel by equipment-type vehicles likely to travel significantly on-road, such as concrete pumping trucks and mobile cranes. By excluding conditionally registered vehicles, the subsidy is not extended to on-road travel by vehicles used mainly for off-road operations and those that do not meet the standard regulations for registration, such as harvesters, backhoes, road paver/finishers and some street sweepers.

The extension applies to diesel used for on-road travel only. Diesel used by a vehicle for a commercial off-road purpose, such as construction activities, will continue to be ineligible for the subsidy.

Example

Diesel used by a concrete pumping truck while travelling on a public road will qualify for the subsidy. However, any diesel used by the

truck while pumping concrete or for associated purposes (e.g. cleaning equipment) would not qualify for the subsidy, as the diesel is being used for an off-road purpose. If diesel is used by the concrete pumping truck for both on-road travel and off-road purposes, the total quantity of diesel purchased from a retailer must be apportioned between those purposes in order to determine the subsidy entitlement.

The definition of diesel engine road vehicle in the *Fuel Subsidy Act 1997* will be amended to give legislative effect to this extension. This amendment will operate retrospectively from 1 June 2006, when the administrative arrangement commenced. Subsidies incorrectly received for equipment-type vehicles before 1 June 2006 will continue to be repayable. The *Fuel Subsidy Act 1997* will also be amended to include record keeping requirements for off-road diesel users.

Government Owned Corporations Act 1993

The Bill will extend the mandate of the Queensland Auditor-General to ensure that appropriate levels of independent scrutiny of the performance of Government departments and agencies contributes to improved service delivery to the community.

Schedule 3, Parts 4 and 5 of the *Government Owned Corporations Act 1993* state that the provisions contained within section 80 of the *Financial Administration and Audit Act 1977* apply to company Government Owned Corporations and subsidiaries of company Government Owned Corporations.

To ensure that the extended mandate also applies to company Government Owned Corporations and their subsidiaries, the Bill inserts additional sections in Schedule 3, Parts 4 and 5, section 80 of the *Government Owned Corporations Act 1993* in the same terms as the amendment to section 80 of the *Financial Administration and Audit Act 1977*.

The Bill also inserts a transitional provision into the *Government Owned Corporations Act 1993* to ensure that the Queensland Auditor-General is able to consider a public sector entity's published performance measures that were in place prior to the introduction of the extended mandate.

These amendments will ensure that the extended mandate can be implemented at the discretion of the Queensland Auditor-General and will apply to all public sector entities, thereby retaining consistency with the current performance management system audit arrangements. The extended mandate will be introduced from 1 January 2007.

Land Tax Act 1915

Substantial non-PPR purpose

Under the *Land Tax Act 1915*, a full land tax concession applies to land used solely as a principal place of residence (PPR).

From the 2005-06 financial year onwards, the *Land Tax Act 1915* was amended to extend the scope of the PPR concession by providing a partial concession where land is used as a PPR and also for a non-PPR purpose which is substantial. If the non-PPR purpose is not substantial, the full concession is available. The Commissioner of State Revenue must determine whether a non-PPR purpose is substantial having regard to a range of factors listed in the *Land Tax Act 1915*.

The factors listed are intended to apply for determining whether a full or partial PPR concession is available. However, the drafting of the relevant provision of the *Land Tax Act 1915* appears to limit its application to cases where the Commissioner is required to calculate an allowable PPR deduction for a partial concession only. An amendment to this provision is therefore required to clarify that the Commissioner must have regard to the factors listed also in determining whether a non-PPR purpose is substantial for either a full or partial PPR concession. This is a technical amendment, with no change being made to the way in which the PPR concession works.

Removal of deduction for Australian citizen absentees

In a 2003 tax treaty with the United Kingdom, Australia adopted a Non-Discrimination Article (“the Article”) to address discrimination which may arise in the context of taxation measures. One of the Article’s objectives is to prevent discrimination on the basis of nationality or citizenship.

The *Land Tax Act 1915* provides a land tax deduction for land used for the business of agriculture, pasturage or dairy farming. However, in its application to absentees (non-residents), the deduction is available only to absentees who are Australian citizens. Similarly, the deduction is available to trustees of trusts of which an absentee is a beneficiary, only if the absentee is an Australian citizen.

To avoid contravention of the Article, the *Land Tax Act 1915* will be amended to remove eligibility for the deduction for Australian citizens who are absentees, so that all absentees are ineligible. This change will apply for the 2007-08 and later financial years.

Taxation Administration Act 2001

Amendment of purpose provisions

The *Taxation Administration Act 2001* makes general provision about the administration and enforcement of revenue laws, namely, the *Duties Act 2001*, the *Pay-roll Tax Act 1971* and the *Community Ambulance Cover Act 2003*.

Another important function of the *Taxation Administration Act 2001* is to confer the Commissioner of State Revenue's investigative powers on investigators appointed by a corresponding revenue commissioner. This enables Commonwealth, State and Territory revenue investigators to conduct investigations in Queensland for their corresponding revenue laws (recognised laws), and ensures their investigative powers are consistent with those available to Queensland investigators. Reciprocal provisions in other jurisdictions' revenue legislation apply to enable Queensland revenue investigations to be conducted interstate.

The stated purpose of the *Taxation Administration Act 2001* is silent as to the treatment of recognised laws despite references in the investigations provisions. In order to provide an express statutory link to the recognised laws, the purpose provisions of the *Taxation Administration Act 2001* will be amended to include as a purpose of that Act the administration and enforcement of recognised laws.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Implementation costs in relation to the amendments to the *Community Ambulance Cover Act 2003*, the *Duties Act 2001*, the *Fuel Subsidy Act 1997*, the *Land Tax Act 1915* and the *Taxation Administration Act 2001* are not expected to be significant.

The funds made available by the Government in the 2006-07 State Budget for performance management system audits for the 2006-07 financial year will enable the Queensland Audit Office to undertake the extended audit mandate from 1 January 2007. No additional funding will be required for the extended mandate in the 2006-07 financial year.

The Auditor-General will review the Queensland Audit Office's audit resource capacity before the next State Budget (i.e. for the 2007-08 financial year) and discuss any resource implications of the extended audit

mandate with the Treasury Department. Any additional funding to support the Queensland Audit Office's extended audit activity will be considered as part of the annual Budget development process for future years.

Consistency with Fundamental Legislative Principles

The amendments extending the *Community Ambulance Cover Act 2003* water pump and farming shed exemptions, the *Duties Act 2001* first home concession to certain circumstances where the first home is acquired for less than its unencumbered value, and the *Fuel Subsidy Act 1997* to subsidise on-road diesel use by certain equipment-type vehicles, will commence retrospectively.

These amendments are beneficial to taxpayers or subsidy recipients (as the case may be). Further, all of these extensions have been publicly announced and their commencement will align with the commencement of existing administrative arrangements.

The amendments to the *Community Ambulance Cover Act 2003* permitting exclusion by Regulation from the requirement for written Commissioner approval of subcontract arrangements involves the delegation of a power to exclude to subordinate legislation. The legislative obligation to obtain approval is clearly defined in the Act, and the Regulation making power will only provide for circumstances where this obligation can be appropriately ameliorated. The types of processes for which exclusion under Regulation may be made are appropriately limited by the terms of the proposed amendment to ancillary, administrative processes related to functions of electricity retailers under the Act. The limitation provides a clear description of the kinds of matters for which a Regulation may be made. The use of a Regulation making power is necessary to provide sufficient flexibility to respond to emerging commercial arrangements entered into by electricity retailers and their subcontractors, which fall into the category of ancillary administrative processes.

Consultation

To the extent that the Bill gives effect to State Budget and State election announcements, public consultation was not necessary.

The Queensland Auditor-General and the Treasury Department were consulted regarding the scope and financial implications of the proposed amendments to the *Financial Administration and Audit Act 1977* and the *Government Owned Corporations Act 1993*. The Chair of the Public Accounts Committee has been advised of the proposals.

Public consultation on the other amendments contained in this Bill was considered either unnecessary or inappropriate.

Notes on Provisions

Clause 1 cites the short title of the Bill.

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

Clause 3 states that Part 2 of the Bill amends the *Community Ambulance Cover Act 2003*.

Clause 4 omits section 9 relating to notes contained in the text of the *Community Ambulance Cover Act 2003*. This section is no longer required as the *Acts Interpretation Act 1954* now includes provision for notes to be treated as part of an Act.

Clause 5 amends subsections 81(2) and 81(3) of the *Community Ambulance Cover Act 2003*, as introduced by the *Energy Assets (Restructuring and Disposal) Bill 2006*. It makes the application of those subsections subject to qualifications imposed by new sections 81B and 81A respectively, as introduced by clause 6.

Clause 6 inserts new sections 81A and 81B. Subsections 81(1) and (2) of the *Community Ambulance Cover Act 2003*, as introduced by the *Energy Assets (Restructuring and Disposal) Bill 2006*, contemplate some or all of an electricity retailer's functions under the Act being contracted out by electricity retailers and tiers of authorised subcontractors under them. Subsection 81(3) as introduced by the *Energy Assets (Restructuring and Disposal) Bill 2006* prohibits any such contracts without the written approval of the Commissioner of State Revenue.

Section 81A provides for exclusion by Regulation from the requirement of Commissioner of State Revenue approval of these contracts, where certain conditions are met. To take the benefit of the exclusion, the contract must only relate to matters prescribed under a regulation. The matters which may be prescribed under regulation are limited by subsection 81A(2), to matters which are ancillary, administrative processes related to an electricity retailer's functions under section 80(2), for example, mailing and printing services. It is intended that the benefit of the exclusion will apply where the only processes being subcontracted between the parties

meet this criteria. Consequently when considering whether a contract is entitled to exclusion, all contracts between the parties are taken into account. If the parties have multiple contracts, some for processes to which exclusion by Regulation under section 81A applies, and others for which Commissioner of State Revenue approval is required, Commissioner of State Revenue approval will be required for all.

Subsection 81A(3) provides that despite section 81A having the effect that a particular contract does not require the approval of the Commissioner of State Revenue, an electricity retailer or authorised subcontractor is still entitled to seek approval to the contract under section 81(1) or (2). Whether or not Commissioner of State Revenue approval is in fact obtained will impact upon whether or not the matters covered by the relevant subcontract can be further subcontracted, as addressed in section 81B.

Section 81B provides that an authorised subcontractor which has agreed to perform ancillary administrative processes under a contract for which the Commissioner of State Revenue's approval is not required under section 81 because of section 81A, and for which the Commissioner of State Revenue's approval has not in fact been obtained, is not entitled to further subcontract the matters to which the subcontract relates under subsection 81(2). Where a contract has been entered to which section 81A applies, the contractor agreeing to perform the relevant processes will still be an authorised subcontractor for the purposes of the Act. However, to ensure appropriate protections for levy payers, it is not appropriate that contractors to which section 81A applies, and which do not obtain approval for the contract from the Commissioner of State Revenue, be treated in the same way as other authorised subcontractors for certain purposes. One example is the capacity to further subcontract functions, which is otherwise provided for by subsection 81(2), as introduced by the *Energy Assets (Restructuring and Disposal) Bill 2006*. If section 81A applies to the contract, such that approval from the Commissioner of State Revenue is not required, and this approval is not in fact obtained, then section 81B prohibits further subcontracting. However, to reflect normal business practices, where Commissioner approval of the contract is obtained in these circumstances, further subcontracting is permitted.

Clause 7 amends section 82 of the *Community Ambulance Cover Act 2003*, by introducing a new subsection (3) stating that where an authorised subcontractor is only performing ancillary, administrative processes, such that the need for Commissioner of State Revenue approval under section 81 has been excluded through section 81A, the subcontractor is not entitled to be a party to an administration agreement between the Commissioner of State Revenue and the electricity retailer. This treatment applies whether

or not Commissioner of State Revenue approval for the contract is in fact obtained. In circumstances where the authorised subcontractor is only performing ancillary, administrative processes, such that the need for Commissioner of State Revenue approval has been excluded through section 81A, it is not necessary or appropriate for the subcontractor to be entitled to be a party to the administration agreement.

Clause 8 amends section 149 of the *Community Ambulance Cover Act 2003* to provide that the deeming under that section, of documents given to authorised subcontractors to have been given to the Commissioner of State Revenue, does not apply where the authorised subcontractor concerned has only entered into a contract for which the Commissioner of State Revenue's approval is not required under section 81 because of section 81A. This treatment applies whether or not Commissioner of State Revenue approval for the contract is in fact obtained. Where an authorised subcontractor is only performing ancillary, administrative processes, such that the need for Commissioner of State Revenue approval has been excluded through section 81A, it is not appropriate that giving a document to that subcontractor be sufficient to meet the obligation to give the document to the Commissioner of State Revenue under the Act.

Clause 9 amends the definition of "primary production" in the Schedule to the *Community Ambulance Cover Act 2003* to include certain amenity horticulture activities. As a result, electricity sale arrangements relating to pumps and farming sheds used for the commercial production or wholesale selling of non-food horticultural products (such as cut flower or turf production and wholesale nurseries) may now qualify for exemption from the Community Ambulance Cover levy. However, electricity sale arrangements relating to pumps and farming sheds used for the retail sale of, or provision of other services relating to, non-food horticultural products (such as indoor plant hire, landscaping or recreational area maintenance, retail sale of cut flowers and retail nurseries) will not qualify for exemption.

Clause 10 states that Part 3 of the Bill amends the *Duties Act 2001*.

Clause 11 omits section 4 relating to notes contained in the text of the *Duties Act 2001*. This section is no longer required as the *Acts Interpretation Act 1954* now includes provision for notes to be treated as part of an Act.

Clause 12 omits section 92(1)(c) and inserts a new section 92(1)(c). The effect of the new subsection is that a person may be eligible for the first home transfer duty concession where the unencumbered value of the residential land being transferred is \$250,000 or less, even though the

consideration for the transfer of the land is less than the unencumbered value of the land. However, where the unencumbered value of the residential land is more than \$250,000, the consideration for the transfer must be equal to or greater than the unencumbered value of the land to be eligible for the first home transfer duty concession.

Examples

Anna is purchasing her first home, which has an unencumbered value of \$250,000, from her grandfather for \$100,000. Anna otherwise satisfies the criteria for the first home transfer duty concession. As the property has an unencumbered value of \$250,000 or less and it is her first home, Anna will pay no transfer duty.

Mr and Mrs Smith have decided to move into a smaller home and to give their current home to their son, William. This will be William's first home. The home has an unencumbered value of \$350,000 but William will not be paying any consideration. As the unencumbered value of the property is greater than \$250,000 and William is not paying at least the unencumbered value of the property, he will not be eligible for the first home concession. However, he would still be eligible for the transfer duty home concession if he satisfies the criteria for that concession.

Clause 13 amends section 152 and inserts a new section 152(2) to clarify the operation of the exemption for correction of errors in previous dutiable transactions. The exemption only applies to correct clerical errors in a previous dutiable transaction about the same property, provided certain conditions are satisfied.

Clause 14 omits section 459(2)(e), which provides for registration of agricultural colleges as exempt institutions for the purposes of obtaining certain duty exemptions. This provision is now redundant due to changes to the legislation relating to agricultural colleges. The reference to section 459(2)(e) in section 459(5) is also omitted.

Clause 15 inserts a new Chapter 17, part 6 in the *Duties Act 2001*, and new sections 568 and 570 in that part. Section 568 provides a definition for part 6, and section 570 provides that the new 92(1)(c) (as inserted by clause 12) applies retrospectively to dutiable transactions relating to residential land entered into on or after 1 May 2004.

Clause 16 omits section 9(1)(d) to give effect to the abolition of transfer duty on share buy-backs for Queensland marketable securities from 1 January 2007.

Clause 17 omits section 10(1)(c) to ensure that Queensland marketable securities will no longer be treated as dutiable property. This amendment gives effect to the abolition of transfer duty on transfers of, and various other transactions concerning, Queensland marketable securities from 1 January 2007.

Clause 18 omits sections 24(1) and (2), which provide the separate transfer duty rate of 60c per \$100 or part of \$100 applicable to Queensland marketable securities, to reflect the abolition of transfer duty on transactions concerning Queensland marketable securities from 1 January 2007. Sections 24(3) and (4) are consequently renumbered as sections 24(1) and (2).

Clause 19 omits section 30(7)(a), which refers to Queensland marketable securities in the context of the transfer duty aggregation provisions, as this subsection is no longer required upon the abolition of transfer duty on transactions concerning Queensland marketable securities from 1 January 2007. Subsections (7)(b) and (7)(c) are consequently renumbered as (7)(a) and (7)(b).

Clause 20 amends section 85 to provide as an additional purpose of Chapter 2, part 9 of the *Duties Act 2001* the provision of a transfer duty concession for land on which a first home is to be constructed.

Clause 21 amends the definition of “first home” in section 86(2) to ensure that a person will not qualify for a first home transfer duty concession for residential land if the person has previously received a first home concession in respect of (different) vacant land under sections 92 or 93A.

Clause 22 inserts new sections 86A to 86D. Section 86A defines “residential land”. Section 86B sets out the circumstances in which a residence to be constructed on vacant land is a person’s “first home” for the purposes of eligibility for a first home transfer duty concession. Section 86C defines “vacant land” for the purposes of that concession. Section 86D defines “vacant land concession beneficiary” for the purposes of sections 86(2) and 86B.

Clause 23 amends section 89 to ensure that the definition of “transfer date” applies to both residential land (i.e. land on which a residence is constructed) and vacant land.

Clause 24 amends section 90 to ensure that the definition of “dutiable value” applies to both residential land (i.e. land on which a residence is constructed) and vacant land.

Clause 25 makes a minor amendment to the heading of section 91.

Clause 26 amends section 92 to provide, from 1 January 2007, a transfer duty concession for the transfer or agreement for the transfer of vacant land on which a person's first home is to be constructed. Where the eligibility criteria in section 92 are satisfied, the concession for vacant land will be worked out under section 92(2)(b), by reference to the concession amount in Schedule 4B to the *Duties Act 2001*.

This clause also omits section 92(1)(c) (as inserted by clause 12) and inserts a new section 92(1)(c) to ensure that subsection applies to both residential land (i.e. land on which a residence is constructed) and vacant land from 1 January 2007. From 1 January 2007, new section 92(1)(c) increases the threshold (to \$320,000) under which a person may be eligible for the first home transfer duty concession where the unencumbered value of the residential land or vacant land being transferred is \$320,000 or less, even though the consideration for the transfer of the land is less than the unencumbered value of the land. Where the unencumbered value of the residential land or vacant land is more than \$320,000, the consideration for the transfer must be equal to or greater than the unencumbered value of the land for the transaction to be eligible for the first home transfer duty concession. Minor amendments are also made to the heading of section 92, and to section 92(1)(b)(ii).

Clause 27 amends the heading of section 93 to clarify that the section only applies to mixed and multiple claims by individuals for home and first home concessions relating to residential land (i.e. land on which a residence is constructed), and not vacant land. A minor consequential amendment is also made to section 93(6)(a)(ii).

Clause 28 inserts a new section 93A to deal with claims by individuals relating to vacant land in the following circumstances:

- the residence to be constructed will be the first home of one or more, but not all, of the transferees;
- there is an acquisition of a part interest in vacant land, and the residence to be constructed will be the first home of the transferee.

New section 93A provides a first home transfer duty concession in these circumstances which is proportionate to the interest of the transferee(s) who satisfy the eligibility criteria for the first home concession.

Clause 29 amends the heading of section 94 to clarify that the section applies to claims under section 93 where a trustee acquires residential land (i.e. land on which a residence is constructed).

Clause 30 inserts a new section 94A to provide rules that apply to claims under section 93A when a trustee of a trust acquires vacant land on which a residence is to be constructed. As for section 92, the concession is not available for trust property unless the land is held on a fixed trust for the benefit of persons under a legal disability. In these cases, section 93A is to be applied as if the beneficiaries of the trust were the transferees of the residence.

Clause 31 omits section 95 and inserts a new section 95 to ensure that all applications for a concession under Chapter 2, part 9 of the *Duties Act 2001*, whether they relate to residential land or vacant land, must be made in the approved form.

Clause 32 omits sections 97(1)(d)(iii) and (f) to remove the transfer duty concessions under Chapter 2, part 10 of the *Duties Act 2001* for particular family businesses in relation to transactions concerning Queensland marketable securities. These subsections will no longer be required upon abolition of transfer duty on transactions concerning Queensland marketable securities from 1 January 2007.

Clause 33 omits section 103 containing the conditions that apply for section 97(1)(f). This section will no longer be required as section 97(1)(f) is being omitted under clause 32 to reflect the abolition of transfer duty on transactions concerning Queensland marketable securities from 1 January 2007.

Clause 34 omits section 105(3) which relates to family companies. This subsection will no longer be required upon abolition of transfer duty on transactions concerning Queensland marketable securities from 1 January 2007.

Clause 35 inserts a new section 106(3) to ensure that marketable securities gifted on or after 1 January 2007 are not taken into account in working out transfer duty on a gift of property used for a prescribed business. This amendment reflects the abolition of transfer duty on transactions concerning Queensland marketable securities from 1 January 2007.

Clause 36 omits sections 148(1)(c), (d) and (2), which provide exemptions for certain transactions concerning Queensland marketable securities. These exemptions will no longer be required upon abolition of transfer duty on transactions concerning Queensland marketable securities from 1 January 2007.

Clause 37 amends section 153, which provides for a reassessment of transfer duty after a home or first home concession has been provided, where the residential land is disposed of within one year after the

occupation date. The amendment ensures that the section also applies where a first home transfer duty concession has been provided for vacant land under section 92 or 93A. A minor amendment is also made to the heading of section 153.

Clause 38 amends section 154, which provides for a reassessment of transfer duty after a home or first home concession has been provided, where the transferee disposes of the residential land before commencing occupation or does not commence occupation within the required timeframe. For acquisitions of residential land, the transferee must start to occupy the residence within one year after the transfer date.

This amendment ensures that the section also applies where a first home transfer duty concession has been provided for vacant land under section 92 or 93A. For acquisitions of vacant land, the residence must be constructed, and the transferee must start to occupy the residence, within two years after the transfer date. A minor amendment is also made to the heading of section 154.

Clause 39 amends section 155, which requires a transferee to notify the Commissioner if an event occurs that triggers a reassessment under sections 153 or 154, to ensure that the section also applies where a first home transfer duty concession has been provided for vacant land under sections 92 or 93A.

Clause 40 amends section 173, which details how business property that has been taken to have no value under the transfer duty concession for particular family businesses in Chapter 2, part 10 of the *Duties Act 2001* is to be treated for land rich duty. The amendment ensures that the concessionary treatment of the transaction described in section 97(1)(f) (which is subject to the conditions in section 103) continues to apply for land rich duty, despite the omission of section 97(1)(f) and section 103 from Chapter 2, part 10. This provision is being amended to reflect the abolition of transfer duty on transactions concerning Queensland marketable securities from 1 January 2007.

Clause 41 amends section 194, which aligns the land rich duty treatment of relevant acquisitions with the transfer duty treatment of dutiable transactions where they comprise the same transaction. The amendment removes the reference to the transfer duty exemption in section 148(1)(c), which exempts certain transactions relating to marketable securities, to reflect the omission of that section from the transfer duty provisions.

Clause 42 inserts a new section 194A to ensure that the equivalent of the transfer duty exemption in section 148(1)(c) for certain transactions

relating to marketable securities continues to apply for land rich duty, given the omission of section 148(1)(c).

Clause 43 omits section 216 and inserts a new section 216 to remove the separate rate of corporate trustee duty of 60c per \$100 or part of \$100 applicable to dutiable property that is Queensland marketable securities. This separate rate will no longer be required upon the abolition of transfer duty on transactions concerning Queensland marketable securities, as Queensland marketable securities will no longer be dutiable property.

Clause 44 omits section 227 and inserts a new section 227 to remove the deduction from corporate trustee duty for transfer duty paid or payable for acquisitions of shares in a corporate trustee or relevant corporation for a corporate trustee. This deduction will no longer be required upon the abolition of transfer duty on transactions concerning Queensland marketable securities. However, a deduction will continue to apply for interstate transfer duty paid or payable for the transaction.

Clause 45 omits section 272 and inserts a new section 272 which sets out when a residence will be a person's "home" or "first home" for the purposes of the home and first home mortgage duty concessions. Under this amendment, the timeframe in which a person is required to construct and start to occupy a residence, in order to qualify for a mortgage duty concession in relation to a home or first home that is to be constructed, is extended from a period of one year to two years after the mortgage is first signed. Where a residence is already constructed on the land, the one year period continues to apply.

Clause 46 amends section 291, which provides for a reassessment of mortgage duty in certain circumstances where a home or first home mortgage duty concession has been provided. The amendment reflects the extension of the timeframe allowed for a person to start to occupy the residence, where a residence is to be constructed on the land, from one year to two years after the date the mortgage is first signed.

Clause 47 omits Chapter 7 to give effect to the abolition of hire duty on and from 1 January 2007.

Clause 48 omits the example in section 384(2) and inserts a new example which does not refer to Queensland marketable securities, to reflect the abolition of transfer duty on transactions concerning Queensland marketable securities from 1 January 2007.

Clause 49 omits section 404(d) to reflect the abolition of transfer duty on share buy-backs for Queensland marketable securities from 1 January 2007.

Clause 50 omits section 405, which provides an exemption from transfer duty for certain share acquisitions for a corporate reconstruction, as this exemption will no longer be required upon the abolition of transfer duty on transactions concerning Queensland marketable securities.

Clause 51 amends section 407(1)(c) to reflect the omission of section 405 and the relocation of the circumstances mentioned in section 405 to section 409(1)(a) to (c).

Clause 52 omits section 409 and inserts a new section 409 to ensure that the equivalent of the transfer duty exemption contained in section 405 for certain share acquisitions for a corporate reconstruction continues to apply for land rich duty given the omission of section 405.

Clause 53 omits section 414(1)(e) to remove the exemption from hire duty for exempt institutions, as this exemption will no longer be required upon the abolition of hire duty from 1 January 2007.

Clause 54 amends sections 415(1) and (2) to remove the reference to “hired”, to reflect the abolition of hire duty from 1 January 2007.

Clause 55 amends section 416(2)(a) to remove the reference to “hired”, and omits sections 416(3)(d) and (4)(d), which set out certain requirements that exempt institutions must satisfy for a hire duty exemption to apply, to reflect the abolition of hire duty from 1 January 2007.

Clause 56 amends section 417(1) to remove the reference to “hired”, to reflect the abolition of hire duty from 1 January 2007.

Clause 57 amends section 418(2) to remove the reference to “hired”, to reflect the abolition of hire duty from 1 January 2007.

Clause 58 amends section 419(1)(b) to remove the reference to “hired”, to reflect the abolition of hire duty from 1 January 2007.

Clause 59 amends section 437(1) to remove the requirement for a person to apply for registration to carry on business as a commercial hirer. This amendment reflects the abolition of hire duty from 1 January 2007.

Clause 60 amends section 484 and its heading. Section 484 prohibits registration of instruments effecting or evidencing certain transactions concerning marketable securities unless the instrument is properly stamped. The reference to “a dutiable transaction for a share or right relating to a share” is removed to reflect the abolition of transfer duty on transactions concerning Queensland marketable securities. The section will continue to apply to instruments effecting or evidencing relevant

acquisitions under the land rich duty and corporate trustee duty provisions in Chapter 3, part 1 and 2 of the *Duties Act 2001*.

Clause 61 omits sections 498(2) and (3) and inserts a new section 498(2). By section 498(1), certain shareholdings in a land rich corporation are deemed to be dutiable property and property in Queensland for Chapters 2 and 3. Subsections (2) and (3) detail the manner in which the unencumbered value of the shares in the land rich corporation will be calculated, if required. New subsection (2) replaces these subsections to remove the reference contained in the current subsection (3)(b) to the unencumbered value being equal to the dutiable value of the dutiable transaction relating to the shares if they were to be transferred. This reflects the fact that transfers of Queensland marketable securities will no longer be dutiable transactions from 1 January 2007. From that date, the unencumbered value of the shares in the land rich corporation will be determined by applying the interest of the shareholders to the unencumbered value of the corporation's Queensland land-holdings. This maintains the calculation in the current subsection 3(a).

Clause 62 omits section 506(2) and inserts a new subsection (2) and (3) to extend the existing requirement for a corporation or society to keep instruments effecting or evidencing certain share transactions, to any acquisition of an interest in the corporation or society. A new subsection (3) is also inserted to provide that the meaning of "acquisition" in section 162 applies for section 506.

Clause 63 omits Chapter 17, part 2, division 8 of the *Duties Act 2001*, which clarifies the treatment of hires of goods entered into before commencement of the *Duties Act 2001*, as this provision will no longer be required upon the abolition of hire duty from 1 January 2007.

Clause 64 amends section 539, which is a transitional provision for the repealed *Stamp Act 1894* relating to exemptions for corporate reconstructions, to reflect the omission of section 405 and the relocation of the circumstances mentioned in section 405 to section 409(1)(a) to (c).

Clause 65 omits section 541 as this transitional provision for the repealed *Stamp Act 1894* will no longer be required upon the abolition of hire duty.

Clause 66 removes the examples from section 557(3)(a).

Clauses 67 to 70 relate to new transitional and savings provisions contained in Chapter 17, part 6 of the *Duties Act 2001* for certain amendments to that Act commencing on 1 January 2007.

Clause 67 inserts a heading for Chapter 17, part 6, division 1 of the *Duties Act 2001*.

Clause 68 amends section 568 which provides definitions of terms used in part 6.

Clause 69 inserts a new section 569 which provides that terms used in part 6, the definitions of which are omitted by the Bill, are taken to have their meaning under the omitted definition. This clause also inserts a new heading for part 6, division 2.

Clause 70 inserts a new section 571 into Chapter 17, part 6, division 2 and a new part 6, divisions 3 to 5.

Chapter 17, part 6, division 2 contains transitional provisions for the amendments to the home and first home transfer duty concession provisions.

- Section 570 (as inserted by clause 15 of the Bill) provides that section 92(1)(c) (as inserted by clause 12) applies retrospectively to dutiable transactions relating to residential land entered into on or after 1 May 2004.
- New section 571 ensures that the amendments to the home transfer duty concession and first home transfer duty concession for residential land and vacant land which take effect from 1 January 2007, will only apply to transactions where the liability for transfer duty arises on or after 1 January 2007.

Further, section 571(2) ensures that Chapter 2, part 9, divisions 2 and 3, and part 14, division 1 and Schedule 4A of the *Duties Act 2001*, as in force immediately before 1 January 2007, will apply to certain transfers or agreements for transfer of vacant land or residential land made on or after 1 January 2007, in certain circumstances.

Chapter 17, part 6, division 3 contains savings and transitional provisions for the amendments relating to Queensland marketable securities.

- Section 572 defines “pre-repeal marketable security transaction” for part 6, division 3.
- Section 573 is a savings provision which supplements the savings provided for in the *Acts Interpretation Act 1954*. The section ensures that the provisions of the *Duties Act 2001*, as in force immediately before 1 January 2007, continue to apply for powers, rights, privileges and liabilities that would have been

exercisable, acquired, accrued or incurred on or after 1 January 2007 in relation to a pre-repeal marketable security transaction, as if the amendments made by the Bill had not commenced.

For example, a person may be required to lodge an instrument or transfer duty statement, and pay transfer duty, on or after 1 January 2007 in relation to a pre-repeal marketable security transaction.

- Section 574 is a savings provision to ensure that a deduction from corporate trustee duty under section 227 continues to be available after 1 January 2007 where transfer duty was paid or payable before that date for a transfer or agreement to transfer shares in a corporate trustee or a relevant corporation for a corporate trustee.
- Section 575 saves the application of sections 417, 418 and 419 (as in force immediately before 1 January 2007) for the purposes of assessments and reassessments of duty on certain transactions concerning Queensland marketable securities entered into by exempt institutions before 1 January 2007.
- Section 576 ends the registration of self assessors registered under Chapter 12, part 2 or 3 of the *Duties Act 2001*, to the extent the registration applies to assessments of transfer duty on transactions relating to Queensland marketable securities, from 1 January 2007. Section 576(3) clarifies that the registration of the person under the *Duties Act 2001* for any other purpose or any requirement that applies to the registered person under the *Duties Act 2001* or the *Taxation Administration Act 2001* is not affected.
- Section 577 saves the application of section 484 (as in force immediately before 1 January 2007) to ensure that instruments effecting or evidencing certain share transactions before 1 January 2007 must still be properly stamped before being registered.

Chapter 17, part 6, division 4 contains savings and transitional provisions for the ending of hire duty.

- Section 578 provides definitions for division 4.
- Section 579 is a savings provision which supplements the savings provided for in the *Acts Interpretation Act 1954*. The section ensures that the hire duty provisions under repealed Chapter 7 of the *Duties Act 2001* continue to apply for powers,

rights, privileges and liabilities that would have been exercisable, acquired, accrued or incurred on or after 1 January 2007 in relation to a pre-repeal hiring charge, as if Chapter 7 had not been repealed.

For example, a commercial hirer may be required to lodge a return or statement and pay hire duty on or after 1 January 2007 in relation to a hire of goods entered into by the commercial hirer before 1 January 2007.

- Section 580 clarifies that no refunds will be provided for hire duty paid for a hire of goods entered into before 1 January 2007 merely because of hire duty abolition where the hire of goods ends after 1 January 2007. Under the *Duties Act 2001*, for certain hiring arrangements, hire duty is payable at commencement of the hire of goods on the total hiring charges payable over the full term of the hire. These hiring arrangements are:
 - a credit purchase agreement (defined in section 329); and
 - a hire of goods by a person other than a commercial hirer under section 345.

Section 580 clarifies that, upon abolition of hire duty from 1 January 2007, no entitlement to a refund of hire duty will arise, even though the term of these hiring arrangements may have an end date on or after 1 January 2007. However, this does not affect the operation of any specific refund or reassessment provisions contained in the *Duties Act 2001* or the *Taxation Administration Act 2001*.

- Section 581 ends the registration of commercial hirers registered under Chapter 12, part 1 of the *Duties Act 2001* for hire duty, from 1 January 2007. Section 581(3) clarifies that the registration of a person under the *Duties Act 2001* for any other purpose or any requirement that applies to the registered person under the *Duties Act 2001* or the *Taxation Administration Act 2001* is not affected.
- Section 582 saves the application of sections 417, 418 and 419 (as in force immediately before 1 January 2007) for the purposes of assessments and reassessments of duty on hires of goods entered into by exempt institutions before 1 January 2007.

Chapter 17, part 6, division 5 contains a transitional provision for the amendments to the mortgage duty home and first home concession provisions.

- Section 583 ensures that the amendments to the home and first home mortgage duty concession provisions, which take effect from 1 January 2007, only apply to transactions where the liability for mortgage duty arises on or after 1 January 2007.

Clause 71 amends Schedule 2 to the *Duties Act 2001*, which sets out when a liability for transfer duty on a dutiable transaction arises, by removing the reference to a share buy-back of a Queensland marketable security, to reflect the abolition of transfer duty on transactions concerning Queensland marketable securities from 1 January 2007.

Clause 72 amends Schedule 3 to the *Duties Act 2001*, which sets out the rates of duty on dutiable transactions and relevant acquisitions for land rich and corporate trustee duty, by replacing the reference to section 24(4) with section 24(2), to reflect the amendments made to section 24.

Clause 73 amends Schedule 4A to the *Duties Act 2001*, which sets out the first home transfer duty concession amount, by increasing the first home transfer duty rebate threshold for first home acquisitions relating to residential land (i.e. land on which a residence is constructed) from \$250,000 to \$320,000 so that no transfer duty will be payable by a person purchasing a first home valued up to \$320,000. The level of transfer duty relief for first home acquisitions relating to residential land is also increased for first homes valued over \$320,000 and less than \$460,000 while the amount of transfer duty relief available for first homes valued between \$460,000 and less than \$500,000 remains the same.

The amendments to Schedule 4A also include inserting “residential land” at the end of the heading, replacing the reference to section 92(2) with section 92(2)(a) and inserting a reference to section 93(6A). These amendments clarify that Schedule 4A only applies for working out the first home concession for acquisitions of residential land under new section 92(2)(a), and not acquisitions of vacant land under new section 92(2)(b). A minor amendment is also made to clarify that the concession amount is nil where the dutiable value of the residential land is \$500,000 or more.

Clause 73 also inserts a new Schedule 4B to the *Duties Act 2001* which sets out the first home concession amount for working out transfer duty under new section 92(2)(b) on acquisitions of vacant land on which a residence is to be constructed. For vacant land with a dutiable value of up to \$150,000, a concession of \$3,975 applies so that no transfer duty will be payable. For

vacant land with a dutiable value above \$150,000 but below \$300,000, a concession will apply to reduce the amount of transfer duty payable. For vacant land with a dutiable value of \$300,000 or more, no concession is available.

Clause 74 amends Schedule 6 to the *Duties Act 2001* by omitting, inserting and amending various defined terms as a consequence of other amendments being made to the *Duties Act 2001*.

Clause 75 amends the heading of section 251A to refer to mortgages affecting property in Victoria or Tasmania. A new section 251A(2) is also inserted which provides that Tasmanian stampings prior to 1 July 2007 will be taken into account when determining, for Queensland mortgage duty purposes, whether a mortgage or mortgage package has been properly stamped, stamped with similar duty, duly stamped or is exempt from duty.

Example

A mortgage is signed on 1 July 2005 over Queensland and Tasmanian property, securing an advance of \$3 million. The Queensland property comprises two thirds of the value of all securities. Mortgage duty is paid on \$1 million in Tasmania and \$2 million in Queensland.

On 31 December 2007, a further advance of \$1 million is made. Assuming that no repayments have been made, nor changes in property values have occurred, new section 251A(2) requires that a mortgage be treated as properly stamped to \$1 million in Tasmania. The mortgage has also been properly stamped with Queensland duty of \$2 million. Additional Queensland duty is therefore chargeable on \$1 million in respect of the further advance.

Clause 76 amends section 260(2) to provide that property in Tasmania is disregarded when determining the dutiable proportion on a liability date on or after 1 July 2007, when this amendment commences.

Clause 77 amends section 262(1A) to prevent the avoidance of Queensland mortgage duty, upon abolition of mortgage duty in Tasmania from 1 July 2007, through the use of collateral mortgages.

Clause 78 inserts a new subsection (4) in section 263 to clarify that Tasmanian mortgage duty paid, or a Tasmanian mortgage duty exemption that applied, before 1 July 2007 may be taken into account when determining the extent to which a mortgage or mortgage package is enforceable after 1 July 2007.

Example

A mortgage is signed on 1 July 2005 over Queensland and Tasmanian property, securing an advance of \$3 million. The Queensland property comprises two thirds of the value of all securities. Mortgage duty is paid on \$1 million in Tasmania and \$2 million in Queensland.

On 31 December 2007, a further advance of \$1 million is made. New section 263(4) will ensure that the mortgage duty paid on \$1 million in Tasmania may be taken into account, with the duty paid on \$2 million in Queensland, when determining the extent to which the mortgage is enforceable.

Clause 79 amends the heading of section 290A, which deals with reassessments of mortgage duty in certain circumstances where a mortgage has been stamped in advance, to clarify that the section relates to mortgages affecting property located in Victoria.

Clause 80 inserts a new section 290B. This new section ensures that, where Tasmanian and Queensland mortgage duty is paid under the advance stamping provisions in those States prior to 1 July 2007 for an advance made on or after that date, and the duty paid in Tasmania is later refunded because the relevant mortgage or mortgage package is no longer to be stamped in advance, Queensland mortgage duty will be reassessed having regard to the value of secured properties on the date on which the advance is made.

Clause 81 provides that Part 4 of the Bill amends the *Financial Administration and Audit Act 1977*.

Clause 82 amends section 80 of the *Financial Administration and Audit Act 1977* by inserting an additional subsection which extends the mandate of the Queensland Auditor-General to provide for an independent assessment of the relevance of the published measures used by public sector entities to assess their performance.

Clause 83 inserts a transitional provision into the *Financial Administration and Audit Act 1977* to ensure that the Queensland Auditor-General is able to consider a public sector entity's published performance measures that were in place prior to the introduction of the extended mandate.

Clause 84 provides that Part 5 of the Bill amends the *Fuel Subsidy Act 1997*.

Clause 85 inserts a new section 32A to require purchasers of diesel in a retail quantity from a licensed retailer, who use any of the diesel for an off-road purpose, to keep any record of sale given to them under section 16(2),

and records to enable the amount of diesel used for an off-road purpose to be ascertained. In addition, if the Commissioner gives the person a written notice requiring stated records to be kept, the person must keep those records.

Clause 86 amends Schedule 2 to the *Fuel Subsidy Act 1997* containing the definitions for that Act.

- The definition of “fuel” is omitted and a new, broader, definition of that term is inserted, so that the use of certain emerging forms of motor spirit or diesel may qualify for the fuel subsidy even though they are not ordinarily sold by a retailer.
- A new definition of “conditional registration” is inserted for the purposes of the new definition of “diesel engine road vehicle”.
- The definition of “diesel engine road vehicle” is amended. The effect of the amendment is that diesel used in any vehicle with a diesel engine that is not conditionally registered or of a type that would qualify for conditional registration in Queensland, will be eligible for the subsidy, except to the extent the diesel is used for an off-road purpose.

For example, diesel used by a concrete pumping truck for travel on a public road will qualify for the subsidy. However, any diesel used by the truck while pumping concrete or for associated purposes (e.g. cleaning equipment) would not qualify for the subsidy, as the diesel is being used for an off-road purpose.

As a further example, diesel used by a harvester will not qualify for any subsidy, even if the diesel is used for travel on a public road, because the harvester is a vehicle of a type that would qualify for conditional registration.

Clause 87 provides that Part 6 of the Bill amends the *Government Owned Corporations Act 1993*.

Clause 88 inserts additional subsections in Schedule 3, Parts 4 and 5, section 80 of the *Government Owned Corporations Act 1993* in the same terms as section 80 of the *Financial Administration and Audit Act 1977*. This clause also inserts a transitional provision into the *Government Owned Corporations Act 1993* to ensure that the Queensland Auditor-General is able to consider a public sector entity’s published performance measures that were in place prior to the introduction of the extended mandate.

Clause 89 provides that Part 7 of the Bill amends the *Land Tax Act 1915*.

Clause 90 amends section 3EA to clarify that the Commissioner must have regard to the factors listed in that section when determining whether a non-principal place of residence purpose is substantial, both for deciding whether the land is exempt from land tax, and for working out the amount of an allowable principal place of residence deduction for the land.

Clause 91 amends section 11(5)(a) and (b) and omits section 11(7) so that Australian citizens who are absentees (and trustees of trusts of which an Australian citizen absentee is a beneficiary) are no longer eligible for the land tax deduction for land used for the business of agriculture, pasturage or dairy farming.

Clause 92 inserts a new section 65 to ensure that the deduction under section 11(5) for land used for the business of agriculture, pasturage or dairy farming applies to Australian citizens who are absentees (and trustees of trusts of which an Australian citizen absentee is a beneficiary) for levying land tax for the 2006-2007 financial year.

Clause 93 provides that Part 8 of the Bill amends the *Taxation Administration Act 2001*.

Clause 94 amends section 3(1) to clarify that the making of general provision about the administration and enforcement of (Queensland) revenue laws is the main purpose of the *Taxation Administration Act 2001*, and inserts a new section 3(4) to provide that another purpose is to make provision about the administration and enforcement of (interstate and Commonwealth) recognised laws. A minor amendment is also made to the heading of section 3.