

Revenue and Other Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Revenue and Other Legislation Amendment Bill 2016 (the Bill).

Policy objectives and the reasons for them

Amendments to revenue legislation

The Bill amends Queensland's revenue legislation to protect the State's revenue, give legislative effect to taxpayer beneficial administrative arrangements, maintain the currency of the legislation, and ensure its continued proper operation and administration (the revenue legislation amendments).

The *Duties Act 2001* (Duties Act) is amended to reinstate the previous interpretation and practice relating to a particular requirement for the transfer duty home concessions, following a decision by the Queensland Court of Appeal in *Commissioner of State Revenue v Di Sipio & Anor* [2015] QCA 198. The Duties Act is also amended to give legislative effect to an administrative arrangement which extends the insurance duty exemption for private health insurance contracts to overseas student health cover and temporary visa holder health cover. Amendments also give effect to another administrative arrangement which extends the corporate reconstruction exemptions from transfer duty and landholder duty to dutiable transactions which are statutory vestings. Minor amendments are made to remove a redundant transfer duty exemption and correct a drafting error.

The *Land Tax Act 2010* (Land Tax Act) is amended to give legislative effect to an administrative arrangement which removes a condition in the land tax discount for subdividers requiring the parcels of land to have been subdivided from the one larger parcel. Minor amendments are also made to the land tax exemption where a person transitions from their old home to a new home, to clarify that the new home must be an established home.

The *Taxation Administration Act 2001* (Taxation Administration Act) is amended to clarify the operation of provisions which specify the time at which a document is taken to be given to, and when a payment is taken to be received by, the Commissioner of State Revenue (Commissioner) and to support electronic lodgements of documents and electronic payments. To support these amendments, the *Taxation Administration Regulation 2012* (Taxation Administration Regulation) will be amended to prescribe the time in which an electronic payment is taken to be received by the Commissioner.

Further amendments to the Taxation Administration Act clarify that costs ordered by the Queensland Civil and Administrative Tribunal are included in a person's tax law liability, and correct a cross-reference.

Amendments to superannuation legislation

Australian superannuation funds are regulated by the Australian Government and the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) requires employers to give employees the option to choose the superannuation fund to which their superannuation is paid (choice of fund).

The choice of fund obligations are automatically satisfied when an employer pays superannuation contributions to certain funds, including an unfunded public sector scheme such as the State Public Sector Superannuation Scheme (QSuper), or are made under Commonwealth prescribed legislation, such as contributions made under the *Local Government Act 2009* (LG Act) to the Local Government Superannuation Scheme.

Queensland's core State Government employees and most Local Government employees are required by State legislation to contribute to QSuper and the Local Government Superannuation Scheme respectively. The Queensland Government will amend the *Superannuation (State Public Sector) Act 1990* (QSuper Act) and the *Local Government Act 2009* (LG Act) to provide these employees with choice of fund, to reflect today's mobile employment arrangements.

The Queensland Government will also amend the QSuper Act and the LG Act to enable QSuper and LGIASuper to open their membership to the general public (open fund).

Further amendments to the QSuper Act:

- change the name of QSuper's board of trustees from 'Board of Trustees of the State Public Sector Superannuation Scheme' to 'QSuper Board' to provide clarity to existing and potential members;
- allow the QSuper Board to appoint an auditor other than the Queensland Audit Office, but maintain the requirement that a copy of the auditor's report be provided to the Treasurer; and
- remove the restriction on who can promote QSuper (e.g. external financial advisers).

An amendment to the *Right to Information Act 2009* (RTI Act) exempts the QSuper Board from its operation. This will maintain the confidentiality of the QSuper Board's commercially sensitive information in an open fund environment.

The LG Act will also be amended to change the name of the Local Government Superannuation Scheme to LGIASuper and the name of the Queensland Local Government Superannuation Board to LGIASuper Trustee to reflect a change in the business names adopted by the board.

Amendment of the *Queensland Plan Act 2014* (QP Act)

An objective of the Bill is to minimise the administrative burden by streamlining the approach to government planning and reporting. The Bill removes any potential for conflict between the Government Response to the Queensland Plan required under the QP Act and the statement of government objectives for the community made under the *Financial Accountability Act 2009* (FA Act), ensuring the primacy of the FA Act.

Achievement of policy objectives

Duties Act 2001

Transfer duty home concessions

The *Duties Act 2001* (Duties Act) imposes transfer duty on the dutiable value of dutiable transactions, such as the transfer of land in Queensland. Transfer duty concessions are available for certain dutiable transactions, namely transfers, vestings and certain leases, where a person acquires their home, first home, or vacant land on which the person will construct their first home (home concessions). The person must satisfy eligibility criteria specified in the Duties Act to obtain a home concession. Once obtained, the home concession is subject to requirements specified in the Duties Act relating to the occupation and disposal of the land (occupancy requirements). The Commissioner of State Revenue (Commissioner) must reassess transfer duty without a home concession applying if the person fails to comply with an occupancy requirement, unless an exception applies.

One occupancy requirement is that the acquirer, as owner, must occupy the land as their principal place of residence within 12 months of the date the acquirer is entitled to possession of the land under the dutiable transaction for which the concession is sought (transfer date). Relevantly, another occupancy requirement is that the acquirer must not dispose of the land before occupying it (pre-occupation non-disposal requirement). A further occupancy requirement is that the acquirer must not dispose of the land within 12 months of occupying it.

As the policy of the home concessions is to assist home ownership, rather than investment, the occupancy requirements seek to exclude claims for the home concessions where the acquirer derives income from, or sells, the land within certain timeframes. However, a short transitional period of occupation by the vendor or pre-existing tenant of up to six months after the transfer date is allowed under the pre-occupation non-disposal requirement, as it is considered not to be inconsistent with the acquirer's occupation of the land as their principal place of residence.

As a consequence, the Duties Act specifies that land will be disposed of if an acquirer transfers, leases or otherwise grants exclusive possession of part or all of the land to another person. However, the Duties Act recognises two circumstances that will not be treated as a disposal, where another person (the occupier) has exclusive possession of the land before the acquirer occupies the land. Using the dutiable transaction of transfer to illustrate these, there will not be a disposal where:

- The occupier is the transferor of the land, and vacates the land as soon as reasonably practicable or within six months after the transfer date, whichever is the earlier.
- The occupier has exclusive possession of the land under a lease granted before the transfer date (i.e. a pre-existing lease) and vacates the land on the termination of the current term of the lease or within six months after the transfer date, whichever is the earlier.

It has been the Commissioner's longstanding practice that a disposal by the acquirer occurs at the transfer date if land is purchased subject to a pre-existing lease granted by the vendor. Eligibility for the home concession was therefore considered to be lost in these circumstances, unless the tenant under the pre-existing lease vacated the land at the earlier of the termination of the current term of the pre-existing lease or within six months after the transfer date.

This practice was overturned in the Queensland Court of Appeal's decision in *Commissioner of State Revenue v Di Sipio & Anor* [2015] QCA 198, delivered on 20 October 2015. Relevantly the Court held that no disposal occurs merely because land is purchased subject to a pre-existing lease and that the acquirer must do a positive act in relation to the pre-existing lease for a disposal to occur. This potentially allows the acquirer to earn rental income from a pre-existing tenant for a period longer than six months after the transfer date and still retain the benefit of a home concession, provided the acquirer occupies the land within 12 months of the transfer date. Permitting this longer period of investment income is not consistent with the policy of the home concession, and poses a risk to revenue.

The home concession provisions in the Duties Act will be amended to reinstate the previous interpretation and practice in relation to disposal. Specifically, the acquirer will dispose of the land if it is acquired subject to a lease granted before the transfer date. The amendments will apply to all dutiable transactions to which the home concessions apply, not just a transfer. The existing exception to disposal where the tenant under a pre-existing lease vacates the land at the earlier of the termination of the current term of the pre-existing lease or within six months after the transfer date will then operate as intended. The amendments commence on Royal Assent and will operate prospectively, to apply to dutiable transactions where liability for transfer duty arises on or after commencement of the amendments.

Other amendments

The Duties Act also imposes insurance duty on premiums charged under contracts of general, life and accident insurance. An exemption applies for private health insurance contracts, which operates by cross-referencing the relevant Commonwealth health insurance legislation. In 2008, the cross-reference was amended to reflect changes to the Commonwealth legislation. In 2014 it was identified that the amendments to the Duties Act in 2008 inadvertently excluded overseas student health insurance contracts and temporary visa holder health insurance contracts from the exemption.

From 14 October 2014, an administrative arrangement has operated to extend the insurance duty exemption to cover overseas student health insurance contracts and temporary visa holder health insurance contracts. The Duties Act is amended to give effect to this administrative arrangement from 14 October 2014.

The Duties Act provides corporate reconstruction exemptions from transfer duty and landholder duty for certain dutiable transactions undertaken in the context of corporate reorganisations. A vesting of dutiable property by, or expressly authorised by, statute law (statutory vesting) is not a dutiable transaction to which the corporate reconstruction exemptions currently apply, whereas the exemptions do currently apply to court-ordered vestings. As it is possible for corporate reconstructions to occur by way of statutory vesting, an administrative arrangement has operated from 30 November 2015 to extend the corporate reconstruction exemptions to statutory vestings, pending legislative amendment. The Duties Act is amended to give effect to this administrative arrangement from 30 November 2015.

Additional amendments remove a redundant transfer duty exemption for transactions under the repealed *Anzac Square Development Project Act 1982* and correct a typographical error in the example contained in schedule 4 to the Duties Act.

Land Tax Act 2010

The *Land Tax Act 2010* (Land Tax Act) imposes land tax for each financial year on the taxable value of all taxable land owned by a person at midnight on 30 June of the preceding financial year. Taxable land is freehold land in Queensland which is not exempt land. The taxable value of taxable land is based on the statutory valuation of the land determined by the State Valuer-General under the *Land Valuation Act 2010*.

Where a person owns at least six parcels of undeveloped subdivided land that are held for sale, a 40 per cent discount may be applied to the value of each parcel of land, subject to certain conditions being satisfied (subdivider discount). The current drafting of one of the conditions requires the parcels of land to have been subdivided from the one larger parcel. However, the drafting of the equivalent condition in the subdivider discount of the repealed *Land Tax Act 1915* (1915 Act) did not require the parcels to have been subdivided from the one larger parcel.

Despite the change in the drafting of the condition, industry and the Office of State Revenue (OSR) continued to operate under the 1915 Act position on the basis that when the Land Tax Act replaced the 1915 Act, it was not intended to make significant policy changes or otherwise alter the land tax revenue base. The potential impact of the drafting change was identified in 2013 as an unintended change to the condition. An administrative arrangement has operated from 4 October 2014 to restore the position under the 1915 Act. The Land Tax Act is amended to give effect to this administrative arrangement from 4 October 2014.

Land which is used as a person's home is exempt land. Generally, only one parcel of land can be used as a person's home and therefore be exempt from land tax. However, where a person is transitioning from their old home to their new home and owns both homes when a liability for land tax arises, both parcels of land will be exempt, subject to certain conditions being satisfied (transitional home exemption). Minor amendments are made to the transitional home exemption to clarify that the person's new home must be an established home, not vacant land. This reflects the intended policy of the transitional home exemption and the general operation of the Land Tax Act in requiring actual use of the land in determining eligibility for an exemption.

Taxation Administration Act 2001 and Taxation Administration Regulation 2012

The *Taxation Administration Act 2001* (Taxation Administration Act) and *Taxation Administration Regulation 2012* (Taxation Administration Regulation) collectively provide an administrative framework to support Queensland's revenue laws. The existence of a single set of administrative provisions which apply to all revenue laws ensures consistency and is administratively efficient.

Where a liability for tax arises under a revenue law, certain obligations are imposed on taxpayers including obligations to lodge certain documents and pay tax within the timeframes specified in the revenue laws. The Taxation Administration Act contains provisions which specify the time at which a document is taken to be given to, and when a payment is taken to be received by, the Commissioner of State Revenue (Commissioner). These provisions are amended to remove uncertainty and support electronic lodgements of documents and electronic payments. The Taxation Administration Regulation is also amended to prescribe the time in which an electronic payment is taken to be received by the Commissioner.

A minor amendment to the Taxation Administration Act clarifies that costs ordered by the Queensland Civil and Administrative Tribunal (QCAT) are included in a person's tax law liability to provide consistency with the treatment of court-ordered costs. Another minor amendment corrects a cross-reference within the Taxation Administration Act which was not updated when consequential amendments were made in 2009 to give review jurisdiction to QCAT.

Superannuation State Public Sector Act 1990 and Local Government Act 2009

The Bill amends the *Superannuation (State Public Sector) Act 1990* (QSuper Act) and the *Local Government Act 2009* (LG Act) to provide Queensland's State core public sector and Local Government employees with choice of fund. Consistent with Commonwealth legislation, choice of fund will not extend to members of a defined benefit category.

The QSuper Act and LG Act will prescribe QSuper and LGIASuper as the respective default superannuation funds for State public sector and Local Government employees who do not exercise choice of fund and provide that the level of superannuation contributions made for, or required to be made by, a person will be unaffected by the exercise of choice of fund. The QSuper Act and LG Act are also amended to allow the general public to become members of QSuper and LGIASuper respectively.

Amendments to the QSuper Act will also change the board's legal name to 'QSuper Board', allow the QSuper Board to appoint an auditor other than the Auditor-General and allow parties unrelated to the QSuper Board to promote QSuper.

The QSuper Act is amended to allow the CEO to be employed by an entity wholly or ultimately owned by the QSuper Board, providing additional flexibility. The QSuper Act is also amended to remove provisions that allow the QSuper Board to deduct surcharge debts from a member's superannuation account with the provisions to be appropriately inserted into the *Superannuation (State Public Sector) Deed 1990*.

The QSuper Act allows the Treasurer to direct employers to pay amounts required to fund employees' defined benefit entitlements. In the ordinary course of business this occurs on an ongoing basis through fortnightly employer contributions, paid at a set percentage of employees' salaries as determined by the State Actuary and based on a broad set of economic and financial assumptions.

Situations can occur in which actual salaries exceed these assumptions and result in defined benefit entitlements increasing beyond what has been funded within the scheme. These shortfalls can be resolved by directing the responsible employers to pay an additional amount into the scheme. However, in circumstances where these additional amounts are not paid into the scheme, an amendment to the QSuper Act will allow the Treasurer to adjust an employee's defined benefit multiple. Importantly, a member's defined benefit entitlement that has accrued up to the point of the increase will not be reduced and the adjustment will be made in accordance with actuarial advice.

The LG Act will also be amended to change all references of the Local Government Superannuation Scheme to LGIASuper and the name of the Queensland Local Government Superannuation Board to LGIASuper Trustee, following the fund's name change in February 2016.

Right to Information Act 2009

The Bill amends the RTI Act to exempt the QSuper Board's functions from its operation given its move into a competitive environment.

Amendment of the QP Act

The Bill will achieve its objectives principally by replacing the requirement to develop and implement a government response with a requirement for the Premier to consider the Queensland Plan in developing the statement of government objectives for the community under the FA Act. The Bill sets out the interaction between the QP Act and the FA Act.

The Bill also repeals state and local government reporting obligations to remove the additional layer of reporting created by the QP Act. The requirement for the Premier to provide an annual report on implementation progress is retained as an accountability measure.

Alternative ways of achieving policy objectives

Queensland's State taxes are administered under legislation. Consequently, the policy objectives for the revenue legislation amendments can only be achieved by legislative amendment.

The policy objectives in relation to the QSuper Act, LG Act, RTI Act and QP Act amendments can only be achieved by legislative amendment.

Estimated cost for government implementation

The implementation costs for the revenue legislation amendments are not expected to be significant as the amendments fall within existing frameworks of administration. The costs are expected to be met from existing budget allocations.

The Australian Government has introduced a new compulsory standard for the payment of superannuation contributions, known as SuperStream. State Government employers are transitioning to a new software solution over the coming months to comply with the standard, which will also facilitate Government employers to give effect to choice of fund. Some additional costs will be incurred by Government employers to implement processes and procedures to facilitate employees exercising choice of fund but these are not expected to be significant and are expected to be met from existing budget allocations.

There is no additional cost to government for implementation of the QP Act amendments.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Amendments to revenue legislation

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively – Legislative Standards Act 1992, section 4(3)(g)

Clauses 10 and 16 (Transitional provisions for Revenue and Other Legislation Amendment Act 2016)

The proposed amendments to the Duties Act and Land Tax Act which give legislative effect to administrative arrangements commence retrospectively from the date the administrative arrangements took effect. It is not considered that this breaches fundamental legislative principles as the amendments provide a benefit to taxpayers by extending the availability of tax exemptions and concessions which have operated under administrative arrangements, most of which have been made publically available.

Amendments to superannuation legislation

A Bill should authorise the amendment of an Act only by another Act – Legislative Standards Act 1992, section 4(4)(c).

Clause 27 (Replacement of ss 218 and 219)

The proposed amendment to section 218 of the LG Act allows the trust deed to place constraints on the availability of the scheme to persons. It is not considered that this breaches fundamental legislative principles as it is appropriate for the board to have ultimate control over the application of the scheme to persons. This section merely gives effect to ordinary commercial arrangements.

Clause 62 (Replacement of pt 3, divs 3 and 4)

Proposed section 14C of the QSuper Act does not authorise the deed to amend the QSuper Act. Rather it authorises the deed to set specific QSuper membership requirements on individual persons. It is not considered that this breaches fundamental legislative principles as it is appropriate for the QSuper Board to have ultimate control over the application of the scheme to persons. This section merely gives effect to ordinary commercial arrangements.

Proposed section 15A of the QSuper Act allows the Minister to declare, by written notice, who is a 'core government employee'. It is not considered that this breaches fundamental legislative principles as it is appropriate for the Minister, as Treasurer, to exercise this power as the Treasurer represents the Queensland Government in its capacity as the primary employer sponsor of QSuper. In addition, the Minister's written notice is subordinate legislation and therefore, subject to the scrutiny of the Legislative Assembly.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review – Legislative Standards Act 1992, section 4(3)(a).

Clause 54 (Replacement of s 2A (Eligible schemes))

Proposed replacement section 2A of the QSuper Act allows the Minister to declare, by written notice, that an entity is a unit of the State public sector and thereby its employees are eligible for membership of QSuper under the Queensland Government's arrangements. It is not considered that this breaches fundamental legislative principles as employers either request or consent to participation in QSuper. It is appropriate for the Minister, as Treasurer, to exercise this power because the Treasurer is responsible for overseeing the impact QSuper's contributing employers have on defined benefit liabilities. In addition, the Minister's written notice is subordinate legislation and therefore, subject to the scrutiny of the Legislative Assembly.

Clause 68 (Insertion of new s 28A)

Proposed section 28A of the QSuper Act provides the Treasurer with a discretionary power to adjust an employee's accrued multiple in the standard defined benefit category. The power can only be used when there has been an increase in the employee's defined benefit salary in circumstances where there has not been an increase in the employee's total remuneration, e.g. when an allowance is converted to base salary. It is not considered that this breaches fundamental legislative principles as the 'windfall' benefit caused by an arbitrary increase in salary is not a right of the employee. Further, the power supports prudent financial management of defined benefit liabilities, essential to sustaining the scheme and protecting the rights of all defined benefit members.

Consultation

Amendments to revenue legislation

Community consultation was not undertaken in relation to the revenue legislation amendments in the Bill. Consultation was not considered necessary or appropriate as these amendments are necessary to protect the State's revenue or have either operated under administrative arrangements, or make technical changes to the legislation to ensure its continued effective operation and administration.

Amendments to superannuation legislation

Consultation was undertaken with QSuper, LGIAsuper, the Local Government Association of Queensland, Brisbane City Council and relevant employers and unions on the superannuation policy objectives.

Amendment of the QP Act

In March 2016, a draft Bill of the QP Act amendments was released for targeted consultation with the Queensland Plan Ambassadors Council and the Local Government Association of Queensland.

Consistency with legislation of other jurisdictions

Amendments to revenue legislation

In relation to the amendment to give effect to an administrative arrangement which has operated from 14 October 2014 to extend the insurance duty exemption to cover overseas student health insurance contracts and temporary visa holder health insurance contracts, while there is no harmonised insurance duty exemption model across jurisdictions, the amendment brings Queensland's exemption into line with that of most states and territories.

Otherwise, the Bill is not uniform with or complementary to legislation of the Commonwealth or another state or territory.

Amendments to the QSuper Act and the LG Act

All jurisdictions except for South Australia offer their State public sector workforces choice of fund. Most default funds for public sector employees in the other jurisdictions are open funds.

Amendment of the QP Act

Not applicable for QP Act amendments.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that when enacted, the Bill may be cited as the *Revenue and Other Legislation Amendment Act 2016*.

Clause 2 provides that parts 2, 5 to 8 and 11 and schedule 1 will commence on a day to be fixed by proclamation.

Part 2 Amendment of City of Brisbane Act 2010

Clause 3 provides that part 2 amends the *City of Brisbane Act 2010*.

Clause 4 amends section 211 to omit the reference to the Local Government Superannuation Scheme to reflect the amendments to the LG Act which will provide choice of fund to Local Government employees including employees of Brisbane City Council.

Part 3 Amendment of Duties Act 2001

Clause 5 provides that part 3 amends the *Duties Act 2001*.

Clause 6 amends section 154 of the *Duties Act 2001* by omitting subsection (2) and inserting a new subsection (2) to provide that a transferee, lessee or vested person for land will also dispose of the land if that person acquires the land subject to a lease, granted before the transfer date, over all or part of the land. A new subsection (2AA) is inserted to provide for the exceptions to disposal, which were contained in the previous subsection (2).

Clause 7 amends section 375 of the *Duties Act 2001* by altering the scope of contracts of insurance to which an exemption from insurance duty under that section applies. It removes the previous test of whether the contract of insurance was entered into in the course of an insurer's health insurance business as defined in the *Private Health Insurance Act 2007* (Cwlth) (the PHI Act), section 121-1. That test is replaced with a requirement that a contract of insurance is issued under the PHI Act, and provides hospital benefits or medical benefits or both, whether or not other benefits are also provided.

Clause 8 amends section 404 of the *Duties Act 2001* by renumbering paragraphs (b) to (e) and inserting a new paragraph (b). Section 404 provides how chapter 10, part 1, which provides exemptions for particular duties for corporate reconstruction (as defined in section 398 of the *Duties Act 2001*), applies to particular transactions. 'Corporate reconstruction' is defined in section 398 by reference only to dutiable transactions that are transfers or agreements for the transfer of dutiable property. However, section 404 extends the scope of the exemption by treating particular transactions as transfers or agreements for the transfer for the purpose of chapter 10, part 1.

New section 404(b) provides that, for chapter 10, part 1, a statutory vesting of dutiable property is treated as a transfer of the property to the person in whom it is vested from its owner immediately before the vesting takes place, thus extending the corporate reconstruction exemption to dutiable transactions that are statutory vestings, and which otherwise meet the conditions of the exemption.

Clause 9 amends section 430 of the *Duties Act 2001* to remove paragraph (a) and renumber the remaining paragraphs accordingly.

Clause 10 inserts transitional provisions under new part 22 in chapter 17 of the *Duties Act 2001* for the operation of section 154 as amended by clause 6, section 375 as amended by clause 7 and section 404 as amended by clause 8 respectively.

Section 663(1) provides that section 154(2) and (2AA) as inserted by the Bill apply to a dutiable transaction mentioned in section 154(1)(a) only if liability for transfer duty on the transaction arises on or after the commencement. Subsection (2) provides that section 154(2) as in force before the commencement continues to apply to a dutiable transaction mentioned in section 154(1)(a) if liability for transfer duty on the transaction arose before the commencement.

Section 664 provides that section 154(2) as in force before the commencement, continues to apply for the purposes of section 291(1)(a).

Section 665 provides that section 375 as amended by the Bill, applies to contracts of insurance for which insurance duty would otherwise be payable on or after 14 October 2014.

Section 666 provides that section 404 as amended by the Bill applies to a vesting of dutiable property that takes place on or after 30 November 2015.

Clause 11 amends paragraph (e) in the example in Schedule 4 of the *Duties Act 2001* concerning partnership and trust acquisitions and relevant acquisitions for corporate trustees by replacing the stated unencumbered value of dutiable property in that paragraph with \$500,000, from a previous erroneously included figure of \$100,000.

Part 4 Amendment of Land Tax Act 2010

Clause 12 provides that part 4 amends the *Land Tax Act 2010*.

Clause 13 amends section 30(1)(g) of the *Land Tax Act 2010* to remove a previous condition for the exemption for subdivided land not yet developed, and replace it with a new requirement that the subdivider own at least five other parcels which also meet the conditions for the exemption outlined in paragraphs (a) to (e) of section 30(1).

Clause 14 amends section 42B of the *Land Tax Act 2010*, to clarify the conditions for the concession for the transitional home exemption for a new home before transitioning from a current home by inserting an additional condition for the exemption in new sub-paragraph (1)(b)(ii). New sub-paragraph (1)(b)(ii) requires that on the liability date for the current financial year, the new home for the purposes of the section is capable of being used by a person for residential purposes, whether alone or with another person. Existing sub-paragraphs (ii) and (iii) are renumbered to (iii) and (iv) respectively.

Clause 15 amends paragraphs (b) and (c) in section 44A(2) of the *Land Tax Act 2010* to reflect the addition of new sub-paragraph (1)(b)(ii) in section 42B, and the consequential renumbering of the existing paragraphs (ii) and (iii) to (iii) and (iv) respectively.

Clause 16 inserts a transitional provision under new section 99 of the *Land Tax Act 2010* for the amendments made to section 30 by clause 13, so that section 30 as amended by the Bill is taken to have had effect on and from 4 October 2014.

Part 5 Amendment of Local Government Act 2009

Clause 17 provides that the Bill amends the *Local Government Act 2009* (LG Act).

Clause 18 amends section 208 to change the name of the Queensland Local Government Superannuation Board to LGIASuper Trustee to reflect the change made to the fund's name in February 2016.

Clause 19 amends section 209 to change the name of the Queensland Local Government Superannuation Board to LGIASuper Trustee and to change the name of the Local Government Superannuation Scheme to LGIASuper to reflect the change made to the fund's name in February 2016.

Clause 20 amends section 210 to change the name of the Queensland Local Government Superannuation Board to LGIASuper Trustee and to change the name of the Local Government Superannuation Scheme to LGIASuper to reflect the change made to the fund's name in February 2016.

Clause 21 amends section 211 to change the name of the Queensland Local Government Superannuation Board to LGIASuper Trustee to reflect the change made to the fund's name in February 2016.

Clause 22 inserts a new heading for Chapter 7, Part 2, Division 1 (Division 1 Preliminary).

Clause 23 amends section 216 to change the purpose of Chapter 7 Part 2 to provide that the membership of LGIASuper will be open to the general public.

Clause 24 amends section 216A to omit an existing definition, insert new definitions and amend an existing definition to reflect that employees will be provided with choice of fund and to reflect the change of name of the Local Government Superannuation Scheme to LGIASuper.

Clause 25 inserts a new section 216B, a new section 216C and a new heading for Chapter 7, Part 2, Division 2 (Division 2 LGIASuper). The new section 216B provides a definition of 'permanent employee' for an employee of a Local Government and a definition of 'permanent employee' for an employee of a local government entity by relocating the existing definitions of 'permanent employee' for these employees from subsections 2 to 7 of section 219 into the new section 216B. The new section 216C provides a simplified definition of 'permanent employee' for an employee of Brisbane City Council by relocating and combining the existing definitions of 'prescribed employee' and 'permanent employee' for an employee of Brisbane City Council from section 220A(2), section 303(1) of the *Local*

Government Regulation 2012, Schedule 8 (Dictionary) of the the *Local Government Regulation 2012*, and clause 260 of the LGIASuper trust deed into the new section 216C.

Clause 26 amends section 217 to change the name of the Queensland Local Government Superannuation Board to LGIASuper Trustee and to change the name of the Local Government Superannuation Scheme to LGIASuper to reflect the change made to the fund's name in February 2016. Clause 26 also amends a note which signposts section 220 to reflect an amendment to that section.

Clause 27 replaces section 218 to provide that the membership of LGIASuper will be open to the general public. Clause 27 also replaces section 219 by omitting the requirement that superannuation contributions of employees must only be paid into LGIASuper, thereby providing these employees with choice of fund. The existing definitions of 'permanent employee' currently contained in subsections 2 to 7 of section 219 are relocated to the new section 216B.

The new section 219 prescribes LGIASuper as the default superannuation fund for the following categories of employees who do not exercise choice of fund:

- Local Government employees,
- employees of a local government entity, and
- employees of LGIASuper.

Clause 27 also inserts a new section 219A to relocate the existing requirements currently contained in subsections 1 and 2 of section 222 into the new section 219A.

Clause 28 amends section 220 to allow the employer superannuation contributions for employees, who are members of the accumulation category of LGIASuper, to be paid to a superannuation fund other than LGIASuper, thereby providing these employees with choice of fund. Choice of fund will not be provided to employees who are members of the defined benefit category of LGIASuper. The amendment to section 220 preserves the existing level of contributions that an employer must pay in respect of an employee.

Clause 29 amends section 220A to allow the superannuation contributions that an employee must make to be paid to a superannuation fund other than LGIASuper. The amendment to section 220A preserves the existing level of contributions that an employee must make.

Clause 30 is a consequential amendment which amends section 220B to reflect that employer contributions and employee contributions made under the amended sections 220 and 220A respectively may be paid to a fund other than LGIASuper.

Clause 31 omits sections 220C, 221 and 222. Section 220C is renumbered as the new section 221 and amended to reflect that employee contributions made under the amended section 220A may be paid to a fund other than LGIASuper. The existing section 221 is omitted as it is an obsolete provision. The existing section 222 is omitted and replaced with a new section 222. The existing requirements currently contained in subsections 3 and 4 of section 222 are relocated into the new section 222. The existing requirements currently contained in subsections 1 and 2 of section 222 are relocated into the new section 219A.

Clause 32 omits section 223 which will be an obsolete provision under choice of fund.

Clause 33 amends section 224 to reflect that superannuation contributions under choice of fund are paid funds other than LGIASuper. The time period (i.e. 14 days) in which contributions must be paid by an employer to an employee's superannuation fund is currently prescribed in the LGIASuper trust deed. The 14 day time period will now be prescribed directly in section 224.

Clause 34 is a consequential amendment which amends section 226 to reflect that choice of fund will be provided to Local Government employees.

Clause 35 omits section 227 which is an obsolete provision as the *Superannuation Industry (Supervision) Act 1993* (Cwlth) provides for the audit of superannuation funds.

Clause 36 inserts two new transitional provisions in a new Chapter 9 Part 10. The new section 313 puts beyond doubt that the change of name of the Queensland Local Government Superannuation Board and the change of name of the Local Government Superannuation Scheme are in name only. The new section 314 puts beyond doubt that all entitlements of current members are unaffected by the amendments.

Clause 37 amends schedule 4 (Dictionary) to omit an existing definition, insert new definitions and amend existing definitions to reflect that Local Government employees will be provided with choice of fund, to reflect the change of name of the Queensland Local Government Superannuation Board to LGIASuper Trustee and to reflect the change of name of the Local Government Superannuation Scheme to LGIASuper.

Part 6 Amendment of Queensland Plan Act 2014

Clause 38 provides that part 6 amends the *Queensland Plan Act 2014* (QP Act).

Clause 39 replaces section 3(b)(i), which provided for the main purposes of the Act to include implementation of the plan through the development of a government response to the Queensland Plan and to align the policies, programs and services of public authorities to the strategic direction of the government response.

The new section 3(b)(i) requires the Queensland Plan be considered in preparing a community objectives statement.

Clause 40 replaces section 8, which provided for the preparation of a government response to the Queensland Plan. A new section 8, consistent with one of the main purposes of the Act, outlined in the new section 3(b)(i), provides that the Premier must consider the Queensland Plan in preparing a community objectives statement.

Clause 41 omits part 3, division 2, which provided for a public authority's policies programs and services to align with the government response. The provision is no longer required, following the replacement of section 8, which provided for the preparation a government response.

Clause 42 renumbers part 3, division 3, to part 3 division 2 following the omission of part 3 division 2.

Clause 43 amends section 11 to include the definition of corporate plan from Schedule 2 Dictionary to be consistent with current drafting practice.

Clause 44 omits sections 13 and 14, which provided for public authorities and local governments to include statements about the Queensland Plan in their annual reports.

Clause 45 amends the part 5 heading to remove the reference to the government response.

Clause 46 omits section 18, which provided for the government response to be reviewed. This provision is no longer required, as the requirement for the preparation of a government response has been removed.

Clause 47 omits sections 40 and 41. These sections are no longer required following the removal of provisions relating to public service offices and public authorities.

Clause 48 amends schedule 2 (Dictionary) to insert the definition of a new term used in the provisions and omit definitions that are no longer required.

Part 7 Amendment of Right to Information Act 2009

Clause 49 provides that the Act amends the *Right to Information Act 2009* (RTI Act).

Clause 50 inserts new item 9A into schedule 2, which states that the board's functions under the QSuper Act are functions to which the RTI Act does not apply, necessary to protect the board's confidential information in an open fund environment.

Part 8 Amendment of Superannuation (State Public Sector) Act 1990

Clause 51 provides that the Act amends the *Superannuation (State Public Sector) Act 1990* (QSuper Act).

Clause 52 amends the long title to add persons that are not employed in the State public sector, relevant once QSuper becomes an open fund.

Clause 53 amends section 2 (Interpretation) to update existing definitions, insert new definitions and omit definitions that are no longer required.

Clause 54 replaces section 2A with a provision to retain the ability to declare a public sector entity as a unit of the State public sector and guarantee their employees QSuper membership.

Clause 55 amends section 3 to shorten the formal title of the board to the QSuper Board.

Clause 56 amends section 6A to expand the arrangements under which the CEO to the board can be employed to increase flexibility.

Clause 57 omits section 9A as it is incongruous for departmental employees to work for the board once QSuper becomes an open fund.

Clause 58 amends section 11 to relocate the definition of ‘investment manager’ from the *Interpretation* section into the section that sets out the investment provisions for the fund, aiding readability.

Clause 59 amends the heading of section 12A to clarify that the deed provides for membership categories.

Clause 60 omits sections 13, 13A, 13AA and 13B. These sections restricted QSuper membership to certain categories of employees and will not be applicable when QSuper becomes an open fund.

Clause 61 inserts into section 14 specific reference that the deed will contain, among other matters already listed, provisions around membership of the scheme.

Clause 62 removes existing provisions concerning membership that will not be applicable when QSuper becomes an open fund, removes provisions that are spent and removes provisions in relation to the surcharge which are more appropriately placed in the deed. New divisions 3 and 4 establish the process for admitting new public sector employers to QSuper and preserves the conditions of existing employees when membership may normally cease, for example the transfer of a function out of State control (particularly relevant for members of the defined benefit arrangements). New part 3AA:

- provides that core Government employees, as defined in a regulation, will have choice of fund;
- that QSuper will be the default fund for employees that do not make a choice election;
- preserves the existing contribution model for employees by required employers to retain QSuper’s rules irrespective of the fund to which contributions are paid; and
- allows QSuper to be the default fund for non-core Government employers.

Clause 63 amends section 15K to expand the arrangements under which staff of the Government Superannuation Officer can be employed to increase flexibility.

Clause 64 amends section 20A to allow the board to appoint an alternate auditor to the Auditor-General, which is more suitable for an open fund.

Clause 65 amends section 21 to remove the requirement for a person to be associated with the board before promoting the QSuper scheme, particularly relevant in an open fund environment.

Clause 66 omits section 22, which will not be required when QSuper becomes an open fund.

Clause 67 amends section 28 to clarify that the ability under the Act to enforce units of the State public sector to pay employer contributions applies only for employees in a defined benefit category.

Clause 68 inserts new section 28A, which provides the Treasurer with a discretionary power to adjust a member’s accrued multiple in the standard defined benefit category, in the manner recommended by an actuary. A defined benefit is calculated based on a person’s salary and an accrued multiple representing their years of scheme membership. Consequently, an increase in salary has an immediate increase in the accrued benefit. For accumulation account members, such an increase in salary will only affect future benefits. Promotional and general

increases in salary are reasonable where there is an increase in the person's total remuneration. However, in situations where the increase in salary has not increased overall remuneration, e.g. conversion of an allowance to base salary, an adjustment, in a method recommended by an actuary, will apply to defined benefit members' accrued multiples to offset the increase in the benefit caused by the unremunerative salary increase. Importantly, this will not reduce the person's accrued benefit excluding the increase.

Clause 69 omits section 30D, which refers to repealed subordinate legislation and is therefore no longer required.

Clause 70 omits parts 4A, 4B, 5 and 5A, which contain provisions that are spent and are therefore no longer required.

Clause 71 replaces the spent transitional provisions of part 6 with new transitional provisions to put beyond doubt that the change to the board is in name only and that all entitlements of current members are unaffected by the amendments.

Part 9 Amendment of Taxation Administration Act 2001

Clause 72 provides that part 9 amends the *Taxation Administration Act 2001*.

Clause 73 amends section 40 of the *Taxation Administration Act 2001* which provides when payments are received by the Commissioner of State Revenue (Commissioner). *Clause 73* omits and replaces subsection (2) to clarify that if an amount is tendered to the Commissioner on a day that is not a business day, or after 5p.m. on a business day, payment of the amount is taken to have been made on the following business day.

Additionally, *clause 73* inserts new subsection (3) which provides that if a regulation made under section 29(1)(b) allows an amount to be paid electronically and payment of the amount is made electronically, then subsection (2) does not apply to the amount. Section 29 provides that, subject to section 29A, an amount payable under a tax law must be paid to the Commissioner by cash or cheque or as prescribed under a regulation. Section 29A allows the Commissioner to give a written notice to a person requiring the person to pay any amount or a stated type of amount payable by the person under a tax law to the Commissioner by any prescribed electronic way or a stated prescribed electronic way. Section 4 of the *Taxation Administration Regulation 2012* prescribes that certain amounts payable under a tax law may be paid to the Commissioner using an electronic payment method, as defined.

Clause 74 amends section 61(1)(a) of the *Taxation Administration Act 2001* concerning interest on particular overpayments following a court's or QCAT's decision. The amendment updates a cross-reference to the section of the Act under which the Supreme Court's powers on appeal are specified by removing the reference to section 74 of the *Taxation Administration Act 2001* and replacing it with a reference to section 70C.

Clause 75 amends section 144 of the *Taxation Administration Act 2001*, which provides when a document is taken to be given to the Commissioner. *Clause 75(1)* makes a minor drafting amendment to section 144(1)(e). *Clause 75(2)* omits and replaces subsection (2) to clarify that if a document is given to the Commissioner on a day that is not a business day, or after 5p.m. on a business day, the document is taken to be given to the Commissioner on the following business day.

Additionally, clause 75(2) inserts new subsection (3) which provides that subsection (2) does not apply to a document given in the way mentioned in subsection 144(1)(e). Section 144(1)(e) provides that a document given by electronic communication to the Commissioner in compliance with an electronic communication notice is taken to be given at the time the communication enters an approved information system.

Clause 76 amends the definition of *tax law liability* in Schedule 2 of the *Taxation Administration Act* for the purposes of sections 34, 38, 40, 43 and 44, by replacing the current reference to “court ordered costs” with a reference to “costs ordered by a court or QCAT” to extend the definition to include costs ordered by QCAT.

Part 10 Amendment of Taxation Administration Regulation 2012

Clause 77 provides that part 10 amends the *Taxation Administration Regulation 2012*.

Clause 78 inserts new section 6A into the *Taxation Administration Regulation 2012*. Section 40(1)(b) of the *Taxation Administration Act 2001* provides that a payment made as prescribed under a regulation under section 29(1)(b) of the Act is received by the Commissioner at the time prescribed under the regulation. Section 4 of the Regulation prescribes that certain amounts payable under a tax law may be paid to the Commissioner using an electronic payment method, as defined. New section 6A(1) of the Regulation prescribes for the purposes of section 4 that a payment is received when the payment is credited to an account, with a financial institution, operated by the Commissioner in the performance of the Commissioner’s functions under section 8 of the Act. However, new section 6A(2) clarifies that if the payment is later dishonoured, the payment is taken not to have been received by the Commissioner.

Part 11 Amendment of other Acts

Clause 79 notes that schedule 1 amends the legislation it refers to.

Schedule Amendment of other Acts

Schedule 1 makes minor and consequential amendments to the *Ambulance Service Act 1991*, the *Education (Queensland Curriculum and Assessment Authority) Act 2014*, the *Further Education and Training Act 2014*, the *Government Owned Corporations Act 1993*, the *Industrial Relations Act 1999*, the *Land Court Act 2000*, the *Prostitution Act 1999*, the *Public Officers Superannuation Benefits Recovery Act 1988*, the *Queensland Competition Authority Act 1997*, the *Queensland Investment Corporation Act 1991*, the *Superannuation (Public Employees Portability) Act 1985*, the *TAFE Queensland Act 2013*, and the *Water Act 2000*. The amendments ensure these Acts are consistent with the superannuation policy objectives outlined above and/or allow for the scheme established under the QSuper Act to change name.