

Treasury (Cost of Living) and Other Legislation Amendment Bill 2012

Explanatory Notes

General Outline

Policy Objectives

The Treasury (Cost of Living) and Other Legislation Amendment Bill 2012 (the Bill) amends legislation to implement a number of election commitments. Specifically, the Bill amends the:

- *Duties Act 2001* to reinstate the transfer duty home concession, the previous transfer duty rate structure and previous phasing-out point of \$550,000 for the reducing rebate for the transfer duty first home concession for transactions entered into on or after 1 July 2012;
- *Payroll Tax Act 1971* to increase the exemption threshold from \$1 million to \$1.1 million from 1 July 2012;
- *Electricity Act 1994* to freeze the regulated standard residential retail electricity tariff (Tariff 11) at 2011-12 prices (plus the cost of the Commonwealth Government's carbon tax) for one year from 1 July 2012 and to display carbon price impacts on electricity bills;
- *Queensland Competition Authority Act 1997* to facilitate the establishment of an Office of Best Practice Regulation within the Queensland Competition Authority; and
- *Building Act 1975 and Property Agents and Motor Dealers Act 2000* to remove the requirements to prepare and provide a sustainability declaration prior to the sale of residential dwellings.

The Bill also includes an amendment to the *Carers (Recognition) Act 2008* to streamline the information included in agency annual reports.

Reasons for the Bill

As part of the *Lower Cost of Living for Families* Package for Queenslanders, it was announced that the transfer duty home concession available for the acquisition of a person's principal place of residence is to be reinstated from 1 July 2012. The concession had been removed with effect from 1 August 2011. The Bill amends the *Duties Act 2001* to reinstate the home concession and make associated changes in accordance with the election commitment.

The LNP's Blueprint for Queensland Small Business provides a policy commitment to expand the payroll tax threshold from \$1 million to \$1.6 million over six years with the first threshold increase to be implemented on 1 July 2012. The Bill amends the *Payroll Tax Act 1971* to increase the payroll tax exemption threshold to \$1.1 million from 1 July 2012 to implement the first stage of the election commitment.

As part of this package, the Government also announced that the standard residential electricity tariff, Tariff 11, would be frozen at current 2011-12 tariff levels, plus the cost of the Australian Government's carbon tax, for one year commencing 1 July 2012, and that the cost of the carbon price and the renewable energy target would be displayed on household electricity bills from 1 July 2012. The Bill amends the *Electricity Act 1994* to implement the Government's election commitments.

Prior to the 2012 election the LNP committed to reduce real estate red tape by repealing the sustainability declaration legislation. The Bill amends both the *Building Act 1975* and *Property Agents and Motor Dealers Act 2000* to fulfil this commitment.

Achievement of the Objectives

Duties Act 2001

Under the *Duties Act 2001*, transfer duty applies to the transfer of dutiable property in Queensland, including land. Currently, a concession is available for the transfer, or agreement for the transfer of a person's first home (first home concession). No duty applies for homes up to \$500,000 and a phasing-out rebate applies for values up to \$600,000. To qualify, the person must never have previously held an interest in another residence and must satisfy occupancy requirements.

Prior to 1 August 2011, a duty concession was also available for the transfer, or agreement for the transfer, of a home (home concession). Like

the first home concession, occupancy requirements applied. However, the home did not need to be the person's first home. A concessional transfer duty rate of \$1 for each \$100 or part of \$100 applied to the first \$350,000 of the consideration or value of the home. Duty at the general rates applied to any remaining part of the consideration or value.

The home concession was removed from 31 July 2011. At the same time, there were minor reductions in transfer duty rates. The phasing-out point for the reducing rebate for the first home concession was also increased from \$550,000 to \$600,000 as first home buyers would be transitioning to higher general transfer duty rates.

The Bill amends the *Duties Act 2011* to reinstate the transfer duty home concession, the previous transfer duty rate structure and previous phasing-out point of \$550,000 for the reducing rebate for the first home concession for transactions entered into on or after 1 July 2012. It does this by reinstating the relevant provisions of the *Duties Act 2001* as they existed immediately prior to 1 August 2011.

Reintroduction of the home concession from 1 July 2012 will provide a duty benefit to home buyers where the agreement or transfer is entered into on or after that date. The Bill therefore also introduces into the *Duties Act 2001* a provision to ensure that taxpayers who artificially structure their affairs, such as by cancelling existing contracts and entering into new contracts after 1 July 2012, solely to gain the benefit of the concession do not benefit.

Payroll Tax Act 1971

Under the *Payroll Tax Act 1971*, payroll tax is imposed at the rate of 4.75% on taxable wages paid or payable in a financial year. Currently, payroll tax is chargeable when the total yearly Australian taxable wages of an employer, or those of a group of employers, exceed the exemption threshold of \$1 million. Once total yearly Australian wages exceed the exemption threshold, the employer, or designated group employer for a group of employers, may claim a deduction from their Queensland taxable wages. The maximum deduction is \$1 million which phases out at a rate of \$1 for every \$4 of taxable wages above the threshold. Employers with payrolls over \$5 million receive no deduction.

The Bill amends the *Payroll Tax Act 1971* to increase the payroll tax threshold to \$1.1 million from 1 July 2012 while retaining the current \$1 in \$4 rate of reduction. The amount at which the deduction reduces to zero will therefore increase from \$5 million to \$5.5 million.

Building Act/Property Agents and Motor Dealers Act

The substantive provisions for the sustainability declaration requirements are set out in Chapter 8A of the *Building Act 1975* and Chapter 11, part 5 *Property Agents and Motor Dealers Act 2000*. The Bill omits these provisions and makes consequential amendments to the two Acts, including the insertion of transitional provisions. The transitional provisions reflect the existing law and provide necessary certainty for buyers, sellers and real estate agents.

The repeal will apply to properties that are advertised for sale at the time that the amendments commence. This means that where a sustainability declaration has been prepared prior to the repeal taking effect it will no longer be necessary for either the real estate agent or the seller to continue making the sustainability declaration available to prospective buyers.

Electricity Act

To ensure the Minister responsible for energy has sufficient flexibility to set Tariff 11 in accordance with the Government's decision to freeze Tariff 11 (plus carbon costs) for the 2012-13 tariff year only, the proposed amendments to the *Electricity Act 1994* are required. A regulation-making power has also been inserted to give the Minister the ability to make a regulation requiring a distribution entity to pay an amount to retailers to mitigate the impact of the price freeze, if required.

The Bill also amends the *Electricity Act 1994* to implement the Government's commitments to require retailers to display the cost of the Australian Government's carbon price and the renewable energy target on household electricity bills from 1 July 2012. Under the amendments, retailers will be required to include a statement prescribed in regulation on residential bills for electricity, based on an estimate determined by the Queensland Competition Authority.

Queensland Competition Authority Act

To facilitate the establishment of the Office of Best Practice Regulation within the Queensland Competition Authority, the Bill amends the *Queensland Competition Authority Act 1997* to provide the Authority with the following functions to, under the direction of the Ministers:

- investigate and report on any matter relating to competition, industry, productivity or best practice regulation;
- review and report on regulatory assessment statements; and

- review and report on existing legislation.

Alternatives to the Bill

There are no alternative ways to properly give effect to the policy objectives of the election commitments relating to Queensland's revenue legislation.

Building Act/Property Agents and Motor Dealers Act

The sustainability declaration requirements have legislative force. The only way to remove the requirements is to repeal the provisions.

Electricity Act

There are no alternative ways to properly give effect to the policy objectives of the election commitments relating to the current standard residential electricity tariff, Tariff 11, or ensuring retailers display the cost of the carbon price and renewable energy target on residential electricity bills from 1 July 2012.

Queensland Competition Authority Act

There are no alternative ways to facilitate the establishment of the Office of Best Practice Regulation within the Queensland Competition Authority.

Estimated Cost for Government Implementation

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

Building Act/Property Agents and Motor Dealers Act

Costs associated with the repeal will be limited to informing the real estate industry and the community of the repeal. These costs are not expected to be significant and will be funded through existing resources.

Electricity Act

Modest implementation costs of approximately \$200,000 are expected in relation to the amendments to require carbon pricing to be included on residential electricity bills. These principally relate to managing enquiries on how the carbon price estimates have been determined.

Queensland Competition Authority Act

The implementation costs in relation to the *Queensland Competition Authority Act 1997* have yet to be quantified and will depend on the scope of activities directed by the Ministers.

Consistency with Fundamental Legislative Principles

The amendments to Queensland's revenue legislation do not infringe any fundamental legislative principles.

Building Act/Property Agents and Motor Dealers Act

Repeal of the sustainability requirement does not infringe any fundamental legislative principles.

Electricity Act

The amendments to Queensland's electricity legislation do not infringe any fundamental legislative principles.

Queensland Competition Authority Act

Section 10(e) of the *Queensland Competition Authority Act 1997* currently allows the Ministers to direct the Queensland Competition Authority to investigate, and report to the Ministers on, any matter relevant to the implementation of competition policy. The Bill broadens section 10(e) by enabling the Ministers to direct the Authority to investigate and report on any matter relating to competition, industry, productivity or best practice regulation.

This amendment may raise issues with regard to fundamental legislative principles in relation to the rights and liberties of individuals, given that, under section 12(5) of the Act, the Ministers may apply all or stated provisions of part 6 of the Act to an investigation by the Authority under a section 10(e) direction. Part 6 of the Act contains provisions relating to investigations by the Authority, including powers to require witnesses to attend hearings or produce documents, which may attract penalties if a person does not comply with a requirement.

This is justified on the basis that part 6 provisions will not apply to all investigations that the Authority may carry out in relation to a section 10(e) direction; only those investigations specified by the Ministers under the direction. For certain investigations, it may be necessary for these provisions to apply in order for the Authority to properly carry out the investigation. The Ministers can apply all or stated provisions of part 6 to

an investigation as appropriate. It is also noted that part 6 provisions are applied to a range of other investigations carried out by the Authority in relation to its other functions.

Consultation

The Government announced reinstatement of the home concession and the increase in the payroll tax exemption threshold as an election commitment. Further consultation was not considered necessary.

Building Act/Property Agents and Motor Dealers Act

The Government announced its intention to repeal the sustainability requirements in an election commitment. Further consultation was not considered necessary.

Electricity Act

Limited consultation has been undertaken with retailers on the Government's commitment to include carbon price information on electricity bills.

Queensland Competition Authority Act

Given that the amendments to the *Queensland Competition Authority Act* are not expected to have an impact on the community, no public consultation was considered necessary.

Notes on Provisions

Part 1 Preliminary

Clause 1 cites the short title of the Bill.

Clause 2 provides when various provisions of the Bill commence.

Part 2 Amendment of *Building Act 1975*

Clause 3 provides that Part 2 amends the *Building Act 1975*.

Clause 4 removes references to the sustainability declaration from the simplified outline of the main provisions of the *Building Act 1975*.

Clause 5 removes references to the sustainability declaration from the Chapter 8A, heading.

Clause 6 removes Chapter 8A, part 1 of the *Building Act 1975*. In doing so it repeals the substantive requirements relating to the preparation of sustainability declarations prior to advertising a property for sale.

Clause 7 repeals section 258(2)(d) of the *Building Act 1975* and in doing so removes the power of the Chief Executive to issue guidelines about compliance with the sustainability declaration requirements.

Clause 8 inserts a new part 14 into Chapter 11— Savings and transitional provisions of the *Building Act 1975*.

New section 308 (Continuation of ss 246I and 246J in relation to particular sustainability declarations) applies if, before the commencement, a document that is or purports to be a current sustainability declaration for a class 1a or 2 building was provided to the buyer of a property.

The purpose of the provision is to ensure that the repealed sections 246I and 246J continue to apply for sustainability declarations that were

prepared prior to the repeal. In doing so the provision maintains the status quo for sellers, buyers and agents by:

- (a) ensuring that false or misleading information in a sustainability declaration may give rise to a claim for damages, but does not allow a buyer to terminate a contract. This will allow buyers to continue to claim compensation in these circumstances, but not to terminate a contract based on information in the sustainability declaration.
- (b) specifying that agents are not liable for publishing false or misleading sustainability declarations based on information supplied by sellers.

Clause 9 amends Schedule 2 of the *Building Act 1975* to remove definitions that were required for the sustainability declaration provisions.

Part 3 **Amendment of *Carers (Recognition) Act 2008***

Clause 10 provides that Part 3 amends the *Carers (Recognition) Act 2008*.

Clause 11 omits section 10 on reporting obligations. These will instead be specified in the *Annual report requirements for Queensland Government agencies*. Disclosure of information detailed in the *Annual report requirements for Queensland Government agencies* is mandated by the *Financial and Performance Management Standard 2009*.

Part 4 **Amendment of *Duties Act 2001***

Clause 12 provides that Part 4 amends the *Duties Act 2001*.

Clause 13 reinstates the heading for Chapter 2 Part 9 to refer to *homes*.

Clause 14 reinstates section 85 to include a reference to *home* in the purpose of Part 9.

Clause 15 reinstates the heading for Chapter 2 Part 9 Division 2 to refer to *homes*.

Clause 16 reinstates section 86 to also define a *home*.

Clause 17 reinstates section 86B(2) to include reference to an interest in land on which both a home or first home is constructed.

Clause 18 reinstates the heading for Chapter 2 Part 9 Division 3 to include reference to *homes*.

Clause 19 reinstates section 91 to provide formulae for calculating transfer duty on a dutiable transaction relating to the acquisition of a home that is not a first home.

Clause 20 amends section 92 to reinstate the formulae in subsection (2) to calculate transfer duty on a dutiable transaction relating to a first home. It also reinstates subsection (4).

Clause 21 reinstates and renumbers section 93 to ensure that the mixed and multiple claims provisions also apply to the interests of transferees, lessees or vested persons acquiring a home that is not a first home.

Clause 22 reinstates the heading for Chapter 2 Part 14 Division 1 to refer to *homes*.

Clause 23 reinstates section 153 to include references to the reinstated section 91 and *home*.

Clause 24 reinstates section 154 to include references to the reinstated section 91 and *home*.

Clause 25 reinstates section 155 to include reference to the reinstated section 91.

Clause 26 omits section 272. *Clause 27* amends section 272A and renumbers it as section 272. *Clause 26* and *clause 27* reinstate section 272 to ensure that the home mortgage provisions align with the definitions in reinstated section 86.

Clause 28 inserts a new Part 16 in Chapter 17.

New section 629 makes transitional provisions for amendments concerning the home concession. Subsection (1) provides that certain home concession, first home concession and vacant land concession provisions and provisions relating to reassessments involving home concessions, first home concessions and vacant land concessions (the relevant provisions), as in force on 1 July 2012, apply to dutiable transactions only if liability for transfer duty arises on or after 1 July 2012.

Subsection (2) is an anti-avoidance provision which provides that the relevant provisions in force immediately before 1 July 2012 continue to

apply to certain transfers, or agreements for the transfer, of residential land or vacant land made on or after 1 July 2012.

Clause 29 reinstates schedule 3 and the rates of duty on dutiable transactions and relevant acquisitions for landholder and corporate trustee duty.

Clause 30 reinstates schedule 4A and Schedule 4B. Schedule 4A states the concession (rebate) amounts for transfer duty on residential land containing a first home. Schedule 4B states concession (rebate) amounts for transfer duty on vacant land on which a new home is to be constructed.

Clause 31 reinstates the definitions of *first home*, *home* and *occupancy requirement* in the Dictionary contained in schedule 6.

Part 5 **Amendment of *Electricity Act* 1994**

Clause 32 provides that Part 5 amends the *Electricity Act 1994*.

Clause 33 amends section 55D to make clear that the new section 55GA is a condition of a retail authority.

Clause 34 inserts a new section 55GA to provide that it is a condition of a retail authority that where a retail entity sells electricity to a residential customer, the retailer must include a prescribed statement relating to carbon and renewable energy target cost information in the customer's electricity bill. For the financial year 2012-2013, the prescribed statement will be a Queensland Competition Authority estimate of the general costs of the Australian Government's clean energy and carbon pricing scheme. For subsequent financial years, the Queensland Competition Authority estimate will also include estimated costs of the Australian Government's renewable energy target.

To remove any potential for operational inconsistency with Commonwealth law, such as the Australian Consumer Law, a provision is included to make clear that the new licence condition does not authorise either the Queensland Competition Authority, or a retail entity to engage in conduct that contravenes a Commonwealth law applying to the entity.

Clause 35 inserts a note in section 90 which refers to the inclusion of a new transitional provision in Part 12 of Chapter 14 which applies to the determination of notified prices for the tariff year commencing 1 July 2012.

Clause 36 amends section 90AB(3) to correct a minor administrative error.

Clause 37 amends section 264 to include a transitional arrangement which provides for the making of a regulation under schedule 2, section 1 of the *Electricity Act 1994* to require a distribution entity to pay an amount to retailers that will have the net effect of lowering the total network charge payable by the retailer to the distribution entity. The new sections 264(3) and 264(4) apply to the 2012-13 financial year only, commencing 1 July 2012.

Clause 38 inserts a new Part 12 into Chapter 14 providing transitional arrangements for the amendments relating to section 90 and section 55GA.

A transitional arrangement is contained in a new section 332 and relates to the determination of notified prices for the 2012-13 financial year. The new section prescribes that if, under section 90, the Minister is the pricing entity for a particular tariff for the 2012-13 tariff year, the Minister is not required to have regard to the matters mentioned in section 90(5)(a) in relation to the particular tariff. Accordingly, section 332 will allow the Minister to set a particular tariff for the 2012-13 tariff year, commencing 1 July 2012, without regard to the actual costs of supplying electricity or the impact of the pricing decision on competition in the Queensland retail electricity market.

The transitional arrangements for section 55GA are contained in a new section 333 and provide that the new retail authority condition only applies in relation to electricity bills issued on or after 1 July 2012.

Part 6 Amendment of *Payroll Tax Act* 1971

Clause 39 provides that Part 6 amends the *Payroll Tax Act 1971*.

Clause 40 amends section 17, which provides the formulae for calculating the actual or fixed periodic deduction for an employer who is not a

designated group employer, by increasing the amount for E from 83333 to 91666 to reflect the increase in the payroll tax exemption threshold.

Clause 41 amends section 23, which provides the formula for calculating the periodic deduction for an employer who is a designated group employer, by increasing the amount for E from 83333 to 91666 to reflect the increase in the payroll tax exemption threshold.

Clause 42 amends section 29, which provides the formula for calculating the annual deduction for an employer who is not a designated group employer, by increasing the amount for K from 1,000,000 to 1,100,000 to reflect the increase in the payroll tax exemption threshold.

Clause 43 amends section 33, which provides the formula for calculating the annual deduction for an employer who is a designated group employer, by increasing the amount for K from 1,000,000 to 1,100,000 to reflect the increase in the payroll tax exemption threshold.

Clause 44 amends section 37, which provides the formula for calculating the final deduction for an employer who is not a designated group employer, by increasing the amount for K from 1,000,000 to 1,100,000 to reflect the increase in the payroll tax exemption threshold.

Clause 45 amends section 41, which provides the formula for calculating the final deduction for an employer who is a designated group employer, by increasing the amount for K from 1,000,000 to 1,100,000 to reflect the increase in the payroll tax exemption threshold.

Clause 46 amends the reference to \$19230 in section 52(a) to \$21153, to reflect the effect of the increased payroll tax exemption threshold on an employer's obligation to register for payroll tax.

Clause 47 amends the reference to \$83333 in section 87(1)(b) to \$91666, to reflect the effect of the increased payroll tax exemption threshold on an employer's notification obligations where they are exempt from lodging periodic returns.

Clause 48 inserts a new section 97A(2) to provide that the amendments made by this Bill apply for payroll tax levied on taxable wages paid or payable in the financial year starting on 1 July 2012 and each later financial year.

Part 7 **Amendment of *Property Agents and Motor Dealers Act 2000***

Clause 49 provides that Part 2 amends the *Property Agents and Motor Dealers Act 2000*.

Clause 50 removes references to the sustainability declaration from the purposes of Chapter 11 of the *Property Agents and Motor Dealers Act 2000* set out in section 363.

Clause 51 removes the note to section 470(1)(e) of the *Property Agents and Motor Dealers Act 2000* which related to conduct of a real estate agent that would not give rise to a claim due to the operation of section 373I. The note is redundant as section 373I will be repealed along with the rest of Chapter 11 part 5.

Clause 52 removes Chapter 11, part 5 of the *Property Agents and Motor Dealers Act 2000*. In doing so it repeals the substantive requirement imposed on real estate agents to make sustainability declarations available to prospective buyers.

Clause 53 inserts a new part 10 into Chapter 19 - Transitional and savings provisions.

New section 653 (Continuation of ch 11, pt 5, div 3 in relation to particular sustainability declarations) applies if, before the commencement, the seller's agent:

- (a) published a relevant advertisement for the sale that includes information about a current sustainability declaration for the dwelling; or
- (b) gave, or made available to a person, a current sustainability declaration for the dwelling.

The purpose of the provision is to ensure that the repealed chapter 11, part 5, division 3 continues to apply for the seller and buyer of the dwelling, and the seller's agent, in relation to the sustainability declaration.

This will maintain the status quo for sellers, buyers and agents by:

- (a) ensuring that false or misleading information in a sustainability declaration may give rise to a claim for damages, but does not allow a buyer to terminate a contract. This will allow buyers to continue to claim compensation in these circumstances, but not to terminate a contract based on information in the sustainability declaration.

- (b) specifying that agents are not liable for publishing false or misleading sustainability declarations based on information supplied by sellers.

Clause 54 amends Schedule 2 of the *Property Agents and Motor Dealers Act 2000* to remove definitions that were required for the sustainability declaration provisions.

Part 8 **Amendment of *Queensland Competition Authority Act 1997***

Clause 55 provides that Part 8 amends the *Queensland Competition Authority Act 1997*.

Clause 56 amends the Authority's functions listed under section 10. Section 10(1)(e) is amended to enable the Ministers to direct the Authority to investigate and report to the Ministers on any matter relating to competition, industry, productivity or best practice regulation. New section 10(1)(b) enables the Ministers to direct the Authority to review and report on regulatory assessment statements. New section 10(1)(c) enables the Ministers to direct the Authority to review and report on existing legislation.

Clause 57 amends section 12(5) to provide that, for a direction made by the Ministers under sections 10(1)(b) or 10(1)(c), the direction may state how the reviews are to be conducted by the Authority and the matters to be included in the reports by the Authority.