Revenue and Other Legislation Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Revenue and Other Legislation Amendment Bill 2018.

Policy objectives and the reasons for them

The objective of the Revenue and Other Legislation Amendment Bill 2018 (the Bill) is to make various amendments to a number of Acts administered by the Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships.

Amendments to revenue legislation

The Bill amends Queensland's revenue legislation to support expansion of electronic conveyancing (e-conveyancing) and to ensure its continued proper operation and maintain its currency (the revenue legislation amendments).

Amendments to the *Duties Act 2001* (Duties Act), *Duties Regulation 2013* (Duties Regulation) and the *Taxation Administration Act 2001* (Taxation Administration Act) support an expansion of the transfer duty framework for e-conveyancing in Queensland.

The Taxation Administration Act is also amended to ensure the charitable institution registration requirements operate as intended by requiring that entities seeking registration as charitable institutions must expressly include in their constitutions particular clauses which govern the use of the entity's income and property. In addition, amendments clarify what a constitution is for the purposes of the charitable institution registration provisions.

Amendments to the Duties Act give retrospective legislative effect to a number of beneficial administrative arrangements. These amendments:

- extend the transfer duty concession for family businesses of primary production to all types of dutiable property used to conduct a primary production business;
- ensure that certain deregistered managed investment schemes can be treated as exempt managed investment schemes in particular circumstances and subject to certain conditions; and
- correct a cross-reference in the landholder duty provisions to ensure that landholder duty is properly calculated.

The *Land Tax Act 2010* (Land Tax Act) is amended to give retrospective legislative effect to a beneficial administrative arrangement which ensures that deceased estate land is assessed for land tax as intended.

An amendment to the *Payroll Tax Act 1971* (Payroll Tax Act) updates the rate used to calculate the exempt component of a motor vehicle allowance, ensuring that payroll tax can be correctly calculated and giving retrospective legislative effect to a beneficial administrative arrangement.

Amendments to the *State Penalties Enforcement Act 1999*

The Bill will support the implementation of the new service delivery model for the State Penalties Enforcement Registry (SPER) by making amendments to address technical issues within the *State Penalties Enforcement Act 1999* (the SPE Act). The Bill will ensure that the SPE Act accurately and precisely reflects the policy positions underpinning the new service delivery model and the objectives of the S*tate Penalties Enforcement Amendment Act 2017*.

The Bill aims to address inconsistencies between sections relating to the operation of SPER's non-monetary debt finalisation program for debtors who are experiencing genuine hardship, work and development orders, which is a key element of SPER's new service delivery model. The Bill also supports the move to case management of debtors by SPER by providing for consistent registration arrangements and clarifying the order in which payments made to SPER are allocated to the different types of debt registered with SPER for collection.

Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

The Bill will amend the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (JLOM Act) with the objective being to better capture and prohibit substances (such as turbo yeast) that can be used to make homemade alcohol in nine discrete Indigenous communities.

Homemade alcohol offences currently apply in these nine discrete Indigenous communities: Aurukun, Kowanyama, Lockhart River, Mornington Island, Napranum, Pormpuraaw, Woorabinda, and Wujal Wujal (eight Alcohol Management Plan communities with zero carriage limits) and Doomadgee (as a prescribed community area).

Measures to reduce the supply of alcohol through Alcohol Management Plans are regulated under the JLOM Act and *Liquor Act 1992.* This includes prohibiting the possession and supply of home-brew concentrate in these communities with a zero-alcohol carriage limit and prescribed community areas, so that dry place declarations are not undermined by the production of homemade alcohol.

Homemade alcohol remains a significant issue in these communities, in particular, in the Mornington Island community and other communities during the wet season, with serious health consequences noted by hospitals and mental health services.

Easy access to, and the relatively low cost of ingredients used to make homemade alcohol combined with the ability to use common household items in its manufacture means that homemade alcohol continues to be a source of alcohol in these communities. Emerging methods for making homemade alcohol include using everyday household ingredients such as fruit juice, multivitamins and fertilisers.

The Mornington Island Shire Council Alcohol Management Plan Strategic Review (2017) identified the rising use of turbo yeast (a form of yeast and nutrient pack specifically designed

to produce alcohol in bulk) in the production of homemade alcohol. The key issues with turbo yeast being used to make homemade alcohol are: it produces a bulk volume of alcohol at an accelerated rate; it ferments to a high alcohol level (for example, as high as 23 per cent alcohol); and it is easily accessible through online purchase.

Currently section 38 of JLOM Act makes it an offence for a person in a community area with a zero carriage alcohol limit and prescribed community area to: possess a home-brew kit or component of a home-brew kit; possess equipment or components of equipment used to brew alcohol; possess home-brew concentrate; and supply homemade alcohol.

In *Rockland & Ors v Queensland Police Service* [2013] QDC 61 (Rockland decision), Judge Irwin DCJ considered whether the definition of 'home-brew concentrate' should be interpreted as extending to a substance not including malt and hops and whether yeast was within this definition. Judge Irwin DCJ determined that yeast (such as turbo yeast) did not fall within the definition of home-brew concentrate. Expert evidence was accepted that some species of yeast ferment sugars into ethanol (alcohol), and without the action of such yeast, no beer or wine or any other alcoholic beverage can be made.

The Rockland decision highlighted that substances (such as turbo yeast) are not captured in the definition of 'home-brew concentrate' because it does not include malt and hops. The Bill will address this gap in section 38 of the JLOM Act.

Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003

The Bill will amend the *Aboriginal Cultural Heritage Act 2003* (ACHA) and *Torres Strait Islander Cultural Heritage Act 2003* (TSICHA) to:

1. reinstate the previous understanding of section 34(1)(b)(i)(C) as it was understood by decision-makers under the ACHA and TSICHA; and
2. validate decisions made and actions taken prior to the commencement of these amendments.

On 20 December 2017, the Supreme Court handed down the *Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships* [2017] QSC 321 (Nuga Nuga decision) in which Judge Jackson interpreted section 34(1)(b)(i)(C) of the ACHA.

The Nuga Nuga decision raised concerns that actions taken and decisions made based on the interpretation of section 34(1)(b)(i)(C) prior to the Nuga Nuga decision may be invalid. Reinstating the Department of Aboriginal and Torres Strait Islander Partnerships' previous understanding of section 34(1)(b)(i)(C), would invalidate any actions taken or decisions made in compliance with the ACHA and TSICHA, based on the interpretation of the Nuga Nuga decision. To ensure the validity of decisions made and transition actions taken so that stakeholders who have commenced a process prior to the commencement of these amendments are not disadvantaged, validating and transitional provisions are provided.

Prior to the Nuga Nuga decision, decision-makers under the ACHA and TSICHA understood the requirement under section 34(1)(b)(i)(C) that there 'is not, and never has been, a native title holder' to refer to a person who has been positively determined by the Federal Court to hold

native title under section 225 of the *Native Title Act 1993* (Cth) (NTA). The Nuga Nuga decision clarified that reference to 'native title holder' under s34(1)(b)(i)(C) can refer to both a common law holder of native title or a person who has been positively determined by Federal Court to hold native title under section 225 of the NTA.

As a result of reinstating the previous understanding of section 34(1)(b), this will 'invalidate' processes already commenced since the Nuga Nuga decision. To ensure stakeholders who have already commenced a process under the ACHA and TSICHA are not disadvantaged, the Bill will validate decisions made and actions taken, and transition actions taken where processes had already commenced under the ACHA and TSICHA.

Cross River Rail Delivery Authority Act 2016* and *Acquisition of Land Act 1967

The Bill will make the following amendments to the:

- *Cross River Rail Delivery Authority Act 2016* (CRRDA Act) to make minor administrative changes and include amendments to allow for the Board to appoint an interim chief executive officer; and
- *Acquisition of Land Act 1967* (ALA) to expressly confirm that compulsory land acquisition applications may be endorsed by the Minister administering the CRRDA Act.

These amendments are required to streamline and enhance the administration of the Cross River Rail Delivery Authority (CRRDA).

Achievement of policy objectives

Amendments to revenue legislation

***Duties Act 2001, Duties Regulation 2013* and the *Taxation Administration Act 2001*– amendments to support expansion of e-conveyancing**

Background

Electronic conveyancing for land is enabled in Queensland through the provisions of the *Electronic Conveyancing National Law (Queensland) Act 2013*, which adopts national framework provisions under New South Wales' *Electronic Conveyancing (Adoption of National Law) Act 2012* (the National Law). This legislation provides for the establishment of web-based hubs called Electronic Lodgement Networks (ELNs), operated by ELN Operators approved by the Registrar of Titles (Registrar).

Since introduction of the National Law, parties can elect to use an ELN to electronically settle certain transactions, as an alternative to attending a physical settlement. Certain Land Registry forms are created, digitally signed and lodged with the Registrar through a dedicated ELN workspace for the transaction, in the ELN system, as part of the settlement process.

The *Payroll Tax Rebate, Revenue and Other Legislation and Amendment Act 2015* established the transfer duty and taxation administration framework (the duty framework) to support e-conveyancing.

To ensure appropriate revenue protections, and due to the untested nature of the ELN more generally at that time, the duty framework introduced to support e-conveyancing permitted only ELN transfers. ELN transfers are defined as residential cottage conveyance transactions where there must be an antecedent agreement for transfer entered into outside the ELN and include limitations on the scope of transfer duty concessions or exemptions which can be applied.
The Registrar now permits electronic lodgement of a broad range of land-based transactions through e-conveyancing. This range of transactions, and those which may be permitted for electronic lodgement in the future, includes a range of dutiable transactions outside the current scope of the duty framework for e-conveyancing.

Subject to their specific registration requirements, self assessors registered under chapter 12, part 2 or 3 of the Duties Act are permitted to assess most land-based transactions lodged with the Registrar for transfer duty. Therefore, to align with the existing duty framework where possible and to ensure appropriate revenue risk mitigation, the Bill adjusts the duty framework to support an expansion of e-conveyancing to permit specified land-based dutiable transactions which can be assessed by registered self assessors.

Scope

Under the Duties Act, transfer duty is imposed on dutiable transactions. The range of dutiable transactions which may be self assessed for duty and then lodged and registered electronically with the Registrar is broad and will include transfers, surrenders, vestings or acquisitions of new rights. The varied nature of these transactions, as well as permitting self assessors to apply a range of concessions and exemptions to e-conveyancing transactions, increases potential risks to revenue.

To mitigate these risks, and to cater for differences in transactions, the Duties Act will be amended to have two distinct sub-categories of dutiable transactions for e-conveyancing purposes:

- *ELN transfers*—transfers of land with an antecedent qualifying agreement which are traditionally completed with a financial settlement, unless otherwise excluded; and
- *ELN lodgements*—all other land-based dealings that do not qualify as an ELN transfer, unless otherwise excluded.

Amendments will also clarify that the electronic document lodged with the Registrar to effect an ELN transfer or an ELN lodgement will be known as an ‘ELN transaction document’. The concept of an ELN transaction document exists now for ELN transfers. However, this concept has been redefined to describe the broader range of documents which are contemplated for registration as ELN lodgements.

ELN transfers

Under the existing duty framework, ELN transfers are defined as a sub-category of transfers of dutiable property, which is limited to certain residential cottage conveyances and incidental chattels.

While ELN transfers will remain limited to transfers of dutiable property, amendments will provide that all dutiable property is permitted for transfer provided there is a qualifying agreement between the parties which includes eligible land. Eligible land is defined, and will

permit the transfer of all types of land (e.g. residential land, vacant land, commercial land, industrial land), provided the instrument of transfer is registered in accordance with the *Land Title Act 1994* (Land Title Act).

The scope of concessions which may be applied to ELN transfers will broaden to include relevant home, primary production and prescribed business concessions. However, no exemptions may be applied to ELN transfers other than the exemption on a transfer pursuant to an agreement for which the duty obligation has been met under section 22(2) of the Duties Act.

Amendments will also permit aggregation under section 30 of the Duties Act in circumstances where the qualifying agreement is aggregated with other types of dutiable property under that agreement, or with another qualifying agreement.

Transfers by direction will be excluded from electronic settlement as an ELN transfer. Transfers by direction typically involve a sale between at least three parties, and are evidenced by two or more agreements between the different parties. These agreements are assessed as separate dutiable transactions, with the end transfer being stamped pursuant to both of these documents.

ELN lodgements

Amendments will introduce the ELN lodgement as a new sub-type of dutiable transaction for transfers which do not qualify as an ELN transfer; surrenders; vestings and acquisitions of a new right.

To be eligible for settlement as an ELN lodgement, the permitted dutiable transaction must include a land-based dealing registered under the Land Title Act, the *Land Act 1994* (Land Act) or the *Water Act 2000* (Water Act). A prescribed list of transfer duty concessions or exemptions set out in the Duties Regulation may also be applied to eligible transactions.

When liability for transfer duty arises

Liability for transfer duty is imposed at the times set out in Schedule 2 to the Duties Act. For ELN transfers, the existing duty framework was adjusted to account for the ELN environment and the process by which an ELN transaction document moves through the settlement process. As a consequence, an alternative liability date for ELN transfers is deemed to occur when the ELN workspace contains an ELN transaction document which is signed and that workspace is then ‘locked’.

The timing for liability for transfers, surrenders, vestings and acquisitions of a new right which are ELN lodgements will similarly be deemed to occur when the requisite ELN transaction document has been digitally signed by the parties and the ELN workspace for the transaction is ‘locked’.

The concept of locking is legislatively defined for both ELN transfers and ELN lodgements and is essentially the point where the subscribers for the ELN workspace for the transaction are no longer able to change data in the ELN workspace for the ELN transaction document or its endorsement.

The ELN workspace may also be unlocked in certain circumstances. To ensure revenue protection in the ELN environment, the existing duty framework for ELN transfers confirms that a separate duty liability will arise every time the ELN workspace is locked. Amendments will confirm that these requirements also apply to the expanded category of ELN transfers as well as ELN lodgements.

Similarly, amendments will confirm that both expanded ELN transfers and ELN lodgements are also subject to other existing provisions for ELN transfers relating to locking. In particular, the amendments will provide that each locking deems a fresh ELN transaction document to exist, any endorsement applied before unlocking is of no effect and requires the endorsement process to occur once the ELN workspace is again locked.

Amendments will also extend the existing deeming provision to ensure duty is only applied once to an ELN lodgement where a transaction is completed through the registration of an electronic document by the Registrar.

Endorsement and payment of duty for electronic transactions

Under the existing duty framework for e-conveyancing, and subject to registration requirements, self assessors are able to endorse documents on the basis that duty and any assessed interest and penalty tax has been:

- paid to the Commissioner of State Revenue (Commissioner); or
- received by the self assessor; or
- for ELN transfers only—a 'payment commitment' has been made.

The payment commitment is an existing concept for ELN transfers. The payment commitment reflects that duty may be included as a part of the disbursements to be made for financial settlement. The payment commitment permits self assessors to endorse ELN transaction documents for ELN transfers as an alternative to duty having been paid to the Commissioner or these funds being received by the self assessor prior to endorsement. Once the electronic settlement is completed, transfer duty must be received by the self assessor and paid to the Commissioner in accordance with the self assessor's usual obligations under the Duties Act.

Amendments will confirm that provisions relating to the payment commitment apply only to ELN transfers (as expanded). Self assessors endorsing documents for ELN lodgements will be required to either have paid the assessed duty, and any assessed interest and penalty tax, to the Commissioner or received these funds prior to ELN workspace for that transaction being locked for electronic settlement.

Consequential amendments to the concept of an ELN transaction document will ensure appropriate application of all existing self assessor obligations in the Duties Act to ELN lodgements.

Revenue protection

A number of amendments extend existing revenue protection measures and offences to ensure appropriate application to ELN lodgements.

In particular, ELN transaction documents for ELN lodgements will be subject to:

- existing offences for improper endorsement under sections 480A, 481 and 481A of the Duties Act; and
- the existing offence in section 483 of the Duties Act which prohibits the use or reliance upon an endorsed ELN transaction document other than for the ELN settlement process for that transaction until it is registered under the Land Title Act*;*
- deeming information to be stated to the Commissioner by the parties where it is given in the ELN workspace relevant to the Duties Act or Taxation Administration Act, with the result that it will be an offence by those parties if that information is false or misleading.

Similarly, these provisions will apply to the expanded category of ELN transfers.

Other amendments include the introduction of definitions to support ELN lodgements, and minor and consequential amendments to ensure the operation of terminology across the Duties Act and Taxation Administration Act framework.

***Duties Act 2001* - amendments giving effect to administrative arrangements**

Extension of the transfer duty concession for family businesses of primary production

The Duties Act imposes transfer duty on the dutiable value of dutiable transactions, unless an exemption or concession applies. However, a transfer duty concession is available for certain dutiable transactions between specified family members which relate to business property used to carry on particular family businesses of primary production (the family primary production business concession).

Where the family primary production business concession applies, the dutiable value of the business property to which the transaction relates is taken to be nil. Additionally, if the dutiable property the subject of the dutiable transaction includes residential land adjacent to land used to carry on the business, the dutiable value of the residential land is taken to be nil.

For the purposes of the family primary production business concession, 'business property' is defined in the Duties Act to encompass only land and personal property. Other types of dutiable property that may be used to carry on a primary production business (for example, business assets) are not covered by the family primary production business concession.

From 12 October 2016, an administrative arrangement has operated to extend the family primary production business concession to cover all dutiable property used to conduct a primary production business. This administrative arrangement was published as Public Ruling DA105.3.1 *Extension of concession for dutiable transactions for family businesses of primary production.* The Duties Act will be amended to give retrospective legislative effect to this beneficial administrative arrangement.

Treating certain deregistered managed investment schemes as exempt managed investment schemes

Under the Duties Act, transfer duty is imposed on the acquisition or surrender of a trust interest in a trust that directly or indirectly holds dutiable property. However, dealings in a public unit trust (PUT) that holds or has an interest in dutiable property are generally exempt from duty. The Duties Act provides five categories of PUT, including pooled public investment unit trusts

(PPIUTs). To qualify as a PPIUT, a unit trust must satisfy certain conditions in section 75 of the Duties Act, including that it must be either a registered managed investment scheme (registered scheme), an exempt managed investment scheme (exempt scheme) or a pooled superannuation trust.

Registered schemes and exempt schemes are defined in the Duties Act by reference to the Commonwealth regulatory framework for managed investment schemes under the *Corporations Act 2001* (Cwlth) (Corporations Act). A registered scheme is one registered under the Corporations Act. An exempt scheme is one that, under the Corporations Act, is exempt from the requirement to register because it has only ever issued units to wholesale clients.

In certain circumstances, registered schemes that have previously issued units to retail clients but currently only have wholesale clients may be granted relief by the Australian Securities and Investments Commission (ASIC), by way of an exemption or declaration, to facilitate voluntary deregistration and to exempt those schemes from the requirement to register. However, for the purpose of the Duties Act, these deregistered managed investment schemes do not qualify as exempt schemes because they have previously issued units to retail clients. Therefore, they are unable to qualify, or remain qualified, for PPIUT status.

An administrative arrangement approved on 9 August 2017 has enabled the Duties Act to be administered on the basis that these deregistered managed investment schemes may be treated as an exempt scheme, in particular circumstances and subject to certain conditions. A deregistered managed investment scheme that is treated as an exempt scheme will qualify as a PPIUT if it satisfies the conditions in section 75 of the Duties Act. This administrative arrangement was published in Public Ruling DA075.3.1 *Certain deregistered managed investment schemes may be treated as an exempt managed investment scheme.*

The Duties Act will be amended to give retrospective legislative effect to this beneficial administrative arrangement.

To be treated as an exempt scheme, the trustee of unit trust that is a managed investment scheme which has voluntarily deregistered must make an application in the approved form to the Commissioner. In determining whether to approve the unit trust as a deregistered managed investment scheme for the purpose of the Duties Act, the Commissioner must be satisfied that it would be appropriate having regard to:

- the reasons for deregistering the managed investment scheme;
- the terms of any exemption or declaration made by ASIC under the Corporations Act;
- whether the unit trust has ever qualified as a PUT and the reasons it no longer qualifies;
- the circumstances surrounding the operation of the unit trust since it was deregistered; and
- the PUT provisions in the Duties Act generally.

If approved, a deregistered managed investment scheme can only be treated as an exempt scheme for the period starting immediately before the first trust acquisition or trust surrender of a trust interest in the unit trust since it was deregistered and ending either immediately before the exemption or declaration granted by ASIC ceases to apply or immediately before a unit in the trust is issued or transferred to a person who is not a wholesale client (the deeming period).

If the trustee of a deregistered managed investment scheme that has been approved by the Commissioner becomes aware or ought reasonably to have become aware of an event triggering the end of the deeming period, amendments will ensure that the trustee is required to notify the Commissioner within 28 days. Failure to give notice is an offence under the Taxation Administration Act.

If the Commissioner makes a decision not to approve a unit trust as a deregistered managed investment scheme and makes an assessment of duty on that basis, the amendments clarify that the decision may be objected to as part of an objection to the assessment under the Taxation Administration Act. Taxpayers dissatisfied with a decision on an objection have review and appeal rights under the Taxation Administration Act.

Correcting a cross-reference in the landholder duty provisions

Under the Duties Act, landholder duty is imposed on relevant acquisitions in a private landholder (unlisted corporation) or a public landholder (listed corporation or listed unit trust). A landholder is an entity that has land-holdings in Queensland with an unencumbered value of $2 million or more.

For a relevant acquisition in a private landholder, landholder duty is imposed on the dutiable value of the relevant acquisition. Under section 179 of the Duties Act, the dutiable value is generally calculated by multiplying the unencumbered value of the landholder's Queensland land-holdings by the interests that make up the relevant acquisition. However, certain interests are disregarded or excluded under section 179 of the Duties Act.

The Duties Act provides a landholder duty exemption for particular transactions undertaken for the purpose of changing a corporate structure to make internal adjustments to corporate arrangements (corporate reconstruction exemption). If the acquisition of an interest receives the corporate reconstruction exemption, it is intended that the interest be excluded from the landholder duty calculation in section 179 of the Duties Act. However, due to an incorrect cross-reference in section 179 of the Duties Act, the interest is not excluded.

In order to ensure that landholder duty is properly calculated, an administrative arrangement was approved on 22 August 2017 which has enabled the Duties Act to be administered on the basis that the incorrect cross-reference in section 179 is corrected. This administrative arrangement has been published in Public Ruling DA179.1.1 *Landholder duty—dutiable value of relevant acquisition in a private landholder*. The Duties Act will be amended to give retrospective legislative effect to this beneficial administrative arrangement.

Land Tax Act 2010

Under the Land Tax Act, land tax is imposed on all freehold land in Queensland as at midnight 30 June each year, unless an exemption applies. The owner of land is generally liable to pay land tax on the taxable value of their taxable land at the rates set out under the Land Tax Act which differ depending on whether the owner is a resident individual, company, trustee or absentee. The owner is only liable for land tax once the total value of their taxable land is equal to or greater than the tax-free threshold, which is currently $600,000 for resident individuals and $350,000 for companies, trustees and absentees.

If a liability for land tax arises on land that is part of a deceased estate, the executor or administrator of the estate is usually the owner under the Land Tax Act.

However, despite the provisions of the Land Tax Act, it is intended that the deceased, and not the executor or administrator, is generally taken to be the owner of the land until the administration of the deceased's estate is complete. This is generally to ensure that the lower land tax rates and higher tax-free thresholds for individuals continue to apply during administration. Additionally, it is intended that exemptions that were available to the deceased (such as the home exemption) continue to apply for the financial year immediately following the death of the deceased, unless the land starts to be used in a way that is contrary to the policy underpinning the relevant exemption.

This policy position is longstanding, dating back to the *Land Tax Act 1915* which was the predecessor to the Land Tax Act. The provisions of the *Land Tax Act 1915* supported the intended policy and there was no intention for deceased estate land to be assessed differently under the Land Tax Act. When the Land Tax Act commenced on 30 June 2010, the Office of State Revenue (OSR) continued its assessing practice consistent with the intended policy. An administrative arrangement approved on 14 April 2016, with retrospective effect from 30 June 2010, has enabled the Land Tax Act to continue to be administered on this basis.

To support this longstanding assessing practice and give retrospective legislative effect to this beneficial administrative arrangement, the Land Tax Act will be amended to ensure that the deceased is generally taken to be the owner of land until the administration of the deceased's estate is complete. Further, to ensure that exemptions that were available to the deceased continue to apply for the financial year immediately following the deceased's death provided the land either has not been used since the deceased's death or the land has continued to be used for the same purposes that the deceased used it for and it has not started to be used for any new purposes.

Payroll Tax Act 1971

The Payroll Tax Act imposes payroll tax on taxable wages paid or payable in a financial year once the payroll tax threshold (currently $1.1 million) is exceeded. Wages include allowances paid or payable by an employer. However, a motor vehicle allowance paid or payable to an employee for a return period is only taxable to the extent that it exceeds the exempt component.

The exempt component is calculated by reference to the rate prescribed under the *Income Tax Assessment Act 1997* (Cwlth) (ITAA) for calculating a deduction for car expenses for a large car. This rate no longer exists as the Commonwealth amended the ITAA to replace the separate rates for small, medium and large cars with a single rate determined by the Federal Commissioner of Taxation from the 2015-16 year onwards (single rate).

An administrative arrangement approved on 1 December 2016 has enabled the Payroll Tax Act to be administered on the basis that, for motor vehicle allowances paid or payable on or after 1 July 2016, the exempt component is calculated by reference to the single rate determined by the Federal Commissioner of Taxation for the financial year immediately preceding the financial year in which the allowance is paid or payable.

The Payroll Tax Act will be amended to give retrospective legislative effect to this beneficial administrative arrangement.

Taxation Administration Act 2001

Subject to conditions, entities registered as charitable institutions under the Taxation Administration Act may be eligible for duty, land tax and payroll tax exemptions. Depending on an institution's circumstances, eligibility for these exemptions can be of significant value, particularly if an entity is liable for land tax or payroll tax, both of which are imposed on a recurring periodic basis.

The Taxation Administration Act provides the conditions an entity must satisfy to qualify for registration. In particular, pursuant to section 149C(5) of the Taxation Administration Act, an entity generally must not be registered unless, under its constitution, however described:

- its income and property are used solely for promoting its objects;
- no part of its income or property is to be distributed, paid or transferred to its members; and
- on its dissolution, its assets remaining after satisfying all debts and liabilities must be transferred to another charitable institution.

It was never intended that an entity should qualify for registration if its constitution, or another instrument constituting and governing it, does not expressly contain the restrictions in section 149C(5) of the Taxation Administration Act.

However, as the Taxation Administration Act does not specifically state that these restrictions must be expressly included, an entity may be registered as a charitable institution if the practical effect of its constitution or other governing instrument, within the framework of the relevant statutory and common law rules, is that the restrictions are satisfied. Additionally, while the Taxation Administration Act recognises a constitution 'however described', it does not specifically provide that a constitution may include another instrument constituting and governing an entity.

The Taxation Administration Act will be amended to require that an entity must expressly include the restrictions in section 149C(5) in its constitution or other governing instrument. Further, amendments will clarify that, for the purpose of the charitable institution registration requirements in the Taxation Administration Act, a constitution may include a statute, deed or other instrument constituting an institution and governing its activities or members. The amendments will ensure the charitable institution registration requirements operate as intended and provide administrative certainty for OSR and taxpayers.

The amendments will apply to both currently registered entities and entities seeking registration in the future. Some entities currently registered will need to amend their constitution or other governing instrument to expressly include the restrictions in section 149C(5) of the Taxation Administration Act in order to continue to qualify for registration. Transitional provisions will ensure they are given a reasonable amount of time to make amendments. Generally, entities will have six months to amend. However, entities governed by statute will have eighteen months to amend, in recognition of the more complex process required to amend legislation.

Entities applying for registration as a charitable institution on or after commencement will need to ensure their constitution or other governing instrument expressly contains the restrictions in section 149C(5) of the Taxation Administration Act.

Amendments to the *State Penalties Enforcement Act 1999*

The Bill will support the implementation of the new SPER service delivery model by addressing technical issues within the SPE Act which affect the new model's implementation. The Bill removes inconsistencies between various sections relating to work and development orders. The Bill also provides for consistency across the registration arrangements for all debt types collected by SPER by providing for debts referred by Victims Assist Queensland to be treated as defaulted court debts on registration, leading to the issue of an enforcement order.

Additionally, amendments in the Bill also support SPER's move to case management of debtors by simplifying the arrangements for the order in which payments made by debtors are to be allocated to the various elements of their SPER debt, such as restitution, court fines, fees and infringement notice fines. The Bill provides a single payment priority order for all debt types and elements, which accommodates SPER applying fees at a case level.

Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

Amendments to the JLOM Act will achieve the policy objective of capturing and prohibiting existing and emerging substances (such as turbo yeast) that can be used to make homemade alcohol.

Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003

Amendments to the ACHA and TSICHA will achieve the policy objectives to reinstate the 'last claim standing' provision as previously understood by decision-makers under the ACHA and TSICHA prior to the Nuga Nuga decision; and validate decisions made and actions taken, and transition actions taken prior to the commencement of these amendments.

Cross River Rail Delivery Authority Act 2016* and *Acquisition of Land Act 1967

The Bill will achieve its objective of clarifying Board membership by updating section 33(1)(c) to replace the reference to repealed legislation with a reference to current legislation. It will expressly confirm that the Board may appoint a short-term interim chief executive officer in instances where the position becomes vacant.

The Bill will achieve its objective of enhancing the administrative efficiency of the CRRDA by:

- removing the requirement to have the budget completed by 31 March each year;
- confirming the Board may appoint an interim chief executive officer should the position be vacated for any reason; and
- expressly confirming the Minister administering the CRRDA Act is a "relevant Minister" for the compulsory acquisition purposes of the ALA.

Alternative ways of achieving policy objectives

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

There are no alternative ways of achieving the Bill's policy objective to support implementation of the new SPER service delivery model other than through legislative amendments.

Amending the JLOM Act, ACHA and TSICHA is the only way of achieving the policy objective.

In relation to the CRRDA Act and ALA, there were no other options identified for achieving the policy objectives.

Estimated cost for government implementation

Amendments to revenue legislation

The implementation costs for the amendments to expand e-conveyancing for transfer duty in Queensland are less than $100,000.

The implementation costs for the remaining revenue legislation amendments are not expected to be significant as the amendments fall within existing frameworks of administration and either restore a previous position or have been operating under existing administrative arrangements.

Amendments to the *State Penalties Enforcement Act 1999*

Any costs associated with the amendments to the SPE Act will be funded from within the existing allocations for the implementation of the new SPER service delivery model.

Amendments to *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003*

The proposals in the Bill will be implemented within existing resources.

Cross River Rail Delivery Authority Act 2016* and *Acquisition of Land Act 1967

There is no cost to implementing these changes.

Consistency with fundamental legislative principles

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

Amendments to revenue legislation

Legislation should have sufficient regard to the rights and liberties of individuals - Legislative Standards Act 1992, section 4(2)(a)

Amendments to *Duties Act 2001* and *Taxation Administration Act 2001* for electronic conveyancing

Overview

While a number of amendments to allow for e-conveyancing affect the rights or liberties of individuals, they need to be considered as a package, and overall they are beneficial. Electronic conveyancing provides an alternative to parties attending a physical settlement, and is intended to achieve greater efficiency in the conveyancing process. The amendments also align permissible e-conveyancing transactions more closely with the transfer duty self assessor framework. This ensures consistency and clarity for transfer duty self assessors conducting land-based dealings in Queensland, and reduces the overall legislative and red-tape burden on taxpayers.

These amendments seek to strike an appropriate balance between the rights and liberties of individuals and minimisation of risk to revenue, particularly those risks associated with allowing endorsement of e-conveyancing documents for transfer duty of the basis of a payment commitment.

While the amendments apply to parties who elect for an electronic settlement, parties may choose to continue to operate under current paper-based conveyancing practices. Should parties opt not to use e-conveyancing, they will not be impacted by the amendments.

Further details of how the balance between revenue protection and the rights and liberties of individuals is achieved through the amendments are discussed below.

Amendments to extend existing self assessor requirements

Amendments updating the definition of 'ELN transaction document' to include the broader range of documents required for registering ELN lodgements will necessarily extend existing self assessor obligations under the Duties Act. These amendments ensure equitable application of self assessor requirements irrespective of the type of transaction or settlement elected by the parties.

Specific amendments include:

- Clauses 30 to 34 extend the application of existing self assessor requirements for notices of registration, restrictions on assessments by the Commissioner and lodging transaction statements to all permissible e-conveyancing transactions; and
- Clause 35 extends the grounds for suspending or cancelling a self assessor's registration to apply to the new definition for ELN transaction document where a payment commitment is made for the relevant transfer agreement.

Amendments to extend existing offence provisions

Amendments to the Duties Act and Taxation Administration Act necessarily extend the operation of existing offences for e-conveyancing, and for self assessors more generally, to all permissible e-conveyancing transactions.

The consistent application of these offences ensures equity irrespective of how a transaction is settled, as well as providing continued revenue protection through the correct endorsement of dutiable transactions and the administration of the transfer duty framework.

In particular, the updated definition of 'ELN transaction document' will extend the following existing offences:

- Clause 36 for the proper endorsement by a registered self assessor;
- Clause 37 for endorsement by a person other than a self assessor;
- Clause 38 for when endorsement is either incorrect or illegible; and
- Clause 40 which states that a person cannot record an ELN transaction document under the Land Title Act unless properly endorsed.

Amendments to definitions of 'ELN transfer' and 'relevant transfer agreement' which extend the benefit of the Commissioner's charge

Existing provisions in the Duties Act for ELN transfers allow the Commissioner the benefit of a first charge over the transferee's interest in the land the subject of the transaction, where a self assessor has endorsed the transaction based on a payment commitment.

Land is currently limited to relevant residential land (that is, land generally the subject of cottage conveyancing). However, amendments in clause 14 to remove restrictions on the classification of land from the definition of 'relevant transfer agreement' will permit eligible ELN transfers to settle all types of land under a payment commitment.

To ensure consistency and equity in the availability of the first charge as between like transactions, and continue revenue protection, the Commissioner's benefit of a first charge over land is also being extended to reflect this new scope.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review - Legislative Standards Act 1992, sections 4(2)(a) and 4(3)(a)

Clause 11 - Amendments to *Duties Act 2001* – Treating certain deregistered managed investment schemes as exempt managed investment schemes

Clause 11 of the Bill inserts new sections 76E to 76G which provide that, subject to certain conditions, a deregistered managed investment scheme may be treated as an exempt scheme if the Commissioner has given approval. This effectively gives the Commissioner power to determine whether that scheme is eligible for PUT status under the Duties Act which ultimately determines whether an exemption from duty is available.

In considering whether or not to treat a deregistered managed investment scheme as an exempt scheme, the Commissioner is required to consider an exhaustive list of factors in each case. Therefore, the Commissioner's power is considered to be sufficiently defined so as to ensure that it is exercised consistently and that deregistered managed investment schemes are treated equally.

Additionally, if the Commissioner makes a decision as to whether a deregistered managed investment scheme is to be treated as an exempt scheme and then subsequently makes an assessment on the basis of that decision, the decision will be subject to objection under the Taxation Administration Act as part of an objection to that assessment. Further, taxpayers dissatisfied with a decision on objection have the right to appeal to the Supreme Court or apply to the Queensland Civil and Administrative Tribunal for a review.

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively – Legislative Standards Act 1992, sections 4(2)(a) and 4(3)(g)

Clauses 48, 56 and 59 – Transitional provisions for the *Revenue and Other Legislation Amendment Bill 2018*

Clauses 48, 56 and 59 insert transitional provisions which ensure that amendments to the Duties Act, Land Tax Act and Payroll Tax Act, which give legislative effect to administrative arrangements, commence retrospectively from the date the administrative arrangements took effect. It is not considered that this breaches fundamental legislative principles as the amendments provide a benefit to taxpayers as they extend or ensure the intended availability of existing tax exemptions or concessions or ensure tax is assessed as intended. The administrative arrangements relating to the Duties Act have all been published as Public Rulings.

Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

The amendments to prohibit homemade alcohol being made with a substance or combination of substances in the nine discrete Indigenous communities may be considered to impinge on a person's rights and liberties (section 4(2)(a) of the *Legislative Standards Act 1992*).

However in 2013, the High Court of Australia determined that alcohol restrictions were a 'special measure' under the *Racial Discrimination Act 1975* (Cth) as they impose constraints on individual liberties which are considered necessary for promoting safety for the community (*Maloney v the Queen* [2013] HCA 28).

Given that the High Court considered alcohol restrictions a special measure in restricted communities, the proposed new offence provision is consistent with the measures taken to ensure the alcohol restrictions are not undermined by the effect of homemade alcohol.

The restriction is justified as a primary objective of the JLOM Act is to minimise the harm caused by alcohol misuse, and associated violence and health concerns in discrete Indigenous communities. Using unregulated substances (including those not for general consumption) to make homemade alcohol has the potential to cause significant harm, due to the dangerous level of alcohol and toxicity. This similarly applies to using uncontrolled fermentation methods.

Therefore, the proposed offence provision is justified to contend with community specific problems and to reduce the harm caused by alcohol misuse.

Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003

The validating and transitional provisions potentially could be interpreted as a breach of a fundamental legislative principles under section 4(2)(g) of the *Legislative Standards Act 1992*, given their retrospective effect.

The policy intent is that stakeholders who have commenced a process in order to comply with the ACHA and TSICHA before and after the Nuga Nuga decision should not be disadvantaged.

The amendments are minimal and deal specifically with the Nuga Nuga decision and require amendment in order to provide certainty to stakeholders required to comply with the ACHA and TSICHA.

Consultation

Amendments to revenue legislation

Consultation on the amendments to support the expansion of e-conveyancing for transfer duty in Queensland was undertaken with the Queensland Law Society.

Community consultation was not undertaken in relation to the other revenue legislation amendments in the Bill. Consultation was not considered necessary or appropriate as the amendments are required to ensure the legislation operates as intended or have been operating under taxpayer beneficial administrative arrangements.

Amendments to the *State Penalties Enforcement Act 1999*

Public consultation was not undertaken on the amendments to the SPE Act due to the technical and machinery nature of the amendments.

Amendments to *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*

The Mayors of the nine discrete Indigenous communities have been consulted (Aurukun, Doomadgee, Kowanyama, Lockhart River, Mornington Island, Napranum, Pormpuraaw, Woorabinda and Wujal Wujal), and they have not raised any issues.

Cross River Rail Delivery Authority Act 2016* and *Acquisition of Land Act 1967

Consultation was undertaken with central agencies (the Department of the Premier and Cabinet and Queensland Treasury), the Department of Transport and Main Roads and the Department of Natural Resources, Mines and Energy.

Consistency with legislation of other jurisdictions

Amendments to revenue legislation

The *Electronic Conveyancing National Law (Queensland) Act 2013*, which applies the Electronic Conveyancing National Law in force in New South Wales, is part of a national scheme to ensure consistency of legislation in all jurisdictions participating in national electronic conveyancing. The Bill contains amendments to support an expansion of e-conveyancing for transfer duty in Queensland. However, variations in the duty legislation in each jurisdiction mean there will, necessarily, be different approaches to the amendments needed to support e-conveyancing.

The amendments to the Payroll Tax Act to update the rate used to calculate the exempt component for a motor vehicle allowance will align Queensland with New South Wales, Victoria, Western Australia, Tasmania, Australian Capital Territory and Northern Territory who have all made similar amendments to their payroll tax legislation.

Otherwise, to the extent the Bill amends Queensland revenue legislation, it is not uniform with or complementary to legislation of the Commonwealth or another state or territory.

Amendments to *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*

A number of other Australian jurisdictions, for example Western Australia and the Northern Territory have legislation that provides for alcohol restrictions in Aboriginal communities. .

A number of Australian states and territories have a framework that provides for recognition, protection and conservation of Aboriginal cultural heritage. These amendments are to specifically apply in Queensland as a result of the application of the last claim standing provision.

Cross River Rail Delivery Authority Act 2016* and *Acquisition of Land Act 1967

The Bill is specific to the State of Queensland, and is not uniform with or complementary to 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 and Other Legislation Amendment Act 2018.*

Clause 2 provides that sections 70, 72, 73 and 74 and part 9 will commence on the day on which section 25 of the *State Penalties Enforcement Amendment Act 2017* commences.

Part 2 Amendment of Duties Act 2001

Clause 3 provides that part 2 amends the *Duties Act 2001*.

Clause 4 amends the note in section 16 to include reference to an ELN lodgement. This note draws attention to sections 156H and 156K, which contain new rules about when liability for transfer duty arises on ELN lodgements in particular ELN-related scenarios.

Clause 5 amends section 18 to reflect the new definition for 'ELN transaction document'.

Clause 6 amends section 19 to reflect the new definition for 'ELN transaction document'.

Clause 7 amends section 20 to reflect the new definition for 'ELN transaction document'.

Clause 8 amends the note in section 21(1) to reflect the inclusion of an ELN lodgement under chapter 2, part 15, division 2. Section 156M in division 2 contains provisions clarifying particular circumstances in which section 21 does not apply for an ELN lodgement.

Clause 9 amends section 22(2) to insert a new note cross-referencing part 15, division 2 for a dutiable transaction that is an ELN lodgement or an ELN transfer. The note in subsection (2A) is amended to clarify its application is only to ELN transfers.

Clause 10 amends section 30(6) to reflect the new definition for 'ELN transaction document'.

Clause 11 inserts new sections 76E to 76G which enable particular deregistered managed investment schemes approved by the Commissioner of State Revenue (Commissioner) to be treated as an exempt managed investment scheme, subject to certain conditions.

New section 76E(1) provides that a unit trust that is a managed investment scheme approved under section 76F as a deregistered managed investment scheme is taken to be an exempt managed investment scheme during the deeming period for the trust, for the purpose of the definition of 'pooled public investment unit trust' in section 75(1). Subsection (2) provides a definition of 'deeming period', being the period starting immediately before the first trust acquisition or trust surrender of a trust interest in the trust following its deregistration under the *Corporations Act 2001* (Cwlth) and ending either immediately before the relevant exemption or declaration made by the Australian Securities and Investments Commission (ASIC) mentioned in new section 76F(3)(a) ceases to apply or immediately before a unit in the trust is issued or transferred to a person who is not a wholesale client.

New section 76F provides for approval by the Commissioner of a unit trust as a deregistered managed investment scheme. Subsection (1) states that a trustee of a unit trust that is a managed investment scheme may apply for approval of the scheme as a deregistered managed investment scheme. Subsection (2) provides that the application must be made in the approved form and supported by enough information to enable the Commissioner to decide the application.

Subsection (3) provides that the Commissioner may give approval where the following conditions are satisfied:

(a) ASIC has made an exemption or declaration under the *Corporations Act 2001* (Cwlth) (ASIC order) enabling an application for deregistration of the scheme under the *Corporations Act 2001* (Cwlth) (deregistration application) to be made; and
(b) all members of the scheme agreed the scheme should be deregistered; and
(c) all members of the scheme were wholesale clients when they acquired their interest in the scheme and at the time of the deregistration application; and
(d) ASIC deregistered the scheme under the *Corporations Act 2001* (Cwlth) applying Chapter 5C of that Act under the ASIC order; and
(e) under the ASIC order, the scheme is exempt from the requirement to register under the *Corporations Act 2001* (Cwlth); and
(f) the Commissioner is satisfied it would be appropriate to give the approval, having regard to the reasons for deregistering the scheme, the terms of the ASIC order, whether the scheme has ever been a public unit trust (PUT) and the reasons it is no longer a PUT, the circumstances of the scheme's operation since deregistration and the purposes of the PUT provisions in the *Duties Act 2001*.

Subsection (4) provides that the Commissioner must give the applicant notice of the decision on the application. If the Commissioner decides not to approve a unit trust as a deregistered managed investment scheme and makes an assessment on the basis that it is not an exempt managed investment scheme, subsection (5) states that the decision may be objected to as part of an objection to the assessment. The right to object is provided for under part 6 of the *Taxation Administration Act 2001* which also provides taxpayers dissatisfied with a decision on objection with a right of appeal or review.

If the Commissioner approves an application, subsection (6) provides that the approval takes effect on the day the approval is given or another day stated in the notice of the decision. Subsection (7) clarifies that the day of effect may be earlier or later than the day of approval.

New section 76G imposes an obligation on a trustee of a unit trust approved as a deregistered managed investment scheme under section 76F to notify the Commissioner of a notifiable event. Subsection (1) provides that a notifiable event occurs if the ASIC order ceases to apply or if a unit in the unit trust is issued or transferred to a person who is not a wholesale client. Subsection (2) provides that, if a trustee becomes aware, or ought reasonably to have become aware of a notifiable event, the trustee must notify the Commissioner within 28 days. A note in subsection (2) states that failure to give notice is an offence under the Taxation Administration Act.

In addition to the notification obligation, the general lodgement obligations in section 19 of the *Duties Act 2001* apply for all acquisitions and surrenders of units in the trust occurring after the end of the deeming period. This includes dealings in the unit trust that occur before the trustee becomes aware, or gives notice, of the notifiable event.

Clause 12 amends section 156A to reflect the new definition for 'ELN transaction document'.

Clause 13 amends the heading of chapter 2, part 15 to reflect the inclusion of the ELN lodgement as new sub-category of dutiable transaction for e-conveyancing.

Clause 14 amends section 156D to provide definitions of various terms used in part 15. Among these, the amended definition of 'ELN transfer' and the insertion of the new definition for 'ELN lodgement' set the scope of dutiable transactions capable of endorsement within the ELN.

The amended definition for 'ELN transfer' provides for transfers of dutiable property where there is 'eligible land', an ELN workspace exists, and the transfer is to the transferee under a 'relevant transfer agreement'. ELN transfers exclude a transfer by direction—that is, where the transfer which will be effected in the ELN workspace is pursuant to an arrangement where there is a first agreement, and then one or more intervening agreements, and the transfer will be executed by one or more of the parties to these agreements to give effect to the agreements.

The concepts of 'eligible land' and 'relevant transfer agreement' are fundamental to when an ELN transfer is permitted for transacting in the ELN and each are defined in section 156D. In particular, the amended definition for 'relevant transfer agreement' sets out:

- the specific criteria required for the antecedent agreement for the ELN transfer;
- that the agreement is not eligible for any concession, exemption or other reductions in transfer duty other than as are prescribed by the *Duties Regulation 2013*; and
- when aggregation is permitted under section 30 of the *Duties Act 2001*.

The new definition for 'ELN lodgement' provides for dutiable transactions other than an ELN transfer which may be transacted in the electronic environment. An ELN lodgement is a transfer, surrender, vesting of land, or acquisition of a new right that is land, which can be registered under the *Land Title Act 1994*, the *Land Act 1994* or the *Water Act 2000*. An ELN workspace must exist for the ELN lodgement. The definition also provides that an ELN lodgement is not eligible for a concession, exemption or other reduction of transfer duty other than as prescribed by the *Duties Regulation 2013*.

The definition of 'ELN transfer document' has been omitted. A new definition for 'ELN transaction document' has been inserted to reflect the range of instruments to register land under the *Land Title Act 1994*, the *Land Act 1994* or the *Water Act 2000* and their applicability to either an ELN transfer or an ELN lodgement. A number of existing definitions in section 156D are amended to reflect the new definition for ELN transaction document.

Clause 15 amends section 156E. Subsection (1) is amended to reflect the new definition of 'ELN transaction document'. New subsection (2) is inserted to specify that an ELN transaction document for an ELN lodgement is 'signed' when all lodgement information in the ELN workspace is digitally signed by or for all parties to the transaction. 'Lodgement information' for an ELN lodgement is defined in section 156D to mean information in the ELN workspace that is necessary for complying with a provision under the *Land Title Act 1994*, *Land Act 1994* or the *Water Act 2000*, or when endorsing the document under the *Duties Act 2001*.

Clause 16 amends section 156F. Section 156F is amended to reflect the new definition for 'ELN transaction document'. Section 156F is also amended to set out when an ELN workspace for an ELN lodgement is 'locked' and 'unlocked' for the purposes of the *Duties Act 2001*. Subsection (1) is amended to provide that the ELN workspace is locked when the subscribers

to the ELN workspace for the ELN lodgement are unable to amend the lodgement information in the ELN workspace. Subsection (2) is amended to provide that an ELN workspace for an ELN lodgement is unlocked if, after the ELN workspace has been locked, the subscribers to the ELN workspace are no longer unable to amend the lodgement information in the ELN workspace.

Clause 17 amends section 156G to specify when dutiable transactions that are associated with ELN lodgements will be 'related'. New subsection (2) provides that the dutiable transactions must be for the same dutiable property, the parties to the transactions are the same and, where there is an agreement—but not a 'relevant transfer agreement'—one or both transactions are transfers under this same agreement. The new note to subsection (2) confirms that there may be more than one ELN lodgement for the same dutiable property to the same parties, and cross references section 156H.

Clause 18 amends section 156H to specify the effect of multiple locking events for the ELN workspace for an ELN lodgement. Subsection (1) is amended to provide for an ELN lodgement that each time a 'multiple locking event' happens, a new ELN transaction document is taken to exist, the ELN transaction document is taken to be signed, and as a consequence, another dutiable transaction that is an ELN lodgement arises. Subsection (2) is amended to provide that a multiple locking event happens when the ELN workspace for the ELN lodgement has been unlocked, and is locked again.

Clause 19 amends section 156I to specify, for the removal of doubt, that the events listed under section 156(1) do not affect a liability for transfer duty imposed on an ELN lodgement. Section 156I ensures that the amendments have their intended effect, by making it clear that subsequent events which are relevant to the imposition of transfer duty for an ELN lodgement do not replace, override or negate an earlier imposition of duty for an ELN lodgement. Section 156I is also amended to reflect the new definition for 'ELN transaction document'.

Clause 20 amends the heading of chapter 2, part 15, division 2, subdivision 2 to reflect that ELN lodgements will not be subject to multiple duty where an incomplete ELN lodgement is related to a completed lodgement. The terms 'incomplete ELN lodgement' and a 'completed lodgement' are defined in section 156D.

Clause 21 omits and replaces section 156J. Section 156J specifies that subdivision 2 applies if one or more 'incomplete ELN transfers' are related to a 'completed transfer', or if one or more incomplete ELN lodgements' are related to a 'completed lodgement'. Subdivision 2 makes provision to ensure multiple duty is not imposed in the specified circumstances, but does not apply unless there is a 'completed transfer' for an ELN transfer or a 'completed lodgement' for an ELN lodgement. All terms are defined in section 156D.

Clause 22 amends section 156K to specify the circumstances when liability for transfer duty is imposed on an incomplete ELN lodgement and a completed lodgement. New subsection (2A) specifies the ELN lodgements to which the section relates. It excludes the 'first related lodgement' as the usual time for liability arising on the transaction under schedule 2 will continue to apply, unaffected by this section. However, for the remaining related incomplete ELN lodgements and the completed lodgements, new subsection (2B) deems liability for those transactions to arise at the same time as when liability arises on the 'first related lodgement'. This overrides the timing provisions in column 2 of schedule 2 for those transactions, given effect through section 16. 'First related lodgement' is defined as an incomplete ELN lodgement

related to the completed lodgement for which the ELN workspace is first locked. Sections 156K(2A) to (4) are renumbered as sections 156K(3) to (6).

Clause 23 amends section 156L to specify when compliance with a duty obligation is deemed for an incomplete ELN lodgement. New subsection (1A) provides that a duty obligation for an incomplete ELN lodgement is complied with by reference to compliance with the same obligations for the related completed lodgement. The duty obligation for the completed lodgement must be complied with in full before compliance is deemed for the incomplete ELN lodgement. Sections 156L(1A) and (2) are renumbered as sections 156L(2) and (3).

Clause 24 amends section 156M to provide for the operation of sections 21 and 22(2) and transfer duty generally for certain ELN lodgements and related matters. Those sections ensure that duty is imposed as appropriate in particular circumstances.

Subsection (1) is amended to declare that, for the removal of doubt, section 21 does not apply to the imposition of transfer duty on an ELN lodgement in specified circumstances.

New subsection (3A) provides that subsection 22(2) does not apply to an incomplete ELN lodgement related to the completed lodgement. This is because where there is a completed lodgement, subsection 22(2) is only intended to apply to the completed lodgement. Liability imposed on any related incomplete ELN lodgement in this scenario is subject to the operation of sections 156K and 156L. This also ensures that the effective endorsement is the one that is made on the completed lodgement.

New subsection (3B) makes clear, for the removal of doubt, that the fact that an incomplete ELN lodgement is not related to a completed lodgement does not affect imposition of liability to duty on the incomplete ELN lodgement.

Sections 156M(3A) to (4) are renumbered as sections 156M(4) to (6).

Clause 25 amends section 156N. Section 156N sets out when parties to a relevant transfer agreement have made a 'payment commitment,' which permits parties to disburse duty funds as part of the electronic settlement. Amendments to subsections (1) and (3) confirm that parties are only able to make a payment commitment for transfer duty, and the assessed interest and penalty tax, on a 'relevant transfer agreement' for an ELN transfer. Subsection (4) is amended to reflect the new definition for 'ELN transaction document'.

Clause 26 amends section 156P to reflect the new definition for 'ELN transaction document'.

Clause 27 amends section 156V to specify that particular information stated to the Commissioner by a party or a relevant subscriber in an ELN workspace for an ELN lodgement is taken to have been stated to the Commissioner. Consequently, should this information be false or misleading, an offence will arise under section 123 of the *Taxation Administration Act 2001*.

Clause 28 amends section 156W. New subsections (3) and (4) specify that the endorsement of an ELN transaction document by a self assessor registered under chapter 12, part 2 or 3 is of no effect from the time the ELN workspace for an incomplete ELN lodgement is unlocked. Consequently, if there are multiple locking events, endorsement of another ELN transaction document for the ELN lodgement must occur before it can be registered under the *Land Title*

Act 1994, *Land Act 1994* or *Water Act 2000*. Section 156W is also amended to reflect the new definition of 'ELN transaction document'.

Clause 29 amends section 179 to replace cross-references to section 409(2) with cross-references to section 409(3). This ensures the dutiable value of a relevant acquisition in a private landholder is correctly calculated where an acquisition of an interest in the landholder received the corporate reconstruction exemption.

Clause 30 amends section 445(2)(g) to reflect the new definition for 'ELN transaction document'.

Clause 31 amends section 447(1) to reflect the new definition for 'ELN transaction document'.

Clause 32 amends section 452(2)(g) to reflect the new definition for 'ELN transaction document'.

Clause 33 amends section 454(1) to reflect the new definition for 'ELN transaction document'.

Clause 34 amends section 455A. Subsections (1), (1A), (4), (5), (6) and (7) and the note in (7) are amended to reflect the new definition of 'ELN transaction document'. Subsections (6) and (7) are also amended to confirm that an ELN transaction document for an ELN lodgement is taken to have been stamped by the self assessor immediately after the ELN workspace for the ELN lodgement has been locked. The note in (7) is amended to confirm that the endorsement of an ELN transaction document for an ELN lodgement stops having effect if the ELN workspace for the ELN lodgement is unlocked.

Clause 35 amends section 465(f) to reflect the new definition for 'ELN transaction document'.

Clause 36 amends section 480A. Subsection (1) is amended to state that it is an offence for a self assessor to endorse an ELN transaction document on the basis that section 22(2) applies to an ELN lodgement where there is an agreement for the transfer of dutiable property unless the duty amount for the agreement has either been paid to the Commissioner or received by the self assessor as applicable. Subsection (2) is amended to reflect the new definition for ELN transaction document; however, this subsection will continue to apply only where a payment commitment has been made for an ELN transfer. Subsection (3) is amended to ensure that a self assessor does not commit an offence against section 480A where:

- the self assessor endorses an ELN transaction document for an ELN lodgement; and
- the ELN lodgement becomes an incomplete ELN lodgement as defined.

Clause 37 amends section 481 to state when a person other than a self assessor commits an offence if endorsing an instrument or an ELN transaction document for an ELN lodgement. Under subsection (1), it is an offence for a person to make any notation or endorsement on an instrument or ELN transaction document indicating or implying duty has been paid for the instrument or ELN transaction document, unless the person is authorised to do so under the *Duties Act 2001*.

To ensure the person is not placed in technical breach of section 481 due to the method in which an endorsement is applied in an ELN, subsection (2) is amended to provide that a person does not commit an offence against section 481(1) for an ELN lodgement in specified

circumstances where the potentially offending conduct is required under the *Electronic Conveyancing National Law (Queensland) 2013* for the completion of the ELN lodgement.

The definition for 'make' in subsection (3) is amended to reflect it includes entering information into the ELN workspace for the ELN lodgement to which the ELN transaction document relates.

Clause 38 amends section 481A to reflect the new definition for 'ELN transaction document'.

Clause 39 amends section 482 to reflect the new definition for 'ELN transaction document'.

Clause 40 amends section 483 to reflect the new definition for 'ELN transaction document'.

Clause 41 amends section 487 to reflect the new definition for 'ELN transaction document'.

Clause 42 amends section 487A to reflect the new definition for 'ELN transaction document'.

Clause 43 amends section 488(1) to reflect the new definition for 'ELN transaction document'.

Clause 44 amends section 491 to reflect the new definition for 'ELN transaction document'.

Clause 45 amends section 496 to reflect the new definition for 'ELN transaction document'.

Clause 46 amends section 499 to reflect the new definition for 'ELN transaction document'.

Clause 47 amends section 503 to reflect the new definition for 'ELN transaction document'.

Clause 48 inserts new part 25 into chapter 17 to provide transitional provisions for the *Revenue and Other Legislation Amendment Act 2018*.

New section 671 contains a definition of 'amending Act'.

New section 672(1) provides that sections 76E to 76G, as amended by the Bill, when enacted, apply in relation to a trust acquisition or trust surrender happening on or after 9 August 2017. Subsection (2) states that a person can not be prosecuted for failing to give notice of a notifiable event under section 76G before the commencement. Subsection (3) provides that an approval mentioned in section 76F given on or after 9 August 2017 and before commencement has effect as if sections 76E to 76G were in force from 9 August 2017.

New section 673 provides that section 179(4), as amended by the Bill, when enacted, applies to relevant acquisitions for which a landholder duty liability arises on or after 22 August 2017.

New section 674 provides that the definition of 'business property' as amended by the Bill, when enacted, applies in relation to dutiable transactions entered into on or after 12 October 2016.

Clause 49 amends schedule 2 to the *Duties Act 2001*. Schedule 2 sets out when liability for transfer duty arises for each dutiable transaction. Subject to the requirements set out in section 156D, an ELN lodgement may be a transfer, surrender or vesting of dutiable property, or an

acquisition of a new right. Currently, the time for liability to arise for each of these transactions differs, depending on particular timing criteria specified under schedule 2.

Amendment to schedule 2 will introduce an alternative liability timing specific to ELN lodgements.

For transfers, surrenders or acquisitions of a new right, timing for liability for an ELN lodgement is amended to be the earlier of the times listed or at the time when the ELN workspace:

- includes an ELN transaction document signed by the parties to the transaction; and
- is locked.

Currently for vestings, under schedule 2, the time for liability to arise is:

- for a statutory vesting—when the vesting takes place; or
- for a court ordered vesting—when the relevant order is made.

Consequently, amendments for both types of vestings will provide the time that liability arises is the earlier of the current events or, if an ELN transaction document for the ELN lodgement evidences the vesting, when the ELN workspace:

- includes the ELN transaction document signed by the parties to the transaction; and
- is locked.

The requirements for when an ELN workspace is 'locked' or 'unlocked' are specified in section 156F. The liability for dutiable transactions where there are multiple events of the ELN workspace being locked or unlocked are specified in chapter 2, part 15, division 2.

Clause 50 amends the dictionary in schedule 6.

To clarify the scope and operation of e-conveyancing as amended by the Bill, when enacted, new definitions are inserted and amendments are made to existing definitions.

The definition of 'business property' is replaced to extend the scope of the definition for the purpose of the family primary production business concession. All other conditions of the concession continue to apply. To the extent it relates to property used to carry on a business of primary production, 'business property' means land primarily used to carry on a business of primary production or other dutiable property used, on or in relation to the land, to carry on that business of primary production. To the extent it relates to property used to carry on a prescribed business, 'business property' means land primarily used to carry on a prescribed business or personal property used, on or in relation to the land, to carry on that prescribed business. There is no change to the scope of the definition of 'business property' to the extent it relates to property used to carry on a prescribed business.

New definitions also inserted for 'managed investment scheme' and 'wholesale client'. Both terms reflect the terms as defined in the *Corporations Act 2001* (Cwlth).

Part 3 Amendment of Duties Regulation 2013

Clause 51 provides that part 3 amends the *Duties Regulation 2013.*

Clause 52 inserts new section 4A. New subsection (1) prescribes that the concessions in part 1 of new schedule 1A are a concession for transfer duty for both ELN transfers or ELN lodgements. New subsection (2) prescribes that the exemptions in part 2 of new schedule 1A are an exemption for transfer duty for ELN lodgements only.

Clause 53 inserts new schedule 1A. New part 1 prescribes the list of concessions for transfer duty which can be applied to ELN transfers and ELN lodgements. New part 2 prescribes the list of exemptions under the *Duties Act 2001* and *Family Law Act 1975* (Cwlth) which can be applied only to ELN lodgements.

Part 4 Amendment of Land Tax Act 2010

Clause 54 provides that part 4 amends the *Land Tax Act 2010.*

Clause 55 amends section 23. Section 23 currently provides for assessment of deceased estate land in circumstances where a beneficiary of a deceased estate or trust created under a will has an interest in deceased estate land when a liability for land tax arises (relevant beneficiary). Amended section 23 applies to the assessment of deceased estate land more generally and not just in circumstances involving relevant beneficiaries. The heading to section 23 and current subsections (1) and (3) are amended to reflect the more general application. Current subsection (2) remains unchanged.

Under section 23(3) each relevant beneficiary may be taken to be the owner of the land in proportion to the beneficiary's interest in the land and the estate administrator will be taken not to be the owner. To the extent that section 23(3) does not apply, new subsection (3A) provides that, for the purpose of assessing a liability for land tax, the deceased person is taken to be the owner of the land and the estate administrator is taken not to be the owner of the land, until administration of the deceased estate is complete.

New subsection (3B) provides that land taken to be owned by the deceased person, or a part of that land, is exempt land for the purpose of assessing a liability for land tax arising on the next 30 June after the date of death, subject to certain conditions. Specifically, new subsection (3B) provides the exemption if the land or the part of land was exempt land as at the last 30 June before the date of death and, as at the next 30 June after the date of death, the land is not being used and has not been used since the date of death or, if the land is being used, it is only being used for the same purpose it was being used for on the last 30 June before the date of death.

New subsection (3C) provides that, if the date of death is 30 June, a reference to 'the next 30 June after the date of death' is a reference to that day.

Sections 23(3A) to (4) are renumbered as sections 23(4) to (7).

Clause 56 inserts new division 8 into part 10 to provide a transitional provision for the *Revenue and Other Legislation Amendment Act 2018.*

New section 101 provides that section 23 as amended by the Bill, when enacted, is taken to have had effect since the commencement of the *Land Tax Act 2010*, being 30 June 2010.

Part 5 Amendment of Payroll Tax Act 1971

Clause 57 provides that part 5 amends the *Payroll Tax Act 1971*.

Clause 58 replaces the definition of 'R' in section 13Y(4). Section 13Y(4) sets out the formula for calculating the exempt component of a motor vehicle allowance paid or payable to an employee for a return period. Payroll tax is only imposed on a motor vehicle allowance paid or payable for a return period to the extent that it exceeds the exempt component which is calculated by multiplying 'K', being the number of kilometres travelled by the vehicle during the return period by 'R', being the relevant rate as stated in section 13Y(4).

The current definition of 'R', which refers to a rate prescribed by the Commonwealth which no longer exists, is replaced with the new definition of 'R', being the rate determined under the *Income Tax Assessment Act 1997* (Cwlth) for calculating a deduction for car expenses using the 'cents per kilometre' method for the financial year immediately preceding the financial year in which the allowance is paid or payable. If there is no rate determined, the relevant rate is the rate prescribed by regulation. This is consistent with the current definition of 'R'.

Clause 59 inserts new part 14 to provide a transitional provision for the *Revenue and Other Legislation Amendment Act 2018.*

New section 146 provides that section 13Y as amended by the Bill, when enacted, is taken to have had effect since 1 July 2016. Therefore, the new definition of 'R' applies to calculate the exempt component of a motor vehicle allowance paid or payable on or after 1 July 2016.

Part 6 Amendment of State Penalties Enforcement Act 1999

Clause 60 provides that part 6 amends the *State Penalties Enforcement Act 1999* (the SPE Act).

Clause 61 amends section 10 of the SPE Act to remove a reference to a penalty that was unintentionally retained in the SPE Act when the offence to which it relates was omitted by the *Revenue Legislation Amendment Act 2014*.

Clause 62 inserts a definition of the term 'WDO eligible amount' into section 32F of the SPE Act, which provides the definitions for Part 3B on work and development orders. The insertion of this new definition clarifies what comprises the amount of a person's SPER debt that may be discharged through non-monetary means by undertaking a work and development order. This new term will replace the term 'enforceable amount' throughout Part 3B of the SPE Act to make it clear that a person may undertake a work and development order for an amount payable under an enforcement order which is within the 28 day payment period, as well as for an amount which is enforceable under Parts 5 and 6 of the SPE Act.

Clause 63 amends section 32G of the SPE Act to replace the term 'enforceable amount' with 'WDO eligible amount'.

Clause 64 replaces the term 'enforceable amount' in section 32H of the SPE Act with 'WDO eligible amount'.

Clause 65 amends section 32I to clarify that a work and development order may not be undertaken to discharge any amount payable under the SPE Act that a court has ordered be paid to a specified person or entity. This includes restitution and compensation ordered by the court to be paid to a victim of crime, as well as orders for damages, to pay costs to a complainant and to pay a fixed portion of a penalty to a person or entity.

Clause 66 replaces the term 'enforceable amount' in section 32J of the SPE Act with 'WDO eligible amount'.

Clause 67 also replaces the term 'enforceable amount' with 'WDO eligible amount' in section 32O of the SPE Act.

Clause 68 amends section 32P(4) to clarify that the requirement for the registrar of SPER to give a written notice of decision applies to decisions to withdraw or to refuse to withdraw a work and development order.

Clause 69 inserts a new paragraph (1)(ba) into section 32S to provide that a person may apply to the Queensland Civil and Administrative Tribunal for review of a decision taken by the registrar of SPER to refuse to withdraw a work and development order under section 32P of the SPE Act. This will provide consistency with section 32P(5) which requires that, if the registrar refuses to withdraw a WDO at the request of a sponsor or debtor, the notice of decision given to an applicant must comply with section 157 of the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 70 inserts a new Part 4A into the SPE Act to replace existing Part 5 Division 9, which sets out the order in which payments made by debtors are to be allocated towards SPER debts. Part 4A substantially re-enacts the order in existing sections 112 and 113 but establishes a single payment priority order for all amounts payable as part of person's SPER debt, consistent with SPER's move to a case management approach. The new Part 4A maintains the existing priority given to amounts which may be ordered payable by a court, such as restitution, compensation and costs. It also confirms the payment priority to be given to SPER fees that are applied at a case level and to infringement notice fines in the order of satisfaction. New section 60C further clarifies that the order of satisfaction applies to any payment of a person's SPER debt, despite any direction provided by the debtor to SPER or the payment being made in response to a particular notice, order or warrant issued under the SPE Act.

Clause 71 amends section 83 of the SPE Act to replace an outdated reference to the *Income Tax Assessment Act 1936* (Cwlth) with a reference to the *Tax Administration Act 1953* (Cwlth).

Clause 72 amends section 96 of the SPE Act to replace the reference to Part 5, Division 9 with a reference to Part 4A, in line with the amendments made by clauses 70 and 73.

Clause 73 omits Part 5, Division 9 from the SPE Act, which is replaced by the new Part 4A inserted by clause 70.

Clause 74 replaces the reference in section 121 of the SPE Act to Part 5, Division 9 with a reference to Part 4A, in line with the amendments made by clauses 70 and 73.

Clause 75 amends Schedule 2 to insert a definition of 'WDO eligible amount' into the Dictionary for the SPE Act.

Part 7 Amendment of State Penalties Enforcement Amendment Act 2017

Clause 76 provides that part 7 amends the *State Penalties Enforcement Amendment Act 2017* (the SPE Amendment Act).

Clause 77 amends section 25 of the SPE Amendment Act to omit the reference to the *Victims of Crime Assistance Act 2009* from the note to new section 33A and clarify the period of time to pay that must be stated in a court debt payment notice.

Clause 78 amends section 26 to clarify that the registrar of SPER must issue a debtor with an enforcement order if the scheme manager registers a debt with SPER for collection under section 120 of the *Victims of Crime Assistance Act 2009*.

Clause 79 omits section 65 of the SPE Amendment Act which provides for an amendment to section 113 of the SPE Act. This amendment is no longer required as clause 73 of the Bill omits section 113 from the SPE Act.

Part 8 Amendment of Taxation Administration Act 2001

Clause 80 provides that part 8 amends the *Taxation Administration Act 2001*.

Clause 81 amends section 113D(2) to reflect the new definition for 'ELN transaction document' as amended in the *Duties Act 2001*.

Clause 82 amends section 149A to insert new subsection (3). New subsection (3) provides that, for section 149A, 'constitution' has the meaning given in new section 149C(6).

Clause 83 amends section 149C. Section 149C provides the restrictions on the registration of charitable intuitions, including that an institution generally must be subject to certain restrictions listed in subsection (5)(a) to (c) relating to the use of its income and property. Subsection (5) is amended to provide that an institution generally must not be registered unless its constitution, however described, expressly provides these restrictions. The restrictions in subsection (5)(a) to (c) remain unchanged.

New section 149(C)(6) inserts a definition of 'constitution' for section 149C which clarifies that a constitution includes a law, deed or other instrument that constitutes the institution and governs the activities of the institution or its members. This definition also applies to section 149A.

Clause 84 inserts new part 21 to provide a transitional provision for the *Revenue and Other Legislation Amendment Act 2018.*

New section 178 provides transitional arrangements for institutions registered under the *Taxation Administration Act 2001* as a charitable institution immediately before commencement of section 149C as amended by the Bill, when enacted. If an institution's constitution is a law, section 149C as in force immediately before commencement continues to apply for a period of eighteen months after commencement. For other types of constitution, it continues to apply for a period of six months after commencement.

Clause 85 amends schedule 2 definition for 'document' and inserts a new definition for 'ELN transaction document' to reflect the new definition of 'ELN transaction document' as amended in the *Duties Act 2001*.

Part 9 Amendment of Victims of Crime Assistance Act 2009

Clause 86 provides that part 9 amends the *Victims of Crime Assistance Act 2009.*

Clause 87 amends section 120 of the *Victims of Crime Assistance Act 2009* to align the terminology relating to the registration of a debt with SPER with the terminology provided in sections 25 and 26 of the SPE Amendment Act. It also amends section 120 to clarify that a debt registered with SPER for collection under this section will be treated as a defaulted court debt for the purposes of the SPE Act, resulting in the issue of an enforcement order. The provisions of the SPE Act relating to court debt payment notices will not apply to those debts.

Part 10 Amendment of other legislation

Division 1 Amendment of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

Clause 88 provides that this division amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

Clause 89 replaces section 26(2)(a) (Purpose of Part 5) with a new section 26(2)(a). The new section 26(2)(a) clarifies that the purpose is achieved by prohibiting in particular community areas the following (together with the existing section 26(2)(b)):

(i) the possession or supply of homemade alcohol;
(ii) the possession of substances used to make homemade alcohol; and
(iii) the possession of things used to make homemade alcohol.

In the Rockland decision, the reference "used to make homemade alcohol" in the purpose section of Part 5 was interpreted to relate only to the possession of "things" (namely, home-brew kit), and not relate to the possession of "certain substances" (namely, home-brew concentrate).

Amending section 26(2)(a) will provide clarity that the purpose of Part 5 includes prohibiting the possession of any substances used to make homemade alcohol (including home-brew concentrate). As such, this will provide clarity on the enforcement of provision under section 68.

Clause 90 amends section 38 (Offences relating to homemade alcohol) to insert a new offence provision for a community area or part community area, or prescribed community area. This offence provision provides that a person must not possess a substance or a combination of substances (other than home-brew concentrate) with the intention of using the substance or substances to make homemade alcohol.

In the Rockland decision, the two defendants were convicted in the Magistrates Court under section 38(2)(c) of the JLOM Act for possessing "home-brew concentrate", namely yeast. The

two defendants had admitted that they possessed yeast with the intention of using the yeast on Mornington Island to make home-brew.

The convictions were appealed and the issue on appeal was whether "home-brew concentrate" as defined in section 27 of the JLOM Act should be interpreted as extending to a substance not including malt and hops, and following this, whether yeast falls within the definition. The decision found that any substance would need to comprise of, or contain, malt and hops before it could be regarded as home-brew concentrate under section 27.

The effect of this decision is that there is a gap under section 38 to prohibit a substance or combination of substances (such as yeast and turbo yeast) that do not come under the definition of "home-brew concentrate" which can to be used to make homemade alcohol.

As such, it is intended the new offence provision will address this gap and prohibit the possession of substances or combination of substances (other than home-brew concentrate) with the intention of using the substance or substances to make homemade alcohol.

The new offence is intended to apply to:

- capture a person who is in possession of a substance or combination of substances in their original state with the intention of using it to make homemade alcohol;
- capture a person using a substance or combination of substances to make homemade alcohol with the intention of using it to make homemade alcohol, and it has become a mixture which has not yet become homemade alcohol because it has not yet reached the level of ethyl alcohol of more than 0.5 per cent. – This is because the person is still in possession of the substance or combination; and
- capture a person using home-brew concentrate with the intention of using it to make homemade alcohol, and it is out of the original packet with the label and has become a mixture which is not yet homemade alcohol (as above). This is because the mixture is still a "substance or combination of substances".

An existing complimentary offence provision is provided in sections 38(2)(b) and 38(3)(b) in relation to possessing equipment or component of equipment.

The new offence provision is not intended to capture the possession of a substance or combination of substances used for their ordinary purpose (for example, yeast, sugar, fertilisers, multivitamins). The offence provision will be triggered by the intention of the person to use the substance or combination of substances to make homemade alcohol, exhibited where the substance or substances are not being used for their ordinary purpose (for example where the substance or combination of substances are found together in large quantities and being fermented together).

The clause also renumbers subsections in sections 38(2) and (3) as a result of inserting a new offence provision in these sections.

Clause 91 renumbers a subsection reference in section 39(2) (Relationship with restricted area) as a result of the renumbering of subsections in section 38.

Clause 92 renumbers a subsection reference in section 67(4) (Evidentiary aids) as a result of the renumbering of subsections in section 38.

Clause 93 renumbers a subsection reference in section 69(1) (Evidence of homemade alcohol having regard to belief of police officer) as a result of the renumbering of subsections in section 38.

Division 2 Amendment of Aboriginal Cultural Heritage Act 2003

Clause 94 provides that this division amends the *Aboriginal Cultural Heritage Act 2003.*

Clause 95 amends section 34(1)(b)(i)(C) known as 'the last claim standing provision' by inserting 'registered' before 'native title holder'. The effect of this amendment will clarify that where there is no other registered native title claimant for an area, the 'native title party' is the last registered native title claimant whose claim has failed and was the last claim registered under the Register of Native Title Claims; and there is not, and never has been, a *registered* native title holder for the area.

This will clarify that the 'last claim standing' provision, to reference to 'registered native title holder' in section 34(1)(b)(i)(C) is a person who has been positively determined by the Federal Court to hold native title under section 225 of the *Native Title Act 1993* (Cth) only.

Clause 96 amends the heading of Part 11 (Transitional provisions) by inserting 'and validation' into this heading.

Clause 97 inserts a new heading (Division 1 Transitional provisions for Act No. 79 of 2003) before section 161.

Clause 98 inserts a new division (Division 2 Transitional and validation provisions for Revenue and Other Legislation Amendment Act 2018). The new Division 2 has three new validation sections after section 169.

New section 170 applies if before the commencement of these amendments, either: a written notice (proposed study) was given to a sponsor under section 56(1) or a public notice (proposed study) was published under section 61(2); and a sponsor has endorsed an Aboriginal party to take part in a cultural heritage study under section 62(2), 64(2) or 65(2). If a cultural heritage study is given to the Chief Executive for recording under section 71(1), the Chief Executive must consider whether to record the findings of the study as in force before the commencement.

This is a transitional provision to ensure that where sponsors have commenced a process, namely provided a written notice or public notice where an Aboriginal party responded, and then endorsed an Aboriginal party as a result of written notice or public notice, that the sponsors are not disadvantaged because they commenced a process to undertake a cultural heritage study in compliance with the ACHA.

Further subsection 3 provides that section 170 does not apply to an act or omission that is declared to be, and have always been valid and lawful under section 172. This is to ensure that section 170 does not apply if section 172 already applies.

New section 171 applies if before the commencement of these amendments, either: a written notice (proposed plan) was given under section 91(1) or a public notice (proposed plan) was published under section 96(2); and a sponsor has endorsed an Aboriginal party under section 97(2), 99(2) or 101(2). If the cultural heritage management plan is given to the Chief Executive

for approval under section 107(1), the Chief Executive must approve or refuse to approve the plan as in force before the commencement.

This is a transitional provision to ensure that where sponsors have commenced a process, namely provided a written notice or public notice where an Aboriginal party responded, and then endorses an Aboriginal party, that the sponsors are not disadvantaged because they commenced a process to develop a cultural heritage management plan in compliance with the ACHA.

Further subsection 3 provides that section 171 does not apply to an act or omission that is declared to be, and have always been valid and lawful under section 172. This is to ensure that section 171 does not apply if section 172 already applies.

New section 172 applies to any act done or omitted to be done before the commencement of these amendments, as if the amended section 34 were in force at the time of the act or omission. The act or omission is, to the extent it was invalid or unlawful, declared to be, and to have always been, valid and lawful.

This means that any act done or omitted to be done as if section 34(1)(b)(i)(C) had always been referred to as 'registered native title holder,' is declared to be and always has been valid and lawful.

The policy intent of clause 98 (the new sections 170, 171 and 172) is that stakeholders who have commenced a process under the ACHA, for example, commenced the consultation process to notify Aboriginal parties should not be disadvantaged.

The transitional provisions will have the effect of ensuring stakeholders who have commenced a process under the ACHA to comply with the ACHA are not disadvantaged and the validating provisions will have the effect of ensuring any actions taken or decisions made before the commencement of these amendments, that were based on the interpretation of section 34(1)(b)(i)(C) prior to the Nuga Nuga decision are and always have been valid and lawful.

Similarly, the transitional provisions will transition the 'endorsed party' status of an Aboriginal party, where the Aboriginal party has been endorsed by a sponsor to take part in a cultural heritage study or cultural heritage management plan prior to the commencement of the amendments, and the cultural heritage study or cultural heritage management plan has been submitted for recording or approval to the Department of Aboriginal and Torres Strait Islander Partnerships after commencement of the amendments. The effect of the transitional provisions will allow the Chief Executive, upon receiving a cultural heritage study or cultural heritage management plan to record or approve respectively, to 'accept' the endorsed party status as it was prior to commencement of the amendments.

It should be noted that any valid actions taken or decisions made before the commencement of the amendments that were based on the interpretation of section 34(1)(b)(i)(C) after the Nuga Nuga decision are preserved by section 20 of the *Acts Interpretation Act 1954*.

Division 3 Amendment of Acquisition of Land Act 1967

Clause 99 provides that this division amends the *Acquisition of Land Act 1967*.

Clause 100 will amend Schedule 2 to expressly confirm the Minister administering the CRRDA Act as the relevant Minister for the purposes of compulsory land acquisitions under the CRRDA Act and ALA.

Division 4 Amendment of Cross River Rail Delivery Authority Act 2016

Clause 101 provides that this division amends the *Cross River Rail Delivery Authority Act 2016* (CRRDA Act).

Clause 102 amends section 33 (1)(c) – Membership of Board, to confirm the chief executive officer responsible for administration of the *Rail Safety National Law (Queensland) Act 2017* is a member of the Cross River Rail Delivery Board.

Clause 103 amends section 49 – Appointment, to expressly confirm the Board may appoint an interim chief executive officer selected from the public service or senior staff of the CRRDA and subject to the same conditions of employment as a permanently appointed chief executive officer.

Clause 104 amends section 71 – Budget Dates, to remove the requirement for preparation of the budget by 31 March.

Division 5 Amendment of Police Powers and Responsibilities Act 2000

Clause 105 provides that this division amends the *Police Powers and Responsibilities Act 2000*.

Clause 106 renumbers a subsection reference in section 53(1) (Prevention of particular offences relating to liquor) as a result of the renumbering of subsections 38 of the JLOM Act.

Division 6 Amendment of Torres Strait Islander Cultural Heritage Act 2003

Clause 107 provides that this division amends the *Torres Strait Islander Cultural Heritage Act 2003* (TSICHA).

Clause 108 amends section 34(1)(b)(i)(C) by inserting 'registered' before 'native title holder'. The effect of this amendment will clarify that where there is no other registered native title claimant for an area, the 'native title party' is the last registered native title claimant whose claim has failed and was the last claim registered under the Register of Native Title Claims; and there is not, and never has been, a registered native title holder for the area.

This will clarify that the 'last claim standing' provision reference to 'registered native title holder' in section 34(1)(b)(i)(C) is a person who has been positively determined by the Federal Court to hold native title under section 225 of the *Native Title Act 1993* (Cth).

Clause 109 amends the heading of Part 10 (Transitional provisions) by inserting 'and validation' after this heading.

Clause 110 inserts a new heading (Division 1 Transitional provisions for Act No. 79 of 2003) before section 160.

Clause 111 inserts a new division (Division 2 Transitional and validation provisions for Revenue and Other Legislation Amendment Act 2018). The new Division 2 has three new validation sections.

New section 168 applies if before the commencement of the amendments, either: a written notice (proposed study) was given to a sponsor under section 56(1) or a public notice (proposed study) was published under section 61(2); and a sponsor has endorsed a Torres Strait Islander party to take part in a cultural heritage study under section 62(2), 64(2) or 65(2). If a cultural heritage study is given to the Chief Executive for recording under section 71(1), the Chief Executive must consider whether to record the findings of the study as in force before the commencement.

This is a transitional provision to ensure that where sponsors have commenced a process, namely provided a written notice or public notice where a Torres Strait Islander party responded, and the sponsor has endorsed a Torres Strait Islander party, that the sponsors are not disadvantaged because they commenced a process to conduct a cultural heritage study in compliance with the TSICHA.

Further subsection 3 provides that section 168 does not apply to an act or omission that is declared to be, and have always been valid and lawful under section 170. This is to ensure that section 168 does not apply if section 170 already applies.

New section 169 applies if before the commencement of the amendments, either: a written notice (proposed plan) was given under section 91(1) or a public notice (proposed plan) was published under section 96(2) and a sponsor has endorsed a Torres Strait Islander party under section 97(2), 99(2) or 101(2). If the cultural heritage management plan is given to the Chief Executive for approval under section 107(1), the Chief Executive must approve or refuse to approve the plan as in force before the commencement.

This is a transitional provision to ensure that where sponsors have commenced a process, namely provided a written notice or public notice where a Torres Strait Islander party responded, and the sponsor endorsed a Torres Strait Islander party, that the sponsors are not disadvantaged because they commenced a process to develop a cultural heritage management plan in compliance with the TSICHA.

Further subsection 3 provides that section 169 does not apply to an act or omission that is declared to be, and have always been valid and lawful under section 170. This is to ensure that section 170 does not apply if section 170 already applies.

New section 170 applies to any act done or omitted to be done before the commencement of the amendments, as if the amended section 34 were in force at the time of the act or omission. The act or omission is, to the extent it was invalid or unlawful, declared to be, and to have always been, valid and lawful.

This means that any act done or omitted to be done as if section 34(1)(b)(i)(C) had always been referred to as 'registered native title holder,' is declared to be and always has been valid and lawful.

The policy intent of clause 111 (the new sections 168, 169 and 170) is that stakeholders who commenced a process under the TSICHA who have for example, commenced the consultation process to notify Torres Strait Islander parties should not be disadvantaged.

The transitional provisions will have the effect of ensuring stakeholders who have commenced a process under the TSICHA to comply with the TSICHA are not disadvantaged and the validating provisions will have the effect of ensuring any actions taken or decisions made before the commencement of these amendments, that were based on the interpretation of section 34(1)(b)(i)(C) prior to the Nuga Nuga decision are and always have been valid and lawful.

Similarly, the transitional provisions will transition the 'endorsed party' status of a Torres Strait Islander party, where the Torres Strait Islander party has been endorsed by a sponsor to take part in a cultural heritage study or cultural heritage management plan prior to the commencement of the amendments, and the cultural heritage study or cultural heritage management plan has been submitted for recording or approval to the Department of Aboriginal and Torres Strait Islander Partnerships after commencement of the amendments. The effect of the transitional provisions will allow the Chief Executive, upon receiving a cultural heritage study or cultural heritage management plan to record or approve respectively, to 'accept' the endorsed party status as it was prior to commencement of the amendments.

It should be noted that any valid actions taken or decisions made before the commencement of the amendments that were based on the interpretation of section 34(1)(b)(i)(C) after the Nuga Nuga decision are preserved by section 20 of the *Acts Interpretation Act 1954*.