Revenue and Other Legislation Amendment Bill 2010

Explanatory Notes

Short Title

The short title of the Bill is the *Revenue and Other Legislation Amendment Bill 2010.*

General Outline

The Bill amends the following Queensland revenue statutes -

- *Community Ambulance Cover Act 2003*
- *Duties Act 2001*
- *First Home Owner Grant Act 2000*
- *Land Tax Act 1915*
- *Payroll Tax Act 1971*
- *Taxation Administration Act 2001*

The Bill also amends the:

- *GST and Related Matters Act 2000*;
- *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* (IIARDA);
- *State Financial Institutions and Metway Merger Facilitation Act 1996*;
- *Superannuation (State Public Sector) Act 1990*; and
- *Trans-Tasman Mutual Recognition (Queensland) Act 2003*.

Policy Objectives

Amendments to revenue legislation

Many of the amendments are beneficial and a number have been operating under administrative arrangements. Others amendments clarify the operation of the legislation or update or correct superseded terms or references. The remaining amendments are considered necessary to protect the revenue.

Amendments to the GST and Related Matters Act 2000

To repeal redundant legislative provisions.

Amendments to the Infrastructure Investment (Asset Restructuring and Disposal) Act 2009

Amendments facilitate the restructure and divestment of the State's interests in a variety of businesses, assets and liabilities currently held through several Government Owned Corporations (GOCs) and other Government owned entities.

Amendments to the State Financial Institutions and Metway Merger Facilitation Act 1996

The Bill proposes to change one aspect of the requirement that each Metway group company locate its head office in Queensland. Specifically, the Bill will amend the requirement that the greater of either 5 directors or 40% of the total number of directors of each Metway group company must be residents of Queensland. The head office restrictions were originally intended to ensure that the Metway Group (now referred to as Suncorp), which was one of Queensland's largest financial institutions, remained Queensland based.

At Suncorp's 2009 Annual General Meeting, shareholders passed a resolution to change the residency restrictions to enable the company to appoint new directors from outside of Queensland. This Bill will enable Suncorp to amend its company constitution and implement the shareholders' resolution. The Bill will require that the managing director be ordinarily a resident of Queensland.

The Bill also proposes to clarify the terms and extent of the State's guarantee of all insurance and indemnity obligations by Suncorp prior to its merger with Metway Bank Limited in 1996. The guarantee does not apply to liabilities that relate to amounts accrued after the Metway amalgamation day on contributions made before or after the Metway amalgamation day.

As an example, the guarantee does not apply to policy holders who, after the Metway amalgamation day, joined a Suncorp group investment product that existed prior to the merger, under the legal umbrella of a master policy holder.

This is consistent with the earlier State guarantee that was provided on the basis of State ownership of Suncorp.

Amendments to the Superannuation (State Public Sector) Act 1990

To simplify the current process for the continuation of eligibility for membership with QSuper for employees who are no longer employed by a State Public Sector Unit as a result of a restructure of a Government business.

Amendments to the Trans-Tasman Mutual Recognition (Queensland) Act 2003

This Bill also makes amendments to the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*. The amendments are to facilitate the application of the Trans-Tasman Mutual Recognition Scheme by simplifying the process for endorsing regulations made under the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth) (Commonwealth TTMRA).

Currently, under the *Trans-Tasman Mutual Recognition (Queensland) Act 2003* (Queensland TTMRA), the Governor may only make a gazette notice endorsing a regulation to be made under the Commonwealth TTMRA by the express authority of an Act of the Queensland Parliament.

The proposed legislation will remove the provision requiring the express authority of an Act, giving Executive Government the power to endorse proposed regulations under the Commonwealth TTMRA.

Reasons for the Bill

Amendments to revenue legislation

Amendments to the *Community Ambulance Cover Act 2003* will clarify the scope of the Commonwealth's exemption from the Community Ambulance Cover levy, support efficient administration by allowing electricity retailers to set-off cancelled cheques and credit card payments against levy amounts payable to the Commissioner of State Revenue (the Commissioner), and make a minor amendment.

The *Duties Act* 2001 provides for the imposition of a range of duties such as transfer duty, land rich duty and insurance duty. Amendments to the *Duties Act 2001* will-

- reinstate insurance duty on life insurance riders regardless of whether they are issued by a life or general insurer, and on insurance taken out with insurers who are not required to be registered or authorised under relevant Commonwealth legislation;
- extend the time for WorkCover to lodge insurance duty statements and pay insurance duty for accident insurance;
- allow for refunds of transfer duty paid on certain transfers which are subsequently cancelled;
- ensure the proper operation of a transfer duty exemption on conversion of land ownership from joint tenancy to tenancy in common
- introduce a new exemption from transfer duty and land rich duty to facilitate the restructuring by ‘top hatting’ of certain stapled entities which meet the requirements for the Commonwealth’s capital gains tax roll-over relief and other conditions;
- extend the transfer duty exemption for managed investment scheme property transfers between a responsible entity and a primary custodian to include transactions involving acquisitions of trust interests;
- extend the contracted property provisions to trust interests for assessing duty to ensure consistent treatment with other contracted property;
- expand the circumstances in which the Commissioner may suspend or cancel a person’s registration under the *Duties Act 2001* as a self assessor to protect the revenue;
- amend an offence provision relating to unauthorised endorsements of instruments that duty has been paid to ensure that it is effective;
- ensure that the transfer duty exemption for gifts of a home to a spouse or de facto partner applies whether or not the home is subject to a mortgage;
- allow the Commissioner to extend the start date for exempt institutions to use property and qualify for a transfer duty exemption;

- restore the transfer duty exemption for vesting of property of an unincorporated association on its incorporation under the *Corporations Act 2001* (Cwth) subject to conditions;
- extend the transfer duty home concessions to grants of a lease or a sublease;
- provide that the transfer duty exemption on a change of trustee may apply even if the rights or interest of a beneficiary are altered provided that duty has been paid on the alterations or they are exempt from duty;
- ensure the proper application of the corporate reconstruction exemption from transfer duty where property is subdivided; and
- make a number of minor amendments.

Amendments to the *First Home Owner Grant Act 2000* will reduce the cap on the value of homes for which the grant is payable from $1 million to $750,000, allow the Commissioner to disclose confidential information to the Australian Taxation Office under reciprocal arrangements, and update a reference.

Amendments to the *GST and Related Matters Act 2000* will remove the superseded Intergovernmental Agreement on Commonwealth-State Financial Relations as a schedule.

Amendments to the *Payroll Tax Act 1971* will change, from 1 July 2009, the territorial nexus for wages paid to employees providing services in more than one jurisdiction to ensure consistency with other jurisdictions, and make a minor technical amendment.

Amendments to the *Taxation Administration Act 2001* will clarify the meaning of ‘tax’ and the operation of the windfall gains provision relating to refunds made by the Commissioner and ensure the proper application of unpaid tax interest where documents are provided late by a party to a self assessor under the *Duties Act 2001*.

Amendments to the *First Home Owner Grant Act 2000, Duties Act 2001, Land Tax Act 1915* and *Taxation Administration Act 2001* will improve consistency of provisions relating to debt collection.

Amendments to the Infrastructure Investment (Asset Restructuring and Disposal) Act 2009 (IIARDA)

IIARDA amendments are necessary to facilitate the commercial restructure and divestment of the declared projects. In particular, on 8 December

2009, the Government announced that certain declared projects would be divested by way of 99 year leases. This Bill inserts new provisions to facilitate the lease of these projects and provide appropriate commercial certainty for the State and ongoing businesses.

Amendments to the State Financial Institutions and Metway Merger Facilitation Act 1996

The *State Financial Institutions and Metway Merger Facilitation Act 1996* (the Act) imposes an obligation on each Metway group company to locate its head office in Queensland. It achieves this by requiring that a prescribed number of directors, currently the greater of either 5 or 40% of the total number of directors of each Suncorp group company, must be ordinarily residents of Queensland and requires that the principal operational offices of stated company personnel and company services be located in Queensland.

At Suncorp's 2009 Annual General Meeting, shareholders passed a resolution to amend the company's constitution to only require that the managing director be ordinarily a resident of Queensland. Suncorp is unable to implement the shareholders' resolution until the Act is amended. The Bill will make the amendments to the Act to enable the shareholders' resolution to be implemented.

The Bill will also amend the Act to clarify the State's guarantee of all insurance and indemnity obligations held by Suncorp prior to its merger with Metway Bank Limited. Specifically, the Bill will ensure that the guarantee does not cover or extend to liabilities that relate to amounts accrued after the Metway amalgamation day on contributions made before or after the Metway amalgamation day.

This is consistent with the earlier State guarantee that was provided on the basis of State ownership of Suncorp.

Amendments to the Superannuation (State Public Sector) Act 1990

The amendments to the *Superannuation (State Public Sector) Act 1990* simplify the current process for the continuation of eligibility for membership with QSuper for employees, who are no longer employed by a State Public Sector Unit as a result of a restructure of a Government business. For prior transactions, the main process has involved the employee and new employer each giving a written notice to QSuper that the parties agree to the employee's continued membership with QSuper. The amendments introduce a new process which permits the Minister to give notice, by gazette, to QSuper declaring that the employees keep all the employees' existing and accruing rights relating to superannuation. The effect is that the new employer will be bound by the QSuper Scheme. The proposed amendments are intended to maintain the status quo and ensure that there is a simple streamlined process for QSuper, the new employer and the affected employees. Although these amendments will be beneficial to affected employees in relation to the declared projects under IIARDA, these amendments apply more generally to all restructuring of Government businesses.

Amendments to the Trans-Tasman Mutual Recognition (Queensland) Act 2003

The Commonwealth TTMRA allows certain laws and certain goods to be excluded on a temporary or permanent basis from the operation of the Trans-Tasman Mutual Recognition Scheme in areas where the participating jurisdictions consider that the application of mutual recognition principles would not be appropriate. The exemptions are contained in the schedules to the Act.

The Commonwealth TTMRA allows the schedules to be amended by regulations made by the Governor-General. The number of jurisdictions that need to endorse such a regulation for it to take effect differs depending on the category of the exemption and whether an exemption is being removed or new exemption is being added.

In most circumstances, it requires the endorsement of all participating jurisdictions to add a new permanent exemption. Certain regulations, such as the annual renewal of special exemptions, need the endorsement of at least two-thirds of participating jurisdictions to be valid.

Queensland is the only jurisdiction that requires an Act of Parliament to endorse regulations made under the Commonwealth TTMRA, meaning the process for endorsement takes significantly longer in Queensland. As a result, it has been the recent practice that amendments to the exemption schedules which only require a two-thirds majority have been made by the other States without the express endorsement of Queensland.

The requirement for an Act of Parliament authorising the Governor to make a gazette notice was originally included in the Queensland TTMRA to ensure the Queensland Parliament could scrutinise regulation to be made under the Commonwealth TTMRA.

However this requirement is disproportionate to the nature of the detail contained in the schedules to the Commonwealth TTMRA. Queensland is the only jurisdiction to require an Act of Parliament in order to endorse amendments to the schedules. The requirement encumbers the efficient application of the mutual recognition schemes and is inconsistent with the objectives of the Trans-Tasman Mutual Recognition Scheme to facilitate a more seamless trans-Tasman market.

This Bill will harmonise Queensland's endorsement process with other participating jurisdictions and will allow for a more efficient application of the mutual recognition schemes.

Achievement of the Objectives

Amendments to revenue legislation

Community Ambulance Cover Act 2003

The *Community Ambulance Cover Act 2003* imposes the Community Ambulance Cover levy (the levy) on electricity sale arrangements for the supply of electricity in Queensland. An electricity sale arrangement means a customer sale arrangement, power card arrangement or an on-supply arrangement. For constitutional reasons, the Commonwealth is not required to pay the levy. There is a gap in the exemptions for the Commonwealth in cases where the Commonwealth acquires electricity from an on-supplier, such as a building owner, or through a power card arrangement. Administrative arrangements have been in place since the commencement of the *Community Ambulance Cover Act 2003* on 1 July 2003 to ensure that the on-supplier and owner of the power card premises are not liable for the levy in these cases given that they are unable to recover the levy from the Commonwealth. The *Community Ambulance Cover Act 2003* is now being amended retrospectively to that date to reflect these arrangements.

Electricity retailers collect the levy through their electricity account systems and are required to pay the amounts collected to the Commissioner without any deduction other than for refunds which they are required to make to their customers for overpaid levies. No set off is allowed where a cheque or credit card payment to the electricity retailer for the levy is subsequently dishonoured, cancelled or reversed. An amendment proposed by the Bill will allow electricity retailers to set-off these amounts from levy collections payable to the Commissioner to facilitate more efficient administration.

A spent commencement provision is also being omitted from the *Community Ambulance Cover Act 2003*.

Duties Act 2001

Insurance duty

The *Duties Act 2001* imposes insurance duty on contracts of general and life insurance, and accident insurance. General insurers are liable for general insurance duty while life insurers are liable for duty on life insurance. A general insurer is defined as a person who writes general insurance and is authorised under the *Insurance Act 1973* (Cwth) to carry on an insurance business. A life insurer is defined to mean a person who writes life insurance and is registered under the *Life Insurance Act 1995* (Cwth).

A life insurance rider is an insurance contract attached to a life insurance policy that provides for additional payment for events such as the disablement or accidental death of the insured. Under the *Duties Act 2001* life insurance riders are defined as class two general insurance and are therefore dutiable at the general insurance rate of 5 per cent of the premium. Although the liability position under the repealed *Stamp Act 1894* was intended to be continued on enactment of the *Duties Act 2001*, an issue arises in relation to liability because it is a life insurer who writes insurance riders but the *Duties Act 2001* does not clearly require life insurers to pay duty in relation to general insurance.

Under the repealed *Stamp Act 1894*, all general and life insurers were liable for insurance duty and it was intended to continue this under the *Duties Act 2001*. However, there are cases where insurers, such as overseas insurers and non commercial captive insurers, are not registered or required to be registered under the relevant Commonwealth legislation and, as a result, issues arise regarding their liability for insurance duty.

Following a public announcement by the Honourable the Treasurer and Minister for Employment and Economic Development on 14 January 2010, the *Duties Act 2001* is to be retrospectively amended to that date to clarify that the insurance duty applies to insurance taken out with overseas insurers, non commercial captive insurers and other insurers not required to be registered or authorised under Commonwealth legislation. The provisions will apply where the insurance relates to Queensland property, an insurable risk or event that may occur in Queensland or life insurance taken out by a Queensland resident. This reflects the policy intent, pre-dating the *Duties Act 2001*.

The *Duties Act 2001* is also being amended to clarify that life insurance riders and similar products (such as stand alone trauma and disability insurance policies) are liable for insurance duty whether those products are provided by a life insurer or a general insurer. This change will also apply retrospectively on and from 14 January 2010 as part of the announced intention to restore the policy position.

In addition, the *Duties Act 2001* is being amended to clarify that, where an insurer is taken to have written both general and life insurance under the *Duties Act 2001*, the insurer will be liable to pay duty at general insurance rates in respect of the general insurance and duty at life insurance rates in respect of the life insurance. For example, where an insurer writes life insurance and life insurance rider products, the insurer will be taken to have received a premium for life insurance for the life insurance product and a premium for general insurance for the life insurance rider product.

Where an insurer does not carry on business in Queensland as an insurer, and is therefore not required to be registered as a self assessor under chapter 12, part 1 of the *Duties Act 2001*, chapter 8, part 6 imposes an obligation on the insured to pay the insurance duty. This obligation is being clarified.

Further, as a result of the changes being made to the insurance duty arrangements, sections 455 and 455A of the *Duties Act 2001* are being amended to provide greater flexibility for the Commissioner in specifying the endorsements that are to be made by a self assessor. This includes overseas insurers who may register under chapter 12, part 2 to pay insurance duty.

Also, WorkCover must lodge an insurance duty statement in the approved form and pay duty in accordance with section 370(4) of the *Duties Act 2001*. WorkCover must do so within 14 days or the longer period the Commissioner allows in accordance with section 370(5). As the Commissioner's practice is to allow 21 days for WorkCover to meet this requirement, the *Duties Act 2001* is being amended to reflect the practice.

Cancelled transfers

Transfer duty applies to transfers, and agreements for transfer, of dutiable property. In most cases, a transfer of dutiable property is signed following the execution of an agreement for transfer of the property. After settlement of a purchase, the transfer document is lodged with the Registrar of Titles for registration. Transfer duty is imposed once only for a transfer transaction. Usually, the duty is accounted for on the agreement for transfer. An exemption applies if an agreement for transfer is cancelled for breach, non-fulfilment of a condition, frustration or by consent of the parties.

In some cases, usually involving related parties, there is no agreement for transfer. Instead, only an instrument of transfer is signed. The *Duties Act 2001* does not provide any refund of duty paid on a transfer which is subsequently cancelled. The Bill will amend the *Duties Act 2001* to require the Commissioner to reassess duty paid on a transfer of dutiable property effected or evidenced by an instrument that is subsequently cancelled, provided certain conditions are met.

Change of ownership from joint tenants to tenants in common and vice versa

The *Duties Act 2001* provides a transfer duty exemption for a transfer, or agreement for transfer, effecting a change in the registered ownership of property from joint tenants to tenants in common, or vice versa. Exemption is conditional upon there being no change in the value of the co-owners' interests at the time of the transaction. To ensure the exemption operates as intended, the Bill amends the provision to provide that the exemption does not apply to a transfer, or agreement for transfer, that results in a change to the value of any co-owner's interest at the time of the transaction.

'Top hatting' restructures of stapled entities

New duty exemptions are proposed to facilitate the restructuring by *top hatting* of certain stapled entities that meet the requirements for the Commonwealth's capital gains tax roll-over relief and other conditions.

Stapled entities are entities whose securities must be traded as if the entities were a single entity. Top hatting restructures involve either the holders of the stapled securities transferring their securities to a new parent unit trust in exchange for units in that trust or a stapled unit trust acquiring all the securities in other stapled entities in exchange for units in the acquiring trust.

As top hatting involves the transfer of all the shares or units in a company or trust, a liability to duty may arise. New exemptions from transfer duty imposed under chapter 2 and land rich duty imposed under chapter 3 of the *Duties Act 2001* are proposed by the Bill for top hatting restructures that meet the capital gains tax rollover requirements in section 124-Q of the

Income Tax Assessment Act 1997 (Cwth) and the other conditions of the exemptions.

All other states and territories except Tasmania facilitate duty-free top hatting restructuring of stapled entities, though there is no uniform model. The new Queensland exemptions will, in most respects, align duty treatment with those jurisdictions.

Transfers of property between a responsible entity of a managed investment scheme and a primary custodian for that entity

Under the *Duties Act 2001,* transfer duty is imposed on dutiable transactions. These transactions include transfers of, and agreements to transfer, dutiable property and trust acquisitions where the trust holds a relevant interest in dutiable property. There is an exemption for transfers of, and agreements to transfer, dutiable property from a responsible entity to a primary custodian for the responsible entity of a managed investment scheme, and vice versa. As trust interests are not dutiable property, the exemption does not apply to trust acquisitions by the relevant entities in these circumstances.

Under administrative arrangements, the exemption has been extended through the provision of ex gratia relief for these transactions. The Bill proposes to amend the *Duties Act 2001* to extend the scope of the duty exemption to trust acquisitions made by either the responsible entity or the primary custodian for the responsible entity of a managed investment scheme where the trust interest was held by the other party immediately before the acquisition.

Contracted property

Under the *Duties Act 2001*, the calculation of duty on trust transactions and relevant acquisitions in land rich corporations and corporate trustees takes into account dutiable property that is subject to a purchase or sale agreement. That is, the dutiable property of the trust, land rich corporation or corporate trustee is taken to include dutiable property which is in the course of being purchased or sold. If the purchase or sale subsequently does not proceed, a reassessment and refund is made. These contracted property provisions ensure that duty cannot be avoided or reduced by, for example, a corporate trustee contracting to sell dutiable property before a person acquires shares in the corporation, and later cancelling the sale contract.

There is a gap in these provisions in relation to contracts to purchase or sell a trust interest. The *Duties Act 2001* is therefore being amended to ensure that trust interests that are subject to a sale or purchase agreement may also be taken into account in these circumstances for consistency of treatment with dutiable property under contract.

Cancellation and suspension of registration of a self assessor

The *Duties Act 2001* provides for a system of self assessment of duty by self assessors registered with the Commissioner. There are three categories of self assessors, namely, insurers carrying on business in Queensland, self assessors who are parties to dutiable transactions such as businesses that regularly engage in property transactions, and self assessors who are agents for parties to transactions such as solicitors and accountants. Registration under the *Duties Act 2001* enables self assessors to self assess duty on dutiable transactions subject to compliance with obligations relating to the content of returns and statements and lodgement with the Commissioner and payment of duty within certain timeframes.

Self assessors who fail to comply with these obligations risk prosecution and fines, suspension or cancellation of their self assessor registration, and in the case of transfer duty self assessors, administrative penalties of up to 75 per cent of the duty payable in a return.

A person's registration as a self assessor can be suspended or cancelled only if there are grounds for doing so under the *Duties Act 2001*, or if a self assessor notifies the Commissioner that they have ceased carrying on business. The grounds for suspension and cancellation of self assessor registration are conviction of an offence against the *Duties Act 2001* or *Taxation Administration Act 2001*, contravention of a provision of the *Duties Act 2001* that does not constitute an offence against the *Duties Act 2001* or the *Taxation Administration Act 2001* and registration as a self assessor because of a materially false or misleading representation or declaration.

If the Commissioner believes that a ground for suspension or cancellation of self assessor registration exists, the Commissioner must issue a show cause notice before suspension or cancellation can occur. The Commissioner can proceed to suspend or cancel registration if, after 21 days and consideration of any representations by the self assessor, the Commissioner still considers that a ground to cancel or suspend exists.

The existing arrangements generally require a successful prosecution of a self assessor before commencing the show cause process. In cases of repetitive or serious breaches of a self assessor's obligations, the time involved in undertaking prosecution action increases the risks for the revenue and self assessors' clients as the self assessor may continue making self assessments until the conclusion of a prosecution and show cause period.

To reduce these risks it is proposed to amend the *Duties Act 2001* to extend the circumstances in which the Commissioner may suspend or cancel a self assessor's registration to include non-payment of penalties imposed on the self assessor under the Act or where there is an unacceptable risk of non-compliance by the self assessor with their statutory obligations.

While the show cause procedure is not being amended and will still apply to most suspension and cancellation processes, the Bill proposes to authorise the Commissioner to immediately suspend a self assessor's registration for up to 56 days if the Commissioner considers that the risk of non-compliance by the self assessor with their obligations is immediate and unacceptable or immediate suspension is necessary to ensure the integrity of the self assessment system. Immediate suspension would be limited to cases involving the most serious breaches of a self assessor's obligations such as where the Commissioner has reason to suspect that the self assessor is collecting monies from their clients on account of duty liabilities and not remitting these funds to the Commissioner.

The self assessor will have the right to seek a review of a decision for immediate suspension.

In addition, there may be cases where self assessors either temporarily or permanently cease carrying on business but retain their registration. To overcome the risks associated with continuing registration in these cases, it is proposed to allow the Commissioner to cancel, (for permanent cessation) or suspend (for temporary cessation), a self assessor's registration regardless of whether the self assessor has first notified the Commissioner.

Transfer of a home between spouses and de factor partners

The *Duties Act 2001* provides a transfer duty exemption for the transfer, or agreement for transfer, of an interest in a home (that is, a residence which will be the acquirer's principal place of residence) from one party in a valid and subsisting marriage or de facto relationship to the other party by way of gift where, after the transfer, the parties own the property as joint tenants or tenants in common in equal shares.

There is a gap in the exemption where a home is transferred subject to a mortgage as this would not be a transfer by way of gift. Under an administrative arrangement in place since 2 May 2003, the *Duties Act 2001* has been administered on the basis that the exemption applies where the transfer is subject to an existing mortgage. The Bill will amend the *Duties Act 2001* with retrospective effect to ensure that the exemption applies in these cases.

Exempt charitable institutions

The *Duties Act 2001* provides an exemption from duty for exempt institutions such as charitable and religious organisations subject to certain conditions. One of the conditions is that the property the subject of the transaction will be used solely or almost solely for a qualifying exempt purpose within six months of duty liability arising and continue to be so used for at least 1 year.

There is an anomaly in the *Duties Act 2001*. Where an institution has been allowed the exemption but subsequently proves unable to start using the property for the qualifying exempt purpose within the six month period, the Commissioner is authorised to extend the time within which the use is to start. However, where an exempt institution advises the Commissioner at the time of applying for an exemption that it cannot meet the six month timeframe but can satisfy the purpose test by a later time, the Commissioner has no discretion to extend the commencement date. The former *Stamp Act 1894* contained provisions authorising the Commissioner in these circumstances to extend the time within which the institution must start to use the property for the qualifying exempt purpose.

An administrative arrangement to allow the start date to be extended has been in place since the commencement of the *Duties Act 2001* on 1 March 2002 to ensure consistency with the previous legislation. The *Duties Act 2001* is therefore being amended to give this arrangement legislative effect by retrospectively providing the Commissioner with a discretion to extend the start date for exempt institutions to use dutiable property for a qualifying exempt purpose. This will apply on and from 1 March 2002 for transfer duty.

Incorporation of associations under the *Corporations Act 2001 (Cwth)*

An unincorporated association may be incorporated under either the *Corporations Act 2001* (Cwth) or the *Associations Incorporation Act 1981*. The vesting of an association's dutiable property in the newly incorporated association is a dutiable transaction on which transfer duty would usually be imposed. The *Duties Act 2001* provides a transfer duty exemption for the vesting of property due to an association's incorporation under the *Associations Incorporations Act 1981*. However, there is no similar exemption in the case of an association incorporating under the *Corporations Act 2001* (Cwth) as there was under the former *Stamp Act 1894*.

Under an administrative arrangement in place since 20 November 2002, ex gratia relief has been provided from transfer duty otherwise payable on the vesting of property because of an association's incorporation under the *Corporations Act 2001* (Cwth), in certain circumstances. The *Duties Act 2001* is being amended to also provide exemption from transfer duty for a vesting of property in an association incorporated under the *Corporations Act 2001* (Cwth). The exemption will impose conditions similar to those that existed under the *Stamp Act 1894*, and that are contained in a published administrative arrangement.

Transfer duty home concessions

Under the *Duties Act 2001*, transfer duty is imposed on dutiable transactions that are transfers of, or agreements to transfer, land in Queensland. Transfer duty is also imposed on dutiable transactions that are the acquisition of a new right. The creation of leases or sub-leases of land results in the acquisition of a new right, and duty is payable in respect of any premium, fine or consideration paid for the grant of the lease or sub-lease.

Transfer duty concessions apply in respect of transfers of, or agreements to transfer, a home (that is, a residence which will be the acquirer's principal place of residence). Currently, the home concessions apply only to transfers and agreements to transfer. This ensures that transfers of freehold and leasehold land can qualify for the transfer duty home concessions.

There are instances where a home can only be held under a leasehold interest. Consequently, there is a gap in the transfer duty home concessions where a home is acquired on the grant of a lease or sub-lease for which a premium, fine or other consideration is payable. Transfer duty applies to these grants but the transfer duty home concessions do not.

Under an administrative arrangement in place since 1 December 2003, the *Duties Act 2001* has been administered on the basis that the transfer duty home concessions also apply to persons who are liable for transfer duty on the acquisition of a grant of an interest in residential land by way of a lease or sub-lease. The transfer duty home concession provisions in the *Duties Act*

2001 are therefore being extended to include the acquisition of a new right that is a lease of residential land in Queensland where the lessee is required to pay a premium, fine or other consideration. The amendments will have retrospective effect from 1 December 2003.

Change of trustee

Under the *Duties Act 2001*, transfer duty applies to dutiable transactions such as a transfer of dutiable property. A transaction undertaken solely to effect a change of trustee is exempt from transfer duty, subject to certain conditions. These include that the transaction cannot involve a change in the rights or interests of any of the beneficiaries or termination of the trust, and transfer duty must have been paid on all previous trust acquisitions. These conditions allow administrative changes to trusts which do not alter beneficial interests, while capturing arrangements that may involve duty avoidance.

Cases have been identified where the conditions of the change of trustee exemption can impede ordinary commercial dealings. For example, a beneficiary may acquire all of the units in a unit trust and pay transfer duty on that acquisition. If, as part of the same arrangement, a new trustee is appointed, transfer duty would also be payable on transfers of dutiable property as a result of the change.

Under an administrative arrangement in place since 13 August 2004, the *Duties Act 2001* has been administered on the basis that the exemption applies also where the relevant change of trustee is part of an arrangement involving a change in the rights or interests of a beneficiary of the trust, provided certain conditions are met. The change of trustee exemption in the *Duties Act 2001* is therefore being amended to also apply where the change of trustee transaction is part of an arrangement involving a change in the rights or interests of a beneficiary of the trust provided duty has been paid on the change in those rights and interests or the transaction effecting those changes was exempt or not subject to duty. The new exemption is conditional on there being no avoidance arrangement. The amendments will have retrospective effect from 13 August 2004.

Corporate reconstructions

The *Duties Act 2001* provides a duty exemption to enable members of a corporate group to transfer group property between group members without incurring transfer duty, provided the transfer is for a corporate reconstruction. A corporate reconstruction involves changing a corporate structure to make internal adjustments to corporate arrangements.

Conditions apply to ensure that the exemption cannot be exploited to avoid duty on transfers for other purposes, such as the sale of assets outside the group.

The exemption conditions include the requirement that the transferor and transferee are group companies and that the property transferred is group property. Generally, this latter condition will be satisfied if the transferor and transferee were group companies either before the group acquired the property or for three years prior to the transfer.

An issue has arisen in relation to land subdivisions undertaken by a member of a corporate group. Upon subdivision, there is an argument that a new interest in land is created. Where the subdivision is undertaken after companies become group companies, the land may arguably be transferred within the group and be eligible for the corporate reconstruction exemption on the basis that the transferor and transferee have been group companies for the whole of the time that the newly subdivided land was owned by the transferor. This is so even if the original parcel of land was acquired before the companies became group companies.

The *Duties Act 2001* is therefore being amended to ensure that, for a lot on a plan of subdivision, the date that the original parcel of land was acquired will be relevant for the corporate reconstruction exemption. For example, if a parcel of land that was acquired after the companies became group companies is subdivided, all of the new lots will be regarded as group property in the same way that the underlying land was group property.

On the other hand, there may be cases where two or more parcels of land are subdivided as part of the one plan of subdivision where some of those parcels were group property and others were not. Similarly two or more parcels of land may be amalgamated under a plan of subdivision where only some of those parcels were group property prior to amalgamation. To ensure that the corporate reconstruction exemption is available on the transfer of subdivided land to the extent that the underlying land was group property prior to the subdivision, a formula for determining the dutiable value applicable for the partial exemption has been included.

Unauthorised duty endorsements on instruments

The *Duties Act 2001* provides for the commission of an offence where a person who is not a self assessor endorses an instrument with any notation indicating or implying that the instrument is duly stamped. On the present drafting of the provision, there is an argument that the provision applies only if a person endorses an instrument in the particular way provided for in the *Duties Act 2001*. If some other endorsement is made, there is uncertainty whether an offence has been committed. An amendment to the *Duties Act 2001* will ensure the provision's proper operation to proscribe any unauthorised endorsement of instruments that duty has been paid, regardless of the manner in which the endorsement is made.

Minor amendments

The Bill also updates the definition of *recognised stock exchange* to reflect the change of name of the Australian Stock Exchange to the Australian Securities Exchange, updates the definition of *approved trustee* to reflect changes in the related Commonwealth legislation and removes a number of incorrect footnote references.

First Home Owner Grant Act 2000

A cap of $1 million on the value of homes for which the First Home Owner Grant is payable was announced in the 2008-09 State Budget and commenced on 1 January 2010. Subsequent to the introduction of the cap, a number of other jurisdictions announced the introduction of a $750,000 cap to apply from 1 January 2010. In line with the interstate position, the *First Home Owner Grant Act 2000* is being amended to reduce Queensland's cap so that homes for which consideration of $750,000 or more is paid are ineligible for the grant. The reduced cap will commence on 31 March 2010. The $1 million cap will continue to apply in relation to an application for a first home owner grant if the commencement date for the transaction to which the application relates is before 31 March 2010.

The Commonwealth has enacted legislation enabling disclosure by the Commonwealth Commissioner of Taxation to the States of information obtained in administering the First Home Saver Account scheme under the *First Home Saver Accounts Act 2008* (Cwth). The Commissioner of Taxation's ability to disclose is conditional on the States making equivalent provision to allow disclosure of information collected in administering their First Home Owner Grant schemes. The *First Home Owner Grant Act 2000* is therefore being amended to allow disclosure of the relevant information by the Commissioner to the Commissioner of Taxation under the reciprocal disclosure arrangements. This amendment will then invoke the operation of section 13J of the *Taxation Administration Act 1953* (Cwth), which will enable the Commonwealth Commissioner of Taxation to disclose information obtained in administering the *First Home Saver Accounts Act 2008* to the Commissioner.

This sharing of information is important in ensuring the effective administration of the respective schemes and, in particular, that the grant is paid to eligible applicants only. Use of the confidential First Home Owner Grant information disclosed to the Commissioner of Taxation will be governed by the secrecy provisions of the *First Home Saver Accounts Act 2008* (Cwth). These provisions restrict the recording, disclosure and on-disclosure of protected information to purposes required for the administration or enforcement of the *First Home Saver Accounts Act 2008* (Cwth) and taxation laws.

The *First Home Owner Grant Act 2000* is also being amended to update a reference to the Commonwealth citizenship legislation.

GST and Related Matters Act 2000

The Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations signed in 1999 required the inclusion of the agreement as a schedule in relevant legislation and a statement that it was the Government's intention to comply with, and give effect to, the agreement. This agreement has now been superseded by the Intergovernmental Agreement on Federal Financial Relations, signed in late 2008, which has no such legislative requirements. The Bill will amend the *GST and Related Matters Act 2000* to reflect the replacement of the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations signed in 1999 with a new agreement that does not require inclusion of the agreement as a schedule in relevant legislation. Section 4 of and the schedule to the *GST and Related Mattes Act 2000* are to be repealed.

Payroll Tax Act 1971

Services performed in more than one jurisdiction

Under the *Payroll Tax Act 1971* the place of payment of wages is generally the nexus for determining payroll tax liability. Unless services are performed entirely in another state (including a territory) or country, there will be a liability for payroll tax in Queensland if the wages are paid or payable in Queensland. This is the case if services are performed in several jurisdictions, whether or not these include Queensland. Where services are performed entirely in Queensland, the place of payment is irrelevant and payroll tax is payable in Queensland.

The core payroll tax nexus provisions are consistent across all states and territories.

Issues recently arose where employees work in more than one jurisdiction in a month. These issues included the impact of modern banking arrangements which make it easy to change the place where wages are paid. To address these issues, all jurisdictions have announced an intention to change the payroll tax nexus arrangements. The changes were announced to have effect on and from 1 July 2009.

The Bill amends the *Pay-roll Tax Act 1971* to give effect to the new nexus arrangements. Where a person performs services entirely in Queensland for an employer during the month, the position is unchanged. The wages paid or payable to the person will continue to be liable for payroll tax in Queensland.

The following changed nexus arrangements will apply where a person performs services in more than one State, or in at least one State and outside any State. (In part 2, division 1, subdivision 1 of the *Pay-roll Tax Act 1971*, the term *employee* is used to refer to a person to whom wages are paid or payable by an employer in relation to services performed or rendered by the person.) Queensland payroll tax will be payable if the employee is based in Queensland. (New section 9A specifies when an employee will be taken to be based in Queensland.) If the employee is not based in a State, the place where the employer is based will be relevant for liability purposes. (Section 9B specifies when an employer, and a corporate employee, will be taken to be based in Queensland.)

Where neither the employee nor the employer is based in a State, sections 9(1)(b)(iii), 9(1)(b)(iv) and 9(1)(c) specify alternative bases for determining if there is a liability for payroll tax in Queensland. Under section 9(1)(b)(iii) and 9(1)(c), the place where the wages are paid or payable will be relevant. Under section 9(1)(b)(iv), if neither the employee nor the employer is based in a State and the wages are not paid or payable in a State, the wages will be liable for payroll tax in Queensland if the wages are paid or payable for services performed or rendered mainly in Queensland (that is, more than 50 per cent) during the month.

New sections 9(2)-(7) clarify matters for determining liability. These amendments are necessary to ensure that employers engaging workers across jurisdictions are not subject to tax in more than one jurisdiction for the same wages. It also ensures that there are no legislative gaps which might result in some wages not being subject to tax in any jurisdiction.

Where the place of payment of wages is relevant for liability, new section 9C provides the basis for determining whether or not the wages will be taken to be paid or payable in Queensland.

In recognition of the retrospective effect of these changes, transitional provisions are being included to ensure that an employer whose liability under the *Pay-roll Tax Act 1971* increases as a result of the amendments will not be subject to any unpaid tax interest or penalty tax under the *Taxation Administration Act 2001*, or penalty under *Pay-roll Tax Act 1971*. The Commissioner will be required to remit the whole of any unpaid tax interest under section 54(2) of the *Taxation Administration Act 2001* and any penalty tax under section 58(1) of the *Taxation Administration Act 2001* where, in relation to wages paid or payable by an employer between 1 July 2009 and 30 June 2010, the employer includes the relevant wages in a return lodged by 21 July 2010. This will also be the case if an employer lodged a final return before 1 July 2010 without including the relevant wages but advises the Commissioner in writing of the additional liability by 21 July 2010. Also, section 90(2) of the *Pay-roll Tax Act 1971* will not apply to impose a penalty.

Similarly, where an employer's liability increases under the new nexus arrangements and this affects the employer's ability to comply with either the *Pay-roll Tax Act 1971* or the *Taxation Administration Act 2001*, the employer will not be taken to commit an offence under either Act if the employer, or an administrator for the employer, takes corrective action by the required time.

For instance, if an employer's liability for payroll tax increases under the new arrangements and the employer first accounts for the additional tax in the annual return lodged by 21 July 2010, the employer will not be taken to have given a false or misleading document, or made a false or misleading statement, to the Commissioner in relation to the periodic returns lodged during the 2009-10 financial year. Sections 122 and 123 of the *Taxation Administration Act 2001* will not apply. These transitional provisions will not apply in other cases, such as where a false or misleading statement is made, or a false or misleading document is lodged, in relation to other matters unrelated to the change in liability under the new nexus arrangements.

Where an employer's liability decreases under the new nexus arrangements and the employer has lodged a final return before 21 July 2010 that includes wages that are no longer liable for payroll tax under the *Pay-roll Tax Act 1971*, the Commissioner must, on written application, make a reassessment to decrease liability. This is subject to sections 18 and 21 and part 4, division 2 of the *Taxation Administration Act 2001* in relation to the time for making reassessments and the making of refunds.

Minor amendment

The Bill will update the definition of *superannuation contribution* in the *Payroll Tax Act 1971* to remove an obsolete reference to a contribution to a superannuation holding accounts reserve under the *Small Superannuation Accounts Act 1995 (Cwth).*

Taxation Administration Act 2001

The *Taxation Administration Act 2001* comprises standard administrative provisions applicable to the *Land Tax Act 1915*, *Payroll Tax Act 1971*, *Duties Act 2001* and the *Community Ambulance Cover Act 2003*. It does not apply to the *First Home Owner Grant Act 2000.*

Prevention of windfall gains on refunds of tax

The *Taxation Administration Act 2001* provides that, where a taxpayer has received an amount from another person for all or part of the tax payable, the Commissioner may make a refund of the tax only if satisfied that the taxpayer will reimburse the other person for the amount received. This ensures that the benefit of any refund is passed on to the person who in effect paid the tax and that the taxpayer does not make a windfall gain from the refund.

Where a refund is required to be made following a court order, it is appropriate that these windfall gains provisions also apply. The *Taxation Administration Act 2001* is therefore being amended to clarify that a court and the Queensland Civil and Administrative Tribunal may not make an order that is inconsistent with these provisions. An amendment to the comparable provision in the *Duties Act 2001* is also being made to ensure consistency.

Another amendment to the windfall gains provision will remove doubt that the provision is intended to apply to both payments and purported payments under a tax law, whether or not made under a mistake of law or fact.

Minor amendment

An amendment in the bill will clarify that *tax* includes a levy. This reflects the fact that the *Community Ambulance Cover Act 2003* is a revenue law under the *Taxation Administration Act 2001*.

Late provision of documents by a party to a self assessor

Under the *Duties Act 2001*, where a party to a transaction engages a registered self assessor, the party must provide the self assessor with all documents that would have otherwise been required to be lodged with the Commissioner. A penalty applies if the documents are not provided on time by the party.

Where the documents are provided late to the self assessor and, as a result, the self assessor does not lodge all necessary documents on time with the Commissioner, unpaid tax interest is intended to accrue from the time that the documents should have been provided to the Commissioner.

Although unpaid tax interest is payable where a self assessor lodges documents late with the Commissioner, the *Taxation Administration Act 2001* is silent on the application of unpaid tax interest where documents are provided late by a party to the self assessor. An amendment in the Bill will clarify that unpaid tax interest is also to take account of any such period of late provision for standard self assessments.

Duties Act 2001, First Home Owner Grant Act 2000, Land Tax Act 1915 and Taxation Administration Act 2001

Queensland revenue legislation includes a variety of debt recovery mechanisms, but these are not standardised across revenue lines. Amendments proposed to the *Duties Act 2001*, *First Home Owner Grant Act 2000*, *Land Tax Act 1915* and *Taxation Administration Act 2001* will improve revenue administration by ensuring greater consistency.

Garnishee provisions

The *First Home Owner Grant Act 2000* is to be amended to provide for the collection of moneys, such as grants that are repayable and penalty amounts relating to those amounts, through garnishees. To effect this, the garnishee provisions of the *Taxation Administration Act 2001* are to be replicated, with necessary adaptations, in the *First Home Owner Grant Act 2000*.

Charges securing the payment of revenue liabilities

The Commissioner presently has power to register a charge over land for debts relating to land tax, land rich duty and the First Home Owner grant. Amendments in this Bill will improve the consistency of the charging provisions. The circumstances in which a charge may be registered to secure the payment of a revenue liability will be unchanged.

- Registration and release of charges

Provisions about the method of registration and release of charges are contained in the various revenue laws. Amendments are to be made to move these provisions from the *Land Tax Act 1915* and the *Duties Act 2001* into the *Taxation Administration Act 2001*. The specific power to impose a charge will remain in the revenue laws.

- *Land Titles Office fees for registration and release of charges*

The Commissioner's practice is to recover from taxpayers the Land Titles Office fees incurred by the Commissioner in registering a charge or a release of charge. Presently, the Commissioner's general power of administration of the revenue laws is relied on in support of this practice. The *Taxation Administration Act 2001* and the *First Home Owner Grant Act 2000* will be amended to clarify that the Commissioner can recover the cost of Land Titles Office fees from taxpayers and grant applicants respectively.

- *Priority of charges*

The Commissioner's charge is only ranked as a first charge over land in the case of land tax. This means that in other cases the Commissioner's charge will rank below existing mortgagees and other security holders with the risk that the Commissioner may not recover any or all of the debt. Amendments are to be made to make the charges under the *Duties Act 2001* and the *First Home Owner Grant Act 2000* first charges over land. The changes will also improve the effectiveness of Commissioner charges as a debt recovery tool, promote fairness and equity and are consistent with revenue laws in a number of other jurisdictions.

To minimise the impact on other existing or potential security holders, the changes will be prospective. For the First Home Owner Grant, the change will apply for the recovery of grants which were authorised for payment after commencement of the amendment. Lenders to first home buyers should therefore be aware before making the loan that any subsequent obligation of their borrower to repay a First Home Owner Grant may result in the Commissioner registering a first charge over the land.

For charges relating to land rich duty, the amendment will apply only to relevant acquisitions in land rich corporations which occur after commencement of the amendment. (A land rich corporation is a corporation which owns land in Queensland worth at least $1 million and at least 60 per cent of its assets by value is comprised of land, wherever situated.) Despite this, there is potential for holders of existing registered securities over land of a land rich corporation and its subsidiary to lose the priority of their securities to the Commissioner's first charge. The potential is limited however, given the nature of a relevant acquisition for land rich duty. It is also probable that lenders to the corporation will be aware of these types of transactions and will have opportunity to make appropriate arrangements to protect their interests.

GST and Related Matters Act 2000

The Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations signed in 1999 required the inclusion of the agreement as a schedule in relevant legislation and a statement that it was the Government's intention to comply with, and give effect to, the agreement. This agreement has now been superseded by the Intergovernmental Agreement on Federal Financial Relations, signed in late 2008, which has no such legislative requirements. The Bill will amend the *GST and Related Matters Act 2000* to reflect the replacement of the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations signed in 1999 with a new agreement that does not require inclusion of the agreement as a schedule in relevant legislation. Section 4 of and the schedule to the *GST and Related Mattes Act 2000* are to be repealed.

Amendments to the Infrastructure Investment (Asset Restructuring and Disposal) Act 2009 (IIARDA)

The IIARDA amendments achieve its objectives by:

(i) making provision about the Forestry Plantations Queensland Office, Urban Land Development Authority and the Coordinator-General as declared entities. These amendments will facilitate the commercial restructure of the declared projects;

(ii) amending some sections to facilitate the transfer of employees, assets, instruments and liabilities from and to the State in connection with the declared projects. These amendments will also facilitate the commercial restructure of the declared projects;

(iii) making provision about the Minister approving workforce transition codes of practice directed at ensuring the appropriate and fair treatment of employees affected by declared projects;

(iv) making provision about the affect of the change of status of declared entities as a result of their divestment under this IIARDA;

(v) inserting three new sections to facilitate the disposal of certain declared projects by way of 99 year leases; and

(vi) inserting a new section which provides that if a provision of a transfer notice or a lease mentioned in sections 15A and 15B is held to be beyond power, invalid or unenforceable, the provision is to be disregarded and severed and the remaining provisions of the Act, transfer notice or lease will continue to have effect.

Amendments to the State Financial Institutions and Metway Merger Facilitation Act 1996

The Bill will enable Suncorp to amend its company constitution.

Amendments to the Superannuation (State Public Sector) Act 1990

The amendments achieve its objectives by:

(i) providing for identical processes for the continuation of eligibility for membership with QSuper under sections 13A and 13AA; and

(ii) introducing a new process for the continuation of eligibility for membership with QSuper in certain circumstances. The new process permits the Minister to give notice, by gazette, to QSuper that employees keep their existing and accruing rights relating to superannuation. The effect is that the new employer will be bound by the QSuper Scheme.

Amendments to the Trans-Tasman Mutual Recognition (Queensland) Act 2003

The Bill will repeal section 7(2) of the Queensland TTMRA, under which the Governor may only make a particular gazette notice under section 7(1) by the express authority of an Act.

This will allow Queensland to endorse a regulation for the purposes of section 43(1) of the Commonwealth TTMRA, under section 7(1) of the Queensland TTMRA, without the requirement for an authorising Act of Parliament that formerly existed.

The Bill will provide that a gazette notice made by the Governor under section 7(1) of the Queensland TTMRA is subordinate legislation. This will mean that such a gazette notice must be tabled in the Legislative Assembly and may be disallowed by the Assembly.

Alternatives to the Bill

The policy objectives can only be achieved by legislative amendments.

Estimated Cost for Government Implementation

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

The cost of administering the IIARDA amendments in respect of the divestment of the nominated businesses will be defrayed by the proceeds of the disposal of these assets.

The remaining amendments are not expected to impose any implementation costs for Government.

Consistency with Fundamental Legislative Principles

Amendments to revenue legislation

Retrospectivity

The amendment to the *Community Ambulance Cover Act 2003* to extend the power card and on-supply exemptions where the Commonwealth is the end user of electricity will apply retrospectively.

The following amendments to the *Duties Act 2001* will also apply retrospectively-

- extending the transfer duty home concession to grants of a lease or sublease;
- extending the transfer duty exemption on change of trustee even if the rights or interests of a beneficiary are altered;
- ensuring that the transfer duty exemption for a gift of an interest in a home to a spouse or de facto partner will apply if the transfer is subject to a mortgage; and
- providing a discretionary power for the Commissioner to extend the date for commencing to use property for a qualifying exempt purpose for transfer duty exemptions relating to exempt institutions.

While retrospectivity raises fundamental legislative principle issues, each of these proposed amendments is beneficial in that they provide an exemption, concession or other benefit and the legislation has been administered under approved administrative arrangements. In addition, where these beneficial changes were likely to apply to a wide range of clients, the terms of the administrative arrangements have been published by the Office of State Revenue.

The amendment to the *Payroll Tax Act 1971* to change the territorial nexus for wages paid to employees providing services in more than one jurisdiction is retrospective to 1 July 2009. The impact on taxpayers will vary, as some may become liable to pay in a lower taxing jurisdiction when the wages were previously liable in a higher taxing jurisdiction, and vice versa. As noted, the change ensures that Queensland's arrangements remain consistent with those applying in all other jurisdictions. As the other jurisdictions publicly announced an intention to change the nexus arrangements from 1 July 2009, it was necessary for Queensland to do the same to prevent double taxation or avoidance.

The Office of State Revenue has advised all taxpayers of the change. Further, to minimise the impact of retrospectivity, employers have been given the option of adopting the new nexus arrangements from 1 July 2009 or continuing with the current arrangements until the law is amended and making any necessary adjustments in their 2009-10 return without interest or penalty tax liability, and without being taken to commit any offence in relation to the delay. Transitional provisions are included in the *Pay-roll Tax Act 1971* to give these arrangements effect. These provisions apply as follows.

- Where an employer accounts for any additional tax liability by the required time, no penalty under the *Pay-roll Tax Act 1971* and no unpaid tax interest (UTI) or penalty tax under the *Taxation Administration Act 2001* will apply for the employer. In relation to UTI and penalty tax (which is imposed automatically under the *Taxation Administration Act 2001* and, consequently, by the Office of State Revenue's information system), the Commissioner will be required to fully remit any amount imposed under that Act, so that the employer will have no liability to pay any such amounts in these circumstances.

- Where an employer's liability increases under the new nexus arrangements and this affects the employer's ability to comply with either the *Pay-roll Tax Act 1971* or the *Taxation Administration Act 2001*, the employer will not be taken to commit an offence under either Act if the employer, or an administrator for the employer, takes corrective action by the required time.

- Where an employer's liability decreases under the new nexus arrangements and the employer has lodged a final return before 21 July 2010 that includes wages that are no longer liable for payroll tax under the *Pay-roll Tax Act 1971*, the Commissioner must, on written application, make a reassessment to decrease liability.

The amendments to the *Duties Act 2001* to impose insurance duty on life insurance riders issued by life insurers, and on insurance taken out with overseas, non-commercial captive and other insurers not required to be registered or authorised under Commonwealth legislation, will be retrospective from the date of announcement of the changes on 14 January 2010. This gives certainty to insurers, many of whom have continued to pay the duty on the basis of the legislation's intended operation and its operation under the repealed *Stamp Act 1894*. The Office of State Revenue has publicised the changes widely, including directly to the insurance industry, and is consulting as necessary to ensure effective implementation.

A number of other amendments to the Duties Act 2001 will also apply retrospectively. Each of these proposed amendments is beneficial in that they provide an exemption, concession or other benefit and the legislation has been administered on this basis under approved administrative arrangements.

Delegation of power

The proposed duty exemption for vesting of property of an association incorporated under the *Corporations Act 2001* (Cwth) operates on the basis that the Commissioner may approve whether an association's object is one which has an end useful to the community. When the exemption was contained in the *Stamp Act 1894*, the Minister was responsible for this approval. However, the delegated arrangements provide consistency in the operation of this exemption with the related exemptions for exempt institutions. Under those related provisions, the power to determine whether or not to register an institution as an exempt institution is vested in the Commissioner. These arrangements work well and are administratively efficient.

The amendments to extend the Commissioner's power to suspend and cancel duty self assessor registrations allow the Commissioner to make an administrative decision to cancel or suspend a duty self assessor's registration in wider circumstances than is currently permitted. In particular, suspension or cancellation will be permitted in cases where there is an unacceptable risk of non-compliance by the self assessor with their statutory obligations, to ensure the integrity of the self assessment system is not jeopardised, for non-payment of administrative penalties by non-compliant self assessors, or where self assessors have ceased, either permanently or temporarily, to carry on business. The proposed arrangements are in the public interest as they are required to protect the revenue from the risks associated with self assessor non-compliance.

The amendments also remove a self assessor's right to be heard prior to immediate suspension in cases where it is necessary to protect the revenue. In these cases, the removal of the requirement for a prior show cause process is necessary to eliminate both the risk to revenue and of potential ongoing losses to the self assessor's clients associated with serious irregularities such as potentially fraudulent activity during the show cause period. However, in relation to the decision for immediate suspension itself, self assessors will be able to seek a review. In addition, self assessors whose registration is immediately suspended will be able to continue to carry on their business, though at some additional cost, as a result of, for example, having to arrange for a lodging agent or another registered self assessor to assess duty on their clients' behalf. In these circumstances, there is not the same imperative for a prior right to be heard given the public interest considerations.

Appropriate reviews of these decisions will continue, initially through the existing internal review process and subsequently, through appeal to the Queensland Civil and Administrative Tribunal. As such, the proposed arrangements provide an appropriate balance between the public interest and individual rights. The proposed arrangements are also broadly consistent with the position interstate, and with similar arrangements in Queensland's *Legal Profession Act 2007* and gambling legislation.

The proposed amendments to the *Duties Act 2001* providing that charges registered by the Commissioner in relation to land rich debts have priority has the potential for holders of existing registered securities over land of a land rich corporation and its subsidiaries to lose the priority of their securities to the Commissioner's first charge. For this to occur, however, the following events would need to occur. A relevant acquisition would need to happen, that is a person (alone or with related persons) must acquire 50 per cent or more of the interests in the land rich corporation or, where that has already happened, their interest must increase. The person must then default in payment of the land rich duty payable. Finally, the

Commissioner must decide to register a charge over the land to ensure collection of the duty payable. In these circumstances, the risk of loss of priority of existing registered securities is very limited. Further, given the nature of a relevant acquisition for land rich duty, it is probable that lenders to the corporation will be aware of these transactions and will have opportunity to make appropriate arrangements to protect their interests.

Also, the changes will improve the effectiveness of Commissioner charges as a debt recovery tool, promote fairness and equity and are consistent with revenue laws in Western Australia, the Australian Capital Territory and the Northern Territory.

Amendments to Infrastructure Investment (Asset Restructuring and Disposal) Act 2009 (IIARDA)

Workforce Transition Code

Clause 85 inserts a new section 10A which permits the Treasurer to approve workforce transition codes of practice with retrospective operation. The Forestry Plantations Queensland Industrial Relations Working Party (which is comprised of representatives of Queensland Treasury, Department of Justice and Attorney General, Forestry Plantations Queensland Office ("FPQO") and relevant union delegates) has agreed to the FPQO Workforce Transition Code. The FPQO Workforce Transition Code was approved by the Treasurer and commenced on 26 October 2009. The proposed provision will be capable of retrospective operation to deal with those circumstances where the State, Unions and FPQO have agreed to the terms of the Code prior to the commencement of the Bill. It is submitted that this is beneficial legislation, since it is directed towards ensuring that the terms and conditions relating to affected employees are aligned with their current terms and conditions of employment.

Exclusion of Property Law Act

Clause 88 inserts a new section 15 which abrogates certain statutory rights under the *Property Law Act 1974*. The practical effect is to exclude the operation of section 121 and Part 8 Division 3 of the *Property Law Act 1994* for long term leases granted in relation to declared projects. The excluded provisions provide consumer protections by deeming certain terms (relating to assignment and relief from forfeiture) to be included in leases. However, the relevant deemed terms are not suitable for the unique long term leasing arrangements associated with major commercial transactions offered by the State. This clause will only affect the third parties purchasing the long term lease rights involved in these major commercial transactions. The exclusion of the relevant deemed terms will provide the necessary commercial certainty for such long term transactions negotiated between the State and the relevant third parties. Further, the State could suffer significant financial detriment if it cannot provide appropriate commercial terms for the long term leases.

Separate Leasing or Dealing with Fixtures and Land

Clause 88 inserts a new section 15A which alters the common law position by permitting certain "fixtures" to be treated as "chattels". As this is a matter of technical construction and interpretation and does not affect third parties' rights, this clause is consistent with the fundamental legislative principles.

Lease Protections

Clause 88 inserts a new section 15B which abrogates the common law should a lease term be interpreted as contrary to the common law. The new section 15A addresses the concern that the common law does not provide the necessary commercial certainty for the State in relation to unique long term leasing arrangements associated with major commercial transactions. The new section will only affect the third parties purchasing the long term leases involved in these major commercial transactions. Further, this section will benefit the State and the affected third parties by providing the necessary commercial certainty for the long term leases arrangements associated with the declared projects which are major commercial transactions. Further, this approach is justified as the State could suffer significant financial detriment, if the State cannot provide appropriate commercial terms for the long term leases.

Cessation of a declared entity as a GOC, Port Authority or being owned by Government

Clause 87 inserts a new section 11A which affects certain third parties' contractual rights which could be triggered by the divestment of a declared entity by way of a transfer of shares. For example, where a declared entity ceases to be a GOC under the *Government Owned Corporations Act 1993*, a port authority under the *Transport Infrastructure Act 1994* or owned by the Government, there will be a deeming of consent by third parties to the change of ownership or status of the declared entity. If this section does not override some third parties' rights, the divestment of the businesses may be delayed and in some cases prevented. These are significant commercial projects and the State and the ongoing businesses require commercial certainty.

Gazette Notices – Appropriate Delegation of Legislative Power

The purpose of the amendments to the *Investment Infrastructure (Asset Restructuring and Disposal) Act 2009* is to facilitate the restructure and divestment of the declared projects. The *Investment Infrastructure (Asset Restructuring and Disposal) Act 2009* confers a broad suite of flexible powers on the Minister to ensure that the declared entities can be commercially restructured and the declared projects can proceed. A gazette notice is the preferred mechanism, as it provides the necessary flexibility to facilitate the commercial restructure and divestment of the declared projects. The proposed amendments adopt the same mechanism as already contemplated in this Act.

Amendments to the Superannuation (State Public Sector) Act 1990

The amendments to sections 13A and 13AA are consistent with the fundamental legislative principles in so far as these amendments are intended to maintain the status quo in relation to an individual's existing or accrued rights in relation to superannuation. These amendments deal with the process and steps to ensure the continued QSuper membership for employees affected by a restructure of a Government business. However, the gazette notice will be capable of retrospective operation, as it is necessary to provide the appropriate flexibility for the State, QSuper and the new employer in restructuring the business and coordinating the transition of the relevant arrangements (including for superannuation).

Amendments to the Trans-Tasman Mutual Recognition (Queensland) Act 2003

By allowing the amendment of schedules to the Commonwealth TTMRA other than by another Act, these provisions might be seen as having insufficient regard to the institution of Parliament. The provisions will allow for the endorsement of regulations under the Commonwealth TTMRA by an Executive act, under section 7(1) of the Queensland TTMRA.

The allowance for an Act to be amended in this way is often referred to as an 'Henry VIII' clause. The Scrutiny of Legislation Committee has stated that Henry VIII clauses may be excusable, depending on the given circumstances, where the clause is to facilitate the application of a national scheme of legislation.

The Bill can be justified in this instance as it will play an important role in maintaining consistency of legislative change across jurisdictions, as part of the application of the Trans-Tasman Mutual Recognition Scheme, which is a national scheme of legislation.

The Trans-Tasman Mutual Recognition Scheme is an extension of the Mutual Recognition Agreement (MRA) in Australia and extends the benefits of the MRA to the market in goods and services between Australia and New Zealand. The mutual recognition legislation was passed by Queensland Parliament with the intention of promoting economic integration and increased trade between participants by reducing regulatory impediments to the movement of goods and people in registered occupations across jurisdictions.

Queensland is the only participating jurisdiction that requires an Act of Parliament to endorse regulations made under the Commonwealth TTMRA, leading to inefficiencies in the application of the national scheme of legislation.

It should be noted that the Bill provides that a gazette notice made by the Governor under section 7(1) is subordinate legislation. This provision further addresses possible concerns the amendments to the Queensland TTMRA do not have sufficient regard to the institution of Parliament, as Parliament has the opportunity to disallow the Governor's endorsement of proposed Commonwealth regulations.

It should also be noted that the amendments do not seek to alter the reference of power contained within the TTMRA and the amendments do not remove the requirements for an Act of Parliament before any amendments to the main body of the Commonwealth TTMRA are adopted.

Consultation

Amendments to revenue legislation

Community

Consultation was not undertaken in relation to the amendments proposed in the Bill which are beneficial or which make minor technical changes, clarifications or corrections. Many beneficial changes have been operating under administrative arrangements pending passage of the necessary legislative amendments.

Broader community consultation on other amendments in the Bill was considered inappropriate given their revenue protection or clarification nature.

Industry

The application of insurance duty on life insurance riders issued by life insurers, and on insurance taken out with overseas, non-commercial captive and other insurers not required to be registered or authorised under Commonwealth legislation, has been the subject of liaison between the Office of State Revenue and the insurance industry. In particular, to enable insurers to make decisions about system changes and duty collection policies, the industry sought clarification on whether or not the previous liability position was to be restored. The Office of State Revenue will also consult with insurers to facilitate implementation of the changes.

Consultation regarding the amendments to the *Duties Act 2001* to extend the Commissioner's power to cancel and suspend a duty self assessors' registration was undertaken with the Commissioner's Taxation Consultative Committee which comprises representatives of the main legal and accounting professional bodies including the Queensland Law Society. The Insurance Council of Australia was also consulted.

Consultation on the amendments to the *Duties Act 2001* to introduce a new exemption to facilitate the restructuring by 'top hatting' of certain stapled entities which meet the requirements of the Commonwealth's capital gains tax roll-over relief and other conditions is not considered necessary as the changes are beneficial and were sought by industry.

No consultation was undertaken in relation to the payroll tax changes prior to the announcement coordinated by State Revenue Commissioners. The Office of State Revenue has advised clients of the changes and will provide more detailed information to assist taxpayers meet their obligations.

In relation to the reduction in the cap for the First Home Owner Grant, the proposed change has been publicly announced and there will be further notification of the 31 March 2010 commencement date to facilitate implementation. In addition, lending institutions will be advised of the changes directly and through the Office of State Revenue website.

Consultation is not considered appropriate in relation to the proposed amendments to the *Taxation Administration Act 2001*, *Duties Act 2001* and *First Home Owner Grant Act 2000* to provide for greater consistency in debt collection mechanisms, as the changes proposed address potential revenue risk as a result of inadequacies in current debt collection tools.

Consultation on the remaining amendments is not considered necessary as they are either beneficial to the community, have been operating under published administrative arrangements, are necessary to protect the revenue or are of a minor technical nature.

Government

Consultation was undertaken with all relevant departments. No objections were raised to any of the amendments.

Amendments to the Infrastructure Investment (Asset Restructuring and Disposal) Act 2009 (IIARDA)

Broad consultation is not considered appropriate, given the confidentiality and probity issues associated with the restructure and divestment of the declared projects. Further these IIARDA amendments are technical and tailored to provide for the appropriate commercial restructure and divestment of the declared projects by the State.

Amendments to the Superannuation (State Public Sector) Act 1990

The QSuper Board has been consulted.

Amendments to the State Financial Institutions and Metway Merger Facilitation Act 1996

The Government has consulted with Suncorp regarding the proposed amendments. The change to director residency requirements was the subject of a resolution at Suncorp's Annaul General Meeting.

Amendments to the Trans-Tasman Mutual Recognition (Queensland) Act 2003

The Commonwealth Government has been consulted.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides that the short title of the Act is the Revenue and Other Legislation Amendment Act 2010.

Clause 2 provides that sections 69 and 73, other than to the extent it inserts new section 77, is to commence on 31 March 2010 and part 9 is to commence a day to be fixed by proclamation.

Part 2 Amendment of *Community Ambulance Cover Act 2003*

Clause 3 provides that the Act amended in part 2 is the *Community Ambulance Cover Act 2003.*

Clause 4 provides for the omission of section 2 from the *Community Ambulance Cover Act 2003* which is a spent commencement provision.

Clause 5 replaces section 48 to extend the levy exemption for the Commonwealth under the section to power card arrangements under which the Commonwealth is the user of the power card premises.

Clause 6 replaces section 60 to extend the levy exemption for the Commonwealth under the section to on-supply arrangements where the Commonwealth is the user of the separate area for the arrangement.

Clause 7 replaces section 103(3) to allow electricity retailers to also set-off from levy amounts payable to the Commissioner of State Revenue a levy amount which has been paid by an electricity customer to the retailer by a cheque which is subsequently dishonoured or a credit card payment which is subsequently reversed. Section 103(5) is also replaced to extend the existing return obligations so that amounts not included in the return because they are amounts set-off from dishonoured cheques or reversed credit card payments are recorded in the electricity retailer levy return.

Clause 8 inserts a new Part 14 to provide a retrospective effect, on and from 1 July 2003, for the amendments to sections 48 and 60.

Part 3 Amendment of Duties Act 2001

Clause 9 provides that the Act amended in part 3 is the *Duties Act 2001*.

Clause 10 amends section 52 to extend its application to the purchase or sale of a trust interest in a trust. Subclause (1) amends the heading to the section by including trust interests. New subsection (5) extends the Schedule 6 dictionary definitions of purchase agreement and sale agreement for section 52 to include uncompleted agreements for the acquisition of a trust interest. New subsection (1A) provides that a trust is taken to have an indirect interest in dutiable property held by another trust where the first trust has made a purchase or sale agreement for a trust interest in the other trust. As a result, for subsection (2), a sale agreement for a trust interest is taken not to have been made and a purchase agreement for a trust interest is taken to have been completed. Subclause (3) makes consequential amendments by replacing subsection (3) with new subsections (3) and (3A) which provide for reassessment in certain circumstances.

Clause 11 amends the note in section 63(1) to refer to new section 52(1A).

Clause 12 amends section 73 by inserting a separate definition of *insurer* in section 73(5). The amendment replicates the existing definition of *insurer* in the Schedule 6 dictionary.

Clause 13 amends section 85 to extend the purpose of Part 9 of the Act to providing transfer duty concessions to a dutiable transaction that is the acquisition of a new right that is a lease of residential land on which a home or first home is constructed or of vacant land on which a first home is to be constructed and for which a premium, fine or other consideration is payable.

Clause 14 inserts a new section 86(3) which ensures that the definition of first home in section 86(2) will not apply where a person has previously acquired an interest in other residential land under a lease for which a premium, fine or other consideration is payable.

Clause 15 inserts a new section 86B(2) which ensures that the definition of *first home* in section 86B for a residence to be constructed on vacant land will not apply where a person has previously acquired an interest in other residential land under a lease for which a premium, fine or other consideration is payable.

Clause 16 replaces section 86D(1) to include in the definition of *vacant land concession beneficiary* a person who acquires a lease of the type mentioned in section 85(1)(b), and makes a consequential amendment to update a reference in section 86D(2).

Clause 17 extends the definition of *a person's transfer date for residential land or vacant land* in section 89 to apply also to a person entitled to possession of the land under a lease of the type under section 85(1)(b).

Clause 18 replaces the definition of *dutiable value of residential land or vacant land* in section 90 to apply also to land the subject of a lease of the type mentioned in section 85(1)(b).

Clause 19 amends section 91 to extend the application of the transfer duty home concession to acquisitions of a lease of the type mentioned in section 85(1)(b).

Clause 20 amends section 92 to extend the application of the transfer duty first home concession to acquisitions of a lease of the type mentioned in section 85(1)(b).

Clause 21 amends section 93 to extend the application of the home concession in relation to mixed and multiple claims for individuals purchasing an interest in residential land to acquisitions of a lease of the type mentioned in section 85(1)(b).

Clause 22 amends section 93A to extend the application of the home concession in relation to mixed and multiple claims for individuals purchasing an interest in vacant land to acquisitions of a lease of the type mentioned in section 85(1)(b).

Clause 23 amends section 94 to extend the application of the home concession in relation to mixed and multiple claims for trustees purchasing an interest in residential land to acquisitions of a lease of the type mentioned in section 85(1)(b).

Clause 24 amends section 94A to extend the application of the home concession in relation to mixed and multiple claims for trustees purchasing an interest in vacant land to acquisitions of a lease of the type mentioned in section 85(1)(b).

Clause 25 amends section 117 by inserting a new subsection (2) to provide a new exemption from transfer duty for a dutiable transaction solely to effect a change of trustee where the transaction is part of an arrangement involving a change in the rights or interest of a beneficiary of the trust. Exemption is conditional on transfer duty having been paid on trust acquisitions or trust surrenders consequent on the change in those rights or interest to which duty applies. Also, the change of trustee must not be part of an arrangement to avoid duty.

Clause 26 inserts new section 122 which provides an exemption from transfer duty for restructuring by 'top hatting' of certain stapled entities which give effect to a scheme that would qualify for the Commonwealth's capital gains tax roll-over relief and which satisfy the other conditions as set out in the section. In particular, exemption will apply for trust acquisitions or trust surrenders of a trust interest in a listed unit trust or widely held unit trust and the transaction must not be part of an arrangement to avoid the imposition of transfer duty.

Section 122(2) sets out the circumstances where the exemption will no longer apply and a reassessment imposing transfer duty must be made. These circumstances are where the interposed trust is not a listed unit trust or a widely held unit trust when the scheme is completed or ceases to be one of these trusts within 3 years of completion of the scheme. A reassessment will also occur if the interposed trust does not retain all of the ownership interests in the stapled entities for at least 3 years after the transaction. However, under subsection (3) a reassessment will not be required where the interposed trust did not retain all those ownership interests because one or more of the stapled entities ceased to exist (for example, a company is deregistered). However, if the cessation occurred under an arrangement to avoid the 3 year ownership requirement, a reassessment must be made.

Clause 27 amends section 130 to extend the transfer duty exemption for transfers between a responsible entity of a managed investment scheme and a primary custodian for that entity of scheme property to include a trust acquisition by one of those parties of a trust interest that is scheme property. The extended exemption applies where the trust interest was held by the other party immediately before the acquisition.

Clause 28 amends section 143 which provides exemption from transfer duty for transactions entered into solely for the purpose of changing the registered ownership of property from joint tenants to tenants in common or vice versa. The amendment ensures that exemption operates as intended by adding the condition that the property either was held as tenants in common in equal shares before the transfer or will be held as such after the transfer as the case may be.

Clause 29 amends section 151 to ensure that the transfer duty exemption for gifts of an interest in a home to a spouse or de facto partner applies whether or not the home is subject to a mortgage.

Clause 30 amends section 153 to extend the requirement for the Commissioner to reassess transfer duty which was assessed on the basis that the acquisition was of a home, first home or vacant land on which a home is to be constructed. Under that section, reassessment is required where the residential land is disposed of within one year of the transferee's occupation date. The amendment extends the requirement to reassess to includes cases where the acquisition was of a lease of the type mentioned in section 85(1)(b).

Clause 31 amends section 154 to extend the requirement for the Commissioner to reassess transfer duty which was assessed on the basis that the acquisition was of a home, first home or vacant land on which a home is to be constructed. Under that section, reassessment is required where the transferee does not comply with the occupancy requirements. The amendment extends the requirement to reassess to includes cases where the acquisition was of a lease of the type mentioned in section 85(1)(b).

Clause 32 amends section 155 to extend the requirement to give notice of a notifiable event under section 91, 92, 93 or 93A to cases where the acquisition was of a lease of the type mentioned in section 85(1)(b).

Clause 33 inserts a new division 3 into chapter 2, part 14 of the *Duties Act 2001*. The new division contains new section 156A which enables a person to apply to the Commissioner to reassess transfer duty paid for a transfer of dutiable property effected or evidenced by an instrument where the instrument is subsequently cancelled. Subsection (1) sets out the conditions which must be satisfied before a reassesment must be made which include that the instrument must not have had legal effect and that there is no resale agreement. Subsection (2) sets out when an instrument has legal effect for subsection (1). Subsection (3) defines *resale agreement* for subsection (1). Subsection (4) provides that an application for reassessment must be made within six months after the instrument is cancelled. The applicant is required by subsection (5) to lodge the instrument with the application. Subsection (6) requires the Commissioner to make a reassessment on the basis that transfer duty is not imposed on the transaction.

Clause 34 amends section 166 by inserting new subsections (4) and (5). In determining if a trustee of a trust is a subsidiary of a corporation, an uncompleted agreement, whether or not conditional, made by the corporation for the acquisition of an interest as a beneficiary of the trust is taken to have been completed and an uncompleted agreement, whether or not conditional, made by the corporation for the disposal of an interest as a beneficiary of a trust is taken not to have been made. This is subject to reassessment under section 197 in certain circumstances. This amendment aligns the treatment of a purchase or sale agreement of a trust interest for land rich duty purposes with that applying for transfer duty and corporate trustee duty.

Clause 35 inserts new section 193A which provides an exemption from land rich duty for restructuring by 'top hatting' of certain stapled entities which give effect to a scheme that would qualify for the Commonwealth's capital gains tax roll-over relief and which satisfy the other conditions as set out in the section, including that the relevant acquisition is not part of an arrangement to avoid the imposition of land rich duty.

Section 193A(2) sets out the circumstances where the exemption will no longer apply and a reassessment imposing land rich duty must be made. These circumstances are where the interposed trust is not a listed unit trust or a widely held unit trust when the scheme is completed or ceases to be one of these trusts within 3 years of completion of the scheme. A reassessment will also occur if the interposed trust does not retain all of the ownership interests in the stapled entities for at least 3 years after the transaction. However, under subsection (3) a reassessment will not be required where the interposed trust did not retain all those ownership interests because one or more of the stapled entities ceased to exist (for example, a company is deregistered). However, if the cessation occurred under an arrangement to avoid the 3 year ownership requirement, a reassessment must be made.

Clause 36 amends section 197 to extend the circumstances in which a reassessment of land rich duty imposed for a relevant acquisition must be made. The additional circumstance requiring a reassessment is where section 166(4) applied for determining whether a trustee of a trust is a subsidiary of a corporation and either a trust interest sale agreement was later completed or a trust interest purchase agreement was not completed.

Clause 37 *(1)* amends the heading of section 198. *Clause 37(2)* omits an unnecessary footnote reference from section 198(1). *Clause 37(3)* amends section 198(2) so that a liability to pay an outstanding amount of land rich duty is a first charge on land owned by the land rich corporation concerned in the relevant acquisition and any subsidiary. *Clause 37(4)* omits sections 198(3) to (5) and inserts new subsections (3) and (4). New subsection (3) provides that the Commissioner may register a charge over land owned by the land rich corporation or its subsidiary under new part 4, division 5 of the *Taxation Administration Act 2001* which provides for the registration and release of charges over land as inserted by this Bill. New subsection (4) provides that the charge has priority over all other encumbrances over the land.

Clause 38 omits section 199 as this is now covered by new part 4, division 5 of the *Taxation Administration Act 2001* as inserted by this Bill.

Clause 39 amends section 213 to provide that a corporate trustee is taken to have an indirect interest in dutiable property held by a trust where the corporate trustee has made a purchase or sale agreement for a trust interest in the trust. For this section, subsection (5) extends the definition of *purchase agreement* and *sale agreement* in schedule 6 of the *Duties Act 2001*. As a result, for subsection (2), a sale agreement for a trust interest is taken not to have been made and a purchase agreement for a trust interest is taken to have been completed. This is subject to subsection (3) which provides for reassessment in certain circumstances. The clause also removes incorrect references to a relevant corporation for a trustee. These amendments align the treatment of a purchase or sale agreement of a trust interest for corporate trustee duty purposes with that applying for transfer duty and land rich duty.

Clause 40 amends the note in section 222(1) to refer to new section 213(1A).

Clause 41 amends the definition of *premium* in section 353(1) to clarify that premiums for general insurance and life insurance may be given to a person who is an insurer as defined in the *Duties Act 2001,* rather than to a general insurer or life insurer respectively. Under the new definition of *insurer* in the Schedule 6 dictionary to the *Duties Act 2001*, an insurer may be a general insurer or life insurer, or both. For example, where an insurer writes both life insurance and life insurance rider products the person will be taken to have received a premium for life insurance for the life insurance product and a premium for general insurance for the life insurance rider product.

Clause 42 amends the definition of *general insurer* in section 354 to provide that a general insurer is a person who writes general insurance as defined in section 350 of the *Duties Act 2001*, regardless of whether the person is authorised under the *Insurance Act 1973* (Cwlth) to carry on an insurance business. For the purposes of the *Duties Act 2001,* an insurance intermediary is not a general insurer.

Clause 43 amends the definition of *life insurer* in section 355 to provide that a life insurer is a person who writes life insurance as defined in section 351 of the *Duties Act 2001*, regardless of whether the person is registered under the *Life Insurance Act 1995* (Cwlth). For the purposes of the *Duties Act 2001,* an insurance intermediary is not a life insurer.

Clause 44 amends section 357 to ensure that insurance duty imposed on general insurance and on life insurance must be paid by the insurer. This extends the liability of an insurer to pay insurance duty on both general insurance and life insurance where the insurer writes both general insurance and life insurance.

Clause 45 amends section 360 by replacing reference to the term *life insurer* with *insurer* to provide that insurance duty must be paid each time an insurer writes a contract of life insurance.

Clause 46 amends the heading for chapter 8, part 5.

Clause 47 amends section 369 and its heading by replacing references to *general insurer* and *life insurer* with the term *insurer.*

Clause 48 amends section 370 to clarify the obligations of insurers in relation to lodging returns and paying insurance duty for general insurance and life insurance. This ensures that a registered insurer with a liability for insurance duty for general insurance or life insurance, or both, is required to comply with the requirements under the new section 370(1).

Subclause (3) amends section 370(5) of the *Duties Act 2001* to allow WorkCover 21 days to lodge a statement and pay insurance duty owing to the Commissioner, as required by section 370(4). An unnecessary footnote reference is also omitted.

Clause 49 replaces section 371 to clarify the operation of chapter 8, part 6 for an insured where insurance is effected or renewed with a person who is not registered under chapter 12, parts 1 or 2. If chapter 8, part 6 applies to the insured, section 372 imposes obligations on the insured to lodge a statement and pay insurance duty. It also clarifies that chapter 8, part 6 does not apply to an insured who has been charged an amount of insurance duty in relation to the premium for the insurance by an insurer mentioned in the new section 371(1).

Clause 50 amends section 372 to clarify it is the insured person who must lodge a statement and pay insurance duty under that section.

Clause 51 amends section 407 to ensure that, for the purposes of determining the application of the corporate reconstruction exemption, property that is a lot on a plan of subdivision registered after the transferor and the transferee became group companies is only group property to the extent that the property comprising the lot was group property under subsection (1)(a) or (b) immediately before the plan of subdivision was registered. It also includes a formula for determining the dutiable value of the eligible property where property that was not group property and property that was group property are subdivided or amalgamated under a plan of subdivision.

Example 1

On 1 January 2008, company A and company B became group companies. Before 1 January 2008, company A owned parcel X. On 1 May 2008, company A acquired parcel Y. On 1 June 2008, a plan of subdivision amalgamating parcels X and Y into lot Z was registered. Immediately before the plan of subdivision was registered, parcel X was valued at $500,000 and parcel Y was valued at $750,000. On 1 July 2008, company A transferred its interest in lot Z to company B. The dutiable value of lot Z at that time was $3,000,000.

Under the amendments to section 407, the transfer of company A's interest in lot Z will be eligible for the corporate reconstruction transfer duty exemption to the extent that parcel Y was group property under section 407(1)(a) or (b) of the Duties Act 2001. In calculating the dutiable value of lot Z that is group property and therefore eligible for the exemption, the formula in new section 407(4) will apply as follows—

- *factor VP is $750,000, being the value of parcel Y immediately before the plan of subdivision was registered (parcel Y being group property under section 407(1)(a) or (b) at that time);*
- *factor TV is $1,250,000, being the combined value of parcels X and Y immediately before the plan of subdivision was registered.*

Applying the formula, the dutiable value of the part of lot Z that is group property is 60 per cent of $3,000,000, that is, $1,800,000. The corporate reconstruction exemption will be allowed to that extent in relation to the transfer of lot Z.

Example 2

If in example 1, company A instead subdivided parcel X to form lots X1 and X2, and transferred both of these new lots to company B on the same date, the formula in section 407(4) applies as follows—

- *factor VP is nil, as parcel X was not group property under section 407(1)(a) or (b) immediately before the plan of subdivision was registered;*
- *factor TV is $500,000, being the value of parcel X immediately before the plan of subdivision was registered.*

Applying the formula, the dutiable value of the part of lots X1 and X2 that is group property is 0 per cent. The corporate reconstruction exemption is therefore not available in relation to the transfer of lots X1 and X2.

If, in this example (and assuming all other facts were unchanged), parcel Y was instead subdivided to form lots Y1 and Y2, 100 per cent (that is, $750,000 / $750,000) of the dutiable value of lots Y1 and Y2 would be eligible for the corporate reconstruction exemption.

Clause 52 amends section 416 to allow the Commissioner a discretion to extend the start date by which an exempt institution must commence to use property for a qualifying exempt purpose.

Clause 53 amends section 419 of the *Duties Act 2001* to correct a reference to a paragraph within that section.

Clause 54 amends section 427 to inset a new subsection (2) providing a duty exemption for the vesting of property of an unincorporated association on its incorporation under the *Corporations Act 2001* (Cwth), subject to conditions.

Clause 55 amends section 437(1) by replacing references to the term *general insurer* and *life insurer* with the term *insurer*.

Clause 56 amends section 445(2)(g) so that a notice of registration for a self assessor under chapter 12, part 2 must state any endorsements to be made on the instruments.

Clause 57 amends section 452(2)(g) so that a notice of registration for a self assessor under chapter 12, part 3 must state any endorsements to be made on the instruments.

Clause 58 amends section 455 to recognise that there are some cases where the endorsement requirements in section 455(2)(a) are not relevant for self assessors who lodge returns. For instance, the endorsement requirements in section 455(2)(a) may not be relevant for self assessors accounting for insurance duty by return. The Commissioner may therefore specify that there are no endorsement requirements or may specify endorsement requirements that are different to those under new section 455(2)(a)(ii).

Clause 59 amends section 455A to recognise that there are some cases where the endorsement requirements in section 455A(4)(a) are not relevant for self assessors who lodge transaction statements. For instance, the endorsement requirements in section 455A(4)(a) may not be relevant for self assessors accounting for insurance duty by transaction statement. The Commissioner may therefore specify that there are no endorsement requirements or may specify endorsement requirements that are different to those under new section 455A(4)(a)(ii).

Clause 60 inserts into section 465 new grounds for suspension or cancellation of a self assessor's registration. The new grounds are where a self assessor has failed to pay a penalty amount or an instalment in relation to a penalty amount on time, has failed to give notice to the Commissioner under section 470 that the self assessor has ceased carrying on business or the self assessor's registration poses an unacceptable risk that the self assessor will not comply with an obligation under the *Duties Act 2001* or the *Taxation Administration Act 2001*.

Clause 61 inserts new section 469A which provides the Commissioner with a power to immediately suspend a self assessor's registration. Section 469A(1) provides that the Commissioner must reasonably believe that there is a ground for suspending or cancelling a self assessor's registration and that it is necessary to suspend the registration immediately to ensure the integrity of the self assessment system (as defined in section 469A(7)) is not jeopardised or to remove an immediate and unacceptable risk of non-compliance with the self assessor's obligations under the *Duties Act 2001* or the *Taxation Administration Act 2001*.

Where the conditions of section 469A are satisfied, the Commissioner may decide to immediately suspend the self assessor's registration and must give the self assessor an information notice which includes the period of the immediate suspension (sections 469A(2) to (4)). The decision to immediately suspend the self assessor's registration may be reviewed under chapter 13. Under this review, it is the decision of immediate suspension that is reviewed rather than the underlying ground of suspension which may ultimately be reviewed under the show cause process provided in sections 466 to 469.

Section 469A(5) and (6) provide for the period of the immediate suspension which can be for a maximum of 56 days.

Clause 62 (1) amends the heading of section 470. Clause 62(2) amends section 470(1) so that it applies where a self assessor ceases to carry on its business permanently. Clause 62(3) removes the requirement to give notice of a business cessation to the Commissioner in an approved form. Any form of written notice may be given. Clause 62(4) amends section 470(3)(b) to provide for the Commissioner to give notice of the cancellation or suspension of registration depending on whether the business cessation is temporary or permanent. Clause 62(5) renumbers sections 470(2) and (3) as sections 470(3) and (5). Clause 62(6) inserts new sections 470(2), (4) and (6) to provide for a self assessor to give notice to the Commissioner where the business cessation is temporary including the period of temporary cessation, and that the suspension of the self assessor's registration must be no longer than the period of temporary cessation.

Clause 63 amends section 481 to clarify that a person commits an offence if they make any notation or endorsement on an instrument indicating or implying that duty has been paid for the instrument unless the person is authorized under the Act to do so.

Clause 64 amends section 506A by providing that a court or QCAT must not make an order relating to a duty refund that is inconsistent with subsection (2) which prevents windfall gains.

Clause 65 inserts a new chapter 17, part 13 to provide for transitional provisions for certain amendments in this Bill.

New section 614 determines the date relevant amendments to the home concessions in chapter 2, part 9 and the reassessment provisions relating to the home concessions in chapter 2, part 14, division 1 are taken to have commenced. Amendments relating to the acquisitions of a new right that is a lease as mentioned in amended section 85(b) are taken to have commenced on 1 December 2003.

New section 615 provides that the amendments to section 117(2) effected by this Bill are taken to have commenced on 13 August 2004.

New section 616 determines that the amendments to section 151 effected by this Bill are taken to have commenced on 2 May 2003.

New section 617 ensures that the amendments to provide that a charge registered for outstanding amounts of land rich duty is a first charge on the land only applies for relevant acquisitions made after the commencement of the amendments.

New section 618 clarifies that a person who, immediately before 14 January 2010, was a registered general insurer or registered life insurer under the *Duties Act 2001* is, on and from 14 January 2010, taken to be a registered insurer. This ensures that insurers who are presently registered under the *Duties Act 2001* as a self assessor are not required to reregister under that Act due to amendments in the Bill.

New section 619 provides that listed provisions of the *Duties Act 2001* as amended by the Bill are taken to have had effect on and from 14 January 2010.

New section 620 determines that the amendments to section 416 effected by this Bill are taken to have commenced on 2 May 2003.

Clause 66 corrects the authorising section of Schedule 3 by including the home concession provisions as transactions to which those rates of duty apply.

Clause 67 amends the Dictionary in Schedule 6 to the *Duties Act 2001*.

Subclause (1) omits the definitions *approved trustee*, *Australian Stock Exchange*, *insurer*, *registered general insurer* and *registered life insurer.*

Subclause (2) inserts new definitions of *approved trustee*, *Australian Securities Exchange*, *insurer*, *interposed trust*, *owner*, *ownership interest*, *registered insurer* and *stapled entity.*

Subclause (3) amends the definition of *intervening event*.

Subclause (4) amends the definition of *recognised stock exchange*

Part 4 Amendment of First Home Owner Grant Act 2000

Clause 68 provides that the Act amended in part 4 is the *First Home Owner Grant Act 2000.*

Clause 69 amends the definition of *eligible transaction* in section 5 to reduce the value of a home that will not qualify for the grant from $1,000,000 or more to $750,000 or more.

Clause 70 (1) amends the heading of section 49. Clause 70 (2) and (3) amends section 49(2) and inserts new section 49(2A) to provide that a charge registered over an applicant or former applicant's interest in land is a first charge on that interest and has priority over all other encumbrances over the interest in the land. Clause 70(4) inserts new section 49(6) and (7) to provide that the applicant or former applicant are liable for the fees payable for registration or release of the charge, and that the amount of the fees is recoverable by the commissioner if paid by him.

Clause 71 inserts new sections 49A to 49D. New section 49A allows the Commissioner to recover a debt payable by an applicant or former applicant for the First Home Owner Grant by serving a garnishee notice on a person who holds, or may receive money, for or on account of the applicant or former applicant, on a person who is liable or may become liable to pay money to the applicant or former applicant, or on a person who has authority to pay money to the applicant or former applicant, even though the applicant or former applicant's entitlement to the money may be subject to unfulfilled conditions.

Payment under the garnishee notice is not required until the garnishee actually holds the money for, or is liable to pay the amount to, the applicant or former applicant. The amount required to be paid by the garnishee may be the full amount of the debt, a lesser amount or amounts at intervals. This would allow the Commissioner, when issuing the garnishee notice and requiring payment by the garnishee, to take account of reasonable living costs for which the applicant or former applicant requires some of the monies held by the garnishee.

New section 49B specifies the time for which a garnishee notice has effect.

New section 49C provides for the adjustment of the amount required to be paid under a garnishee notice if part or all of the debt is satisfied before the due date of the garnishee notice. If the debt is fully discharged, the Commissioner must withdraw the notice.

New section 49D specifies the effect of payment by a garnishee under a garnishee notice.

Clause 72 amends section 68 to allow the Commissioner to disclose confidential information in connection with the administration or enforcement of the *First Home Saver Accounts Act 2008* (Cwlth).

Clause 73 inserts a new part 9 of the *First Home Owner Grant Act 2000* dealing with transitional provisions for this Act.

New section 76 provides for the continued application of section 5 of the *First Home Owner Grant Act 2000*, as in force immediately before its amendment by the amending Act, for applications for a First Home Owner Grant if the commencement date for the eligible transaction is before 31 March 2010.

New section 77 ensures that the amendments to provide that a charge registered over an applicant or former applicant's interest in land is a first charge on the land only, applies for liabilities in relation to a grant the payment of which was authorised after the commencement of the amendments.

Clause 74 amends the Dictionary in the Schedule to the *First Home Owner Grant 2000* to replace the definition of *Australian citizen* and include new definitions of *garnishee, garnishee amount* and *garnishee notice.*

Part 5 Amendment of the GST and Related Matters Act 2000

Clause 75 provides that the Act amended in part 5 is the *GST and Related Matters Act 2000.*

Clause 76 amends the long title of the Act by replacing the reference to the superseded intergovernmental agreement of 1999 with that of the *Intergovernmental Agreement on Federal Financial Relations* of 2008.

Clause 77 omits Part 2 of the Act. Part 2 of the Act makes reference to the schedule and includes the statement that it is the intention of the State to comply and give effect to the superseded intergovernmental agreement.

Clause 78 omits the schedule of the Act. The schedule sets out a copy of the superseded *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*.

Part 6 Amendment of Infrastructure Investment (Asset Restructuring and Disposal) Act 2009

Clause 79 provides that the Act amended in part 6 is the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

Clause 80 is a consequential amendment to reflect the inclusion of the Forestry Plantations Queensland Office as a declared entity.

Clause 81 includes the Forestry Plantations Queensland Office, Urban Land Development Authority and the Coordinator-General as declared entities. These entities will be participants in the restructure and divestment process for the declared projects and, therefore, it is necessary that the definition of declared entities applies to these additional entities.

Clause 82 , *83*, *84*, *90*, *91* and *92* amend certain sections to facilitate the transfer of employees, assets, instruments and liabilities from and to the State in connection with the declared projects.

Clause 83 also amends section 9 to provide that a transfer notice does not affect a condition stated in a report of the Coordinator-General, or otherwise imposed or required by the Coordinator-General, under the *State Development and Public Works Organisation Act 1971*.

Clause 85 inserts a new section 10A which permits the Minister to approve workforce transition codes of practice directed at ensuring the appropriate and fair treatment of employees affected by declared projects.

Clause 86 amends section 11 to provide that the Minister may not give a project direction to the Coordinator-General.

Clause 87 inserts a new section 11A to deal with the change of status of declared entities as a result of their divestment under IIARDA. Where as a result of a declared project, a declared entity is no longer a GOC, port authority or owned by the Government, section 22 of IIARDA will apply to afford certain protections to the State and the declared entity. The practical effect is that section 22 precludes triggering certain contractual rights in counterparties (eg a third party's right to consent to a change of ownership of a declared entity).

Clause 88 inserts new sections to facilitate the divestment of certain declared projects by way of 99 year leases. A new section 15 excludes the operation of section 121 (Provisions as to covenants not to assign etc. without licence or consent) and part 8, division 3 (Relief from forfeiture) of the *Property Law Act 1974* to a lease granted or transferred to an entity in connection with a declared project. If a business is divested by way of a long term lease (eg 99 years), the lease will not be subject to the deemed statutory obligations prescribed in the excluded sections. A new section 15A permits separate leasing or dealing with fixtures from the underlying land. A new section 15B overrides the common law to the extent that an agreed lease or condition is considered contrary to the common law. This clause allows the State, as lessor, to protect the State's interest under long term leases and provide appropriate commercial certainty for all parties.

Clause 89 inserts a new section 17A which provides that if a provision of a transfer notice or a lease mentioned in sections 15A and 15B is held to be beyond power, invalid or unenforceable, the provision is to be disregarded and severed and the remaining provisions of the Act, transfer notice or lease will continue to have effect.

Clause 93 inserts new definitions in the Schedule.

Part 7 Amendment of Land Tax Act 1915

Clause 94 provides that the Act amended in part 7 is the *Land Tax Act 1915*.

Clause 95 amends section 37 by providing that the Commissioner may lodge a request to register a charge over land under new part 4, division 5 of the *Taxation Administration Act 2001* which now provides for the registration and release of charges over land as inserted by this Bill.

Part 8 Amendment of Payroll Tax Act 1971

Clause 96 provides that the Act amended in part 8 is the *Payroll Tax Act 1971*.

Clause 97 amends the definition of *superannuation contribution* in section 3 to remove an obsolete reference.

Clause 98 inserts a new subdivision 1 in part 2, division 1 in relation to wages liable to payroll tax under the Act. The subdivision includes new section 8A, replacement section 9, and new sections 9A – 9C. The subdivision inserts new nexus provisions for working out whether wages are liable for payroll tax under the *Payroll Tax Act 1971*.

Section 8A in subdivision 1 provides that the term *employee* is used to refer to a person for whom wages are paid or payable by an employer. Section 8A clarifies that *employee* includes a person who performs or renders services for an employer and for whom the employer pays wages. That is, under the definition of *wages* in the Schedule to the *Payroll Tax Act 1971*, wages may be paid to a person who is not an employee, such as a company director under paragraph (c) of the definition. The use of the term *employee* in subdivision 1 does not exclude these wages from the subdivision's operation.

Section 9 *s*ubsection (1) specifies the wages that are liable for payroll tax under the *Payroll Tax Act 1971*. Where services are performed or rendered by an employee for an employer entirely in Queensland during a month, the wages are liable for payroll tax under the *Payroll Tax Act 1971* (section 9(1)(a)).

Where services are performed or rendered by an employee for an employer in more than one State, or in at least one State and also outside all States, during a month, section 9(1)(b) specifies the circumstances in which the wages will be liable for payroll tax under the *Payroll Tax Act 1971*. For section 9(1)(b)(i) and (ii), an employee or an employer will be taken to be based in Queensland in the circumstances mentioned in sections 9A and 9B respectively.

For section 9(1)(b)(iv), if neither the employee nor the employer is based in Queensland and the wages are not paid or payable in a State, the wages will be liable for payroll tax under the *Payroll Tax Act 1971* if the services are performed or rendered mainly (that is, more than 50 per cent) in Queensland.

The place of payment of the wages is relevant for determining liability for section 9(1)(b)(iii) and 9(1)(c). Section 9C specifies when wages will be taken to be paid or payable in Queensland.

Subsection (2) provides that, in determining whether wages are liable for payroll tax under the *Payroll Tax Act 1971*, reference must only be had to the services performed or rendered by the employee for the employer during the month in which wages are paid or payable. This is subject to section 9(4) and 5).

Subsection (3) specifies the basis for determining the services performed or rendered by an employee for an employer in the month in which the wages are paid or payable. For instance, if wages are paid and payable in May in relation to services performed by the employee for the employer during April and May, regard will only be had to the services performed in May in deciding whether the wages are liable for payroll tax under the *Payroll Tax Act 1971*. If the employee performed services only in Queensland during May, section 9(1)(a) will apply for determining liability. This will be so even if the employee performed services in more than one jurisdiction in April.

Subsection (4) specifies the basis for determining the services performed by an employee for an employer in a month when the employee did not perform any services for the employer during the month in which the wages are paid or payable. For instance, if wages are paid and payable in May in relation to services performed by the employee for the employer during April and the employee performs no services for the employer in May, regard will be had to the services performed in April in deciding whether the wages are liable for payroll tax under the *Payroll Tax Act 1971*. If the employee performed services in Queensland and New South Wales during April, section 9(1)(b) will apply for determining liability.

Subsection (5) specifies the basis for determining the services performed by an employee for an employer in a month when the employee did not perform any services for the employer during the month in which the wages are paid or payable, or in any earlier month. For instance, if wages are paid and payable in May in relation to an employee who has not yet performed any services for the employer, but the employee will first commence providing services for the employer in Queensland, section 9(1)(a) will apply for determining liability.

For deciding the wages liable for payroll tax under the *Payroll Tax Act 1971* for a month, subsection (6) provides for the aggregation of all wages paid or payable by an employer for an employee in the month. For instance, if two amounts of wages are paid and payable in May in relation to an employee who performs services for the employer in both Queensland and New South Wales during separate periods in May, the two amounts of wages will be aggregated as if they were paid or payable in relation to all services performed or rendered by the employee in May. Section 9(1)(b) will apply for determining liability.

Subsection (7) specifies the basis for determining if wages are liable for payroll tax under the *Payroll Tax Act 1971* where wages are paid in a different month from the month they are payable.

Section 9(1)(b)(i) requires regard to be had to whether an employee is based in Queensland in certain circumstances. Section 9A provides the basis for determining the State where an employee is based. The employee is based in the State in which the employee's principal place of residence is located. Subsections (2) and (3) specify the appropriate time for determining the place where the employee is based. If an employee does not have a principal place of residence, the employee is taken not to be based in a State. In relation to wages paid to a corporate employee, section 9B is relevant for working out where the corporate employee is based.

Section 9(1)(b)(ii) requires regard to be had to whether an employer is based in Queensland in certain circumstances. Section 9B provides the basis for determining the State where an employer is based. The section also applies for working out the State where a corporate employee is based.

If the employer has an ABN, the employer is based in the State in which its registered business address is located, otherwise the employer is based in the State where its principal place of business is located. Subsection (2) specifies the arrangements for working out the registered business address of a business carried on by an employer under a trust and subsection (3) makes provision for where an employer has two or more registered business addresses. Subsections (4) and (5) specify the appropriate time for determining the place where the employee is based. If an employer has neither a registered business address nor a principal place of business, the employer is taken not to be based in a State.

The question of where wages are paid or payable is relevant for sections 9(1)(b)(iii), 9(1)(b)(iv) and 9(1)(c) of the *Payroll Tax Act 1971*. Section 9C specifies the basis for determining the place and time of payment of wages, subject to section 13W of the *Payroll Tax Act 1971*. Subsections (1) and (2) specify how to determine the place and day that wages are paid. Wages are taken to be payable at the place they are paid except if they are not paid by the end of the month in which they are payable. In that case, subsection (4) specifies the basis for determining the place where the wages are taken to be payable.

There are cases where wages paid or payable by an employer for an employee in a month are paid or payable in more than one State. For instance, deductions may be made from the wages by the employer and deposited into a bank account in one State, with the balance of the wages being deposited into a bank account in another State. In those cases, subsection (5) provides that the wages are taken to be paid or payable in the State in which the highest proportion of the wages are paid or payable.

It also inserts a new subdivision 2 in relation to other provisions about imposing liability for payroll tax.

Clause 99 amends section 13W(2) by omitting the note.

Clause 100 inserts new section 15A, which provides an exemption where an employee performs or renders services for an employer entirely in another country in certain circumstances. This exemption was previously provided under section 9 of the *Payroll Tax Act 1971*.

Clause 101 inserts new part 9 in the *Payroll Tax Act 1971*, providing transitional arrangements for the *Revenue and Other Legislation Amendment Act 2010*.

New section 135 inserts definitions for part 9.

New section 136 provides that the *Payroll Tax Act 1971*, as amended by the *Revenue and Other Legislation Amendment Act* 2010, applies, and is taken on and from 1 July 2009 to have applied to wages paid or payable on or after 1 July 2009.

New section 137 together with sections 138 and 139, recognises the retrospective effect given by section 136 of the *Payroll Tax Act 1971* to the amendments effected to the Act by the *Revenue and Other Legislation Amendment Act 2010*. Transitional arrangements are therefore provided by these sections for employers who, in relation to wages paid or payable on or after 1 July 2009 but before 1 July 2010, did not properly account for their payroll tax liability under the amended *Payroll Tax Act 1971* but do so as required under the transitional provisions.

For a relevant employer (as defined in section 135), section 90(2) of the *Payroll Tax Act 1971* does not apply in relation to the employer's liability for payroll tax under the amended *Payroll Tax Act 1971* for relevant wages (as defined by section 135).

New section 138 provides that, for a relevant employer (as defined in section 135), the Commissioner must remit the whole of the unpaid tax interest and penalty tax imposed under the *Taxation Administration Act*

2001 in relation to the employer's liability for payroll tax under the amended *Payroll Tax Act 1971* for relevant wages (as defined by section 135).

New section 139 provides that a relevant person (as defined in subsection (4)) who does not comply with a requirement under the *Payroll Tax Act 1971* or the *Taxation Administration Act 2001* as required will not commit an offence under either of those Acts in certain circumstances.

Example for sections 137, 138 and 139.

An employer paid wages during the 2009-10 financial year that are not liable for payroll tax under the Payroll Tax Act 1971 prior to its amendment by the Revenue and Other Legislation Amendment Act 2010 but which are liable for payroll tax under the Payroll Tax Act 1971 after the commencement of the Revenue and Other Legislation Amendment Act 2010. The employer did not include these wages in any of the periodic returns for the 2009-10 financial year, but included all of the wages in the annual return lodged by 21 July 2010.

In relation to the relevant wages, the employer will not be liable for a penalty under section 90(2) of the Payroll Tax Act 1971. The Commissioner must fully remit any unpaid tax interest or penalty tax that may accrue or be imposed under section 54(2) and 58(1) of the Taxation Administration Act 2001 respectively. The employer does not commit an offence under either the Payroll Tax Act 1971 or the Taxation Administration Act 2001 for example sections 122 or 123 of the Taxation Administration Act 2001 in relation to the failure to include the wages in the periodic returns.

The transitional provisions do not apply in relation to wages other than relevant wages. That is, a penalty, unpaid tax interest and penalty tax may still apply if the employer fails to include other wages in a periodic return for the 2009-10 financial year, and the employer may also commit an offence under the Payroll Tax Act 1971 or the Taxation Administration Act 2001 by failing to comply with an obligation in relation to such wages.

New section 140 provides for the making of a reassessment by the Commissioner, on written application by an employer, where the employer has paid payroll tax under the *Payroll Tax Act 1971* in relation to wages that were liable for payroll tax under the Act prior to its amendment by the *Revenue and Other Legislation Amendment Act 2010*, but which are not liable for payroll tax under the *Payroll Tax Act 1971* after the commencement of the *Revenue and Other Legislation Amendment Act*

2010. The reassessment to decrease liability, and the making of a refund, is subject to sections 18 and 21, and part 4, division 2 of the *Taxation Administration Act 2001*.

Clause 102 omits and reinserts definitions for *amended Act* and *amending Act* in the schedule.

Part 9 Amendment of the State Financial Institutions and Metway Merger Facilitation Act 1996

Clause 103 provides that the Act amended in part 9 is the *State Financial Institutions and Metway Merger Facilitation Act 1996.*

Clause 104 amends section 64 of the *State Financial Institutions and Metway Merger Facilitation Act 1996* to provide that only the managing director be ordinarily a resident in Queensland.

Clause 105 amends section 71 of the *State Financial Institutions and Metway Merger Facilitation Act 1996* to clarify the terms and extent of the State's guarantee of all insurance and indemnity obligations by Suncorp prior to its merger with Metway Bank Limited in 1996. In particular, the amendment will ensure that the guarantee does not cover or extend to liabilities that relate to amounts accrued after the Metway amalgamation day on contributions made before or after the Metway amalgamation day. As an example, this provision will ensure that the guarantee does not apply to policy holders who, after the Metway amalgamation day, joined a Suncorp group investment product that existed prior to the merger, under the legal umbrella of a master policy holder.

Part 10 Amendment of Superannuation (State Public Sector) Act 1990

Clause 106 provides that the Act amended in part 10 is the *Superannuation (State Public Sector) Act 1990*.

Clause 107 amends section 13A to introduce a new process for the continuation of eligibility for membership with QSuper after the transfer of an employee's employment. Section 13A applies in the event that an employee's employment is transferred from a State Public Sector Unit to an entity which is not a State Public Sector Unit in certain circumstances.

Clause 108 amends section 13AA to provide for the same process as set out in section 13A for the continuation of eligibility for membership with QSuper after an employer member ceases to be unit of State public sector. Section 13AA applies in the event that the employer entity ceases to be a State Public Sector Unit as a result of a change of ownership or status of that entity in certain circumstances. In this context, the employee's employment is not transferred to another entity as is the case in the circumstances covered by section 13A.

Part 11 Amendment of the Taxation Administration Act 2001

Clause 109 provides that the Act amended in part 11 is the *Taxation Administration Act 2001*.

Clause 110 amends section 39 by providing that a court or QCAT must not make an order relating to a duty refund that is inconsistent with subsection (1). The amendment also clarifies the meaning of *tax* in subsection (5) and renumbers subsections.

Clause 111 inserts new part 4, division 5, subdivision 1A to provide for the registration and release of charges where this is provided for in a revenue law.

New section 47A provides definitions for new subdivision 1A.

New section 47B provides the procedure for registering a charge over land where a revenue law has provided that the Commissioner may lodge a request to register the charge. The fee for registration of the charge is payable by the owner of the land.

New section 47C sets out the procedure for when the Commissioner must release the charge. The fee for registration of the release of the charge is payable by the owner of the land.

New section 47D gives to the commissioner the power to recover any fees paid by him under the new sections 47B(4) or 47C(5).

Clause 112 inserts new subparagraphs (iii) and (iv) in section 54(4)(aa) of the *Taxation Administration Act 2001*. The new section 54(4)(aa)(iii) ensures that the unpaid tax interest start date for a standard self assessment takes into account any period that a liable party has not complied with its obligations under section 471(E) of the *Duties Act 2001*. The new section 54(4)(aa)(iv) ensures that, where both the liable party and self assessor have not complied with their respective obligations so that section 54(4)(aa)(ii) and new section 54(4)(aa)(iii) both apply, the unpaid tax interest start date will be adjusted to take into account the total number of days of non-compliance under both of these sections. The clause also makes consequential amendments to section 54(5) and inserts a new subsection (7).

Clause 113 amends the Dictionary in Schedule 2 of the *Taxation Administration Act 2001* by inserting a definition of *registrar* and extending the definition of *primary tax* to include a levy.

Part 12 Amendment of Trans-Tasman Mutual Recognition (Queensland) Act 2003

Clause 114 provides that the Act amended in part 12 the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*.

Clause 115 omits the words ‘and 15 and the schedule’ from section 2.

Clause 116 omits section 7(2) to allow the Governor to make a gazette notice under section 7(1) to endorse a regulation under the Commonwealth

Trans-Tasman Mutual Recognition Act 1997, without the express authority of an Act. Clause 114 specifies that a gazette notice made under section 7(1) is subordinate legislation.

Clause 117 omits section 15 as the gazette notice it is authorising has been made, and the section is now unnecessary to the operation of the Act.

Clause 118 omits the schedule (Authorised gazette notice) as the gazette notice contained in the schedule has been made and the schedule is now unnecessary to the operation of the Act.