Fiscal Repair Amendment Bill 2012

Explanatory Notes

General Outline

Policy Objectives

The Fiscal Repair Amendment Bill 2012 (the Bill) amends the following Queensland statutes to implement 2012-13 State Budget measures:

- *Duties Act 2001;*
- *First Home Owner Grant Act 2000;*
- *Mineral Resources Act 1989;*
- *Petroleum and Gas (Production and Safety) Act 2004;*
- *State Penalties Enforcement Act 1999;* and
- *Taxation Administration Act 2001.*

The Bill also contains amendments to clarify the operation of the *Duties Act 2001* and the *Taxation Administration Act 2001.*

Additional policy objectives of the Bill are to:

- abolish the statutory position of the Training Ombudsman to reduce duplication of services and provide cost savings to government.

- amend the *Liquor Act 1992* (Liquor Act) and the *Gaming Machine Act 1991* (Gaming Machine Act) to streamline regulatory processes to reduce the burden on industry by:
  - abolishing the Queensland Liquor and Gaming Commission; and
  - removing the requirement for gaming employees in clubs and hotels to be licensed if they carry out gaming duties.

- amend the *Queensland Competition Authority Act 1997* to:
  - broaden the Queensland Competition Authority's (QCA) existing functions concerning regulatory impact statements (RIS) to enable it, if directed by the Ministers, to review and report on regulatory proposals to ascertain whether a RIS is required;
  - enable a person to produce a document or give a statement containing exempt matter to the QCA to enable it to perform its functions;
  - impose a duty of confidentiality on the QCA in relation to information it receives in the course of performing its function to review and report on regulatory proposals;

- impose a duty of confidentiality on the QCA in relation to information it receives in the course of performing its functions to: investigate and report on any matter relating to competition, industry, productivity or best practice regulation; and review and report on existing legislation; and
- omit part 11, which contains transitional provisions that are no longer needed.

- repeal the *Brisbane Markets Act 2002* and the *Family Security Friendly Society (Distribution of Moneys) Act 1991* because the Acts are no longer needed.

- repeal Part 5 of the *Statutory Instruments Act 1992* (SIA) (and make consequential amendments) to avoid potential conflicts with requirements under the revised RIS System Guidelines.

Reasons for the Bill

Budget measures

The following measures were announced as part of the 2012-13 State Budget:
- increase the marginal transfer duty rate above $1,000,000 from 5.25 % to 5.75 %;
- impose duty on prospecting and exploration permits and authorities;
- clarify application of the landholder provisions to indirect transfers of authorities, leases and licences under Queensland's resources legislation and in relation to items fixed to land where they are capable of separate ownership from the land;
- restrict eligibility for the First Home Owner Grant (FHOG) to first home buyers who build or buy a new home, and increase the grant on new homes to $15,000;
- introduce a penalty for incorrect payment of royalty under the monthly payment arrangements;
- implement changes to improve royalty administration and support the implementation of a royalties module in the Office of State Revenue's (OSR) Revenue Management System (RMS); and
- ensure appropriate access to information to support effective administration of the State Penalties Enforcement Registry.

Amendments are also being made to the *Taxation Administration Act 2001* in relation to the Commissioner of State Revenue's information sharing powers.

Training Ombudsman

The Training Ombudsman is established under the *Vocational Education, Training and Employment Act 2000*. The Training Ombudsman considers and investigates complaints from apprentices, trainees and employers who believe they have been treated unfairly or unreasonably. The Training Ombudsman does not make a decision but reports findings to the parties and to the Minister. The Training Ombudsman also informally resolves complaints.

The Training Ombudsman's functions can be provided for within existing systems and resources, for example:

- a party to a training contract can have a dispute resolved by the Department of Education, Training and Employment through the Training and International Quality Unit or seek information from the Apprenticeship Hotline;
- a complaint about a decision of Skills Queensland (a statutory body) can be appealed to the industrial commission or Queensland Civil and Administrative Tribunal (QCAT), depending on the matter.

The Liquor and Gaming Commissioner

Currently, the Queensland Liquor and Gaming Commission (commission) and the chief executive make decisions under the Gaming Machine Act and the Liquor Act.

The seven member commission meets monthly to consider gaming machine and liquor licence applications of significant community impact such as new club and hotel licences and extended trading hours.

All applications considered by the commission undergo extensive licensing assessment and investigation. On finalisation of the investigation, a report for the commission is prepared and applicants must await the commission's monthly meeting before the application is formally considered for decision. Where the commission requires further information in order to make a decision, applicants may be subject to delays of weeks or months before their application is re-considered. This makes for a very lengthy process for some liquor and gaming licence applications which can result in competitive disadvantages and serve as a disincentive to broaden business opportunities.

The chief executive also has powers to make decisions under the Gaming Machine Act and Liquor Act on all other matters not delegated to the commission including certain licensing and post licensing approvals under the Liquor Act. Under the Gaming Machine Act and Liquor Act, the chief executive is required to make recommendation to the commission, informing their decision making on applications. The chief executive also undertakes roles and makes decisions in relation to a variety of other matters (e.g. approval of responsible service of gambling courses and trainers, reviewing decisions by sites to refuse gaming machine payouts or considering the suitability of persons for appointment as departmental gaming officers).

The amendments will combine the roles and decision making of the commission and the chief executive under the Gaming Machine Act and Liquor Act and transfer them to a new Liquor and Gaming Commissioner (commissioner). There are a variety of current legislative frameworks where a commissioner performs a similar role including the Commissioner for Fair Trading under the *Fair Trading Act 1989* and the Commissioner of State Revenue under the *Taxation Administration Act 2001.* In South Australia there is a Liquor and Gambling Commissioner.

The proposed amendments are not intended to remove the long established licensing processes under the Gaming Machine Act and Liquor Act; but rather streamline the decision making process by removing unnecessary delays created by applications passing through the chief executive and then to the commission and the waiting times associated with commission meetings. The creation of the commissioner with the combined roles of the commission and chief executive will simplify the Liquor and Gaming Machine Acts clarifying who is the decision maker. Disaffected applicants will still have a right of appeal to the Queensland Civil and Administrative Tribunal.

Removal of the requirement for gaming employees undertaking gaming duties to be licensed

All employees who carry out gaming duties are required to be licensed under section 189 of the Gaming Machine Act. Gaming duties are prescribed in the *Gaming Machine Regulation 2002* and include:

- supervision of employees of a licensee who are responsible for the conduct of gaming
- supervision of the access to the internal parts of a gaming machine
- supervision of money clearances
- issuing of keys for the security of gaming machines to employees of a licensee
- supervision of entries in accounting records required to be kept and maintained under the Act
- arranging repairs to gaming equipment and
- any other thing that, under part 7 of the Act (relating to the control of gaming machines) has to be done or that a licensee must ensure is done by a gaming employee.

The original policy rationale for licensing such persons was to ensure that they were honest and of good repute and thus would pose minimal risk to the integrity of gaming i.e. they would not interfere with the outcomes of the game. The reality is that from the commencement of machine gaming, the technology was such that individuals undertaking the duties outlined above could not interfere with the integrity of the game and outcomes, particularly payouts. The gaming machine and monitoring system technical requirements are such that the technology protects from unauthorised access to sensitive parts of the gaming equipment. In New South Wales and the Australian Capital Territory, gaming employees are not required to obtain a licence.

Therefore amendments in the Bill remove the requirement that employees carrying out gaming duties under the Gaming Machine Act be licensed. They will however, continue to be required to undertake mandatory responsible service of gambling (RSG) training. It will be an obligation of the licensee to ensure that there is at least one RSG trained employee present when gaming is being conducted on the premises.

The removal of this licence type will result in significant cost and time savings for individuals seeking employment in the hospitality industry.

Queensland Competition Authority Act 1997

Extending functions of the QCA

In July 2012, the Office of Best Practice Regulation (OBPR) was established within the QCA as part of the Government's election commitment to reduce red tape by 20%. The objective of establishing the OBPR is to strengthen the existing RIS system to ensure that there is rigorous independent and transparent assessment of all new regulatory proposals, and to investigate the regulatory burden in Queensland and recommend strategies for reducing the regulatory burden.

The *Queensland Competition Authority Act 1997* was amended on 30 June 2012 to insert a new function (under section 10(1)(lb)) to enable the QCA, under the direction of Ministers, to review and report on regulatory assessment statements (to be renamed RISs). The OBPR can therefore assess the adequacy of any RIS. However, before preparing a RIS a department must first decide if it is required. Since the requirement to prepare a RIS and its preparation are closely linked, it is considered appropriate the OBPR be given the role of advising departments on whether a RIS is required.

Enabling a person to give exempt matter to the QCA

Section 10(1)(e) of the *Queensland Competition Authority Act 1997* confers the QCA with the function to conduct investigations and report on matters relating to competition, industry, productivity or best practice regulation. Section 10(1)(lb) (as amended) will give the QCA the function to review and report on regulatory proposals and RISs, while section 10(1)(lc) gives the QCA the function to review and report on existing legislation. For the QCA to perform these functions a public service officer may need to give the QCA information that is defined under the Act as "exempt matter", that is Cabinet material or otherwise confidential (e.g. a regulatory proposal that is yet to be considered by Cabinet).

Currently, restrictions imposed by *The Queensland Cabinet Handbook* limit the release of information contained in Cabinet documents. The unauthorised disclosure of "exempt" material (that is, Cabinet material) may leave public service employees liable to disciplinary proceedings under the *Public Service Ethics Act 1994,* or the *Crime and Misconduct Act 2001,* or liable to prosecution under the *Criminal Code.* Similarly, the disclosure of information

in breach of a confidentiality obligation may leave public service employees liable to disciplinary proceedings. The existing protection from civil liability conferred by section 238 of the *Queensland Competition Authority Act 1997* does not extend to protection from criminal liability or from disciplinary proceedings.

The proposed amendments ensure that the production of a document containing exempt matter, or the giving of a statement relating to exempt matter, to the QCA in good faith to enable the QCA to perform the three functions noted above will not constitute a breach of section 85 of the *Criminal Code Act 1899*, section 187 of the *Public Service Act 2008* or section 15 of the *Crime and Misconduct Act 2001*.

Similarly, existing sections 239 and 240 of the *Queensland Competition Authority Act 1997*, which provide for confidentiality of the information the QCA receives, do not prevent the QCA from disclosing information provided to it in connection with a RIS or a regulatory proposal. Any information the QCA receives about a RIS or a regulatory proposal should not be publicly disclosed given these documents contain exempt matter. The proposed amendments impose on the QCA a duty of confidentiality in relation to the information it receives.

It is possible that exempt matter may also be provided to the QCA as part of its functions to: investigate and report on any matter relating to competition, industry, productivity or best practice regulation (section 10(1)(e)); and review and report on existing legislation (section 10(1)(lc)). Therefore, a similar duty of confidentiality is required in relation to those functions.

Repeal of part 11

Part 11 of the *Queensland Competition Authority Act 1997* contains transitional provisions for amendments made in 2008. Part 11 provides that, if an access dispute notice or draft access undertaking was submitted before the commencement of the amendments, certain provisions relating to the making of an access determination or approval of an undertaking do not apply or apply in their form immediately before the amendments took effect. Given the length of time since the amendments were enacted, these transitional provisions are no longer necessary and can be omitted from the Act.

Repeal the Brisbane Markets Act 2002 and the Family Security Friendly Society (Distribution of Moneys) Act 1991

The *Brisbane Markets Act 2002* was enacted as part of the sale of the Brisbane Markets in Rocklea to rectify building approval deficiencies discovered during vendor due diligence. Section 20A(2)(b) of the *Acts Interpretation Act 1954* will preserve the validating effect of the remedy provisions despite the repeal of the Act. Accordingly, this Act is no longer required and can be repealed.

The *Family Security Friendly Society (Distribution of Moneys) Act 1991* provides for an administrator to be appointed to collect the property of the Family Security Friendly Society (the Society), convert the property into money and distribute the monies to the Society's creditors and investors. The Act provided for the Society to be dissolved by the Minister administering the Act by gazette notice after the administrator provided a report to the Minister detailing the property collected and monies paid by the administrator. The Society has been dissolved under the Act. The Act is therefore no longer required and may be repealed.

Repeal of Part 5 of the Statutory Instruments Act 1992

The process for the development and review of regulation in Queensland is referred to as the Regulatory Assessment Statement System (to be renamed the Regulatory Impact Statement (RIS) System). The RIS System is administered by Queensland Treasury and Trade and the Treasurer issues Guidelines related to the RIS System. It is proposed that, subject to approval by the Treasurer, a range of amendments will be made to the RIS System Guidelines to reflect the role of the OBPR and to facilitate improvements to the RIS System.

Part 5 of the SIA currently provides guidelines for RISs about proposed subordinate legislation and will potentially conflict with requirements of the revised RIS System Guidelines, which apply to all forms of regulation (primary and subordinate legislation and some types of quasi-regulation).

Achievement of the Objectives

Duties Act 2001

Transfer duty rates

Transfer duty is imposed under the *Duties Act 2001* on the dutiable value of dutiable transactions, such as transfers and agreements for the transfer of dutiable property, at progressive rates up to 5.25%. These progressive rates also determine the duty payable on transactions for which landholder duty and corporate trustee duty apply. The rates are contained in Schedule 3 of the *Duties Act 2001*.

As part of the State Budget revenue initiatives, Schedule 3 of the *Duties Act 2001* will be amended as and from the date of Royal Assent to:

- increase the transfer duty rate from 5.25% to 5.75% for the part of the dutiable value of a dutiable transaction or relevant acquisition exceeding $1,000,000;
- extend the part of the dutiable value of a dutiable transaction or relevant acquisition subject to a transfer duty rate of 4.5% to include values greater than $980,000 and up to and including $1,000,000.

Duty on prospecting and exploration permits and authorities (exploration permits)

Under the *Duties Act 2001*, duty currently applies to the direct and indirect transfer of authorities, leases and licences under Queensland's resources legislation (resource rights) either as land or a Queensland statutory licence, subject to certain exceptions. However, the direct and indirect transfer of an exploration permit is not dutiable and these permits are not treated as land for landholder duty.

Landholder duty applies to a relevant acquisition in a landholder corporation or listed unit trust, namely, the acquisition of an interest of 50 per cent or more in an unlisted corporation or 90 per cent or more in a listed corporation or listed unit trust. The corporation or trust must hold Queensland land worth at least $2 million. Resource rights which are an interest in land are taken into account in working out landholder duty.

The *2011-12 Mid-Year Fiscal and Economic Review* (MYFER) released at 10.30am on 13 January 2012 (the start time) included an announcement that, from the start time, transfer duty will apply to the direct and indirect transfer of exploration permits. This initiative was confirmed as part of the revenue initiatives announced in the State Budget.

Grants of exploration permits will continue to be exempt from duty consistent with the duty treatment of other grants of resource rights.

To give legislative effect to the announcement, the *Duties Act 2001* is to be amended to remove the current exclusions from the definitions of *land* and *statutory licence* for exploration permits for transfer duty and landholder duty.

This amendment to the *Duties Act 2001* will have retrospective effect to the start time to cover the period from announcement to enactment of the Bill. This will provide the legislative authority for the collection of transfer duty and landholder duty in relation to exploration permits from the start time and ensure that the *Duties Act 2001* can be properly administered in relation to rights and obligations arising prior to Royal Assent.

Transfer duty will apply to agreements for transfer and transfers made or entered into at or after the start time. However, if an agreement for transfer of an exploration permit is entered into before the start time, a transfer of the permit made after the start time pursuant to the agreement will not be liable for transfer duty. Transfer duty will also apply to other dutiable transactions relating to exploration permits such as the creation or termination of a trust, trust acquisition or surrender or partnership acquisition. Duty will apply where liability for duty determined under the *Duties Act 2001* arises at or after the start time.

Exploration permits held by a corporation or listed unit trust will be included as land-holdings of the entity and be taken into account for landholder duty purposes where a relevant acquisition in the landholder occurs at or after the

start time. The time of a relevant acquisition will be determined under section 163 of the *Duties Act 2001*. However, where there is an agreement to acquire an interest in a landholder entered into before the start time which is completed after the start time which, under section 163(2)(b) of the *Duties Act 2001,* gives rise to or is included in, a relevant acquisition in the landholder when the agreement is completed, exploration permits will not be included as land-holdings of the entity for landholder duty for that relevant acquisition.

Special transitional provisions will apply to ensure that persons are not detrimentally affected retrospectively in relation to offences, unpaid tax interest and penalty tax.

Duty on resource rights

Under the *Duties Act 2001*, transfer duty applies to the direct and indirect transfer of resource rights, subject to certain specific exceptions. This is because resource rights arise under statutory licences and transfer duty applies to the transfer of those licences.

Uncertainty has arisen in relation to the application of landholder duty to indirect transfers of resource rights. The uncertainty arises due to differences in provisions of the *Duties Act 2001* and the resource legislation under which the resource rights are granted and recent case law.

To address the uncertainty and the risk to revenue, the *Duties Act 2001* is to be amended to ensure landholder duty applies. Amendment will ensure consistent duty treatment of indirect transfers compared with direct transfers of resource rights.

An issue has also been identified that grants of some resource rights are currently not specifically stated to be exempt which is inconsistent with the exempt treatment of other grants of resource rights. Amendments are therefore to be made to exempt from duty the grants of those resource rights to ensure consistent duty treatment with other grants.

Landholder duty – items fixed to land

The landholder provisions of the *Duties Act 2001* include as land-holdings anything that is fixed to land that may be separately owned from the land. Once it is established that the entity has an interest in particular land, any items fixed to that land are included as land-holdings of that entity regardless of whether or not the items are fixtures at law or owned by the entity.

An issue has arisen following a recent Western Australian Supreme Court decision which creates uncertainty for the application of Queensland landholder duty to these items.

To ensure that landholder duty continues to apply as intended to these items and consistent with the longstanding position in Queensland, the *Duties Act 2001* is to be amended to provide that land-holdings include anything fixed to the

entity's land that may be separately owned from the land whether or not the entity has an interest in the thing fixed to the land.

First Home Owner Grant Act 2000

Under the *First Home Owner Grant Act 2000*, first home buyers who have entered into an eligible transaction which has been completed and who satisfy certain eligibility criteria are entitled to payment of a grant of $7,000. An eligible transaction is a contract to purchase or build, or for an owner builder the building of, a home.

As part of revenue initiatives announced in the State Budget, the *First Home Owner Grant Act 2000* will be amended to increase the grant to $15,000 for new homes. The increased grant will be available where the commencement date for the eligible transaction is on or after 12 September 2012.

The *First Home Owner Grant Act 2000* will also be amended so that, from 11 October 2012, only a contract to purchase or build, and the building by an owner builder of, a new home will be an eligible transaction. The grant will not then be available for the purchase of an existing home.

New home is defined as a home that has not been previously occupied or sold as a place of residence.

Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004

Civil penalty

Monthly payment arrangements for royalties were introduced on 1 January 2012 under the *Mineral Resources Regulation 2003* and the *Petroleum and Gas (Production and Safety) Regulation 2004*. Under these arrangements, a person must make two monthly payments – instalment 1 and instalment 2 - in relation to a quarterly liability. For mineral royalty, instalment 3 is payable when the quarterly return is required to be lodged and, for petroleum royalty, instalment 3 is payable by the last business day of the month immediately after the end of the royalty return period.

Instalments 1 and 2 for a quarter are generally calculated under the default method as one-third of the previous quarter's liability. However, a royalty payer may elect to use the estimates method for working out the instalments if the person reasonably believes that the current quarter's royalty liability will be less than the previous quarter's. In those cases, each estimated instalment is worked out as one-third of the estimated royalty liability for the current quarter. Instalment 3 is the balance payable for the quarter.

Use of the estimates method raises the risk that a person may understate the expected quarterly liability to reduce the monthly payments. Currently, the Minister may refuse to allow a person to use the estimates method if satisfied the person did not have a reasonable basis for forming the belief that the

royalty liability for the current quarter would be less than the previous quarter's. However, an additional sanction in the form of a penalty is to be introduced for managing revenue risks and promoting compliance with the monthly payment arrangements in particular.

The *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* will therefore be amended to authorise the making of a regulation dealing with civil penalties where a person makes an election about the time and manner, or amount, of payment of royalty to the State. Under this regulation-making power, the *Mineral Resources Regulation 2003* and the *Petroleum and Gas (Production and Safety) Regulation 2004* may be amended to prescribe how a civil penalty will apply for monthly royalty instalments made under the estimates method.

Interest for unpaid royalties

Under both the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* the Minister may require the payment of interest where royalty is not paid as required. Interest applies at the rate prescribed, which differs for mineral and petroleum royalties, and is calculated on a compounding basis.

Under the *Taxation Administration Act 2001*, unpaid tax interest (UTI) applies for the State's other major own-source revenues, namely duties, payroll tax and land tax. UTI applies automatically to unpaid tax, subject to a remission discretion. Interest is calculated on unpaid tax and penalty only and applies at the bank bill yield rate plus 8%. The UTI rate is currently 11.66% per annum.

The *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* are being amended to adopt interest arrangements that reflect those under the *Taxation Administration Act 2001* as follows.

- Unpaid royalty interest will be imposed on the amount of royalty that is unpaid from time to time, from the day immediately after the royalty is required to be paid, until it is fully paid, both dates inclusive. Interest will not be imposed on any unpaid penalty, interest or fee.
- The unpaid royalty interest rate will be prescribed.
- Any extension of the date for paying royalty will not be taken into account for determining the day that unpaid royalty interest starts to apply.
- Payment application rules will apply for working out the amount of unpaid royalty on which interest accrues.
- A regulation may prescribe further detail for working out interest in particular cases. For instance, it is intended that the *Mineral Resources Regulation 2003* and *Petroleum and Gas (Production and Safety) Regulation 2004* will specify particular details for how interest is worked out for unpaid monthly instalments.

The Minister may fully or partially remit the unpaid royalty interest.

Late lodgement fee

Under the *Petroleum and Gas (Production and Safety) Act 2004*, a late lodgement fee of $159 applies when a petroleum royalty return is lodged late, with no discretion to remit it. The *Petroleum and Gas (Production and Safety) Act 2004* is being amended to provide a discretion for the Minister to remit the fee.

As part of the implementation of the RMS royalties module, the amendments to the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* will commence on 1 October 2012.

State Penalties Enforcement Act 1999

On 25 May 2012, responsibility for the State Penalties Enforcement Registry (SPER) transferred from the Department of Justice and Attorney-General to OSR within Queensland Treasury and Trade. SPER's primary responsibility is the collection and enforcement of fines and certain court ordered amounts.

Effective debt collection requires that SPER have the ability to access quality debtor related information to enable debtors to be properly identified and appropriate enforcement action instituted. In addition, given the sensitivity of the information that SPER accesses, there should also be appropriate restrictions placed on the disclosure of information obtained by SPER.

Currently, the SPER Registrar's ability to access information is limited and there is no general obligation of confidentiality in relation to the information obtained in the administration of the *State Penalties Enforcement Act 1999.* In addition, with OSR now having responsibility for SPER and the State's major revenues, there is an opportunity to facilitate the sharing of information within OSR for administration of all legislation for which it is responsible.

Therefore, the *State Penalties Enforcement Act 1999* is being amended to adopt information access and confidentiality provisions that are consistent with comparable provisions in the *Taxation Administration Act 2001*, which applies for transfer duty, payroll tax and land tax administered by OSR.

The information access provision will allow the Registrar, by written notice, to require a person to provide information and documents about a stated matter. The notice may be broad or specific and, unlike the current information access provision, need not identify a particular person to whom the requirement relates. This will therefore enable access to databases containing relevant information, for instance, which will facilitate data matching.

The new confidentiality obligations will apply to officials acting in an official capacity who acquire confidential information. The disclosure of that information will be limited to those circumstances stated in the Act. For instance, the Registrar may disclose personal confidential information in connection with the administration or enforcement of the *State Penalties*

Enforcement Act 1999 or a revenue law, allowing information sharing with the Commissioner of State Revenue.

There will be a distinction between personal confidential information and other confidential information, with more stringent conditions applying for the disclosure of personal confidential information.

The new provisions will also impose confidentiality obligations on someone who illegally or inadvertently obtains confidential information, and someone to whom the Registrar discloses confidential information as permitted under the *State Penalties Enforcement Act 1999*.

Existing specific disclosure of information provisions, including those dealing with disclosure of information obtained from the Queensland Police Service, will remain.

In addition, amendments will be made to the *Taxation Administration Act 2001* to allow information obtained by the Commissioner of State Revenue to be provided to the SPER Registrar for the administration and enforcement of the *State Penalties Enforcement Act 1999.*

Reflecting the fact that SPER is now administered by OSR, the penalties that will apply for breaching the new confidentiality provisions are being increased to reflect the penalty that applies for the corresponding offences under the *Taxation Administration Act 2001*.

Training Ombudsman

The objective of reducing duplication of services will be achieved by abolishing the position of the Training Ombudsman and utilising existing services and appeal avenues.

Liquor and Gaming Commissioner and Removal of the requirement for gaming employees undertaking gaming duties to be licensed

The objectives of the Bill in relation to streamlining liquor and gaming regulatory procedures will be achieved by -

- Amending the Gaming Machine Act and the Liquor Act to remove provisions relating to the powers and functions of the commission and the chief executive and replacing them with provisions that establish a Liquor and Gaming Commissioner with the functions and powers currently held by the commission and chief executive.
- Amending the Gaming Machine Act to remove the requirement that a person who carries out gaming duties be licensed, but retain the requirement that they complete responsible service of gambling training, and require licensees to ensure that there at least one person present and performing their employment role, when gaming is being conducted on the premises.

Queensland Competition Authority Act 1997

The Bill achieves the policy objectives by amending section 10(1)(lb) of the *Queensland Competition Authority Act 1997* to allow the QCA (if directed by the Ministers) to review and report on regulatory proposals. Section 10 lists the Authority's functions.

Furthermore, the Bill will amend section 234 to make clear that if a person, in good faith, produces a document containing exempt matter or gives a statement relating to exempt matter, to enable the authority to perform functions under section 10(1)(e), (lb) or (1c), the production of the document or the giving of the statement will not constitute a disclosure of official secrets under section 85 of the *Criminal Code Act 1899*, a disciplinary ground under section 187(1)(f) of the *Public Service Act 2008*, or official misconduct under the *Crimes and Misconduct Act 2001*.

The Bill will also insert a new section 239A to require the QCA to take all reasonable steps to ensure information it receives in the course of performing its functions under section 10(1)(lb) will not be disclosed, for example, proposed legislation or RISs or information relating to such legislation or RISs submitted or proposed to be submitted for Cabinet consideration. However, the QCA would be authorised to disclose such information in certain circumstances, for example, to: a member; employee; consultant or agent of the authority who receives the information in the course of his or her duties; under an Act; under the RIS System guidelines published by the department; or with the consent of the relevant government agency.

Amendments are also to be made to provide similar protection against the disclosure by the QCA of exempt matter (as defined in the QCA Act) given to it in the course of performing its functions under sections 10(1)(e) and 10(1)(lc) of the Act. These sections of the Act respectively provide the head of power that enables Ministers to direct the authority to: investigate and report to the Ministers on any matter relating to competition, industry, productivity or best practice regulation; and to review and report on existing legislation.

The Bill will also repeal part 11 of the *Queensland Competition Authority Act 1997*.

Repeal the Brisbane Markets Act 2002 and the Family Security Friendly Society (Distribution of Moneys) Act 1991

The Bill will achieve its objective by repealing the *Brisbane Markets Act 2002* and the *Family Security Friendly Society (Distribution of Moneys) Act* 1991.

Repeal of Part 5 of the Statutory Instruments Act 1992

Repeal of Part 5 of the *Statutory Instruments Act 1992* will achieve the policy objective in that it is necessary to mitigate any potential conflicts with requirements of the revised RIS System Guidelines, which apply to all forms

of regulation (primary and subordinate legislation and some types of quasi-regulation). It is noted that the repeal of Part 5 of the *Statutory Instruments Act 1992* results in a range of consequential amendments to other Acts, some of which specify exclusions from Part 5. It is proposed that this issue will be addressed specifically in the revised RIS System Guidelines to ensure similar exclusions from the RIS System apply in respect to those Acts.

Alternatives to the Bill

The policy objectives cannot be achieved through any alternative means.

Liquor and Gaming Commissioner and Removal of the requirement for gaming employees undertaking gaming duties to be licensed

As the powers and functions of the commission/chief executive and the requirement to be licensed when carrying out gaming employees are currently prescribed in legislation, legislative amendment is required to remove them. Additionally, the Liquor and Gaming Commissioner requires legislative authority to make decisions and perform its regulatory functions, and therefore legislative amendment is required to insert this authority.

For these reasons, if the objectives are to be achieved, there is no alternative to a Bill.

Queensland Competition Authority Act 1997

Amendment of the *Queensland Competition Authority Act 1997* is the only means of extending the functions of the QCA to review and report on regulatory proposals. Similarly, amendment of the Act is the only suitable way of protecting departmental officers from breach of *Criminal Code Act 1899*, the *Public Service Act 2008* or the *Crime and Misconduct Act 2001* when disclosing, in good faith, information to the QCA in performing its functions, and imposing a duty of confidentiality on the QCA. Amendment of the *Queensland Competition Authority Act 1997* is the only means of repealing part 11 of the Act, which is now redundant.

Repeal the Brisbane Markets Act 2002 and the Family Security Friendly Society (Distribution of Moneys) Act 1991

Repealing the *Brisbane Markets Act 2002* and the *Family Security Friendly Society (Distribution of Moneys) Act 1991* is the only way of removing legislation that is no longer required from the Queensland statute books.

Repeal of Part 5 of the Statutory Instruments Act 1992

Repeal of Part 5 of the SIA is the only means of ensuring there are no potential conflicts with requirements of the revised RIS System Guidelines.

Estimated Cost for Government Implementation

Budget measures

Implementation costs in relation to the amendments 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.

Amendments to the *State Penalties Enforcement Act 1999* and the *Taxation Administration Act 2001* to effect SPER administrative improvements will facilitate improved levels of debt collection for the State.

Training Ombudsman

The Bill omits Chapter 5, Part 1 of the *Vocational Education, Training and Employment Act 2000*. The abolition of the Training Ombudsman will provide the government with ongoing savings of $393,000 per annum.

Liquor and Gaming Commissioner and Removal of the requirement for gaming employees undertaking gaming duties to be licensed

As the amendments streamline Government decision making and regulatory licensing requirements, it is expected that there will be savings to Government through the removal of the costs of the commission and its functions, and the removal of the processing cost related to licensing of gaming employees.

Queensland Competition Authority Act 1997,* repeal the *Brisbane Markets Act 2002* and the *Family Security Friendly Society (Distribution of Moneys) Act 1991* and repeal of Part 5 of the *Statutory Instruments Act 1992

Implementation of the Bill is not expected to result in any additional administrative costs to the Government.

Consistency with Fundamental Legislative Principles

Retrospectivity

Amendments to the *Duties Act 2001*

The amendment to the *Duties Act 2001* that imposes duty on direct and indirect transfers of authorities to prospect, exploration permits and prospecting permits under the *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004*) will operate retrospectively to 10.30am on 13 January 2012 (start time).

The *2011-12 Mid-Year Fiscal and Economic Review* (MYFER) announced the changes with effect from the start time. To minimise the impacts of retrospectivity and to provide certainty for taxpayers during the period before

enactment of retrospective legislation, the following steps were undertaken immediately after announcement of the changes:

- OSR published a fact sheet providing full details of the proposed changes.
- OSR and the Department of Natural Resources and Mines (DNRM) (previously the Department of Employment, Economic Development and Innovation) liaised on implementation issues including DNRM's tenure registration processes for transfers lodged before enactment of the legislation. (DNRM maintains the mining tenure register on which direct transfers of exploration permits are registered.)

- DNRM wrote to the holders of all exploration permits advising of the duty change.

Under the Bill, only the duty liability will be imposed retrospectively on transactions that have occurred on or after the start time. Taxpayers will have 30 days following enactment of the legislation to comply with their duty obligations. Consequently, associated offences, unpaid tax interest, late payment interest and penalty tax under the *Duties Act 2001* and *Taxation Administration Act 2001* will only be committed or accrue on any unpaid duty prospectively after the date of Royal Assent, and only if these prospective obligations are not complied with.

Amendments to the *First Home Owner Grant Act 2000*

The amendment to the *First Home Owner Grant Act 2000* increasing the amount of the grant to $15,000 for those buying or building a new home will apply retrospectively from 12 September 2012. However, the amendment is beneficial for people purchasing or building a new home as they will now be entitled to an increased grant and not be affected by other changes in grant conditions.

Prior to its commencement, the measure was publicly announced on 10 September 2012 in the context of the State Budget. Subsequent media coverage publicising the change is also expected to minimise the impacts of retrospectivity. OSR also publishes details of Budget changes on its website immediately following the Budget announcement and advises stakeholders such as professional advisers, financial institutions and industry associations of the changes.

Appropriate protection against self-incrimination

Amendments to the *State Penalties Enforcement Act 1999*

Amendments to the *State Penalties Enforcement Act 1999* will provide that a person may not fail to comply with an information requirement on the basis that complying may incriminate the person. Abrogating the privilege against self-incrimination is necessary to ensure the Registrar is able to access information to effectively manage enforcement debtors who have failed to pay an amount outstanding under an enforcement order. However, there is both a

direct and derivative use immunity included for information given by a person under the information access provisions, meaning that any evidence obtained cannot be used in criminal proceedings other than where the falsity or misleading nature of the information or document is relevant.

Whether legislation has sufficient regard to rights and liberties of individuals

Amendments to the *State Penalties Enforcement Act 1999*

The penalty that will apply for a person disclosing confidential information contrary to the *State Penalties Enforcement Act 1999* is being increased to 100 penalty units, being the same as that for the comparable offences under the *Taxation Administration Act 2001*. This increase reflects that the Registrar will have broader access to confidential information under the new information access provisions. It also reflects that OSR is now responsible for SPER and that the penalty that applies for staff inappropriately disclosing confidential information obtained under the *State Penalties Enforcement Act 1999* should be the same as that applying for inappropriate disclosure of confidential information obtained under a revenue law.

Whether legislation has sufficient regard to the institution of Parliament - delegation of legislative power

Amendments to the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004*

The *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* are being amended to authorise the making of a regulation dealing with civil penalties where a person makes an election about the time and manner, or amount, of payment of royalty to the State. Under this regulation-making power, the *Mineral Resources Regulation 2003* and the *Petroleum and Gas (Production and Safety) Regulation 2004* may be amended to prescribe how a civil penalty will apply for monthly royalty instalments made under the estimates method.

The *Mineral Resources Regulation 2003* and the *Petroleum and Gas (Production and Safety) Regulation 2004* specify how royalty payments are required to be made. Relevantly, the regulations contain the detail of when monthly royalty payments are made, the basis on which monthly royalty payments are worked out and the circumstances in which a person may elect to make monthly royalty payments using the estimates method.

It is considered that the provisions detailing the basis on which a civil penalty will apply for such payments are appropriately included in the regulations because the principles and terms on which the provisions rely are contained only in the regulations.

Training Ombudsman

The proposal to abolish the Training Ombudsman potentially breaches the fundamental legislative principle that legislation does not adversely affect rights and liberties (see section 4(3)(g) of the *Legislative Standards Act 1992*). Abolishing the position of the Training Ombudsman removes a right of a person to make a complaint to, or seek a review from, the Training Ombudsman. However, the breach is justified as an aggrieved party has other avenues to seek a review of the decision. For example, a party to a training contract can have a dispute resolved by the department; and a complaint about a decision of Skills Queensland can be appealed to the industrial commission (s 230 of the VETE Act) or QCAT(s 224(1)(d)), depending on the matter.

The new section 410 of the VETE Act provides for a transitional regulation making power. This section, and any transitional regulation made under it, will expire 1 year after commencement. The transitional regulation making power may be used to provide for, allow or facilitate a matter relating to the omission of provisions in the VETE Act about the Training Ombudsman. Subsection (2) provides for list of the matters the transitional regulation may include.

Section 4(4)(c) of the *Legislative Standards Act 1992* provides that whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill authorises the amendment of Act only by another Act. The new section 410 potentially breaches this fundamental legislative principle as it allows a regulation to amend an Act (a 'Henry VIII' clause). This potential breach is justified as any transitional provisions made under the regulation will facilitate the process of dealing with outstanding complaints upon commencement. It is also considered the strict limits on the use of this power (e.g. its expiry after 1 year and the type of matters it can include) ensure that the Bill has sufficient regard to the institution of Parliament.

Liquor and Gaming Commissioner and Removal of the requirement for gaming employees undertaking gaming duties to be licensed

The Bill contains a transitional provision that states the commission members will not be entitled to compensation for the removal of their positions due to the abolition of the commission.

The Scrutiny Committee has previously stated that legislation that fails to provide for compensation after a person has been removed from a statutory office may not have sufficient regard to the rights and liberties of individuals.

Commissioners are only remunerated to perform their legislative functions under the Gaming Machine Act and Liquor Act. Remuneration is paid based on the number of meetings attended in order to perform these functions. Section 25(1) of the Gaming Machine Act provides that the commission is to hold such meetings as are necessary for the efficient performance of its functions. The commission members will no longer exist upon commencement of the provisions that abolish the commission. Therefore, they

will no longer be performing any functions under the Act and there will be no need for meetings to be held. It is therefore justifiable that no remuneration and no compensation be provided to commissioners once the commission is abolished.

A transitional provision inserted into the Gaming Machine Act will have a retrospective effect in regards to gaming employee licensees. Between 11 September 2012 and the commencement date of the section, a person who is the holder of a gaming employee's licence that expired between those dates is taken to be a licensed gaming employee. The effect of this amendment is to remove a regulatory burden on these people by allowing them to continue to perform their employment duties without having to apply for a licence that is soon to be repealed. The retrospective element of the amendment is therefore justifiable.

Queensland Competition Authority Act 1997

The following aspects of the Bill raise fundamental legislative principles issues:

Duty of confidentiality

Section 4(4)(a) of the *Legislative Standards Act 1992* specifies that a Bill should allow the delegation of legislative power in appropriate cases and to appropriate persons.

There may be a perception that allowing the QCA to disclose information it received in the course of undertaking its functions under section 10(1)(lb) if authorised by guidelines about a regulatory impact statement system, approved by the Treasurer, may adversely affect the institution of Parliament by delegating law-making power. However, in this instance, it is considered that the approach is justified on the basis that it will provide a practicable and flexible way of ensuring that information the QCA receives in performing its function can be disclosed for the purposes of giving effect to the RIS Guidelines. The RIS Guidelines is a fixed document that is readily accessible to readers of legislation and the general public.

Immunity from breach of *Criminal Code Act 1899*, the *Public Service Act 2008* or the *Crime and Misconduct Act 2001*

Section 4(3)(h) of the *Legislative Standards Act 1992* provides that legislation should not confer immunity from proceedings or prosecutions without adequate justification. The Scrutiny of Legislation Committee has stated that one of the fundamental principles of the law is that everyone is equal before the law and each person should therefore be fully liable for their actions or omissions. However the Committee does recognise that the conferral of immunity is appropriate in certain situations.

Proposed new section 234(3) and (4) will confer immunity from prosecutions for disclosure of official secrets under section 85 of the *Criminal Code Act*

1899, a disciplinary ground under section 187(1)(f) of the *Public Service Act 2008*, or official misconduct under the *Crimes and Misconduct Act 2001* if the person, in good faith, produces a document containing exempt matter or gives a statement relating to exempt matter, to enable the QCA to perform a functions under section 10(1)(e), (lb) or (1c). The immunity provided in this instance is reasonable, appropriate and necessary as it will enable persons to disclose to the QCA information that the QCA needs to carry out its statutory functions. Furthermore, the immunity will only apply if the person is acting in good faith.

Repeal the Brisbane Markets Act 2002 and the Family Security Friendly Society (Distribution of Moneys) Act 1991

The repeal of the *Brisbane Markets Act 2002* and the *Family Security Friendly Society (Distribution of Moneys) Act 1991* do not breach fundamental legislative principles.

Repeal of Part 5 of the Statutory Instruments Act 1992

The repeal of Part 5 of the *Statutory Instruments Act 1992* does not breach fundamental legislative principles.

Consultation

Budget measures

Consultation was undertaken with the Queensland Resources Council and the Australian Petroleum Production and Exploration Association in relation to the amendments being made to the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004*. No issues were raised.

Consultation on the other amendments to implement 2012-13 State Budget initiatives was not appropriate.

The *Taxation Administration Act 2001* amendment is being made for administrative purposes. Consultation is therefore not considered to be necessary.

Training Ombudsman

No community consultation was undertaken on the amendments. The Department of Education, Training and Employment was consulted.

Liquor and Gaming Commissioner and Removal of the requirement for gaming employees undertaking gaming duties to be licensed

Consultation has been undertaken with key industry stakeholders including, the Queensland Hotels Association, Clubs Queensland, and casino operators. No opposition was raised in regards to the proposed amendments.

Queensland Competition Authority Act 1997

The QCA was consulted with respect to the proposed amendments.

Consultation on the other amendments to implement 2012-13 State Budget initiatives was not appropriate.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides that the short title is the *Fiscal Repair Amendment Bill 2012*.

Clause 2 specifies the commencement dates for provisions.

Part 2 Amendment of Duties Act 2001

Clause 3 provides that this part amends the *Duties Act 2001*.

Clause 4 amends section 137(1) so that transfer duty is not imposed on the grant of a resource authority. Section 137(3) is also omitted as it is no longer necessary and consequential renumbering is made.

Clause 5 amends section 167(1)(a) so that an item, that may be separately owned from land, which is fixed to land in which an entity has an interest is to be included in that entity's land-holdings whether or not the entity has an interest in the item.

Clause 6 inserts new Chapter 17 Part 17 to provide for transitional and declaratory arrangements for the Bill.

New section 630 sets out the definitions for Part 17.

New section 631 clarifies that amendment of the definition of land by the Bill is to be disregarded for deciding whether a resource authority, other than an exploration authority, was land under the Act as in force before the commencement of the Bill.

New section 632 provides that the purpose of new Division 3 is to provide for the imposition of duty in relation to exploration authorities during the retrospectivity period.

New section 633 provides that the definition of land that is taken to have applied during the retrospectivity period includes exploration authorities.

New section 634 provides that the definition of statutory licence that is taken to have applied during the retrospectivity period includes exploration authorities.

New section 635 provides that transfer duty is not imposed on the grant of an exploration authority that occurred during the retrospectivity period.

New section 636 provides that if a transfer of an exploration authority occurs after the commencement of the Bill and the transfer is pursuant to an agreement to transfer that authority entered into before commencement of the Bill, transfer duty is not imposed on the transfer.

New section 637 provides that where there is an agreement to acquire an interest in a landholder entered into before the start time that is the subject of a relevant acquisition made after the start time because of section 163(2)(b), exploration land-holdings are not to be taken into account in working out landholder duty for the relevant acquisition.

New Subdivisions 3 and 4 set out the obligations and consequences of a liability for duty arising during the retrospectivity period in relation to exploration authorities. It provides for obligations and consequences based on three categories of circumstances:

a) where liability to duty only arises due to the retrospective operation of the Bill;
b) where a liability to duty for the transaction existed prior to commencement of the Bill but no assessment had been made; and
c) where a liability to duty for the transaction existed prior to commencement of the Bill and an assessment had been made.

New section 638(1) sets out that this section applies where liability to transfer duty only arises due to the retrospective operation of the Bill in relation to exploration authorities, including where the transaction becomes liable due to aggregation with other transactions under section 30.

Where new section 638 applies:

a) the period for parties liable to pay the duty under section 19(3) is taken to be 30 days after the commencement day (section 638(2)); and
b) for a standard self assessment, the date liability for duty arises for section 455A(3) is taken to be the commencement day and the date by which a liable party must comply with section 471E(1) is taken to be 30 days after the commencement day (section 638(3)).

Example

X Co. purchases an exploration permit from Z Co. on 5 February 2012. Within 30 days from commencement of the Bill, X Co. is required to lodge the instrument or transfer duty statement and any approved forms with the

Commissioner of State Revenue for assessment or engage a self assessor to assess the transaction.

If X Co. lodges as required within 30 days (and any self assessment is made and paid as required), there will be no unpaid tax interest or penalty tax imposed in relation to the period between 5 February 2012 and when the transaction is assessed. Unpaid tax interest will accrue in the usual way if the duty is not paid when required.

New section 639(1) sets out that this section applies where a liability to transfer duty arose before the start (but has not yet been assessed) in relation to a transaction and, after the start date, the dutiable value of the transaction is required to be assessed by including the value of an exploration authority.

Where new section 639 applies:

a) section 638(2) and (3) applies to the transaction and the liable parties (section 639(2)); and
b) the change in the lodgement dates under section 638(2) and (3), does not affect–
    i. how unpaid tax interest under section 54 of the *Taxation Administration Act 2001* accrues in relation to any part of unpaid transfer duty in relation to dutiable property that is not an exploration authority; or
    ii. the application of penalty tax under section 58 of the *Taxation Administration Act 2001* in relation to any part of unpaid transfer duty in relation to dutiable property that is not an exploration permit (section 639(3)).

Example

X Co. purchases freehold land, plant and equipment and an authority to prospect from Z Co. on 5 February 2012 and has not lodged any part of the transaction for assessment with the Commissioner of State Revenue or engaged a self assessor. Within 30 days from commencement of the Bill, X Co. is required to lodge the instrument or transfer duty statement and any approved forms with the Commissioner of State Revenue for assessment or engage a self assessor to assess the transaction.

If X Co. lodges as required within 30 days (or any self assessment is made and paid as required), there will be no unpaid tax interest or penalty tax imposed in relation to the period between 5 February 2012 and when the transaction is assessed in relation to the authority to prospect. However unpaid tax interest and penalty tax will be payable for the part of the duty assessed relating to the freehold land and plant and equipment. Unpaid tax interest will accrue in the usual way in relation to the authority to prospect if the duty is not paid when required.

New section 640(1) sets out that this section applies where a liability to transfer duty arose before the start (which has been assessed) in relation to a

transaction and, after the start date, the dutiable value of the transaction is required to be reassessed by including the value of an exploration authority.

Where new section 640 applies:

a) the transaction must be reassessed (section 640(2));
b) within 30 days after commencement of the Bill, the parties liable to transfer duty must give notice to the Commissioner of State Revenue that a reassessment is required and lodge all relevant documents for reassessment (section 640(3));
c) if the parties comply with the above requirement, no penalty tax is payable in relation to the difference in the reassessed duty that is attributable to an exploration authority (section 640(4));
d) for unpaid tax interest that relates to unpaid transfer duty that is attributable to an exploration authority, the start date for section 54 of the *Taxation Administration Act 2001* is either –
    i. the due date of the reassessment; or
    ii. if the parties have not complied with the requirement to give notice to the Commissioner of State Revenue of the reassessment and lodge documents – the date that is the same number of days before the due date for the reassessment as the number of days in the periods of noncompliance with the requirement as far as it relates to the exploration authority (section 640 (5) and (6)); and
e) for unpaid tax interest that relates to any unpaid transfer duty that is attributable to dutiable property other than an exploration authority, the start date for section 54 of the *Taxation Administration Act 2001* is the usual start date for a reassessment.

Example

X Co. purchases freehold land, plant and equipment and an authority to prospect from Z Co. on 5 February 2012 and lodged the transaction as far it related to the freehold land and plant and equipment for assessment with the Commissioner of State Revenue as required. Within 30 days from commencement of the Bill, X Co. is required to notify the Commissioner of State Revenue that a reassessment is required and lodge the instrument or transfer duty statement.

If X Co. notifies and lodges as required within 30 days, there will be no unpaid tax interest or penalty tax imposed in relation to the period between 5 February 2012 and when the transaction is reassessed in relation to the authority to prospect. Unpaid tax interest will accrue in the usual way in relation to the authority to prospect if the duty is not paid when required under the reassessment.

For new sections 638 to 643, failure to notify the Commissioner of State Revenue as required or failure to comply with a lodgement requirement is an offence under the *Taxation Administration Act 2001*.

New sections 641, 642 and 643 provide for similar obligations and consequences as new sections 638, 639 and 640 in relation to landholder duty and corporate trustee
duty.

New section 644 requires a self assessor registered under Chapter 12, Part 3 to give notice to the Commissioner of State Revenue within 30 days after commencement of the Bill that a transaction statement was lodged, where the self assessor made a self assessment in relation to a transaction during the retrospectivity period that should have included an exploration authority. Failure to comply with this provision is an offence and section 488 also applies.

New section 645 applies to persons who recorded an instrument or transaction in a register of interests; entered in the records of a corporation or society an instrument that evidences or effects a relevant acquisition or a trustee or responsible entity of a unit trust that recorded in the trust's records an instrument that evidences or effects a trust acquisition or trust surrender.

These persons must notify with Commissioner of State Revenue within 30 days after commencement of the Bill that the record or entry was made where the transaction, relevant acquisition, trust acquisition or trust surrender related to an exploration authority. Failure to comply with this provision is an offence.

New section 646 clarifies that a person does not commit an offence in relation to an act or omission done or omitted to be done during the retrospectivity period due to the retrospective operation of the Bill.

New section 647 provides that instruments stamped during the retrospectivity period will be taken to have been properly stamped despite the retrospective operation of the Bill.

New section 648 provides that section 167, as amended by the Bill, applies to relevant acquisitions made on or after the commencement day.

New section 649 provides which dutiable transactions and relevant acquisitions the new Schedule 3 will apply to.

Clause 7 inserts a new Schedule 3 setting out the rates of duty on dutiable transactions for transfer duty and relevant acquisitions for landholder and corporate trustee duty.

Clause 8 amends the Dictionary in Schedule 6.

In particular, new definitions of *exploration authority*, *land* and *resource authority* are included and the definition of *statutory licence* is amended to ensure duty applies to exploration authorities. In respect of statutory licences, the effect of this amendment is that exploration authorities will be included

whether or not they were statutory licences, as defined, on their creation, grant or issue.

Part 3 Amendment of First Home Owner Grant Act 2000

Clause 9 provides that this part amends the *First Home Owner Grant Act 2000*.

Clause 10 inserts a definition of *new home* into section 6. It is the same as the definition in the existing section 25A (which is being omitted).

Clause 11 amends section 20, which details the amount of the grant. From 12 September 2012, the amount of the grant for a *new home eligible transaction* will be the lesser of the consideration for the eligible transaction or $15,000. *New home eligible transaction* is defined as a contract to purchase or build, and the building by an owner builder, of a new home.

Clause 12 omits section 25A which defines *new home*. The definition of *new home* will now be in section 6.

Clause 13 inserts a new Part 11.

New section 79 is a transitional provision for the amendments that commence on 12 September 2012. It provides that the provisions prior to amendment continue to apply in relation to eligible transactions with a commencement date earlier than 12 September 2012.

New section 80 sets out the amount of the grant payable where the Commissioner of State Revenue is satisfied a scheme exists to obtain an increased amount of grant. The Commissioner of State Revenue will presume a scheme, unless satisfied to the contrary, where a contract made on or after 12 September 2012 replaces one made before 12 September 2012 and the contract is one to purchase or build the same or a substantially similar home. If that is the case, the amount of the grant will be the lesser of the consideration for the transaction or $7,000.

Clause 14 amends the Schedule to provide that the definition of *new home* can be found in section 6.

Clause 15 amends section 5, which defines *eligible transaction*. In particular, it inserts new sections 5(1) to (3) to provide that, from 11 October 2012, only a contract to purchase or build, and the building by an owner builder of, a new home will be an eligible transaction. In doing so, it omits section 5(3) as moving an existing home onto land is not the construction of a new home.

Clause 16 amends *new home eligible transaction* in section 20(2) (as inserted on 12 September 2012) to provide it is an eligible transaction mentioned in section 5(1).

Clause 17 amends section 22A to recognise that an eligible transaction under section 5 could, depending on its commencement date, be for a new home or other home.

Clause 18 Inserts a new section 81.

New section 81 is a transitional provision for the amendments that commence on 11 October 2012. In particular, section 81 provides that the provisions as in force on 12 September 2012 continue to apply in relation to eligible transactions with a commencement date starting on or after 12 September 2012 but before 11 October 2012.

Part 4 Amendment of Gaming Machine Act 1991

Division 2 Amendments commencing on assent

Clause 19 states that Part 4 amends the Gaming Machine Act.

Clause 20 amends the heading to Part 5 (Licensing of repairers, service contractors, gaming nominees, gaming employees and key monitoring employees) by removing a reference to 'gaming employees'.

Clause 21 omits and inserts a new section 189 which provides the circumstances under which a gaming employee must hold a current responsible service of gambling course certificate when carrying out gaming duties.

Clause 22 amends section 189A by removing a reference to repealed section 189(2) of the Act and updating a reference to section 189(15) and relocating the definition of 'responsible service of gambling course certificate' to Schedule 2.

Clause 23 inserts a new section 191 which provides the circumstances under which the chief executive must issue a notice requiring an individual to obtain an approved responsible service of gambling course certificate. The provision also provides that a licensee must ensure that a person does not continue to be employed as referred to in subsection (1) after receiving the notice.

Clause 24 amends section 193 by removing the requirement for a person to be a licensed gaming employee under sections 193(2)(a) and 193(3)(a) and replacing it with a requirement that the person is employed by the licensee and holds a current responsible service of gambling course certificate.

Clause 25 repeals section 196, which provides the requirements for a licensed gaming employee to apply for a gaming nominee's licence, and section 197, which provides the requirements for a licensed gaming nominee to apply for a gaming employee's licence.

Clause 26 amends section 198 by removing references to 'gaming employee's'.

Clause 27 amends section 201 which details the chief executive's obligations when considering an application by repealing section 201(5) relating to licensed gaming employees.

Clause 28 amends section 202 by removing a reference to 'gaming employee's' from section 202(2)(b).

Clause 29 amends section 207 by removing a reference to 'gaming employee's' from section 207(2)(b).

Clause 30 amends section 209 to insert a new definition of 'formal identification card' which removes the reference to licensed gaming employee so that the definition only applies to a gaming nominee.

Clause 31 amends section 217 in relation to the obligations of a licensee dealing with employees to remove references to licensed gaming employees.

Clause 32 amends section 223, which requires the destruction of fingerprints, to remove requirements with respect to licensed gaming employees.

Clause 33 amends section 224, which allows the grant of provisional licences, to remove ability to grant a provisional gaming employee's licence.

Clause 34 amends section 366, which provides a regulation making power, to remove regulation power with respect to gaming employee's licences.

Clause 35 inserts a new part 12, Division 16 which provides for transitional provisions to ensure the effective operation of the Act through the removal of licensing requirements for licensed gaming employees.

Clause 36 amends schedule 1, which provides for reviewable decisions, by removing the first column in relation to licensed gaming employees and inserting 201(1).

Clause 37 amends schedule 2, which provides definitions for the purposes of the Gaming Machine Act, to remove the existing definitions and insert new amended definitions for *gaming employee, interested person, licensed person,* and *responsible service of gambling course certificate.*

Division 3 Amendments commencing 1 July 2013

Clause 38 omits sections pertaining to the establishment, powers, functions, roles and processes of the Queensland Liquor and Gaming Commission (commission). The clause also inserts a new Division 1 replacing 15 to 28 of the Gaming Machine Act. It provides for the establishment of the Liquor and Gaming Commissioner (commissioner) who will have the same powers, functions, roles and responsibilities as the commission and the chief executive currently hold under the Gaming Machine Act and Liquor Act. The commissioner is to be a senior executive of the department and can perform other roles under the *Public Service Act 2008.* The clause provides that the commissioner can make guidelines and standards under the Gaming Machine Act.

Clause 39 amends section 29 to allow persons who currently can appeal decisions by either the commission or the chief executive to the Queensland Civil and Administrative Tribunal (QCAT) under the Gaming Machine Act to be able to appeal decisions by the commissioner to QCAT.

Clause 40 amends section 30, which provides for reconsideration of decisions by the chief executive, commission and inspectors, to remove references to chief executive and commission and replace with commissioner.

Clause 41 amends section 31, which provides for QCAT's review of decisions by the chief executive and the commission, to remove references to chief executive and commission and replace with commissioner.

Clause 42 amends section 32, which provides for QCAT giving leave for a review to be decided on new evidence in particular circumstances, to remove references to chief executive and commission and replace with commissioner.

Clause 43 inserts a new division in Part 2 to improve the functionality of the Gaming Machine Act.

Clause 44 amends section 50 to enable the Minister to delegate powers to the commissioner, and enable the commissioner to delegate powers to an appropriately qualified public service employee or an appropriately qualified inspector. The commissioner's delegation of power can be further sub-delegated to an appropriately qualified public service employee.

Clause 45 amends section 53 to change references to commissioner of police to police commissioner.

Clause 46 amends section 53A to change references to commissioner of police to police commissioner.

Clause 47 amends elements of section 54, which currently relate to members of the commission, to remove references to members of the commission and provide that a person who is, or was, the commissioner must

not disclose confidential information gained by the person in performing a function or exercising a power under this Act or another Act.

Clause 48 omits sections 54A to 54C as these provisions relate to the chief executive power to make guidelines and standards and these powers have been given to the commissioner in an earlier clause of this Bill.

Clause 49 amends section 55, which makes gaming as provided for under the Gaming Machine Act, lawful to remove references to the commission and chief executive and replace with commissioner.

Clause 50 amends section 55B (Community impact statement and statement of responsible gambling initiatives required for application of significant community impact) to remove references to the commission and insert references to the commissioner.

Clause 51 amends section 55C which relates to the advertising of applications of significant community impact, to remove references to the liquor licensing authority (which is the chief executive of the Liquor Act, whose functions and powers are also to be given to the commissioner).

Clause 52 amends section 55D(2) to replace a reference to the commission's guidelines with a reference to the commissioner's guidelines.

Clause 53 amends section 56 which provides for applications for gaming machine licences to remove a reference to the relevant chief executive (which is the chief executive of the Liquor Act, whose functions and powers are also to be given to the commissioner) and replace with references to the commissioner.

Clause 54 amends the sectional definition of local community area in section 56A to remove a reference to the commission and an invalid section number and replace it with a reference to the commissioner and a valid section number.

Clause 55 amends the sectional definition of local community area in section 56B to remove a reference to the commission and an invalid section number and replace it with a reference to the commissioner and a valid section number.

Clause 56 omits current section 57, which provides for the chief executive to assess applications for gaming machine licences and make recommendations to the commission, and current section 58 which provides for decisions by the commission on the applications. As the commissioner will fulfil the roles of both the chief executive and the commission, the clause inserts new sections that ensure that the commissioner has the authority to perform the necessary actions and decision making currently performed by the chief executive and the commission.

Clause 57 amends section 60 (Basis on which number of gaming machines to be installed in premises and hours of gaming are to be decided) so that the commissioner has the authority to make decisions and performs actions currently held by the commission and the chief executive.

Clause 58 omits current section 62, which provides for the chief executive to assess applications for additional premises under a category 2 licence and make recommendations to the commission, and current section 63 which provides for decisions by the commission on the applications. As the commissioner will fulfil the roles of both the chief executive and the commission, the clause inserts new sections that ensure that the commissioner has the authority to perform the necessary actions and decision making currently performed by the chief executive and the commission.

Clause 59 amends section 68 to enable to the commissioner to issue licences, which is currently the role of the chief executive.

Clause 60 makes consequential amendments to section 71A to ensure references to various subsections of the Gaming Machine Act are accurate.

Clause 61 amends section 78 which relates to transfers of licences under the Liquor Act and their impact on certain applications and approvals under the Gaming Machine Act removing references to liquor licensing authority and replacing them with commissioner.

Clause 62 amends section 78A which relates to transfers of licences under the Liquor Act and their impact on certain applications and approvals under the Gaming Machine Act removing references to liquor licensing authority and replacing them with commissioner.

Clause 63 amends section 79, which relates to transfers of licenses under the Liquor Act and their impact on operating authorities under the Gaming Machine Act, removing references to the chief executive and relevant chief executive and replacing them with commissioner.

Clause 64 omits current section 82, which provides for the chief executive to assess applications for increases in gaming machines for existing licensees and make recommendations to the commission, current section 83 which provides for decisions by the commission on the applications and current section 84, which details the matters the chief executive must have regard to when considering an application. As the commissioner will fulfil the roles of both the chief executive and the commission, the clause inserts new sections that ensure that the commissioner has the authority to perform the necessary actions and decision making currently performed by the chief executive and the commission.

Clause 65 omits current section 85B, 85C and 85D which provides for the chief executive to assess applications for increases in approved hours of gaming and make recommendations to the commission, and provides for decisions by the commission on the applications. As the commissioner will

fulfil the roles of both the chief executive and the commission, the clause inserts new sections that ensure that the commissioner has the authority to perform the necessary actions and decision making currently performed by the chief executive and the commission.

Clause 66 omits current section 90B, 90C and 90D which provides for the chief executive to assess applications for decreases in approved hours of gaming and make recommendations to the commission, and provides for decisions by the commission on the applications. As the commissioner will fulfil the roles of both the chief executive and the commission, the clause inserts new sections that ensure that the commissioner has the authority to perform the necessary actions and decision making currently performed by the chief executive and the commission.

Clause 67 amends section 97 which provides for the cancellation or suspension of gaming machine licences and letters of censure to licensees under prescribed circumstances by removing references to the commission and the chief executive.

Clause 68 amends section 98 which provides the circumstances under which the commissioner may immediately suspend a gaming machine licence by removing references to the commission and the chief executive.

Clause 69 amends section 100 which details the effect of a suspension of a licence under section 98 by removing references to the commission and the chief executive.

Clause 70 amends section 101 which details when the commissioner or a licensee must give notice of an event to interested persons by removing references to the chief executive and the commission.

Clause 71 amends section 106 which details the circumstances under which the commissioner may appoint an administrator instead of suspending a gaming machine licence.

Clause 72 amends section 109F, which provides for operating authorities becoming operating authorities of the state, to omit subsection (e), which required the chief executive to make a recommendation to the commission, and insert 97(12(c)(ii)(A) or (13)(a).

Clause 73 amends section 109M, which provides for applications for approval of a permanent transfer, to omit subsection 4, which required the chief executive to make a recommendation to the commission.

Clause 74 amends section 109N which details the requirements regarding the consideration for the transfer of entitlements by updating a reference in the Act.

Clause 75 amends section 109O which details the requirements of the transferor's licensed premises by updating a reference in the Act.

Clause 76 amends section 109P which details the requirements of the transferee's licensed premises by updating a reference in the Act.

Clause 77 amends section 109Q, which provides for the variation of the terms of a permanent transfer before the transfer has taken place, to omit subsection 4, which required the chief executive to make a recommendation to the commission.

Clause 78 amends section 109T, which provides for applications for approval of temporary transfers of entitlements, to omit subsection 5, which required the chief executive to make a recommendation to the commission.

Clause 79 amends section 109U, which provides the requirements for transfer periods and consideration for the transfer of entitlements, by updating a reference in the Act.

Clause 80 amends section 109V, which provides the requirements regarding transferor licensed premises, by updating a reference in the Act.

Clause 81 amends section 109W, which provides the requirements regarding transferee licensed premises, by updating a reference in the Act.

Clause 82 amends section 109X, which provides for the variation of the terms of a temporary transfer, to omit subsection 4, which required the chief executive to make a recommendation to the commission.

Clause 83 amends section 109ZA, which provides for an entitlement becoming an entitlement of the state, to omit subsection (e), which required the chief executive to make a recommendation to the commission, and insert 97(12(c)(ii)(A) or (13)(a).

Clause 84 amends section 109ZH, which provides for the decrease, end, or temporary transfer of entitlements, to omit subsection (e), which required the chief executive to make a recommendation to the commission, and insert 97(12(c)(ii)(A) or (13)(a).

Clause 85 amends section 116, which provides for obtaining further information to support an application for a supplier's licence, to remove references to chief executive and replace with commissioner.

Clause 86 omits current section 121, which provides for the chief executive to make a recommendation regarding the grant or the refusal to grant a supplier's licence, and current section 122 which provides for decisions by the commission on the applications. As the commissioner will fulfil the roles of both the chief executive and the commission, the clause inserts a new section 122 which ensures that the commissioner has the authority to perform the necessary actions and decisions currently performed by the chief executive and the commission.

Clause 87 amends section 139, which provides for grounds to suspend or cancel a supplier's licence, to remove references to chief executive and commission and replace with commissioner.

Clause 88 amends section 145, which provides for directions to rectify to be issued to a licensed supplier, to remove references to chief executive and replace with commissioner.

Clause 89 omits current section 146, which provides for the chief executive to recommend the suspension or cancellation of a supplier's licence to the commission, and current section 147 which provides for decisions by the commission on a cancellation or suspension. As the commissioner will fulfil the roles of both the chief executive and the commission, the clause inserts a new section 147 to ensure that the commissioner has the authority to perform the necessary actions and decision making currently performed by the chief executive and commission.

Clause 90 amends section 148, which provides for the suspension, cancellation and appointment of an administrator for a supplier's licence, to remove references to chief executive and commission and replace with commissioner.

Clause 91 amends section 149, which provides for the immediate suspension of a supplier's licence, to remove references to chief executive and commission and replace with commissioner.

Clause 92 amends section 150, which provides for the suspension of a supplier's licence, to remove references to chief executive and commission and replace with commissioner.

Clause 93 amends section 325I (Report about criminal history) to change references to commissioner of police to police commissioner.

Clause 94 amends section 327, which provides authority to issue directions, to remove references to chief executive and commission and replace with commissioner.

Clause 95 amends section 335, which provides the Minister with the power to order an inquiry, to remove references to the commission and replace with the commissioner.

Clause 96 amends section 336, which provides for the review and termination of agreements, to remove references to chief executive and commission and replace with commissioner.

Clause 97 amends section 344, which makes it an offence for a person to modify or fail to maintain something subject to an approval or authority, to remove references to chief executive and commission and replace with commissioner.

Clause 98 omits section 345, which requires the chairperson and two other commissioners to sign documents issued by the commission.

Clause 99 amends section 346, which makes it an offence to accept or offer a bribe, to remove references to chief executive and commission and replace with commissioner.

Clause 100 amends section 354, which limits liability on account of actions performed for the purposes of the Act, to remove references to chief executive and commission and replace with commissioner.

Clause 101 amends section 356, which provides for procedures and requirements for proceedings for offences, to remove references to chief executive and commission and replace with commissioner.

Clause 102 amends section 357, which provides for starting proceedings for an offence, to remove references to chief executive and commission and replace with commissioner.

Clause 103 amends section 361, which provides for evidence to be given under the Act, to remove references to chairperson and replace with commissioner.

Clause 104 amends section 366, which provides the Governor in Council with the power to make regulations, to remove reference to chief executive and replace with commissioner.

Clause 105 inserts new definitions for division 16 to ensure the clarity of the Act.

Clause 106 inserts a new part 12 division 16, which provides for transitional provisions to ensure the effective operation of the Act through the transition of powers and functions of the chief executive and commission to the new commissioner.

Clause 107 omits and reinserts schedule 1, which provides for decisions which are reviewable under the Gaming Machine Act, to remove references to chief executive and commission and replace with commissioner.

Clause 108 amends schedule 2, which provides definitions for the purposes of the Gaming Machine Act, to remove definitions for *approved form, chairperson, commission, commissioner, liquor licensing authority, relevant chief executive* and the various definitions for *supporting material*, and insert a new definition for approved form, commissioner, police commissioner and supporting material.

Clause 109 makes various minor consequential amendments to sections of the Gaming Machine Act, which currently relate to the chief executive, by removing ‘chief executive’ or ‘chief executive’s’ and replacing with ‘commissioner’ or ‘commissioner’s’ for consistency with the new model.

Clause 110 makes various minor consequential amendments to sections of the Gaming Machine Act, which currently relate to the commission, by removing 'commission' or 'commission's' and replacing with 'commissioner' or 'commissioner's' for consistency with the new model.

Part 5 Amendment of Liquor Act 1992

Clause 111 provides that Part 5 amends the *Liquor Act 1992*.

Clause 112 amends section 4 (definitions for commonly used terms throughout the Act) to remove references to chief executive and commission and replace with commissioner.

Clause 113 amends section 21 which outlines the jurisdiction and powers of the tribunal to remove references to chief executive and commission and replace with commissioner.

Clause 114 amends section 30 which describes who may apply to the Queensland Civil and Administrative Tribunal for a review of decisions, to remove references to chief executive and commission and replace with commissioner.

Clause 115 amends section 31, which provides that an application is taken to be refused if the chief executive does not notify of the decision within the prescribed timeframe, to remove references to chief executive and commission and replace with commissioner.

Clause 116 amends section 32, which provides for the notification of interested persons if a review of a decision is made, to remove references to chief executive and commission and replace with commissioner.

Clause 117 amends section 33 which provides that the tribunal must make a decision based on evidence available to the chief executive or commission, to remove references to chief executive and commission and replace with commissioner.

Clause 118 amends section 34 which provides that leave from the tribunal is required to introduce new evidence, to remove references to chief executive and commission and replace with commissioner.

Clause 119 makes minor amendments to section 42A which provides that the chief executive may issue guidelines. References to chief executive are replaced by commissioner through operation of clause 144.

Clause 120 amends section 58A which provides that a licence granted under this Act is subject to the conditions prescribed under a regulation, to remove references to chief executive and commission and replace with commissioner.

Clause 121 amends section 69 which details the authority of a subsidiary of-premises licence, to remove references to chief executive and commission and replace with commissioner.

Clause 122 amends section 89 which provides definitions for various terms used in Part 4, Division 8 of the Act, to remove references to chief executive and commission and replace with commissioner.

Clause 123 amends section 94 which provides that the decision of the chief executive as a result of the moratorium cannot be challenged, to include reference to commissioner.

Clause 124 replaces section 99G which provides that the chief executive may request information from the police commissioner to assist in making a decision under this division, to remove references to chief executive and commission and replace with commissioner and police commissioner.

Clause 125 amends section 103N which provides the chief executive and the commissioner of police with the power to issue the Adult Entertainment Code in conjunction with a Regulation, to remove references to commissioner and replace with police commissioner.

Clause 126 amends section 107, which provides for the circumstances in which the chief executive can grant a permit, to remove references commissioner and replace with police commissioner.

Clause 127 amends section 107F, which requires the chief executive to provide the commissioner of police with particulars relevant to an adult entertainment permit application, to remove references commissioner and replace with police commissioner.

Clause 128 amends section 109B, which provides for the processes and requirements associated with registration as a controller for the purposes of adult entertainment, to remove references to commissioner and commissioner's and replace with police commissioner and police commissioner's.

Clause 129 amends section 116, which requires that a community impact statement be provided by an applicant for certain licence applications, to remove references to chief executive and commission and replace with commissioner.

Clause 130 amends section 119A to remove a reference to the commission.

Clause 131 amends section 137, which provides for the procedure for taking disciplinary action in relation to a licence, to remove references to chief executive and commission and replace with commissioner.

Clause 132 amends section 137A, which provides for the chief executive or the commission to take disciplinary action after considering any

representations made by a licensee, to remove references to chief executive and commission and replace with commissioner.

Clause 133 amends section 137B, which provides for notice to be given about a decision of the chief executive or the commission regarding proposed disciplinary action against a licensee, to remove references to chief executive and commission and replace with commissioner.

Clause 134 amends section 137D, which provides for amounts payable as debts to the state, to remove references to chief executive and commission and replace with commissioner.

Clause 135 omits part 5 division 7, which requires decisions of significant community impact must be made by the commission.

Clause 136 amends section 142R, which provides that the chief executive must consider and decide on an application for approval as an approved manager, to update a reference to the police commissioner.

Clause 137 amends section 154A, which details the process for commercial hotel licensees to relocate a detached bottle shop, to include an approval by the commissioner for a detached bottle shops.

Clause 138 amends section 173ZQ, which provides the chief executive with the ability to request information from the commissioner regarding certain applications, to remove references to chief executive and commissioner and replace with commissioner and police commissioner.

Clause 139 amends section 173ZR, which allows the chief executive to give a copy of an order to the commissioner, to remove references to chief executive and commissioner and replace with commissioner and police commissioner.

Clause 140 amends section 219, which provides for the establishment and administration of the community investment fund, to remove references to chief executive and replace with commissioner.

Clause 141 amends section 232B, which requires the commissioner of police to give certain information to the chief executive, to replace references to ‘commissioner’ with references to ‘police commissioner.’

Clause 142 inserts a new section 234A which provides the commissioner with the power to approve forms.

Clause 143 inserts a new part 12 division 12, which provides for transitional provisions to ensure the effective operation of the Act through the transition of the functions and powers of the chief executive and commission to commissioner.

Clause 144 makes various minor consequential amendments to sections of the Liquor Act , which currently relate to the chief executive by removing 'chief executive' or 'chief executive's' and replacing with 'commissioner' or 'commissioner's'.

Clause 145 makes various minor consequential amendments to sections of the Liquor Act which currently refer to the commission by removing 'commission' and replacing with 'commissioner' for consistency with the new model.

Clause 146 makes various minor consequential amendments to sections of the Liquor Act which refer to the assistant police commissioner as the 'assistant commissioner' by removing references to the assistant commissioner and replacing them with assistant police commissioner.

Part 6 Amendment of Mineral Resources Act 1989

Clause 147 provides that this part amends the *Mineral Resources Act 1989*.

Clause 148 inserts section 321A allowing the making of a regulation in relation to civil penalties.

Clause 149 replaces sections 332 and 333 and inserts new section 332A.

Section 332 provides for the imposition of unpaid royalty interest at the rate prescribed under the *Mineral Resources Regulation 2003*. The basis on which interest is imposed on unpaid royalty is specified under section 332. However, a regulation may prescribe how unpaid royalty interest is worked out in particular cases or classes of cases. For instance, a regulation may prescribe the way that unpaid royalty interest is worked out for royalty payable by monthly instalments.

Under sections 30 and 30A(1)(c) of the *Mineral Resources Regulation 2003,* royalty payable for an annual return period and instalment 3 payable for a quarterly return period must be paid when the royalty return for the relevant period is required to be lodged. Section 28 of the *Mineral Resources Regulation 2003* specifies when royalty returns must be lodged and provides that the Minister may extend the date for lodging a return. Where the Minister makes such a decision, the time for paying the relevant royalty is also extended. However, under section 332(4), any such extension does not extend the start date for working out unpaid royalty interest.

The Minister may fully or partially remit unpaid royalty interest that has been imposed under this section.

New section 332A specifies how payments relating to royalty must be applied. This order of application of payments is also relevant under section 332(5) for working out unpaid royalty interest.

Section 333 specifies who may recover amounts in relation to unpaid royalty.

Clause 150 inserts new Part 19 Division 18 to provide transitional provisions for unpaid royalty in particular cases. For instance, under the transitional provision, where royalty is unpaid before, and remains unpaid on, 1 October 2012, interest will be worked out as follows:

a) under section 332 of the *Mineral Resources Act 1989* and the relevant provisions of the *Mineral Resources Regulation 2003*, as those provisions applied before 1 October 2012, in relation to the royalty unpaid from time to time before that day; and
b) under section 332 of the *Mineral Resources Act 1989* and the relevant provisions of the *Mineral Resources Regulation 2003* as those provisions applied on 1 October 2012, in relation to the royalty unpaid from time to time on and from that day.

Clause 151 amends Schedule 2 to insert a definition of *unpaid royalty interest*.

Part 7 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Clause 152 provides that this part amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Clause 153 amends section 81(1) to change the reference in paragraph (d) from *unpaid petroleum royalty interest* to *unpaid royalty interest*, and to include the civil penalty that may be prescribed under section 604A.

Clause 154 amends section 103(3) to change the reference in paragraph (d) from *unpaid petroleum royalty interest* to *unpaid royalty interest*, and to include the civil penalty that may be prescribed under section 604A.

Clause 155 amends section 161(1) to change the reference in paragraph (d) from *unpaid petroleum royalty interest* to *unpaid royalty interest*, and to include the civil penalty that may be prescribed under section 604A.

Clause 156 amends section 171(3) to change the reference in paragraph (d) from *unpaid petroleum royalty interest* to *unpaid royalty interest*, and to include the civil penalty that may be prescribed under section 604A.

Clause 157 amends section 595 to allow the Minister to remit all or part of the fee that applies under subsection (3) for the late lodgement of a petroleum royalty return. The fee is ordinarily required to accompany the return to which it relates but may be remitted before or after lodgement of the return.

Clause 158 amends the note in section 597(5).

Clause 159 amends section 600(3) to change the reference from *unpaid petroleum royalty interest* to *unpaid royalty interest*, and to include the civil penalty that may be prescribed under section 604A.

Clause 160 replaces section 602 and inserts section 602A.

Section 602 provides for the imposition of unpaid royalty interest at the rate prescribed under the *Petroleum and Gas (Production and Safety) Regulation 2004*. The basis on which interest is imposed on unpaid royalty is specified under section 602. However, a regulation may prescribe how unpaid royalty interest is worked out in particular cases or classes of cases. For instance, a regulation may prescribe the way that unpaid royalty interest is worked out for royalty payable by monthly instalments.

Unlike the case for mineral royalties, there is no legislative authority to extend the date for paying petroleum royalty. Inclusion of a provision similar to section 332(4) of the *Mineral Resources Act 1989* is therefore unnecessary.

The Minister may fully or partially remit unpaid royalty interest that has been imposed under this section.

New section 602A specifies how payments relating to petroleum royalty must be applied. This order of application of payments is also relevant under section 602(5) for working out unpaid royalty interest.

Clause 161 amends section 603 to provide for the recovery of a civil penalty payable under a regulation made under new section 604A.

Clause 162 inserts section 604A allowing the making of a regulation in relation to civil penalties.

Clause 163 inserts new Chapter 15 Part 14 to provide transitional provisions.

New section 974 is a transitional provision applying for unpaid petroleum royalty in particular cases. For instance, under the transitional provision, where royalty is unpaid before, and remains unpaid on, 1 October 2012, interest will be worked out as follows:

a) under section 602 of the *Petroleum and Gas (Production and Safety) Act 2004* and the relevant provisions of the *Petroleum and Gas (Production and Safety) Regulation 2004*, as those provisions applied before 1 October 2012, in relation to the royalty unpaid from time to time before that day; and

b) under section 602 of the *Petroleum and Gas (Production and Safety) Act 2004* and the relevant provisions of the *Petroleum and Gas (Production and Safety) Regulation 2004* as those provisions applied on 1 October 2012, in relation to the royalty unpaid from time to time on and from that day.

New section 975 is a transitional provision for section 595, allowing the Minister to remit a fee under new section 595(5) even if the fee was payable before 1 October 2012.

Clause 164 amends Schedule 2 to omit the definition of *unpaid petroleum royalty interest* and insert a definition of *unpaid royalty interest*.

Part 8 Amendment of Queensland Competition Authority Act 1997

Clause 165 provides that part 8 amends the *Queensland Competition Authority Act 1997*.

Clause 166 amends section 10(1)(lb) to enable the Queensland Competition Authority (QCA), at the direction of the Ministers, to review and report on regulatory proposals of government agencies. The clause also replaces the reference to "regulatory assessment statement" with "regulatory impact statement" and omits subsection (2), which contains the definition of regulatory assessment statement.

Clause 167 amends section 12 to reflect numbering changes under section 10.

Clause 168 amends the heading of the section 234 and inserts new subsections (3) and (4) to provide that if a person, in good faith, produces a document containing exempt matter or gives a statement relating to exempt matter, to enable the authority to perform functions under revised sections 10(e), (lb) or (1c), the production of the document or the giving of the statement will not constitute a disclosure of official secrets under section 85 of the *Criminal Code Act 1899*, a disciplinary ground under section 187(1)(f) of the *Public Service Act 2008*, or official misconduct under the *Crimes and Misconduct Act 2001*.

These provisions have been included to protect persons who, in good faith, give the Authority documents containing exempt matter or make statements relating to exempt matters, from disciplinary and criminal proceedings.

Clause 169 amends the heading of section 239.

Clause 170 inserts a new section 239A to impose a duty of confidentiality on the QCA. The QCA must take all reasonable steps to ensure information it receives in the course of performing its functions under section 10(e), 10(lb) and 10(lc) is not disclosed other than to specified persons or in specified circumstances.

Clause 171 repeals Part 11.

Clause 172 inserts a new definition of regulatory impact statement in the Dictionary (schedule 2). This definition was originally contained in section

10(2), omitted in clause 166 above. The amendment reflects the change in terminology from "regulatory assessment statement" to "regulatory impact statement".

Part 9 Amendment of State Penalties Enforcement Act 1999

Clause 173 provides that this part amends the *State Penalties Enforcement Act 1999*.

Clause 174 replaces section 152 and inserts new sections 152A – 152I.

Section 152 provides the Registrar with a power to give a written notice requiring the provision of information in a person's knowledge, or documents in a person's possession or control. The notice must specify the information or documents that must be produced and the time and way they must be produced.

It is not necessary that the written notice relate to information or documents dealing with a particular person, such as a named enforcement debtor. A notice can require the provision of information or documents generally, subject to the requirement being made for the administration or enforcement of the Act. For instance, a notice may require access to a database of information for a data matching exercise.

Failure to comply with the notice is an offence, unless the person has a reasonable excuse. It is a reasonable excuse not to provide information or a document if the person on whom the notice is served reasonably suspects that doing so is likely to endanger the safety of a person.

Example

As part of a data matching exercise, the SPER Registrar wishes to verify the accuracy of its debtor address details. The Registrar issues a notice under section 152 requiring another government agency to provide certain bulk information data sets derived from the agency's client database. In complying with the notice, the government agency compiles a data set consisting of over 200 client address details. Of these 200 address details, the agency identifies that disclosure of 5 clients' addresses is reasonably likely to endanger the safety of those 5 clients.

The government agency is required to comply with the notice under section 152 by providing the required information for the 195 clients for whom the agency does not have any safety concerns, and may refuse to provide the information in relation to the other 5 clients.

Section 152 does not apply to the Queensland Police Service. Rather, a request for information from the Commissioner of the police service would be made under section 151.

New section 152A provides the Registrar with a power to require a person, by written notice, to attend before the Registrar at a reasonable time and place to provide information or documents within the person's knowledge, possession or control. The information may be required to be given on oath or the information or documents verified by statutory declaration. Similarly to section 152, these powers must be exercised for the administration or enforcement of the Act. Further, as is the case for section 152, this section does not apply to the Queensland Police Service.

Failure to comply with a notice is an offence, unless the person has a reasonable excuse. It is a reasonable excuse for a person not to provide information or a document if the person reasonably suspects that doing so is likely to endanger the safety of a person.

If a person, other than an enforcement debtor or their representative, is required under new section 152A to attend before the Registrar, they are entitled to be paid attendance expenses as prescribed under a regulation.

New section 152B provides for the recording of questions asked by the Registrar and the information given in response by a person required to attend before the Registrar under new section 152A. The recording must be done with the person's knowledge and, upon request, the person is to be provided with a copy of the recording.

New section 152C provides that the Registrar may, by written notice, require certain documents or information to be translated into English and converted into Australian currency. Failure to comply with the requirement is an offence.

If a person does not comply with the requirement, the Registrar may have the material translated or converted and the cost of doing so will be recoverable from the person.

New section 152D provides that a person must comply with a requirement under sections 152 or 152A, even though the information or document provided may be incriminating. However, such incriminating information or documents will not be admissible against the person in criminal proceedings, except proceedings in relation to the falsity or misleading nature of the information or document. This protection extends to evidence directly or indirectly derived from the information or document.

New section 152E provides that a person commits an offence where the person gives the Registrar a document containing information that the person knows or should reasonably know is false or misleading in a material particular. Subsection (2) specifies when the offence under subsection (1) will not apply to a person.

New section 152F creates an offence where a person states anything to the Registrar that the person knows or should reasonably know is false or misleading.

New section 152G prohibits the disclosure of confidential information acquired by an official in the official's capacity to anyone else, subject to the exceptions stated in subsection (1). Where confidential information is acquired under section 151, section 152G prohibits the official from disclosing the information unless the disclosure is permitted under section 151. For other confidential information, it must not be disclosed unless permitted under new sections 152G or 152H.

The obligation of non-disclosure extends to a person who is, or has been, engaged in the administration or enforcement of the *State Penalties Enforcement Act 1999*.

The extent to which disclosure is permitted under section 152G depends on whether the information is personal confidential information or other confidential information. The Registrar may disclose personal confidential information, being information that identifies, or is likely to identify, a person or disclose information about the person's affairs, only in the circumstances stated in section 152G(2). These circumstances include the following:

- to the person to whom the information relates,
- to another person where the Registrar is satisfied they are acting for the person to whom the information relates, or where express or implied consent to the release has been given by the person to whom the information relates e.g. an enforcement debtor writes to a member of Parliament raising issues regarding their enforcement debt;
- where another law expressly requires or permits the disclosure; and
- for the administration or enforcement of the State Penalties Enforcement Act 1999 or a revenue law e.g. providing information to the Commissioner of State Revenue for the administration of the *Duties Act 2001*.

Other confidential information, which is more general in nature e.g. enforcement debt collection statistics, may be disclosed where the Registrar considers it appropriate.

The intention of new section 152G is to protect the confidentiality of certain information and is not intended as a general enabling provision for the dissemination of information by the Registrar. Accordingly, new section 152G confirms that it creates no right in any person to be given confidential information.

New section 152H deals with the disclosure of confidential information in two further cases.

The first case is where a person knowingly acquires confidential information without lawful authority, or receives confidential information that the person knows, or ought to know, is confidential. The person cannot disclose that information except if permitted under this section or, where section 151 applies, except if that section authorises the disclosure.

The second case applies where the Registrar has disclosed confidential information to a person under section 152G. The person may further disclose that information only in the circumstances stated in section 152H(3). For instance, there is no limitation on the further disclosure of confidential information to the person to whom the information relates. In addition, the person receiving the information from the Registrar under section 152G may use it for the purpose for which it was disclosed.

New section 152I provides that a person engaged in the administration or enforcement of the *State Penalties Enforcement Act 1999* cannot be compelled to disclose confidential information or matters relating to that confidential information in the course of legal proceedings, unless those legal proceedings are for the administration or enforcement of the Act.

Part 10 Amendment of Statutory Instruments Act 1992

Clause 175 provides that this part amends the *Statutory Instruments Act 1992*.

Clause 176 amends section 4 to remove the reference to Part 5, given Part 5 of the *Statutory Instruments Act 1992* is to be repealed.

Clause 177 omits Part 5 to avoid potential conflicts between the content of Part 5 and the revised Regulatory impact statement system Guidelines.

Part 11 Amendment of Taxation Administration Act 2001

Clause 178 provides that this part amends the *Taxation Administration Act 2001*.

Clause 179 amends section 111 to clarify that, under section 111(2)(d), the Commissioner of State Revenue may disclose personal confidential information for the administration or enforcement of a royalty law as defined in new section 111(7).

It also inserts new subsection (2)(h) to allow the Commissioner of State Revenue to disclose personal confidential information to the Registrar of the SPER for the administration or enforcement of the *State Penalties Enforcement Act 1999*.

Part 12 Amendment of Vocational Education, Training and Employment Act 2000

Clause 180 provides that this part amends the *Vocational Education, Training and Employment Act 2000* (VETE Act). This part omits Chapter 5,

part 1, that is, the statutory position and functions of the Training Ombudsman and also omits references throughout the VETE Act to the Training Ombudsman.

Clause 181 amends Chapter 5 heading to omit the words 'Ombudsman and'.

Clause 182 omits Chapter 5, part 1 (Training Ombudsman) from the VETE Act. The effect of this clause is that the statutory position and functions of the Training Ombudsman no longer exist upon commencement of the clause.

Clause 183 replaces the heading of Chapter 5, part 3 with a new heading 'Other provisions about Skills Queensland's functions'.

Clause 184 amends section 183B to remove the requirement that an information notice for a decision to refuse an employment exemption states that an application may be made to have the decision reviewed by the Training Ombudsman. However, the information notice will still be required to state that an application can be made to QCAT for review of the decision.

Clause 185 amends section 183C to remove the requirement that an exemption notice or information notice about an employment exemption states that the an application may be made to have the decision reviewed by the Training Ombudsman. However, the exemption notice or information notice will still be required to state that an application can be made to QCAT for review of the decision.

Clause 186 omits section 224(2) effectively removing the reference to time limits for an appeal to QCAT of decisions reviewable by the Training Ombudsman as there will no longer be reviews of decisions by the Training Ombudsman. Instead, the new section 224(2) retains the ability to make an application directly to QCAT for review of a decision in accordance with the QCAT Act.

Clause 187 amends section 277 to omit from the definition of 'official' the reference to the Training Ombudsman. Section 277 provides for the offence of a person making a false or misleading statement to an official.

Clause 188 amends section 284 to remove the requirement for the Training Ombudsman to disclose any conflicts of interest to the Minister.

Clause 189 amends section 286(3)(c) to remove the reference to disclosures required to be made to the Training Ombudsman being exempt from the confidentiality offence under subsection (2).

Clause 190 amends section 289(2)(a) and (3) to omit references to the Training Ombudsman in relation to proving evidentiary matters in proceedings under the VETE Act.

Clause 191 amends section 290(3) to omit the reference to the Training Ombudsman being an indemnified person under the VETE Act.

Clause 192 inserts a new Chapter 10, part 8 'Transitional provisions for the Fiscal Repair Amendment Act 2012'.

The new section 407 provides for the definitions of '*commencement'* and '*former ombudsman'* for the purposes of Chapter 10, part 8.

The new section 408 provides that upon commencement the person holding appointment as the Training Ombudsman immediately before commencement goes out of office. Subsection (2) provides that no compensation is payable to the former ombudsman. Any entitlements to unused leave and superannuation will be payable to the Training Ombudsman in accordance with the terms of their appointment.

The new section 409 provides that on commencement, documents and records of the Training Ombudsman become documents and records of the department.

The new section 410 provides for a transitional regulation making power. This section and any transitional regulation made under it will expire 1 year after commencement. This transitional regulation making power may be used to provide for, allow or facilitate a matter relating to the omission of provisions in the VETE Act about the Training Ombudsman. Subsection (2) sets out a non-exhaustive list of the matters for which the transitional regulation may provide.

Clause 193 provides for the amendment of the Schedule 3 Dictionary to remove the definitions of 'adverse decision about an employment exemption', 'ombudsman' and 'referrable matter' as these terms are only used in Chapter 5, part 1. Subsection (2) provides for the definition of 'information notice' to refer to omit the reference to the Training Ombudsman.

Part 13 Repeals and amendment of other Acts

Division 1 - Repeals

Clause 194 repeals the *Brisbane Markets Act 2002* and the *Family Security Friendly Society (Distribution of Moneys) Act 1991*.

Division 2 – Amendments of other Acts

Clause 195 refers to the Schedule, which details the minor and consequential amendments.

Schedule – Acts Amended

Child Care Act 2002

Clause 1 omits Division 4 to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Coastal Protection and Management Act 1995

Clause 1 omits section 54(4) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Corporations (Ancillary Provisions) Act 2001

Clause 1 omits section 23(3) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Disaster Management Act 2003

Clause 1 omits section 67(5) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Clause 2 omits section 72(5) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Evidence Act 1977

Clause 1 amends section 47(2) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Legislative Standards Act 1992

Clause 1 amends section 2 definition of 'significant subordinate legislation' to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Marine Parks Act 2004

Clause 1 amends section 16(2) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Clause 2 inserts a definition in section 16(8) to reflect amendment made to section 16(2) in *Clause 1* above.

Clause 3 omits section 19(5) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Motor Racing Events Act 1990

Clause 1 omits section 50 to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Parliament of Queensland Act 2001

Clause 1 amends section 93(2)(b) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Clause 2 amends section 93(2) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Public Health Act 2005

Clause 1 omits section 323(6) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Public Safety Preservation Act 1986

Clause 1 omits section 14(6) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Supreme Court of Queensland Act 1991

Clause 1 amends section 88 heading to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Clause 2 amends section 88(1) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Tobacco and Other Smoking Products Act 1998

Clause 1 amends section 14 heading to update a cross-reference to the *Gaming Machine Act 1991.*

Clause 2 amends the Schedule to update a cross-reference to the *Gaming Machine Act 1991*.

Transport Operations (Marine Safety) Act 1994

Clause 1 omits section 45(3) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Transport Operations (Passenger Transport) Act 1994

Clause 1 omits section 92(3) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Water Act 2000

Clause 1 omits Chapter 2, Part 3, Division 2, subdivision 6 to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Clause 2 omits section 71 to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.

Wet Tropics World Heritage Protection and Management Act 1993

Clause 1 omits section 41(5) to reflect the repeal of Part 5 of the *Statutory Instruments Act 1992*.