

# Revenue Legislation Amendment Bill 2014

## Explanatory Notes

### Short title

The short title of the Bill is the *Revenue Legislation Amendment Bill 2014*.

### Policy objectives and the reasons for them

The *Revenue Legislation Amendment Bill 2014* (the Bill) amends the following Acts to implement 2014-15 State Budget measures, implement reform initiatives or ensure their continued effective operation:

- *Duties Act 2001*
- *Land Tax Act 2010*
- *Mineral Resources Act 1989*
- *Payroll Tax Act 1971*
- *Petroleum and Gas (Production and Safety) Act 2004*
- *State Penalties Enforcement Act 1999*
- *Taxation Administration Act 2001*.

#### **Duties Act 2001**

The Bill amends the *Duties Act 2001* to remove a requirement of direct lineal relationship between the transferor and transferee for the family primary production business concession to apply. The amendment will allow more flexible succession planning in that context.

Another amendment to the *Duties Act 2001* limits the application of an exemption for conversion from home unit company holdings to strata title, to home unit companies that are in existence as at the commencement date of the amending legislation, and where shares in the company have been issued or are under agreement to be issued. The amendment will ensure the exemption only applies as intended. In addition, a redundant part of the exemption will be removed.

#### **Land Tax Act 2010**

The Bill amends the *Land Tax Act 2010* to provide a new exemption from land tax for land that does not receive a home exemption because the owner is in the process of selling their old home and moving into a new one, where appropriate conditions are met. This will ensure equitable relief applies, whether or not a person's transitional home ownership arrangements span a land tax liability date.

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

The Bill amends the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* to improve royalty administration and debt collection, and strengthen royalty compliance. A number of the amendments adopt provisions similar to those in the *Taxation Administration Act 2001*, which applies to State taxes.

Specifically the royalty amendments will:

- establish a clear and consistent assessment and reassessment framework for determining royalty liability;
- provide for the imposition of a penalty as an alternative to prosecution where royalty liability is understated, subject to remission;
- provide comprehensive information access and investigation powers;
- impose record keeping obligations to ensure information is kept for an appropriate time for determining a person's royalty liability;
- allow for the garnisheeing of amounts owed by a third party to a person to satisfy a royalty debt the person has to the State and, subject to particular safeguards, place administrators of royalty payers' property in the same position as the royalty payer with respect to their royalty liability;
- provide for consistent refund arrangements allowing refunds of overpaid royalty to be credited against current or future royalty liabilities;
- allow the date for lodging petroleum royalty returns to be brought forward for the protection of the public revenue and for the due date that would ordinarily apply on an assessment notice to be brought forward in certain cases;
- enable petroleum producers to make an election to change the basis on which their annual returns are lodged from a calendar year to a financial year, and vice versa; and
- support the use of approved information systems for royalty administration.

**Payroll Tax Act 1971**

The Bill amends the *Payroll Tax Act 1971* to provide an exemption for Queensland Government departments where particular criteria are met, and Queensland Hospital and Health Services. The amendments will increase the efficiency of internal government funding arrangements in appropriate circumstances.

**State Penalties Enforcement Act 1999**

As part of a reform programme for the State Penalties Enforcement Registry (SPER), the *State Penalties Enforcement Act 1999* will be amended to support a new service delivery model which is directed at enabling the SPER functions to be delivered more effectively and efficiently. The model will allow the Registrar of SPER to engage debt collection agents, either directly or through an intermediary, to assist in the collection of unpaid infringement notices and court ordered amounts.

## **Taxation Administration Act 2001**

The Bill amends the *Taxation Administration Act 2001* to remove a limitation on the persons who may be appointed as the Commissioner of State Revenue, for flexibility.

## **Achievement of policy objectives**

### **Duties Act 2001**

#### Extending the family primary production business transfer duty concession

A transfer duty concession under the *Duties Act 2001* applies to transfers of land used for a family primary production business or personal property used to conduct the business on the land, where conditions are met. The transfer must be by way of gift, and currently must be between lineal descendants such as parent to child or grandparent to grandchild. In addition, the concession is available for certain indirect acquisitions involving family partnerships, family trusts and family unit trusts, again by way of gift.

The purpose of the concession is to facilitate succession planning to allow certain transfers, which would ordinarily occur out of a deceased estate, to be undertaken at an earlier time.

To recognise that direct lineal descendants are not always the beneficiaries under a will, or the family members who choose to continue the family business, amendments will remove the requirement of direct lineal relationship between the transferor and transferee for the family primary production business concession to apply. However, a family relationship will still be required, as will the requirement that the transfer be by way of gift.

The amendment will take effect on assent.

#### Limiting transfer duty exemption for conversion of company titled home units to strata title

Prior to the introduction of strata title legislation, a home unit company structure provided the primary ownership method for individual units in an apartment building. In these structures, a company owns the land and building and exclusive occupancy rights for a particular apartment are attached to a share issued to the apartment owner.

Section 133 of the *Duties Act 2001* provides an exemption (strata title exemption) for transfers of strata titled lots as a consequence of conversion of ownership from a home unit company. The purpose of the exemption is to encourage adoption of a strata title ownership structure under the *Building Units and Group Titles Act 1980* or *Body Corporate and Community Management Act 1997* where that choice was not originally available. While it is still possible for the home unit company structure to be used for new developments, the strata title system was intended to replace it and, until recently, use of company title schemes was uncommon.

However, the Office of State Revenue has become aware of new developments being structured to utilise the strata title exemption. Developments are structured initially as a home unit company, shares are issued to apartment purchasers and the home unit company scheme is converted almost immediately to strata title. Transfer duty would have been payable if the purchaser merely acquired the strata titled lot.

This use of the exemption is inconsistent with its policy intent and provides an unintended competitive advantage to those who use home unit company structures for new developments.

Amendments will ensure the exemption is limited to its intended application, but also that specified purchasers who have already committed to acquiring property in new developments utilising a home unit company structure on the basis that no duty will apply are not unfairly prejudiced. This will be achieved by making it a condition of the exemption that:

- as at the date of commencement of the amendment, both:
  - shares in a home unit company have been issued to a person, and
  - under the company's constitution, the holder of the shares must be entitled to occupy a separate area; or
- as at the date of commencement of the amendment, the transferee in the transaction for which exemption is sought under section 133 has entered into an agreement with the transferor corporation, the terms of which include that:
  - the transferee purchases the relevant shares; and
  - because of the purchase of the shares, the transferee is entitled to occupy the separate area which will become the transferee's lot once strata title is registered.

In addition, an existing paragraph of section 133 dealing with conversion to lots under plans registered under the *Building Units and Group Titles Act 1980* is removed as no new plans can be registered under that Act.

The amendments will take effect on assent.

### **Land Tax Act 2010**

To qualify for the home exemption under the *Land Tax Act 2010*, the land must generally have been continuously used by the owner for residential purposes in the six months prior to the annual land tax liability date (30 June). The home exemption currently only applies to one parcel of land at a land tax liability date, being the taxpayer's principal place of residence. This ensures potential for abuse is limited.

However, the limitation can result in inequitable outcomes where a person purchases their new home before the land tax liability date, but sells their old home after that date.

A new land tax exemption is proposed, subject to conditions. These conditions will ensure that an old home in the process of being sold, or a new home in the process of being moved into, is also exempted, provided that by the next land tax liability date:

- the taxpayer is entitled to the home exemption for the new home; and
- the taxpayer no longer owns the old home; and
- subject to an exception for some existing leases, no rent or income is received from the old home after it ceases to be used as the home of the owner or from the new home before it commences being used as the home of the owner.

If, after application of the exemption, the land owner fails to meet the eligibility conditions, they will be required to give notice to the Commissioner. The Commissioner will be required to reassess land tax without the benefit of the new exemption.

The amendments will take effect for land owned on and from midnight on 30 June 2014.

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

The Office of State Revenue is responsible for administering the royalty provisions of the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004*.

Effective royalty revenue management relies on voluntary compliance by royalty payers, coupled with an effective compliance programme to identify non-compliance. When non-compliance is identified, appropriate sanctions should apply.

Voluntary compliance is facilitated where a person's legislative obligations, and the sanctions for non-compliance, are clear and consistent. This is particularly the case for royalty, where a person may have obligations arising under both the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004*. However, the royalty administration framework of each Act has been separately developed over a period of time, with consequent inconsistencies and some deficiencies.

The Bill will therefore implement a number of reforms which will facilitate significant improvements in administration of the royalty base, delivering benefits to royalty payers and the State. A number of the amendments will adopt provisions consistent with those in the *Taxation Administration Act 2001*, which provides the administrative framework for taxes in Queensland, including the assessment and recovery of tax, imposition of penalties, record keeping obligations and powers of investigation. The *Taxation Administration Act 2001* has been used effectively for the administration and management of State tax revenue for a number of years and provides an appropriate framework for improving royalty administration.

Additional amendments are also being progressed to further improve administration of the royalty base and deliver benefits to royalty payers.

With the exception of the provisions dealing with record keeping obligations, the amendments to the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* commence on 1 July 2014.

*Assessments and reassessments*

The proper determination of a person's royalty liability is fundamental for providing the person with certainty about the amount payable and for ensuring the right amount is paid to the State. However, neither the *Mineral Resources Act 1989* nor the *Petroleum and Gas (Production and Safety) Act 2004* has a robust framework for assessing royalty liability.

The *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* will therefore be amended to provide a consistent assessment regime across both Acts, modelled on that in the *Taxation Administration Act 2001*, to clarify how liability for royalty and other amounts (royalty-related amounts) is determined. The assessment framework will also support the implementation of the new royalty penalty for understated royalty, where liability for the penalty will be triggered by the making of a default assessment, a reassessment of a default assessment or a reassessment increasing the royalty previously assessed for a period.

Under the new framework, an assessment must be made on lodgement of a royalty return, including if the liability is nil, and may also be made at any time in the absence of a return if the Minister is satisfied that there is a liability for a royalty-related amount.

Where a royalty-related amount has been incorrectly assessed, the Minister may make a reassessment for the correct amount. No time limits will apply for reassessments to increase liability. Reassessments decreasing liability will generally be required to be made within five years of the original assessment being made. This period is extended where a reassessment is required under either the *Mineral Resources Act 1989* or the *Petroleum and Gas (Production and Safety) Act 2004*, or where a reassessment has been requested within the five year period.

The new provisions, which commence on 1 July 2014, will specify the principles for how assessments and reassessments may be made, including an ability for the Minister to make an assessment or reassessment based on the available information considered relevant. Also, where a return, information or other document is not given to the Minister as required, an assessment or reassessment may be made on the basis of the amount the Minister reasonably believes to be the royalty liability and as if the document had been provided.

Where a person becomes aware that an assessment or reassessment of royalty-related amount was not, or is no longer, correct and the liability has been understated, they are required to notify the Minister. This allows the correct royalty liability to be determined.

Consistent with the *Taxation Administration Act 2001*, the Minister may require royalty to be paid earlier than the date ordinarily applying if the Minister reasonably believes it may not otherwise be recoverable. This provision complements the new garnishee provisions.

Transitional provisions clarify how the new assessment and reassessment provisions will apply in relation to prior period liabilities, including for the *Petroleum and Gas (Production and Safety) Act 2004* which currently has no concept of an assessment or reassessment being made.

### *Penalty for understated royalty*

Similarly to the *Taxation Administration Act 2001*, the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* provide for the imposition of interest for late payment of royalty and for offences for failing to meet royalty obligations. However, unlike the *Taxation Administration Act 2001*, there is currently no ability to impose an administrative penalty where royalty liability is understated.

To encourage voluntary compliance and provide a cost effective administrative alternative to prosecution for an offence, the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* will be amended to adopt an administrative penalty framework modelled on that in the *Taxation Administration Act 2001*. The royalty penalty amount will be imposed on the making of a default assessment, a reassessment of a default assessment or a reassessment increasing the royalty previously assessed for a period. The rate of the penalty is 75% of the royalty liability under a default assessment or the understated royalty, subject to a discretion to fully or partially remit it, and to increase it by up to 20% where a person has hindered or prevented the Minister from becoming aware of the nature and extent of their royalty liability.

Administrative guidelines for the remission of the royalty penalty amount will ensure that proper regard is had to the reasons for the understatement of liability and the royalty payer's culpability, if any. As the penalty is an alternative to prosecution of a person for an offence, the provisions will specify when it must be remitted or reinstated if prosecution action is commenced or withdrawn.

The royalty penalty amount may be imposed for any reassessment increasing royalty liability that is made on or after 1 July 2014, irrespective of whether the original assessment was made before or after 1 July 2014. Similarly, the royalty penalty amount may be imposed on a default assessment made on or after 1 July in relation to royalty payable for an earlier return period. However, to ensure that all royalty payers have the ability to avoid liability for the penalty if they have previously understated royalty liability, transitional provisions will apply to provide a penalty amnesty. This means that royalty penalty will not be payable if, within six months after the commencement of the new provisions, a person makes a voluntary disclosure to the Minister of the amount of the royalty that was understated for a previous period.

### *Investigation and access to information*

Protection of the State's royalty revenue base requires comprehensive investigation and information access powers for royalty investigators to identify royalty non-compliance and accurately determine a person's royalty liability. The continued implementation of the Office of State Revenue's royalty compliance program will increasingly involve clients with both petroleum and mineral royalty liabilities so it is vital to have consistent and effective investigation powers across the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004*. However, each Act currently has deficiencies or inconsistencies in the powers provided.

The *Taxation Administration Act 2001* provides a robust and comprehensive framework for access to information and documents for taxation administration and enforcement and for investigators conducting investigations of the State's revenue laws.

Accordingly, the current royalty investigation and information access provisions in the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* are being omitted and the investigation and information access provisions of the *Taxation Administration Act 2001* will be applied for royalty investigation purposes, subject to the changes and modification that are necessary to enable the *Taxation Administration Act 2001* provisions to operate appropriately in the royalty context. Applying the *Taxation Administration Act 2001* investigation and information access provisions for royalty purposes under the *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004* will also align the investigative regime across the State's royalties, ensuring consistent exercise of compliance powers and outcomes for the State's mineral and petroleum royalty payers.

The compliance powers which may be exercised by a royalty investigator include the following:

- to require the provision of information or documents to the Minister or a royalty investigator;
- to require a person to attend before the Minister or a royalty investigator to provide information, orally or in writing, or to produce documents;
- to enter places, subject to specified conditions;
- to exercise various powers, having entered a place; and
- to seize or retain documents or other things.

Given royalties are only imposed where a mineral or petroleum is mined or produced, royalty investigators will also be authorised to test a sample of a thing seized to determine whether it is a mineral or petroleum, even though the testing may result in the destruction of the sample.

These powers may be exercised only for the administration and enforcement of the royalty provisions of the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004*. Royalty investigators will be appointed by the Minister and will be appropriately qualified public service employees. Royalty investigators will be issued with an identity card that must be produced when exercising powers in relation to places.

Access to a place without a warrant will be permitted in specified circumstances, including with consent, when a public place is open to the public or, if an enterprise is conducted from a place, when it is being conducted or the place is otherwise open for entry (except that part of the place used as a residence). That is, access to places where an enterprise is conducted is not limited to usual hours of business if the enterprise actually operates at other hours. A warrant will be required for access to places in other cases.

To ensure the continued integrity of the State's royalty collections, a person will not be entitled to refuse to provide information or documents on the grounds that it may be incriminating. This ensures that the Minister or a royalty investigator can obtain all information necessary to properly determine a royalty liability. However, the use of the information in criminal proceedings will be limited to those cases where the falsity or misleading nature of the information or document is relevant e.g. where the information or documents provided are false. These amendments do not affect the doctrine of legal professional privilege.



### *Record keeping obligations*

Effective royalty revenue management relies on records being retained by royalty payers and being available for an appropriate time to enable royalty liability to be determined. While the *Mineral Resources Act 1989* requires royalty related records to be kept for seven years, there are no specific royalty record keeping obligations under the *Petroleum and Gas (Production and Safety) Act 2004*. In contrast, the *Taxation Administration Act 2001* requires records to be kept for five years and also specifies how they are to be kept and made available.

To provide consistency and clarity about royalty record keeping obligations for all royalty payers, the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* are being amended to adopt record keeping provisions consistent with those in the *Taxation Administration Act 2001*.

In addition to a requirement to keep records for five years, the provisions will specify how the records must be made available and will require they be written in English and have amounts expressed in Australian currency, or be capable of ready translation or conversion into the required form. In addition, the Minister will have the ability to require the translation or conversion of any document or information that the Minister reasonably believes is relevant to the administration or enforcement of a royalty provision, whether or not the information or document is held by a royalty payer or another person.

The new record keeping obligations will commence on assent but will generally apply to records created before that date that are in existence on assent (*pre-commencement records*). However, where pre-commencement records were required to be kept under the former section 326 of the *Mineral Resources Act 1989*, the retention period will remain seven years.

Consistent with the *Taxation Administration Act 2001*, offence provisions will apply where a person fails to comply with the record keeping obligations, including if a record is wilfully damaged by any person.

### *Garnishee and administrator provisions*

As is the case for State tax revenues, effective debt recovery mechanisms to recover unpaid royalty are necessary to protect the State's royalty revenue base. Although the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* allow unpaid royalty and royalty related amounts to be recovered as a debt in legal proceedings, neither includes garnishee or administrator provisions. In contrast, the *Taxation Administration Act 2001* facilitates effective debt recovery for unpaid tax by enabling the exercise of garnishee powers and imposing obligations on certain administrators.

Garnishee and administrator provisions consistent with those in the *Taxation Administration Act 2001* will therefore be included in the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* to assist in the recovery of royalty-related amounts payable to the State.

Under the garnishee provisions, the Minister may issue a garnishee notice to a third party requiring that person to pay monies to the Minister, rather than to a royalty payer, to satisfy the royalty payer's debt, in full or in part.

These arrangements balance the garnishee's interests with the State's revenue needs in promptly collecting royalty due where a person fails to pay an amount as required. That is, a garnishee notice may be issued for a future amount payable by the third party but there is no requirement to pay the amount to the Minister until the garnishee holds the amount for the royalty payer. Also, in making payment to the Minister, the garnishee is taken to have acted with the royalty payer's authority and to have satisfied an obligation to pay the amount to the royalty payer.

The administrator provisions enable the Minister to recover a royalty-related amount from a royalty payer's administrator. The provisions require administrators to notify the Minister of their appointment within a stated period, and place the administrator in the same position as the royalty payer for the liability, to the extent of the realised value of all property that the administrator has taken possession of as administrator and which is available to the administrator for payment of the liability.

Consistent with the *Taxation Administration Act 2001*, offence provisions will apply where an administrator fails to notify the Minister of their appointment within the required time period and where a garnishee fails to comply with a garnishee notice.

#### *Royalty refunds*

Under the *Petroleum and Gas (Production and Safety) Act 2004*, overpaid petroleum royalty may be refunded by crediting it against a current or future petroleum royalty, or royalty related, liability. Both the *Mineral Resources Act 1989* and the *Mineral Resources Regulation 2013* contain provisions requiring royalty refunds to be made in particular circumstances. However, the manner in which refunds may be made is not consistent. The *Mineral Resources Regulation 2013* allows overpaid royalty to be refunded by crediting it against a current or future royalty, or royalty related, liability. However, the *Mineral Resources Act 1989* does not allow overpayments arising from reassessments to be offset as a credit against a current or future royalty liability.

The *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* will therefore be amended to clarify when a refund entitlement arises and to provide that the refund may be made by paying it to the royalty payer or crediting it against a current or future royalty-related amount of the person's current or future royalty, or royalty related, liability.

#### *Early petroleum returns*

Generally, petroleum royalty is payable when a quarterly and annual petroleum royalty return is required to be lodged. However, it is possible that, prior to the due date for the return, a revenue risk may arise which would compromise the State's ability to collect the royalty if the return was not lodged until the usual due date.

For mineral royalty purposes, the Minister is able to bring forward the due date for lodgement of a royalty return, and therefore the date for paying the royalty, where it is considered necessary for the protection of the public revenue.

The *Petroleum and Gas (Production and Safety) Act 2004* will be similarly amended for petroleum royalty purposes. Given the petroleum royalty legislative framework, consequential amendments to the *Petroleum and Gas (Production and Safety) Regulation 2004* will also be progressed to achieve this outcome.

#### *Election to change basis on which petroleum annual royalty returns are lodged*

Under the *Petroleum and Gas (Production and Safety) Act 2004*, petroleum producers are required to lodge both quarterly and annual royalty returns. Annual returns are required to be lodged on either a calendar year or financial year basis.

To make lodgement of annual returns more convenient, the *Petroleum and Gas (Production and Safety) Act 2004* will be amended to allow petroleum producers to elect to change the basis on which they lodge annual returns from a financial year basis to a calendar year basis, and vice versa. Subject to the election being made within stated timeframes, and the Minister's approval, this will be achieved through lodgement of a six month transitional return to facilitate the change from one annual return basis to the other. The new 12 month annual return period will commence after the transitional return period ends.

The *Petroleum and Gas (Production and Safety) Act 2004* applies to the transitional return as if it was an annual royalty return for an annual return period. As a result, the time for lodging the transitional return is three months after the end of the transitional return period pursuant to section 599 of the Act and any petroleum royalty required to be paid is payable when the transitional return is due, pursuant to section 147BA of the *Petroleum and Gas (Production and Safety) Regulation 2004*.

In addition, under section 147C of the *Petroleum and Gas (Production and Safety) Regulation 2004*, petroleum royalty is calculated based on the wellhead value of petroleum disposed of or produced by the petroleum producer. The calculation of wellhead value for an annual return period involves the carrying forward of any negative wellhead value from a return period to future return periods within the same annual return period. During the transitional return period, negative wellhead value will be deductible across the return periods within the six month transitional return period. As a change to a different annual return period will only occur at the election of a petroleum producer, any impacts arising from having a shorter period to offset negative wellhead values during the transitional period should be considered before making the election.

#### *Approved information system*

The *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* will be amended to recognise the use of automated decision making systems for royalty administration. Consistent with the *Taxation Administration Act 2001*, the provision will confirm the Minister's ability to use such a system to make royalty decisions and will clarify that any decision made by the approved information system will be taken to be a decision of the Minister. However, in recognition of the limitations of an automated decision making system, decisions involving the exercise of a discretion will not fall within the scope of this provision.

### *Royalty offences*

Offence provisions consistent with those in the *Taxation Administration Act 2001* are being included in the *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004* to ensure there is a consistent offence framework for both mineral and petroleum royalty payers. These offences relate to a failure to comply with a requirement of the Minister or investigator and providing false or misleading documents or information.

As is also the case under the *Taxation Administration Act 2001*, these offences and the offence for wilfully damaging a record that is required to be kept for royalty purposes will be “type 1” executive liability provisions. This means that an executive officer of a corporation may also be held liable for a non-compliant corporation’s commission of the offence.

### **Payroll Tax Act 1971**

Under the *Payroll Tax Act 1971*, payroll tax is payable by employers on all taxable wages. Presently, the wages paid by State Government entities including departments, statutory bodies and commercial business units within departments, are generally taxable wages.

For departments that receive funding from the consolidated fund, the application of payroll tax to these departments results in Government funding being recirculated between the departments and the consolidated fund. This raises efficiency issues, making it appropriate for certain wages paid by departments to be exempted by the currently proposed amendment.

In contrast, complex funding arrangements and participation in market competition in relation to statutory bodies and commercialised business units within departments generally makes it appropriate for them to continue to be liable for payroll tax.

However, Hospital and Health Services (HHSs) have been identified as an exceptional case where wages paid by a statutory body should also be exempt from payroll tax. HHSs were established under the *Hospital and Health Boards Act 2011* as part of the Queensland Government’s implementation of the National Health Reform agenda. HHSs were constituted as separate legal entities in order to devolve operational management for public hospitals to the local level. They are the principal providers of public sector health services and their services are not subject to market competition with the private health sector.

Queensland Health, through its Director-General, retains a strong level of policy and operational control over HHSs through the issue of Health Services Directives, as provided for in the *Hospital and Health Boards Act 2011*. But for the National Health Reform agenda changes, the functions performed by HHS staff would have continued to be performed by employees of Queensland Health.

The *Payroll Tax Act 1971* will be amended to exempt the following Queensland Government entities from payroll tax:

- a department as defined in section 8 of the *Financial Accountability Act 2009*, except wages paid or payable by a commercialised business unit; or
- a Hospital and Health Service established for Queensland under section 17 of the *Hospital and Health Boards Act 2011*.

The amendments will commence on 1 July 2014.

### **State Penalties Enforcement Act 1999**

The *State Penalties Enforcement Act 1999* will be amended to establish a clear legislative framework to enable the engagement of debt collection agents, whether directly by the Registrar or indirectly through the engagement of an intermediary, and the delegation of the Registrar's or SPER's functions as appropriate.

Under the framework, the Registrar may contract with a service contractor to provide authorised services for the administration and enforcement of the Act. Where the services to be performed require the exercise of a power or the performance of a function of the Registrar or SPER, a delegation must be made to the service contractor. However, only powers and functions prescribed under the *State Penalties Enforcement Regulation 2000* may be delegated.

The service contract may impose a condition on the provision of the authorised service and may allow for the delegation of the Registrar's power to delegate under section 161 of the Act and the delegation of a prescribed function. Subject to the service contract, the service contractor may delegate or subdelegate a prescribed function to stated persons, but cannot delegate the power of delegation.

The contract may also allow the service contractor to subcontract the provision of the authorised services and impose a condition on the subcontracting. The contract between the service contractor and service subcontractor must comply with the terms of the service contract between the Registrar and the service contractor, including in relation to any delegated function or power that may be subdelegated.

The new provisions clarify the standing of the service contractor and service subcontractor in performing an authorised service, including their ability to use the name of SPER. Further, in performing an authorised service, laws generally apply to the service contractor and service subcontractor as if they were the Registrar or SPER. However, a regulation may prescribe that a law does not apply to a service contractor and service subcontractor as appropriate.

A person performing an authorised service under a service contract or service subcontract will be bound by the confidentiality obligations under the *State Penalties Enforcement Act 1999*.

These new arrangements allow the Registrar to contract with one entity rather than multiple entities to perform authorised services, and ensure that the day to day management of the service subcontractors is the service contractor's responsibility. Importantly, however, the engagement of a service contractor does not relieve the Registrar of the Registrar's obligations in relation to the proper administration and enforcement of the Act. Similarly, the engagement of a service subcontractor does not relieve the service contractor of its obligations under the service contract.

The amendments commence on assent.

## **Taxation Administration Act 2001**

The current provisions of the *Taxation Administration Act 2001* require a senior executive of the department of Queensland Treasury and Trade to be appointed as Commissioner of State Revenue. However, the definition of *senior executive*, as taken from the *Public Service Act 2008*, does not include an officer appointed on a fixed term contract.

To allow use of fixed term contracts for the appointment of the Commissioner of State Revenue the *Taxation Administration Act 2001* will be amended to remove the requirement that a senior executive of the department be appointed as the Commissioner of State Revenue.

The amendment will operate retrospectively from 19 February 2014, to cover the appointment of the current Commissioner from that date.

## **Alternative ways of achieving policy objectives**

In relation to all amendments, the policy objectives can only be achieved by legislative amendment.

## **Estimated cost for government implementation**

### **Duties Act 2001, Land Tax Act 2010, Payroll Tax Act 1971 and Taxation Administration Act 2001**

The implementation cost for these amendments are not expected to be significant.

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

The implementation costs in relation to the royalty administration and compliance amendments are not expected to be significant. These costs relate to administration of the amnesty arrangements for the new royalty penalty, client education activities, changes to publications, documents, website and systems, staff training and managing any enquiries on the amendments. Such costs will be met through existing resources.

### **State Penalties Enforcement Act 1999**

There will be a range of additional costs incurred in implementing the new service delivery model, including those associated with engaging an entity to act as an intermediary between SPER and a panel of debt collection agencies. These costs are expected to be more than offset by the increased revenue that the new business model will realise.

## **Consistency with fundamental legislative principles**

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

*Whether legislation has sufficient regard to rights and liberties of individuals – Legislative Standards Act 1992, s 4(2)(a)*

**Mineral Resources Act 1989 and Petroleum and Gas (Production and Safety) Act 2004 – Director's liability provisions**

The Bill amends section 412A *Mineral Resources Act 1989* and section 814 *Petroleum and Gas (Production and Safety) Act 2004* to include further royalty offence provisions as "executive liability" provisions. Section 412A *Mineral Resources Act 1989* and section 814 *Petroleum and Gas (Production and Safety) Act 2004* are "type 1" liability provisions which operate to impose liability on an executive officer of a corporation for a corporate fault. Of the three types of director liability provisions, type 1 liability provisions are the least onerous as a corporation's executive officers are only taken to have committed the offence if the corporation committed the offence and the executive officer did not take all reasonable steps to ensure the corporation did not engage in conduct constituting the offence. As the least onerous type of executive liability provision, it places the onus on the prosecution to prove that a director failed to take reasonable steps to prevent the commission of the offence.

The relevant royalty offences are those relating to the wilful destruction of records, the provision of false or misleading information or documents and the failure to comply with a royalty information or lodgement requirement. The royalty offences are the same as existing revenue offences that are type 1 offences under the *Taxation Administration Act 2001*.

As is the case with taxpayers under the *Taxation Administration Act 2001*, only royalty payers generally possess the information necessary to enable an accurate assessment of royalty liability to be made. Consequently, a failure to comply with these royalty obligations will significantly impact the ability to determine a person's royalty liability. It also recognises most royalty payers are corporate entities and the corporation's executive officers are generally in the best position to ensure compliance with these obligations. However, the executive liability provision and the offences themselves provide reasonable steps which an executive officer can take, or refrain from doing, to ensure compliance by the corporation.

Significantly, making these offences "executive liability" provisions also reduces the scope for corporations to engage in fraudulent activity which pose a significant threat to government revenue and the Queensland economy as a whole. These offences therefore form a core element of the State's royalty regime and operate to preserve the integrity of the State's revenue.

**Mineral Resources Act 1989 and Petroleum and Gas (Production and Safety) Act 2004 – Assessment and reassessment provisions**

A clear and consistent framework for making assessments and reassessments of royalty liability is being included in the *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004*. The Minister will be required to assess liability on lodgement of a royalty return and may also, based on all available information considered relevant, assess royalty liability in the absence of a return or where incomplete information is provided. Where royalty liability has been incorrectly assessed, the Minister may make a reassessment for the correct amount within specified time periods.

To provide certainty for the State's revenues and sufficient time for royalty payers to seek a reassessment and refund if they consider they've overpaid royalty, a reassessment decreasing liability must be made within five years of the original assessment being made, subject to extension in certain limited circumstances. This timeframe is consistent with the *Taxation Administration Act 2001*.

Neither the *Mineral Resources Act 1989* nor the *Petroleum and Gas (Production and Safety) Act 2004* currently limits the Minister's ability to increase royalty liability if an understatement is identified. This recognises that it is appropriate to ensure a person pays the correct royalty amount to the State to compensate for its use of a scarce resource. However, the ability to make a reassessment is often practically limited by the availability of relevant records. New record keeping obligations being included in the *Mineral Resources Act 1989* nor the *Petroleum and Gas (Production and Safety) Act 2004* will require royalty records to be kept for five years, although existing mineral royalty records must continue to be kept for seven years.

These timeframes for making reassessments are considered to be reasonable in all the circumstances and to appropriately balance the State's and royalty payers' rights and interests.

***Whether the Bill has sufficient regard to the rights and liberties of individuals by sufficiently defining administrative power and making administrative power subject to appropriate review – Legislative Standards Act 1992, s 4(3)(a)***

#### **Mineral Resources Act 1989 and Petroleum and Gas (Production and Safety) Act 2004 – Assessment and reassessment provisions**

A new administrative framework for determining a person's royalty liability is being included in the *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004*. This will require that an assessment be made to determine the royalty related amounts payable.

The *Mineral Resources Act 1989* currently allows for the making of assessments and reassessments, with any review rights being under the *Judicial Review Act 1991*. Similarly, any review rights in relation to the determination of petroleum royalty liability under the *Petroleum and Gas (Production and Safety) Act 2004* would arise under the *Judicial Review Act 1991*. No change is being made to these review arrangements.

An administrative penalty may be imposed for an offence where a person's royalty liability increases on a reassessment, where a default assessment is made or a reassessment is made of a default assessment. Liability for the royalty penalty will be determined as a matter of fact if a default assessment is made or royalty liability increases. However, the penalty may be remitted in full or in part. Administrative guidelines will be developed for the circumstances where remission is appropriate, including having regard to the person's culpability, if any. This will ensure that proper regard is had to the reasons for the understatement of liability. Also, the penalty is an alternative to prosecution of a person for an offence, and the provisions specify when it must be remitted or reinstated if prosecution action is commenced or withdrawn. This approach is consistent with the approach taken for tax liabilities under the *Taxation Administration Act 2001* which has been operating effectively.



As no change is being made to review arrangements, any review rights for these decisions, as for all royalty related decisions currently, will arise under the *Judicial Review Act 1991*.

*Whether legislation has sufficient regard to the rights and liberties of individuals generally, and by conferring power to enter premises, search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer – Legislative Standards Act 1992, s 4(2)(a) and 4(3)(e)*

### **Mineral Resources Act 1989 and Petroleum and Gas (Production and Safety) Act 2004 – Investigation and information access powers**

The investigation and information access powers are conferred on royalty investigators by applying the provisions of part 7, division 2, subdivisions 2 to 6 of the *Taxation Administration Act 2001*, being the investigation and information access powers used to investigate compliance with the State's revenue laws. Adoption of the *Taxation Administration Act 2001* investigation and information access powers will provide a consistent, modern and tested compliance framework for the State's royalties.

Therefore, consistent with the *Taxation Administration Act 2001*, to ensure all necessary information and documents are available to allow proper determination of a royalty liability, the Bill amends the *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004* to provide royalty investigators with the power to require the giving of information or documents, to enter places without a warrant in specified circumstances (being where consent is obtained or where it is a public place open to the public). In addition, although access to places by royalty investigators is generally first negotiated with the occupant, there are limited cases where access to a place must be taken without prior notice to ensure the continued existence of information relevant to the determination of royalty liability is not jeopardised.

The ability to act quickly to access and secure information or documents will be essential on some occasions. Royalty investigators will therefore also be allowed access without a warrant to places used for conducting an enterprise where access is taken when the enterprise is being conducted or the place is otherwise open for entry. However, in other cases, a warrant will be necessary.

Having accessed a place, a royalty investigator may then exercise other specified powers, including the power to seize documents or other things. Again, these powers are necessary to ensure that all relevant information and documents are available to determine a royalty liability. Appropriate safeguards regarding the seizure, retention and return of any documents and things are included within the relevant provisions.

Royalty investigations also involve issues that do not arise in the general revenue context, which has necessitated the inclusion of an additional royalty investigation power. As a royalty liability only arises if a mineral or petroleum is mined and royalties vary depending on the type of mineral mined, instances will arise where it is necessary to determine whether a substance mined is in fact a mineral or petroleum or the type of mineral.

While the Bill provides royalty investigators with a power to access a place and seize things, is it necessary to enable a royalty investigator to test a sample where the testing may result in the sample's destruction. Therefore, the Bill amends the *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004* to provide royalty investigators with the power to carry out, or arrange to have carried out, scientific or other tests on a thing seized where the testing may result in the destruction of the thing if the thing is a sample of mineral or petroleum, as the case may be.

Generally, any administrative decision which may adversely affect a person's rights should be subject to appropriate review and where testing occurs, a review against the decision which will result in the possible destruction of the sample is limited to a person's review rights under the *Judicial Review Act 1991*. No additional review rights are considered necessary in these cases given there will be no adverse effect on a person's rights arising from the testing of the sample. The amount of mineral or petroleum required to be seized for testing will be limited to an amount necessary for scientific testing, which will be negligible. Accordingly, the destruction of an amount used for testing will not adversely affect a royalty payer personally, nor will it affect the royalty payer's mining operations or business.

*Whether legislation has sufficient regard to the rights and liberties of individuals by providing appropriate protection against self-incrimination – Legislative Standards Act 1992, s 4(3)(f)*

#### **Mineral Resources Act 1989 and Petroleum and Gas (Production and Safety) Act 2004 – Protection against self-incrimination**

The *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004* will provide that a person may not fail to comply with an information or lodgement requirement on the basis that complying may incriminate the person. However, as the principle in abrogating the self-incrimination privilege is to ensure that the Minister can access all relevant information to properly determine a person's royalty liability, any information so obtained cannot be used in criminal proceedings except where the falsity or misleading nature of the information is relevant.

This approach is consistent with the approach used in the *Taxation Administration Act 2001*, which is that that royalty payers, similar to taxpayers, often uniquely possess the information necessary to enable a determination to be made whether or not they have properly satisfied their royalty liabilities, so that any refusal to provide that information would preclude the making of an accurate assessment of a royalty liability.

The provisions are therefore considered to strike an appropriate balance between revenue protection for the State and the rights of royalty payers.

*Whether legislation has sufficient regard to the rights and liberties of individuals by not affecting rights and liberties or imposing obligations retrospectively – Legislative Standards Act 1992, s 4(3)(g)*

**Mineral Resources Act 1989 and Petroleum and Gas (Production and Safety) Act 2004 – Date of effect of assessment and reassessment provisions**

The Bill will allow assessments and reassessments to be made under the new framework on and from 1 July 2014, including where an assessment was made for an earlier period before 1 July 2014 and is to be reassessed after that date. As there is no concept of an assessment in the *Petroleum and Gas (Production and Safety) Act 2004* a determination of royalty liability prior to 1 July 2014 will be taken to be an assessment for the purposes of applying the new reassessment provisions.

The royalty penalty will also be imposed in relation to a default assessment made on or after 1 July 2014, including where the liability relates to an earlier period, and for all reassessments made on or after 1 July 2014 where the royalty payable for a period increases under the reassessment, irrespective of whether the original assessment was made before or after 1 July 2014. However, to ensure that all royalty payers have the ability to avoid liability for the penalty if they have previously understated royalty liability, transitional provisions will apply to provide a penalty amnesty. This means that the royalty penalty will not be payable if a person makes a voluntary disclosure to the Minister within six months after the commencement of the new provisions of the amount of the royalty liability understated for a previous period. This is considered to appropriately manage any potential retrospective effect of the new royalty penalty provisions.

**Taxation Administration Act 2001 – operative effect of changes to conditions of appointment of Commissioner of State Revenue**

While the amendment to conditions for appointment of the Commissioner of State Revenue under the *Taxation Administration Act 2001* are retrospective, they do not offend fundamental legislative principles as they do not affect rights or liberties, or impose obligations. Since the current Commissioner's appointment on 20 February 2014, all powers and functions of this office have been exercised under a delegation from the former Commissioner of State Revenue.

*Whether legislation has sufficient regard to the institution of Parliament – Legislative Standards Act 1992, s 4(4)*

**State Penalties Enforcement Act 1999 – Prescribing laws not to apply to service contractors and service subcontractors**

The *State Penalties Enforcement Act 1999* is being amended to allow the registrar to enter into a contract with a service contractor to provide authorised services for the administration and enforcement of the Act. The registrar may delegate powers and functions to the service contractor under the contract for this purpose. The service contractor may also enter into a contract with a person to subcontract the provision of these authorised services, and may subdelegate powers and functions as permitted by the service contract.

In undertaking the authorised services, the service contractor and service subcontractor may use the name *SPER* and do anything necessary for, or incidental to, the provision of the services. Anything done by, or in relation to, the service contractor and service subcontractor for an authorised service is taken to have been done by, or in relation to, the registrar or SPER.

In recognition of the standing of these entities in providing authorised services, laws are generally taken to apply to them as if they were the registrar or SPER. However, in framing the contract, or as the contractual relationship matures, it may be appropriate that certain laws not apply to these entities. For instance, certain protections provided to the registrar may be inappropriate for the service contractor or service subcontractor. Accordingly, to ensure the contractual arrangements operate effectively in all regards, including for the State, a regulation may be made to exclude the operation of a law from application to the service contractor or service subcontractor as appropriate. It is considered that the ability to prescribe these exclusions by regulation is necessary to provide the appropriate timeliness of response to required changes.

## **Consultation**

### **Duties Act 2001, Land Tax Act 2010, Payroll Tax Act 1971 and Taxation Administration Act 2001**

Consultation was undertaken with all relevant government departments. No objections were raised to the amendments. Community consultation was not undertaken as the amendments are necessary for the protection of revenue.

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

Community consultation was not undertaken in relation to the royalty administration amendments as the amendments are either necessary for revenue protection purposes or are beneficial.

### **State Penalties Enforcement Act 1999**

As part of the development of the new service delivery model for SPER, consultation has been undertaken with the Program Reference Group which includes representation from key stakeholders, including Queensland Treasury and Trade, Department of the Premier and Cabinet, Department of Transport and Main Roads, Department of Justice and Attorney-General, and Queensland Police Service. Other organisations independent of State Government are also represented and include the Brisbane City Council and Local Government Association of Queensland.

A community consultation strategy is being developed as part of the implementation of the new service delivery model.

## **Consistency with legislation of other jurisdictions**

The amendments are specific to the State of Queensland and are not intended to be complementary to, or conflict with, legislation of the Commonwealth or another state.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* provides that the Bill, when enacted, may be cited as the *Revenue Legislation Amendment Act 2014*.

*Clause 2* provides for the commencement of the Bill.

### Part 2 Amendment of Duties Act 2001

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

*Clause 4* amends section 98, which contains conditions applying to a dutiable transaction that is a transfer, or agreement for the transfer, of business property. As section 98 currently applies to primary production businesses and prescribed businesses, the relevant conditions that refer to an 'ancestor' and 'descendant' are amended to also refer to a 'defined relative', where business property is used to carry on a business of primary production. The definition of the term 'defined relative' will be inserted into schedule 6 and contains the list of family members.

*Clause 5* amends section 99, which contains conditions applying to a dutiable transaction that is a partnership acquisition if property of the partnership includes business property. Section 99 is amended similarly to section 98.

*Clause 6* amends section 100, which contains conditions applying to a dutiable transaction that is a trust acquisition, other than a trust acquisition on the creation of a trust or a trust acquisition for a unit trust, if property of the trust includes business property. Section 100 is amended similarly to section 98.

*Clause 7* amends section 101, which contains conditions applying to a dutiable transaction that is the creation of a trust, or trust acquisition on the creation of a trust, of business property, or an indirect interest in dutiable property if the dutiable property includes business property. Section 101 is amended similarly to section 98.

*Clause 8* amends section 102, which contains conditions applying to a dutiable transaction that is a trust acquisition for a unit trust if the property of the trust includes business property. Section 102 is amended similarly to section 98.

*Clause 9* replaces section 123(4)(b) with a new provision as a consequence of the expansion of the family primary production business concession.

*Clause 10* replaces section 133 with a new provision. Firstly, the new section 133 no longer applies to a transfer, or agreement for the transfer, of a lot under a building units or group titles plan registered under the *Building Units and Group Titles Act 1980* as no new plans can be registered under that Act. Accordingly, the new section 133 only applies to a transfer, or agreement for the transfer, of a lot that, under the *Body Corporate and Community Management Act 1997*, is a lot included in a community titles scheme. The provision of the exemption and the conditions in new subsection (1) continue the conditions in the current paragraph (b).

However, new subsection (1) is subject to the conditions in new subsection (2). Specifically, subsection (1) will only apply if, before the commencement day, a home unit company is in existence and shares in the company have been issued. Subsection (1) will also apply if, before the commencement day, the transferee entered into an agreement with the transferor corporation under which the transferee is entitled to purchase the shares that will be surrendered to obtain transfer of the lot from the transferor corporation. Importantly, in both instances, the holding of the shares must entitle the shareholder to occupy a separate area.

New subsection (3) defines ‘commencement day’ as the day the section commences.

*Clause 11* amends section 173 as a consequence of the expansion of the family primary production business concession.

*Clause 12* inserts a new chapter 17, part 19 and sections 653 and 654. These are transitional provisions relating to the amendment of the family primary production business concession provisions in chapter 2, part 10. New section 653(1) provides that the relevant provisions, as in force on the commencement, apply to dutiable transactions only if liability for transfer duty arises on or after the commencement. New section 653(2) contains definitions of ‘commencement’ and ‘relevant provisions’.

New section 654 ensures that the same conditions that applied for obtaining the family primary production business concession under chapter 2, part 10 are relevant for satisfaction of the exemption conditions for section 123.

*Clause 13* amends the dictionary in schedule 6. A new definition of ‘defined relative’ is inserted, which is a term used in the amended family primary production business concession provisions. The definition contains a wider range of family relationships than those in the current definition of ‘ancestor’ and ‘descendant’. The current definitions of ‘family partnership’, ‘family trust’ and ‘family unit trust’ are replaced with new definitions as a consequence of the expansion of the family primary production business concession.

### **Part 3      Land Tax Act 2010**

*Clause 14* provides that the part amends the *Land Tax Act 2010*.

*Clause 15* inserts new sections 42A and 42B into the *Land Tax Act 2010*.

Section 42A provides an exemption for land which was a person's home on the land tax liability date for the previous financial year, but which is no longer their home because they have moved out of it into their current home. Section 42A(1) specifies a number of conditions which must be met both in relation to the old home and the current home, before the old home is entitled to exemption. In relation to the current home, the person must be entitled to the home exemption under section 41 or 42 of the *Land Tax Act 2010* on that land; and they must not have owned the current home at the land tax liability date for the previous financial year. For their old home, they must have been entitled to the home exemption under sections 41 or 42 of the *Land Tax Act 2010* on that land at the land tax liability date for the previous financial year; they must have continuously owned that land since then; and they must not own that land by the land tax liability date for the financial year after the current financial year.

Section 42A(2) provides the exemption for the old home, subject to further conditions in section 42A(3), as further explained in section 42A(4). The exemption is limited to the extent the old home was exempt land under sections 41 or 42 in the previous financial year.

Section 42A(3) provides the exemption does not apply if the person receives rents or profits from either their old home after they cease to use it as their home, or from their current home before they begin to use it as their home. However, section 42A(4) provides that if the only rental earned from the current home is from a lease that the current home was subject to at the time it was acquired, the exemption will still apply. Section 42A(5) provides a definition of *liability date* for section 42A.

Section 42B provides an exemption for land which will be a person's home by the land tax liability date for the next financial year (their new home), but which is not yet their home, because they have not moved out of their current home.

Section 42B(1) specifies a number of conditions which must be met both in relation to the current home and the new home, before the new home is entitled to exemption. In relation to the current home, the person must be entitled to the home exemption under section 41 or 42 of the *Land Tax Act 2010* on that land, other than through the application of section 38 of the *Land Tax Act 2010*; and they must no longer own the current home by the land tax liability date for the next financial year. For the new home, they must not have owned it at the liability date for the previous financial year; and they must continue to be the owner of that land and be entitled to exemption for it under sections 41 or 42 of the *Land Tax Act 2010* at the liability date for the next financial year.

Section 42B(2) provides the exemption for the new home, subject to further conditions in section 42B(3), as further explained in section 42B(4). The exemption is limited to the extent the current home is exempt land under sections 41 or 42 in the current financial year.

Section 42B(3) provides the exemption does not apply if the person receives rents or profits from either their current home after they cease to use it as their home, or from their new home before they begin to use it as their home. However, section 42B(4) provides that if the only rental earned from the new home is from a lease that the new home was subject to at the time it was acquired, the exemption will still apply. Further, the lessee must give vacate the new home on the earlier of the end of the lease or within 6 months after the new home was acquired. Section 42B(5) provides a definition of *liability date* for section 42B.

*Clause 16* inserts a new section 44A into the *Land Tax Act 2010*. Section 44A provides for reassessment to remove the benefit of the exemption under section 42A or 42B where the conditions of either exemption are not satisfied.

Section 44A(1) provides the circumstances in which reassessment will apply in relation to section 42A. Section 44A(2) provides the circumstances in which reassessment will apply in relation to section 42B. Section 44A(3) defines *relevant matter* for the purposes of the section, being each of the circumstances for which section 44A applies as specified in sections 44A(1) and (2).

Under sections 44A(4) and (5) a person is required to give notice to the Commissioner of State Revenue stating details of any relevant matter. A failure to do so gives rise to an offence under section 121 of the *Taxation Administration Act 2001*. The notice is required to be given within 28 days after the relevant matter happens, or the circumstances comprising it arise. Section 44A(6) then requires the Commissioner to make a reassessment of the person's land tax for the year in which exemption under section 42A or 42B was applied on the basis that the relevant exemption no longer applies.

## **Part 4 Mineral Resources Act 1989**

*Clause 17* provides that this part amends the *Mineral Resources Act 1989*.

*Clause 18* replaces section 326 with new sections 326 to 326E.

New section 326 requires a person who is the holder of a mining claim or mining lease or who otherwise mines mineral from land to keep records that are necessary to establish the person's liability for royalty. In this regard, the requirement to keep records includes an obligation to make the necessary records.

New section 326A provides that, although records are not required to be kept in Queensland, they must be readily accessible by the Minister.

New section 326B provides that the required records must be written in English and amounts must be expressed in Australian currency. Alternatively, they must be kept in a way that is capable of being readily converted into those forms.

New section 326C specifies the period for keeping records.

New section 326D provides that records must not be wilfully damaged or destroyed. This prohibition extends to persons other than those to whom the particular record relates.

New section 326E provides that the Minister may require certain documents or information to be translated into English and converted into Australian currency. The obligation for conversion does not apply only to a person who is required to keep records. If the Minister's requirement is not met, the Minister may have the material translated or converted and the cost of doing so will be recoverable from the person by the Minister.

*Clause 19* amends section 412A(5) to include the offence of wilfully damaging records in new section 326D(1) within the definition of 'executive liability provision'.



*Clause 20* inserts new part 9 in chapter 15 which provides for transitional provisions. New part 9 contains new sections 820 and 821.

New section 820 provides a definition of the term ‘commencement’ for the purpose of part 9.

New section 821 ensures that the seven year record keeping period in repealed section 326(2) will continue to apply to a person after the commencement of the new record keeping provisions.

This section also ensures that the record keeping obligations under new sections 326A, 326B, 326D and 326E will apply to a person to whom repealed section 326 applied before the commencement of this section, but who has ceased to be a holder of a mining claim or mining lease or otherwise mine mineral from land.

*Clause 21* omits section 322.

*Clause 22* omits section 326E(6).

*Clause 23* omits section 327.

*Clause 24* omits sections 328 to 330.

*Clause 25* inserts a heading for new Part 3 Royalty administration.

*Clause 26* inserts a heading for Division 1 Preliminary.

*Clause 27* omits section 331 and inserts sections 331 to 331G.

New section 331 provides definitions for part 3.

New section 331A specifies when the Minister must or may make an assessment of the royalty-related amount payable by a person for a period. An assessment must be made if a royalty return is lodged, even if the liability is nil. The Minister may make a default assessment at any time in the absence of a return if satisfied a royalty-related amount is payable for a period.

New section 331B provides for the making of a reassessment of the royalty-related amount payable by a person for a period. A reassessment increasing the royalty-related amount payable for a period may be made at any time whereas a reassessment decreasing the royalty-related amount payable for a period must be made within five years after the day the original assessment for the period was made, subject to the exceptions stated in subsection (5). A reassessment must be made if a provision of this or another Act requires it. The time for making such a reassessment is not limited, including where the amount payable decreases.

New section 331C specifies the basis on which assessments, including default assessments, may be made. An assessment may be made on the basis of the information considered relevant by the Minister. The basis for making a default assessment, or an assessment where information and documents are either not given or are insufficient, is also specified.

New section 331D requires a notice of assessment to be given for the making of an assessment and reassessment. The section also specifies the information required to be included in the notice and the due date for paying a royalty-related amount under the notice.

New section 331E provides for the imposition and remission of a royalty penalty amount and specifies the rate at which it is imposed and the other matters for its imposition.

A person is liable for a royalty penalty amount where the Minister makes a default assessment or a reassessment of a default assessment. A royalty penalty amount is also imposed where a reassessment is made increasing the royalty-related amount payable for a period.

The royalty penalty amount may be increased by 20% of the royalty penalty amount otherwise imposed in stated circumstances.

New section 331F ensures that, where a proceeding is commenced against a person for an offence and a royalty penalty amount has been imposed for the particular act or omission that constitutes the offence, the royalty penalty amount is not payable unless the proceeding is withdrawn. That is, the royalty penalty amount is imposed as an alternative to prosecution for the same wrongdoing.

New section 331G enables the Minister to remit all or part of the royalty penalty amount imposed under section 331E.

*Clause 28* amends section 332 to require a notice to be given in particular circumstances.

*Clause 29* inserts new division 4 in chapter 11, part 3 and also inserts new section 332AA.

New section 332AA provides for refunds to be made where on an assessment or reassessment the royalty-related amount paid by a person for a period is higher than the amount payable by the person for the period. The refund is to be made by repaying the excess amount to the person or crediting it against an amount the Minister is reasonably satisfied is, or will be, payable by the person for a royalty-related amount.

The provision also provides for refunds to be made in the same manner when the royalty-related amount paid is higher than the amount payable by a person, in circumstances other than where an assessment or reassessment is made, and where the Minister gives the person a notice stating the excess amount.

The section also clarifies that no interest is payable on the excess amount refunded.

*Clause 30* amends section 332A to include references to a royalty-related amount.

*Clause 31* amends section 333 to include references to a royalty penalty amount.

*Clause 32* omits section 334 and inserts new sections 333A to 333ZA.

New section 333A allows the Minister to specify an earlier time for payment of a royalty-related amount than the date it would otherwise be payable under the Act if the Minister reasonably believes the amount may not be recoverable if the ordinary due day were to apply. This time cannot be earlier than when the notice specifying the payment date is given.

New section 333B creates an offence where a person fails to comply with an information requirement or lodgement requirement without reasonable excuse.

New section 333C creates an offence where a person gives the Minister or a royalty investigator a document containing information that the person knows or should reasonably know is false or misleading in a material particular. A document can be false or misleading because it is incomplete. A defence is also provided.

New section 333D creates an offence where a person states anything to the Minister or a royalty investigator that the person knows or should reasonably know is false or misleading. A statement can be false or misleading because of the omission of information.

New section 333E provides that a person must comply with particular requirements to give information or documents or to lodge a document even though the information or document provided may be incriminating. However, any such incriminating information or document 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 but does not apply where the information or documents are sourced independently in a manner unrelated to the disclosure under the *Mineral Resources Act 1989*.

*Example*

*A person is given a notice requiring the production of all information and documents relevant to an assessment of a royalty liability previously made. The person is aware that one of the documents discloses that a matter was significantly understated, and that royalty was therefore incorrectly assessed.*

*The person must provide all of the information and documents requested. The information and documents obtained may be used to make a reassessment to reflect the royalty properly payable and may also be used in any recovery proceedings.*

*However, the information may not be used to prosecute the person for an offence under a royalty provision. For instance, the person cannot be prosecuted for the offence of providing false or misleading documents and information under sections 333C and 333D.*

*If, in providing the required documents and information, the person provided false or misleading documents or made false or misleading statements to the royalty investigator, the person may be prosecuted for an offence in relation to the falsity of those documents and information.*

New section 333F imposes an obligation on a person to notify the Minister where a royalty-related amount has been under-assessed for a period. Failure to notify the Minister as required is an offence.

New section 333G creates an offence where a person obstructs the Minister or a royalty investigator when exercising a power under a royalty provision or a person assisting the Minister or royalty investigator.

New section 333H creates an offence where a person pretends to be a royalty investigator.

New section 333I provides definitions for division 6.

New section 333J specifies when an administrator must advise the Minister of the administrator's appointment. Failure to inform the Minister as required is an offence.

New section 333K specifies the Minister's powers and remedies against an administrator and the extent to which an administrator is liable for payment of a royalty-related amount of the person for whom they are appointed administrator. This provision is not intended to override the general rules regarding priority of creditors.

New section 333L allows the Minister to recover a debt payable by a person (the 'liable person') under a royalty provision by serving a garnishee notice on a person who holds, or may receive money, for or on account of the liable person, on a person who is liable or may become liable to pay money to the liable person, or on a person who has authority to pay money to the liable person, even though the liable person's entitlement to the money may be subject to unfulfilled conditions.

Payment under the garnishee notice is not required until the garnishee actually holds the money for, or is liable to pay the amount to, the liable person. The amount required to be paid by the garnishee may be the full amount of the debt, a lesser amount, or amounts at intervals.

New section 333M specifies the time for which a garnishee notice has effect.

New section 333N provides for the adjustment of the amount required to be paid under a garnishee notice if part or all of the debt is satisfied before the due date of the garnishee notice. If the debt is fully discharged, the Minister must withdraw the notice.

New section 333O specifies the effect of payment by a garnishee under a garnishee notice.

New section 333P provides that the Minister may approve an information system for a royalty provision.

New section 333Q provides that the Minister may arrange for the use of an approved information system to make a decision under a royalty provision if the decision does not involve the exercise of the Minister's discretion. The decision is taken to be a decision made by the Minister.

New Part 3A dealing with investigations relating to royalty provisions includes new sections 333R to 333ZA.

New section 333R specifies the purposes for which a power under Part 3A may be exercised. A power conferred under Part 3A may be exercised only for the administration and enforcement of a *Mineral Resources Act 1989* provision to the extent it is relevant for royalties.

New section 333S provides for the appointment of appropriately qualified public service employees as royalty investigators.

New section 333T provides that a royalty investigator's appointment is conditional and the exercise of powers may be limited.

New section 333U provides for the issue of an identity card to a royalty investigator.

New section 333V requires that a royalty investigator, in exercising the applied powers of entry to places and applied powers on having taken entry, must first produce his or her identity card or have it clearly displayed for inspection. The obligation to produce an identity card does not apply for the exercise of the other applied powers under Part 3A or the royalty investigator's power under section 333ZA.

If circumstances do not permit the production of the identity card to the person at that time, the royalty investigator must do so as soon as reasonably possible. The requirement to produce an identity card before exercising the relevant powers does not apply if the royalty investigator is entering a public place when it is open to the public. Similarly, the requirement does not apply if a royalty investigator is entering land around premises to contact the occupier or if the royalty investigator is entering part of the place that the royalty investigator considers members of the public are allowed to enter to contact the occupier.

New section 333W specifies when a royalty investigator ceases to hold office.

New section 333X specifies how a royalty investigator may resign from office.

New section 333Y requires a royalty investigator to return his or her identity card upon ceasing to be a royalty investigator.

New section 333Z provides for the investigation powers of the Minister and a royalty investigator. In addition to the powers conferred on a royalty investigator under Part 3A, the Minister and a royalty investigator may exercise the powers conferred under the applied taxation investigations provisions. The applied taxation investigation provisions comprise the same powers which are conferred on the Commissioner of State Revenue and an investigator in the *Taxation Administration Act 2001*, part 7, division 2, subdivisions 2 to 6. The applied taxation investigation provisions may be exercised by the Minister and a royalty investigator subject to any necessary changes or modification to ensure the taxation investigation provisions operate appropriately for the purposes of the *Mineral Resources Act 1989*.

New section 333Z also clarifies that an offence is committed under the *Mineral Resources Act 1989* if a person commits an offence mentioned in sections 88(6), 96(2) or 96(4) *Taxation Administration Act 2001* as applied.

New section 333ZA clarifies a royalty investigator may carry out, or arrange to have carried out, testing on a mineral sample which may have the effect of destroying the sample. If the sample is destroyed, the obligation to return the sample, under applied section 99(1) *Taxation Administration Act 2001*, will not apply.

Clause 33 omits section 334.

*Clause 34* makes a consequential amendment to section 342 to update a cross reference.

*Clause 35* amends section 412A(5) to include further offences within the definition of ‘executive liability provision’. The following offences will now be executive liability provisions; section 333B(1) (failure to comply with information requirement or lodgement requirement), section 333C(1) (false or misleading documents) and section 333D(1) (false or misleading information).

*Clause 36* inserts into chapter 15 part 9 new transitional provisions for the *Mineral Resources Act 1989*.

New section 822 specifies the transitional arrangements for chapter 11 part 3 division 2 and 3 so that an assessment or reassessment may be made on or after 1 July 2014 in relation to a royalty-related amount payable by a person for a period ending before 1 July 2014. In addition, a royalty penalty amount may be imposed even where the particular act or omission mentioned in section 331F occurred before 1 July 2014.

The section also specifies when a royalty penalty amount will not be imposed on a reassessment made on or after 1 July 2014 which increases the royalty-related amount payable by a person for a royalty return period ending before 1 July 2014.

New section 823 ensures that the requirement for an administrator to notify the Minister under new section 333J upon becoming aware of a liability is not imposed retrospectively. The section also applies to an administrator appointed before the commencement to require notification to the Minister within 14 days after the commencement.

*Clause 37* inserts a number of definitions in the dictionary in schedule 2.

## **Part 5      Payroll Tax Act 1971**

*Clause 38* provides that the part amends the *Payroll Tax Act 1971*.

*Clause 39* inserts a new subsection 14(2)(da), which provides an exemption from payroll tax for wages paid or payable by a department (except to the extent those wages are paid or payable by a commercialised business unit), or by a Hospital and Health Service established for Queensland under section 17 of the *Hospital and Health Boards Act 2011*. It also amends section 14(9) to introduce the new defined terms “commercialised business unit” and “department”.

## **Part 6      Petroleum and Gas (Production and Safety) Act 2004**

*Clause 40* provides that this part amends the *Petroleum and Gas (Production and Safety) Act 2004*.

*Clause 41* inserts new part 3A in chapter 6. Part 3A contains new sections 604B to 604G.

New section 604B requires a petroleum producer to whom section 590 applies to keep records that are necessary to establish the person’s liability for royalty. In this regard, the requirement to keep records includes an obligation to make the necessary records.

New section 604C provides that, although records are not required to be kept in Queensland, they must be readily accessible by the Minister.

New section 604D provides that the required records must be written in English and amounts must be expressed in Australian currency. Alternatively, they must be kept in a way that is capable of being readily converted into those forms.

New section 604E specifies the period for keeping records.

New section 604F provides that records must not be wilfully damaged or destroyed. This prohibition extends to persons other than those to whom the particular record relates.

New section 604G provides that the Minister may require certain documents or information to be translated into English and converted into Australian currency. The obligation for conversion does not apply only to a person who is required to keep records. If the Minister's requirement is not met, the Minister may have the material translated or converted and the cost of doing so will be recoverable from the person by the Minister.

*Clause 42* amends section 814(5) to include the offence of wilfully damaging records in new section 604F(1) within the definition of 'executive liability provision'.

*Clause 43* amends section 81 to refer to a royalty-related amount.

*Clause 44* amends section 103 to refer to a royalty-related amount.

*Clause 45* amends section 161 to refer to a royalty-related amount.

*Clause 46* amends section 171 to refer to a royalty-related amount.

*Clause 47* amends section 487 to include to a royalty penalty amount.

*Clause 48* amends the heading for chapter 6 part 2.

*Clause 49* inserts new Division 1 Preliminary, section 592A to provide definitions for new Division 1 and a new Division 2 heading.

*Clause 50* amends section 593.

*Clause 51* amends section 594 to provide that the Minister may, where it is considered necessary for the protection of the public revenue, require a petroleum producer to lodge a quarterly petroleum royalty return earlier than the day it is ordinarily required to be lodged under section 594.

*Clause 52* makes a consequential amendment to section 595 to clarify that the late lodgement fee for a quarterly petroleum royalty return must accompany the quarterly petroleum royalty return where it is lodged later than when it is either ordinarily required to be lodged under section 594 or any earlier day that it is required by the Minister to be lodged under section 594.

*Clause 53* omits sections 596 to 598.

*Clause 54* amends section 599 to provide that the Minister may, where it is considered necessary for the protection of the public revenue, require a petroleum producer to lodge an annual royalty return earlier than the day it is ordinarily required to be lodged under section 599.

Section 599 is also amended to allow a petroleum producer to apply to the Minister to change the basis on which their annual returns are lodged from a calendar year basis to a financial year basis (or vice versa). The application must be made before the end of the producer's current annual return period, or at a later time if allowed by the Minister. If the Minister approves the application, the producer must lodge a transitional annual return for the transitional return period, being a six month period commencing on the day after the producer's return period in which the application was made ends. The new annual return period commences the day after the transitional return period ends, and is each 12 month period after this.

The amendments also ensure the *Petroleum and Gas (Production and Safety) Act 2004* applies to the transitional return as if the return were an annual royalty return for an annual return period. This means the same lodgement requirements that apply to annual returns in section 599(2) and (3), also apply to transitional returns. In addition, section 147BA of the *Petroleum and Gas (Production and Safety) Regulation 2004* will apply to the transitional return as if the return were an annual royalty return. In calculating the wellhead value of petroleum under section 148 for the purposes of determining the amount of royalty payable for the transitional return period, any negative wellhead value may only be deducted in a later royalty return period within the six month transitional return period.

*Clause 55* amends section 599A to clarify that a royalty estimate must be provided in a document.

*Clause 56* inserts new division 3 *Royalty assessments and reassessments*, which includes new sections 599B to 599E, and new division 4 *Use of approved information system for particular decisions*, which includes new section 599F to 599G.

New section 599B specifies when the Minister must or may make an assessment of the royalty-related amount payable by a petroleum producer for a period. An assessment must be made if a royalty return or annual royalty return is lodged, even if the liability is nil. The Minister may make a default assessment at any time in the absence of a return if satisfied a royalty-related amount is payable for a period.

New section 599C provides for the making of a reassessment of the royalty-related amount payable by a petroleum producer for a period. A reassessment increasing the royalty-related amount payable for a period may be made at any time whereas a reassessment decreasing the royalty-related amount payable for a period must be made within five years after the day the original assessment for the period was made, subject to the exceptions stated in subsection (5). A reassessment must be made if a provision of this or another Act requires it. The time for making such a reassessment is not limited, including where the amount payable decreases. The section also clarifies how a reassessment is made for a period once an assessment has been made for an annual return period.



New section 599D specifies the basis on which assessments, including default assessments, may be made. An assessment may be made on the basis of the information considered relevant by the Minister. The basis for making a default assessment, or an assessment where information and documents are either not given or are insufficient, is also specified.

New section 599E requires a notice of assessment to be given for the making of an assessment and reassessment. The section also specifies the information required to be included in the notice and the due date for paying a royalty-related amount under the notice.

New section 599F provides that the Minister may approve an information system for a royalty provision.

New section 599G provides that the Minister may arrange for the use of an approved information system to make a decision under a royalty provision if the decision does not involve the exercise of the Minister's discretion. The decision is taken to be a decision made by the Minister.

*Clause 57* inserts new chapter 6 part 3 division 1, omits section 600 and 601 and inserts new sections 600, 601, 601A and 601B.

New section 600 provides for refunds to be made where on an assessment or reassessment the royalty-related amount paid by a petroleum producer for a period is higher than the amount payable by the producer for the period. The refund is to be made by repaying the excess amount to the producer or crediting it against an amount the Minister is reasonably satisfied is, or will be, payable by the producer for a royalty-related amount.

New section 600 also provides for refunds to be made in the same manner when the royalty-related amount paid is higher than the amount payable by a petroleum producer, in circumstances other than where an assessment or reassessment is made, and where the Minister issues the producer a notice stating the excess amount.

The section also clarifies that no interest is payable on the excess amount refunded.

New section 601 provides for the imposition and remission of a royalty penalty amount and specifies the rate at which it is imposed and the other matters for its imposition.

A petroleum producer is liable for a royalty penalty amount where the Minister makes a default assessment or a reassessment of a default assessment. A royalty penalty amount is also imposed where a reassessment is made increasing the royalty-related amount payable for a period.

The royalty penalty amount may be increased by 20% of the royalty penalty amount otherwise imposed in stated circumstances.

New section 601A ensures that, where a proceeding is commenced against a petroleum producer for an offence and a royalty penalty amount has been imposed for the particular act or omission that constitutes the offence, the royalty penalty amount is not payable unless the proceeding is withdrawn. That is, the royalty penalty amount is imposed as an alternative to prosecution for the same wrongdoing.

New section 601B enables the Minister to remit all or part of the royalty penalty amount imposed under section 601.

*Clause 58* amends section 602 to remove a reference to additional petroleum royalty under omitted section 601.

*Clause 58* also amends section 602 to insert new subsections (7) and (8). New subsection (7) states that if a regulation provides for unpaid royalty interest to be worked out if royalty is payable by instalments, and the Minister decides to remit to a person the whole or part of the interest under subsection (6), the Minister is required to give a notice to the person informing them of the amount to be remitted.

New subsection (8) clarifies that subsection (7) only applies if the amount of the unpaid royalty interest is to be remitted before an assessment notice is given for the remittance.

*Clause 59* amends section 602A to include references to a royalty-related amount.

*Clause 60* inserts a new section 603 to include references to a royalty-related amount.

*Clause 61* inserts a new section 604 to allow the Minister to specify an earlier time for payment of a royalty-related amount than the date it would otherwise be payable under the Act if the Minister reasonably believes the amount may not be recoverable if the ordinary due day were to apply. This time cannot be earlier than when the notice specifying the payment date is given.

*Clause 62* omits section 604G(6).

*Clause 63* inserts new division 2 in chapter 6, part 3. Division 2 contains new sections 604AA to 604AG.

New section 604AA provides definitions for division 2.

New section 604AB specifies when an administrator must advise the Minister of the administrator's appointment. Failure to inform the Minister as required is an offence.

New section 604AC specifies the Minister's powers and remedies against an administrator and the extent to which an administrator is liable for payment of a royalty-related amount of the person for whom they are appointed administrator. This provision is not intended to override the general rules regarding priority of creditors.

New section 604AD allows the Minister to recover a debt payable by a person (the 'liable person') under a royalty provision by serving a garnishee notice on a person who holds, or may receive money, for or on account of the liable person, on a person who is liable or may become liable to pay money to the liable person, or on a person who has authority to pay money to the liable person, even though the liable person's entitlement to the money may be subject to unfulfilled conditions.

Payment under the garnishee notice is not required until the garnishee actually holds the money for, or is liable to pay the amount to, the liable person. The amount required to be paid by the garnishee may be the full amount of the debt, a lesser amount, or amounts at intervals.

New section 604AE specifies the time for which a garnishee notice has effect.

New section 604AF provides for the adjustment of the amount required to be paid under a garnishee notice if part or all of the debt is satisfied before the due date of the garnishee notice. If the debt is fully discharged, the Minister must withdraw the notice.

New section 604AG specifies the effect of payment by a garnishee under a garnishee notice.

*Clause 64* inserts new parts 4 and 4A in chapter 6.

New part 4 dealing with offences and related matters includes new sections 605 to 611.

New section 605 creates an offence where a person fails to comply with an information requirement or lodgement requirement without reasonable excuse.

New section 606 creates an offence where a person gives the Minister or a royalty investigator a document containing information that the person knows or should reasonably know is false or misleading in a material particular. A document can be false or misleading because it is incomplete. A defence is also provided.

New section 607 creates an offence where a person states anything to the Minister or a royalty investigator that the person knows or should reasonably know is false or misleading. A statement can be false or misleading because of the omission of information.

New section 608 provides that a person must comply with particular requirements to give information or documents or to lodge a document even though the information or document provided may be incriminating. However, any such incriminating information or document 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 but does not apply where the information or documents are sourced independently in a manner unrelated to the disclosure under the *Petroleum and Gas (Production and Safety) Act 2004*.

#### *Example*

*A person is given a notice requiring the production of all information and documents relevant to an assessment of a petroleum royalty liability previously made. The person is aware that one of the documents discloses that a matter was significantly understated, and that petroleum royalty was therefore under-assessed.*

*The person must provide all of the information and documents requested. The information and documents obtained may be used to make a reassessment to reflect the petroleum royalty properly payable and may also be used in any recovery proceedings.*

*However, the information may not be used to prosecute the person for an offence under a royalty provision. For instance, the person cannot be prosecuted for the offence of providing false or misleading documents and information under sections 606 and 607.*

*If, in providing the required documents and information, the person provided false or misleading documents or made false or misleading statements to the royalty investigator, the person may be prosecuted for an offence in relation to the falsity of those documents and information.*

New section 609 imposes an obligation on a person to notify the Minister where a royalty-related amount has been under-assessed for a period. Failure to notify the Minister as required is an offence.

New section 610 creates an offence where a person obstructs the Minister or a royalty investigator when exercising a power under a royalty provision or a person assisting the Minister or royalty investigator.

New section 611 creates an offence where a person pretends to be a royalty investigator.

New part 4A dealing with investigations relating to royalty provisions, includes new sections 612 to 617.

New section 612 specifies the purposes for which a power under part 4A may be exercised. A power conferred under part 4A may be exercised only for the administration and enforcement of a *Petroleum and Gas (Production and Safety) Act 2004* provision to the extent it is relevant for petroleum royalty.

New section 613 provides for the appointment of appropriately qualified public service employees as royalty investigators.

New section 614 provides that a royalty investigator's appointment is conditional and the exercise of powers may be limited.

New section 615 provides for the issue of an identity card to a royalty investigator.

New section 616 requires that a royalty investigator, in exercising the applied powers of entry to places and applied powers on having taken entry, must first produce his or her identity card or have it clearly displayed for inspection. The obligation to produce an identity card does not apply for the exercise of the other applied powers under Part 4A or the royalty investigator's power under section 617.

If circumstances do not permit the production of the identity card to the person at that time, the royalty investigator must do so as soon as reasonably possible. The requirement to produce an identity card before exercising the relevant powers does not apply if the royalty investigator is entering a public place when it is open to the public. Similarly, the requirement does not apply if a royalty investigator is entering land around premises to contact the occupier or if the royalty investigator is entering part of the place that the royalty investigator considers members of the public are allowed to enter to contact the occupier.

New section 616A specifies when a royalty investigator ceases to hold office.

New section 616B specifies how a royalty investigator may resign from office.

New section 616C requires a royalty investigator to return his or her identity card upon ceasing to be a royalty investigator.

New section 616D provides for the investigation powers of the Minister and a royalty investigator. In addition to the powers conferred on a royalty investigator under part 4A, the Minister and a royalty investigator may exercise the powers conferred under the applied taxation investigations provisions. The applied taxation investigation provisions comprise the same powers which are conferred on the Commissioner of State Revenue and an investigator in the *Taxation Administration Act 2001*, part 7, division 2, subdivisions 2 to 6. The applied taxation investigation provisions may be exercised by the Minister and a royalty investigator subject to any necessary changes or modification to ensure the taxation investigation provisions operate appropriately for the purposes of the *Petroleum and Gas (Production and Safety) Act 2004*.

New section 616D also clarifies that an offence is committed under the *Petroleum and Gas (Production and Safety) Act 2004* if a person commits an offence mentioned in sections 88(6), 96(2) or 96(4) *Taxation Administration Act 2001* as applied.

New section 617 clarifies a royalty investigator may carry out, or arrange to have carried out, testing on a petroleum sample which may have the effect of destroying the sample. If the sample is destroyed, the obligation to return the sample, under applied section 99(1) *Taxation Administration Act 2001*, will not apply.

*Clause 65* makes a consequential amendment to section 736 to clarify the scope of an authorised officer's functions.

*Clause 66* makes a consequential amendment to section 813.

*Clause 67* amends section 814 to include further offences within the definition of 'executive liability provision'. The following offences will now be executive liability provisions; section 605(1) (failure to comply with information requirement or lodgement requirement), section 606(1) (false or misleading documents) and section 607(1) (false or misleading information).

*Clause 68* amends section 851AA.

*Clause 69* inserts new chapter 15 part 18 which includes transitional provisions for the *Petroleum and Gas (Production and Safety) Act 2004*.

New section 988 specifies the transitional arrangements for new divisions 1 and 3 of chapter 6 part 2, and sections 601 to 601B, so that an assessment or reassessment may be made on or after 1 July 2014 in relation to a royalty-related amount payable by a petroleum producer for a period ending before 1 July 2014. In addition, a royalty penalty amount may be imposed even where the particular act or omission mentioned in section 601A occurred before 1 July 2014.

For making an assessment or reassessment on or after 1 July 2014, the section clarifies when an assessment or reassessment will be taken to have been made for the prior period.

The section also specifies when a royalty penalty amount will not be imposed on a reassessment made on or after 1 July 2014 which increases the royalty-related amount payable by a petroleum producer for a royalty return period ending before 1 July 2014.

New section 989 ensures that the requirement for an administrator to notify the Minister under new section 604AB upon becoming aware of a liability is not imposed retrospectively. The section also applies to an administrator appointed before the commencement to require notification to the Minister within 14 days after the commencement.

*Clause 70* amends the dictionary in schedule 2 to include a number of definitions.

## **Part 7 State Penalties Enforcement Act 1999**

*Clause 71* provides that this part amends the *State Penalties Enforcement Act 1999*.

*Clause 72* amends the heading for section 10 to clarify the persons to whom it applies, and subsection 10(3) to clarify the purpose for which the persons mentioned in the subsection may be engaged. In addition, subsections (5) to (7) are omitted.

*Clause 73* inserts new sections 10A to 10C.

New section 10A applies if the registrar engages an entity under section 10(3)(b) to provide services to assist in the administration or enforcement of the Act. The services that the service contractor is authorised to perform must be specified in the service contract, which may also impose a condition on the provision of the authorised service, may include a delegation under section 10C, may authorise the subcontracting of the authorised service and may impose a condition on the subcontracting.

The section also specifies the standing of the service contractor in providing an authorised service and provides that the engagement of a service contractor does not relieve the registrar of the registrar's obligations in relation to the proper administration and enforcement of the Act.

Anything done by or in relation to the service contractor for or in relation to the authorised service is taken to have been done by or in relation to the registrar or SPER. In performing the authorised services, laws generally apply to the service contractor as if the service contractor were the registrar or SPER. However, in recognition of the standing of these entities in providing authorised services, laws are generally taken to apply to them as if they were the registrar or SPER.

However, to ensure the contractual arrangements operate effectively in all regards, including for the State, a regulation may be made to exclude the operation of a law from application to the service contractor or service subcontractor as appropriate.

New section 10B applies if the service contract authorises the subcontracting of an authorised service and the service contractor subcontracts with another entity to provide the authorised service. The service subcontract must comply with any relevant conditions imposed under the service contract and state the authorised services required to be performed. The service subcontract may impose a condition on the provision of the authorised service. The service contractor may delegate a prescribed function that is permitted to be delegated under the service contract and section 10C(1) or may, subdelegate a prescribed function that has been delegated to the service contractor under section 10C(3).

The section also specifies the standing of the service subcontractor in providing an authorised service and provides that the engagement of a service contractor does not relieve the registrar of the registrar's obligations in relation to the proper administration and enforcement of the Act and nor does it relieve the service contractor of its obligations under the service contract.

Anything done by or in relation to the service subcontractor for or in relation to the authorised service is taken to have been done by or in relation to the registrar or SPER. In performing the authorised services, laws generally apply to the service subcontractor as if the service subcontractor were the registrar or SPER. As for a service contract, a law may be prescribed as not applying to the service subcontractor.

New section 10C allows the registrar to delegate to a service contractor the registrar's power of delegation under section 161 of the Act or another function or power of the registrar or SPER that is prescribed. The section specifies the persons to whom a service contractor may delegate or subdelegate a prescribed function.

*Clause 74* inserts new sections 11A and 11B.

New section 11A provides for the issuing of an identity card to an enforcement officer and the requirements for the identity card.

New section 11B requires the return of the identity card within 21 days of a person ceasing to be an enforcement officer.

*Clause 75* amends section 148 to include a note.

*Clause 76* amends the definition of *official* in section 152G to clarify that the confidentiality obligations extend to a person who is providing, or has provided, an authorised service under a service contract or service subcontract.

*Clause 77* amends section 158 to extend the ways in which a document may be served under the Act and to state when it is taken to be served.

*Clause 78* amends section 161 to clarify that the registrar's power of delegation under the section is subject to new section 10C.

*Clause 79* amends section 65 to extend the matters for which a regulation may be made under the Act.

*Clause 80* amends the dictionary in schedule 2 to include a number of definitions and amends the definition of *enforcement officer*.

## **Part 8      Amendment of Taxation Administration Act 2001**

*Clause 81* provides that the part amends the *Taxation Administration Act 2001*.

*Clause 82* amends section 7, which deals with the appointment of the Commissioner of State Revenue. Subclause (1) amends section 7(2) by replacing the requirement that a senior executive of the department be appointed as the Commissioner with a requirement that an appropriately qualified person be appointed as the Commissioner. Subclause (2) inserts a new section 7(3) which provides that it does not matter whether the appointee is or is not already a public service officer.

*Clause 83* inserts a new part 19 and section 176, which provides that section 7, as in force on the day the section commences, is taken to have had effect on and from 19 February 2014.

*Clause 84* omits the definition of ‘senior executive’ from the schedule 2 dictionary as this term will no longer be used in the *Taxation Administration Act 2001*.