

# Revenue and Other Legislation Amendment Bill 2025

## Explanatory Notes

### Short title

The short title of the Bill is the *Revenue and Other Legislation Amendment Bill 2025* (the Bill).

### Policy objectives and the reasons for them

The Bill amends legislation administered by the Commissioner of State Revenue (Commissioner) and the Registrar of the State Penalties Enforcement Registry (SPER) to implement revenue measures announced in the 2025-26 State Budget and to make other necessary amendments to such legislation.

The *First Home Owner Grant and Other Home Owner Grants Act 2000* (FHOG Act) is amended to implement a 2025-26 State Budget revenue measure to extend the temporary increased amount of the First Home Owner Grant (FHOG) from \$15,000 to \$30,000 for a further year, until 30 June 2026.

The *Payroll Tax Act 1971* (Payroll Tax Act) is amended to implement a 2025-26 State Budget revenue measure to extend the 50 per cent payroll tax rebate for wages paid or payable to apprentices and trainees for a further year, until 30 June 2026.

The *Duties Act 2001* (Duties Act) and *Land Tax Act 2010* (Land Tax Act) are amended to introduce windfall tax provisions, which will only apply in certain circumstances where provisions imposing Queensland foreign surcharges, including recently passed revenue protection provisions, are constitutionally invalid or inoperative. Also, to further protect against a successful challenge to foreign surcharge validity and make other supporting amendments.

The *State Penalties Enforcement Act* (SPE Act) is amended to clarify the circumstances in which a registration fee may be imposed when a matter is registered with SPER on or after 10 June 2022 following a person defaulting on an infringement notice.

The Bill also amends the *Electricity Act 1994* (Electricity Act) to validate certain transfers of generation authority G01/17 to Tilt Renewables Australia Pty Ltd ACN 101 038 331 (Tilt Renewables), following a technical error in the original transfer.

The Bill also amends the *Parliament of Queensland Act 2001* (PoQ Act) to provide that the Speaker or the Deputy Speaker of the Legislative Assembly is the chairperson of each portfolio committee when it is examining a Bill for an appropriation Act in a public hearing held in accordance with section 26C of the *Constitution of Queensland 2001*. The amendments will also clarify that if the Speaker is present as a witness before an Estimates public hearing held

by a portfolio committee, then the Deputy Speaker is the chairperson of the committee at the public hearing while the Speaker is a witness.

## **Achievement of policy objectives**

### ***FHOG Act – Extension of temporary increase to FHOG amount***

The FHOG Act provides for payment of the FHOG for first home buyers who have entered into an eligible transaction which has been completed and who satisfy certain eligibility criteria. An eligible transaction is a contract to purchase or build a new home, or the building of a new home by an owner builder.

Currently, the FHOG Act provides for a temporary increase in the amount of the FHOG from \$15,000 to \$30,000, which applies to eligible transactions entered into between 20 November 2023 and 30 June 2025 (both dates inclusive).

The FHOG Act will be amended to extend the temporary increased amount of the FHOG for a further year, until 30 June 2026.

### ***Payroll Tax Act – Extension of payroll tax rebate for apprentice and trainee wages***

Under the Payroll Tax Act, payroll tax is payable by employers on all taxable wages. However, certain wages are specifically exempt. Relevantly, wages paid to apprentices or trainees during the period of their apprenticeship or traineeship are exempt where specified conditions are met.

In addition to the exemption for wages paid to apprentices and trainees, the Payroll Tax Act also provides a payroll tax rebate for wages paid or payable during an eligible year by an employer, or the designated group employer for a group, to a person who is an apprentice or trainee under the *Further Education and Training Act 2014* (the apprentice and trainee rebate). An ‘eligible year’ is a financial year ending 30 June 2010, 2011, 2012, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024 or 2025. For an eligible year ending on or after 30 June 2017, a 50 per cent rebate applies to the wages of apprentices and trainees. For any other eligible year, the rebate is 25 per cent of the employer’s apprentice and trainee wages.

The Payroll Tax Act will be amended to extend availability of the 50 per cent apprentice and trainee rebate to wages paid or payable during the financial year ending 30 June 2026.

### ***Duties Act and Land Tax Act – Amendments relating to Queensland’s foreign surcharges***

Under foreign surcharge provisions in the Duties Act and Land Tax Act, foreign persons who acquire or own land in Queensland may be subject to duty and land tax foreign surcharges and differential rates and thresholds for land tax. Specifically:

- Additional foreign acquirer duty (AFAD) is a duty surcharge on certain transactions involving the acquisition of residential land by a foreign individual, foreign corporation or trustee of a foreign trust;

- The land tax foreign surcharge is a surcharge rate of land tax in relation to foreign companies and trustees of foreign trusts that own land in Queensland as at midnight 30 June each year; and
- Separate general and surcharge rates of land tax (as well as a lower tax-free threshold) which apply to absentees compared to other individuals that own land in Queensland as at midnight 30 June each year.

(collectively, the foreign surcharges)

Prior to 8 April 2024, there was a period of uncertainty as to the interaction of particular Commonwealth laws with the imposition of State foreign surcharges in relation to persons from certain countries. If a court considers that State and Commonwealth laws are inconsistent, this may lead to a finding, in accordance with section 109 of the *Commonwealth Constitution* (the Constitution), that the State law is invalid to the extent of the inconsistency.

In response to this uncertainty, amendments were made by the *Revenue Legislation Amendment Act 2025* (RLAA) to introduce revenue protection provisions. The purpose of these amendments was to ensure the intended operation and imposition of the foreign surcharges in relation to persons from certain countries for the period during which the uncertainty existed.

As a further revenue protection measure, the Duties Act and Land Tax Act will be amended to introduce provisions to implement a windfall duty and a windfall tax (collectively, the windfall taxes) and to support their proper operation and enforcement. These windfall tax provisions will only apply if both the foreign surcharge provisions and the RLAA revenue protection provisions were invalid or inoperative because of section 109 of the Constitution to the extent they apply to certain foreign surcharge liabilities.

The provisions may be invalid or inoperative because a court has decided that the relevant foreign surcharge provisions and the RLAA revenue protection provisions were invalid or inoperative because of section 109 of the Constitution. They may also be invalid or inoperative because a court has decided that corresponding provisions of a tax law in Queensland or another State or Territory, which are equivalent or comparable, are invalid or inoperative because of section 109 of the Constitution. The windfall tax provisions will have application from the day that the relevant court decides the invalidity or inoperativeness (the decision day). The Commissioner will be required to give notice of the decision day, by publishing it on the Queensland Revenue Office's website, within 5 business days of the Commissioner becoming aware the decision day has happened.

If the windfall tax provisions apply, a taxpayer will be entitled to a tax windfall if they have been given an assessment of a foreign surcharge liability arising before 8 April 2024 and the foreign surcharge, as it applied in relation to their transaction or land, is invalid because the relevant imposition provisions were to any extent constitutionally invalid or inoperative.

A windfall tax will only be imposed on taxpayers who claim, or are taken to claim, their entitlement to a tax windfall by undertaking certain actions. This will be where they obtain a court order for the repayment of amounts paid in relation to their foreign surcharge liability on the basis of invalidity or they otherwise take or have taken action to assert that their liability is invalid. For example, by commencing legal proceedings, seeking a refund or reassessment to

reduce their foreign surcharge liability to nil, making or pursuing an objection, advising of an intention not to pay or failing to pay after ceasing to pursue an assertion of invalidity.

Importantly, a windfall tax liability will only be imposed as an alternative to a foreign surcharge liability. It will not be imposed in addition to a foreign surcharge validly imposed in relation to a relevant transaction or land held as at 30 June when liability for land tax arises. Further, a windfall tax liability will generally not be imposed on taxpayers that accept their foreign surcharge liability.

Where a windfall tax is imposed, the amount of windfall tax will be equivalent to the taxpayer's relevant foreign surcharge liability (plus penalty tax and interest assessed or paid).

The windfall taxes will generally be administered in the same way as any other tax. The *Taxation Administration Act 2001* (Taxation Administration Act) will generally apply in relation to administration of the windfall taxes, with taxpayers having the same objection and appeal rights in relation to assessments of windfall tax and reassessments being able to be made as necessary. Unpaid tax interest (UTI) and penalty tax will apply consistent with other taxes to the extent appropriate, ensuring UTI and penalty tax outcomes for a taxpayer subject to a windfall tax are generally equivalent to those that would have resulted from their foreign surcharge liability.

However, some aspects of administration will be different to enable the windfall taxes to operate properly. Payments made by a taxpayer in relation their foreign surcharge liability will be applied to their windfall tax liability to ensure no refunds have to be made and the application of such a payment will be deemed to satisfy any requirement to repay ordered by a court. Special rules will apply to ensure UTI is properly calculated in relation to the windfall taxes and to ensure the existing 5-year limitation period on reassessments does not preclude a taxpayer claiming their entitlement to a tax windfall.

Existing provisions which apply generally to the recovery, investigation and enforcement of tax (including duty and land tax) will equally apply in relation to the windfall taxes. That is, these provisions will effectively continue to apply in relation to taxpayers subject to the windfall taxes as opposed to applying to any additional persons. Some new security and recovery powers will also be introduced for the windfall taxes. These powers align with powers that currently apply in relation to particular duties and land tax so generally equivalent powers effectively continue to apply in relation to taxpayers subject to the windfall taxes.

In addition, amendments will be made to address certain issues that may arise from a successful challenge to the validity of a foreign surcharge. These amendments will ensure assessments of other tax liabilities (e.g. transfer duty and land tax at the general rate) included in the same assessment notice as a foreign surcharge liability are valid and separate assessments. They will also ensure that a taxpayer who successfully challenges the validity of a foreign surcharge cannot be awarded statutory interest currently contemplated in the Taxation Administration Act. These amendments are necessary to ensure the proper imposition of existing taxes and to protect the revenue base.

### ***SPE Act – Clarification of imposition of registration fee***

Under the SPE Act, an administering authority may give a default certificate for a particular infringement notice offence to SPER for registration if the person served with the infringement

notice for the offence (alleged offender) has not paid the fine in full or taken a particular other action within 28 days after the date of the notice.

Since commencement of the SPE Act, the policy intention has always been that upon registration of a default certificate by SPER, the amount owing by the alleged offender in relation to the infringement notice offence is increased by the amount of a prescribed registration fee (currently 73.80 fee units (\$78.20 for the 2024-25 financial year)). Procedurally, when a default certificate is registered:

- SPER becomes responsible for the collection of the amount owing (which includes the registration fee) from the alleged offender;
- SPER issues an enforcement order to the alleged offender, ordering the person to pay the amount owing within 28 days after the date of the order; and
- failure by the alleged offender to pay the amount stated in the enforcement order, or to take a particular other action, within 28 days after the date of the enforcement order allows SPER to take a range of enforcement actions.

An administering authority that is entitled to retain the amount of any fine paid to it (retaining authority) is required to pay the amount of the registration fee to SPER when giving a default certificate, with that amount being refunded in certain circumstances (e.g. if SPER recovers the amount owing from the alleged offender). Retaining authorities include local councils, universities and some hospital boards. Conversely, an administering authority that does not retain fines (non-retaining authority) is not required to pay such amount when giving a default certificate. Non-retaining authorities include Government departments.

An administering authority may give an amended default certificate to SPER for registration if amendment of an earlier certificate is necessary (e.g. because of an error in the earlier certificate). No amount is payable to SPER by the administering authority in relation to an amended default certificate, nor is the amount owing by the alleged offender increased by a further registration fee upon its registration.

The *State Penalties Enforcement (Modernisation) Amendment Act 2022* (SPEMA Act) amended the SPE Act with effect from 10 June 2022 to, amongst other things, allow prescription of a date by which an administering authority must give a default certificate to SPER to avoid a late lodgement fee being payable by the administering authority. Consequential amendments to the SPE Act made by the SPEMA Act (the consequential amendments) were intended to clarify that, if an administering authority incurred a late lodgement fee, only the registration fee (and not the late lodgement fee) would be recoverable from the alleged offender.

Consistent with both the original policy intention of the SPE Act and the intended operation of the consequential amendments, since 10 June 2022 SPER has continued the longstanding practice of increasing the amount owing by an alleged offender by the registration fee upon registration of a default certificate (other than an amended default certificate) in all cases – that is, irrespective of whether the default certificate was given to SPER by a retaining authority or a non-retaining authority. However, due to the consequential amendments, the SPE Act could potentially be interpreted in an unintended manner to only authorise such increase where a default certificate registered by SPER on or after 10 June 2022 had been given to SPER by a retaining authority.

To put the matter beyond doubt and to confirm the existing and longstanding interpretation and practice, the SPE Act will be amended to clarify that, for a default certificate registered on or after 10 June 2022 (other than an amended default certificate), the amount owing by the alleged offender is required to be increased by the registration fee whether the default certificate is given by a retaining authority or a non-retaining authority.

The SPE Act will also be amended to confirm the validity of anything done, or omitted to be done, on the basis that the amount owing by the alleged offender was required to be increased by the registration fee upon registration of such default certificate, provided that relevant procedural requirements were followed.

### ***Electricity Act 1994***

It has emerged that a decision made by the regulator on 14 June 2024 under section 184 of the Electricity Act to transfer a generation authority to Tilt Renewables was affected by jurisdictional error as certain procedural requirements in the Electricity Act were not complied with in assessing the application. The decision was subsequently remade on 20 June 2025 in compliance with the requirements of the Act.

To ensure legal certainty about the regulator's decision to transfer the generation authority, the Electricity Act will be amended to retrospectively validate the original transfer, the subsequent revocation and the new transfer of generation authority G01/17 to Tilt Renewables. This approach is reasonable and appropriate because it addresses a technical error in the original transfer process while maintaining the integrity of the regulatory framework under the Electricity Act.

### ***Parliament of Queensland Act 2001***

In accordance with section 26C of the *Constitution of Queensland 2001*, the Legislative Assembly must ensure that each Bill for an annual appropriation Act is referred to one of the Parliament's portfolio committees for examination in a public hearing.

The PoQ Act provides for matters relating to the Legislative Assembly including the establishment and membership of the Parliament's portfolio committees and the power of the Legislative Assembly to make rules relating to the conduct of its business and of its committees.

In accordance with sections 91 to 91C of the PoQ Act, the chairperson of a Parliament's portfolio committee is the member of the committee nominated as the chairperson by the Leader of the House.

The government has an election commitment to reform the Legislative Assembly's Budget Estimates process to deliver accountability and transparency and support better services for Queenslanders. As part of the reforms, it is proposed that the Speaker or the Deputy Speaker of the Legislative Assembly, will preside as chairperson over the Estimates committee public hearings at which ministers appear to answer questions about the Bill for the annual appropriation Act.

The Speaker and Deputy Speaker are well practiced in presiding over meetings of the Legislative Assembly and implementing the standing rules and orders. Providing that the

Speaker or the Deputy Speaker will preside over the Estimates hearings will ensure a more consistent approach to the Estimates hearings process across all parliamentary committees.

The reform will support members of the portfolio committees to undertake a fair, balanced and robust examination of the Appropriation Bill as it relates to ministerial portfolios and enhance the ability of the portfolio committees to hold ministers to account and scrutinise government expenditure, performance and effectiveness.

To support the practical implementation of this reform, the Legislative Assembly will, in accordance with section 11 of the PoQ Act, be able to adopt standing rules and orders to support the Speaker, or Deputy Speaker to chair the public hearings held in accordance with section 26C of the *Constitution of Queensland 2001*.

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

The policy objectives of the Bill can only be achieved by legislative amendment.

## **Estimated cost for government implementation**

Implementation costs relating to amendments to the FHOG Act and Payroll Tax Act to implement 2025-26 State Budget revenue measures are expected to be met from within existing budget allocations.

The windfall tax provisions will only ever operate as an alternative to the current foreign surcharge provisions and the amendments made by RLAA. If the windfall tax provisions apply and liabilities arise necessitating administration of the windfall taxes, implementation costs can be met from within existing budget allocations.

There are no costs associated with the implementation of the amendments to the SPE Act, as such amendments do not alter current practices in relation to recovery of a registration fee from an alleged offender following registration of a default certificate.

Costs associated with amendments to the Electricity Act will be met from within existing budget allocations.

While no additional costs are anticipated as a result of the proposed amendments to the PoQ Act, any costs would be met from within the existing resources of the Parliamentary Service.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles (FLPs). Potential inconsistencies are discussed below.

***Duties Act 2001 and Land Tax Act 2010 – remedial amendments relating to foreign surcharges – legislation must have sufficient regard to the rights and liberties of individuals (Legislative Standards Act 1992, section 4(2))***

Section 4(2)(a) of the *Legislative Standards Act 1992* (Legislative Standards Act) requires that legislation has sufficient regard to the rights and liberties of individuals. Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, amongst other things, the legislation is unambiguous enabling individuals to ascertain whether it applies to them and does not adversely affect rights and liberties, or impose obligations, retrospectively.

Publication of decision day by Commissioner

The requirement for the Commissioner to give notice of the decision day, by publishing it on the Commissioner's website, within five business days after becoming aware the decision day has happened, could be perceived as affecting the rights and liberties of individuals because legislation should be unambiguous and individuals should be able to ascertain whether a law applies to them.

A decision day is the earlier of the day a court first decides that the relevant foreign surcharge provisions and the RLAA revenue protection provisions, were, to any extent, invalid or inoperative under section 109 of the Constitution, or the day that a court decides that a corresponding provision, which is equivalent or comparable, is, to any extent, invalid or inoperative under section 109 of the Constitution. The windfall tax provisions will have application once a decision day happens. From this day, taxpayers may claim or be taken to have made a claim for a tax windfall which gives rise to a liability for a windfall tax.

The fact that requirement to publish a decision day is dependent on the Commissioner's awareness of a decision day happening may be perceived to be uncertain, this does not reduce a person's ability to ascertain when the windfall tax provisions apply. The Commissioner's publication of the decision day does not affect when the windfall tax provisions will apply. A decision day itself is based on objective and factual circumstances. That is, it is based on a finding by a court that specified provisions in a Queensland tax law, or corresponding tax legislation of another State or Territory, are invalid or inoperable under section 109 of the Constitution.

Court decisions are publicly available, generally online via official court websites. The specific legislative provisions that are the subject of court decisions are clearly set out in those published decisions. The relevant foreign surcharge provisions, RLAA revenue protection provisions and corresponding provisions are set out in the windfall tax provisions along with the relevant provision of the Constitution under which they may be invalid or inoperative. Therefore, the provisions themselves ensure persons potentially impacted by the windfall tax provisions have the ability to locate the factual information they need to become aware that a decision day has happened.

The requirement for the Commissioner to give notice of the decision day by publishing it on the Commissioner's website is intended to ensure that potentially affected persons are made aware of a court decision of this nature, whether in relation to Queensland or corresponding legislation. Importantly, no rights or liberties of individuals are affected by the Commissioner's notification of a decision day. In this regard, it is intended to increase awareness that a decision day has happened, particularly for persons who may be impacted by the windfall tax provisions.



As such, the requirement for the Commissioner to notify of a decision day is considered to have sufficient regard to the rights and liberties of individuals.

#### No refunds or orders for statutory interest upon successful foreign surcharge validity challenges

While the amendments do not remove a person's right to challenge a foreign surcharge liability, they will practically impact the outcomes that a taxpayer may achieve from such a challenge, including challenges that have already commenced. This may be perceived as affecting their rights retrospectively.

For a taxpayer seeking a refund of payments made in relation to a foreign surcharge liability on the basis that the liability is invalid, either under the Taxation Administration Act or the general law, the effect of the windfall tax provisions is that such action will trigger a windfall tax liability and any payments the taxpayer made in relation to the relevant foreign surcharge liability will be applied to their windfall tax liability. No entitlement to a refund will arise under the Taxation Administration Act and, if a court has ordered a refund, application of the payment to the windfall liability will be taken to satisfy that court order. That is, the windfall tax provisions will acknowledge the person's right to repayment in accordance with the court order but, in recognition that the windfall tax liability will be equivalent to payments that were required to be made in relation to their foreign surcharge liability, will allow that order to be satisfied by way of reallocation instead of a refund. In this regard, when considered from the perspective of taxpayer outcomes, the amendments may be perceived as practically extinguishing rights to refunds retrospectively.

Also, for a taxpayer who successfully challenges the validity of a foreign surcharge through court proceedings, the amendments ensure that the court cannot award statutory interest as currently contemplated under the Taxation Administration Act for certain types of proceedings determined in a taxpayer's favour. While this may be perceived to be extinguishing a right to statutory interest retrospectively, a successful outcome in proceedings does not automatically give rise to a right to interest as, under the Taxation Administration Act orders to pay interest are at the court's discretion.

To the extent the amendments do give rise to FLP issues, they are considered necessary and appropriate. The amendments are considered to be in the public interest in that they protect foreign surcharge revenue by ensuring that persons intended to be subject to foreign surcharges in Queensland are not relieved of those liabilities and that those who challenge their foreign surcharge liabilities in court are not able to derive a financial benefit. This ensures certainty of revenue for the benefit of the State and all Queenslanders.

#### New security and recovery powers to support administration of the windfall taxes

The introduction of new security and recovery powers specifically in relation to the windfall taxes have the potential to impact the rights of individuals subject to the windfall taxes as well as other individuals.

In relation to both windfall duty and windfall tax that is not paid by the taxpayer by the date required, the unpaid amount will be a first charge on the taxpayer's interest in certain relevant land and the charge will be able to be registered with the Registrar of Titles. In particular circumstances where a charge has been registered, the Commissioner will have the power to sell the relevant land. A registered charge will not be affected by a disposition of the taxpayer's

interest in the land, in acknowledgement that registration gives prospective purchasers of the land the opportunity to identify and consider the impact of the charge before acquiring the land.

Appropriate limitations will apply before unpaid windfall duty or windfall tax becomes a first charge on land and before the power of sale can be exercised.

Specifically, unpaid windfall duty or windfall tax will only be a first charge on a taxpayer's interest in relevant land if the taxpayer still owns the land that was the subject of their foreign surcharge liability that ultimately gave rise to their liability for windfall duty or windfall tax.

Also, the power of sale will only be engaged if the unpaid windfall duty or windfall tax has not been paid within 18 months of the charge being registered on the land and the Commissioner has given the taxpayer and any owner of the land 6 months' notice before applying to the Supreme Court to sell the land. Further, any owners not liable for a foreign surcharge will have a statutory entitlement to recover proceeds from the sale (less certain amounts to discharge earlier security interests recorded for the land) as a debt from the taxpayer.

In relation to windfall tax, the Commissioner will be able to take security for the payment of unpaid windfall tax which may be in the form of a bank guarantee or cash deposit or both. Further, the Commissioner will be able to require a mortgagee of the taxpayer's interest in relevant land to pay an amount of unpaid windfall tax, subject to appropriate limitations and safeguards.

Specifically, recovery from the mortgagee will only be able to occur if the taxpayer still owns the land that was the subject of their foreign surcharge liability that ultimately gave rise to their liability for windfall tax. Also, where a mortgagee is required to pay an amount of unpaid windfall tax, they will have a statutory entitlement to recover that amount as a debt which will be taken to be secured by the mortgage.

To the extent the amendments do give rise to FLP issues, they are considered necessary and appropriate. The new security and recovery provisions align with equivalent and longstanding provisions in the Duties Act and Land Tax Act and will ensure that the Commissioner has the necessary powers, consistent with the powers that exist for other State taxes, to recover and enforce any outstanding windfall tax liabilities. This will ensure that appropriate amounts can be collected in circumstances where foreign surcharges in Queensland were intended to be payable. This is considered to be in the public interest in that it enables the State to enforce foreign surcharge revenue that has been assessed, ensuring certainty of revenue for the benefit of the State and all Queenslanders.

***State Penalties Enforcement Act 1999 – clarification of imposition of registration fee –not adversely affecting rights and liberties, or imposing obligations, retrospectively (Legislative Standards Act 1992, section 4(3)(g))***

As noted, section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals which depends on, amongst other things, whether the legislation adversely affect rights and liberties, or imposes obligations, retrospectively.

The amendments to the SPE Act, to clarify the imposition of the registration fee, apply to default certificates registered by SPER on or after 10 June 2022 and confirm the validity and lawfulness of things done (or omitted to be done) as a consequence of registration of such default certificates. This may be perceived as adversely affecting rights or imposing obligations retrospectively.

To the extent that a default certificate given to SPER by a non-retaining authority was registered on or after 10 June 2022, then the alleged offender could have potentially sought to challenge the imposition of the registration fee and enforcement actions taken as a consequence of registration under the provisions as currently drafted. The amendments remove the basis for such potential challenge as they clarify, with effect from 10 June 2022, that the relevant provisions operate as intended to require that the amount owing by an alleged offender be increased by the registration fee whether the default certificate is given by a retaining authority or a non-retaining authority.

While this may be perceived as extinguishing rights retrospectively, a challenge on such a basis is theoretical only. It does not automatically give rise to any right (e.g. to be relieved of the registration fee) as it would ultimately be for a court to decide.

The amendments to validate any enforcement actions that have been taken for an unpaid infringement notice registered by SPER on or after 10 June 2022 only validate such an action to the extent that it was based on the premise that the amount owing included a registration fee. They do not validate any procedural defects that had occurred in relation to such enforcement action, such as failing to serve a notice of intention to issue an immobilisation warrant prior to immobilising a vehicle.

These amendments are considered necessary and appropriate to clarify and ensure the intended operation of the SPE Act since 10 June 2022. They align with longstanding interpretation and practice and do not practically result in any change to the amount that an individual has been or is required to pay to SPER. Further, no additional obligations are imposed on an individual as a result of the amendments. The amendments are considered to be in the public interest in that they provide certainty to relevant alleged offenders and the State regarding recovery of the registration fee for registrations of default certificates since 10 June 2022.

### ***Electricity Act 1994 – validate certain transfers of generation authority G01/17***

It is considered that the amendments to the Electricity Act do not affect the rights and liberties of individuals as they apply to a corporation. However, if the provisions were considered to apply to individuals, this would be an instance of a curative retrospective provision that does not have significant effects on rights and liberties of individuals. The validating provision in this instance is justified as it is necessary to validate an administrative action under the Electricity Act.

## **Consultation**

Community consultation was not undertaken in relation to the amendments to legislation administered through QRO in the Bill as they are being implemented as part of the 2025-26

State Budget, are revenue protection amendments or are technical amendments necessary to ensure Queensland's penalty debt legislation operates as intended.

The Queensland Productivity Commission's Office of Best Practice Regulation was consulted on the Electricity Act amendments, which are minor and machinery in nature to correct a technical error. They have confirmed that no further regulatory impact analysis is required under the Queensland Government Better Regulation Policy.

Targeted consultation on a confidential draft of the Bill with the PoQ Act amendments was undertaken with the Clerk of the Parliament.

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

The amendments are specific to the State of Queensland and are not otherwise uniform with or complementary to legislation of the Commonwealth or another state or territory.

# 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 2025*.

*Clause 2* provides for the commencement of the amendments made by the Bill. In particular, it provides that the amendments to the:

- *First Home Owner Grant and Other Home Owner Grants Act 2000* commence on 1 July 2025; and
- *Payroll Tax Act 1971* commence on 1 July 2025.

## Part 2 Amendment of the Duties Act 2001

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

*Clause 4* amends section 246B of the *Duties Act 2001* (Duties Act) which imposes a charge for unpaid transfer duty in certain circumstances. The amendments provide that a charge for unpaid transfer duty has priority over all other encumbrances over the land, other than a charge under section 156P or new section 246V as inserted by amendments made by this Bill.

*Clause 5* inserts new chapter 4A which provides for windfall duty.

New part 1 of chapter 4A contains preliminary matters.

New section 246J provides for the application of chapter 4A. Section 246J(1) sets out the threshold conditions for when chapter 4A applies. Firstly, additional foreign acquirer duty (AFAD) must have been purportedly imposed on a relevant transaction as defined in section 231, being a dutiable transaction on which transfer duty is imposed or a relevant acquisition on which landholder duty or corporate trustee duty is imposed. Secondly, the purported liability for AFAD must have arisen before 8 April 2024. Thirdly, the purported liability must have been assessed and an assessment notice given before the decision day. Fourthly, the purported imposition of AFAD must have been invalid only because chapter 4 and section 688 were invalid or inoperative to any extent under section 109 of the *Commonwealth Constitution* (Constitution).

This fourth condition will be satisfied where a court decides that both chapter 4 and section 688 are constitutionally invalid or inoperative. Chapter 4 is the relevant chapter that provides for AFAD. Section 688 provides for the imposition of AFAD in circumstances where the purported imposition of AFAD payable on or after 1 January 2018 and before 8 April 2024 is invalid only because the provisions that purportedly imposed it were to any extent invalid or inoperative under section 109 of the Constitution.

Section 246J(2) provides that the fourth condition is taken to be satisfied if a corresponding provision is to any extent invalid or inoperative under section 109 of the Constitution. This will be where a court decides that a corresponding provision is invalid or inoperative. A *corresponding provision* is defined in section 246J(5) and includes provisions of tax laws in

Queensland and other States and Territories that impose foreign surcharges. For example, provisions of Queensland's *Land Tax Act 2010* (Land Tax Act) which impose a surcharge rate of land tax on foreign companies and trustees of foreign trusts are corresponding provisions. Also, provisions of the *Duties Act 2000* (Vic) that impose foreign purchaser additional duty.

Where the relevant threshold conditions in section 246J(1) are satisfied, section 246J(3) provides that the AFAD described in those conditions is *invalid AFAD*. This will be the case where the fourth condition is satisfied because a court decides that both chapter 4 and section 688 are constitutionally invalid or inoperative or where it is taken to be satisfied because a court decides that a corresponding provision is invalid or inoperative.

Section 246J(4) defines *decision day*, which is relevant to the third condition. A decision day is the earlier of the day a court first decides that chapter 4 and section 688 of the Duties Act were, to any extent, invalid or inoperative under section 109 of the Constitution or the day that a court decides that a corresponding provision is, to any extent, invalid or inoperative under section 109 of the Constitution.

New section 246K provides that the Commissioner must give notice of the decision day within 5 business days after the Commissioner becomes aware the decision day has happened by publishing it on the Commissioner's website.

New section 246L provides for the imposition of *windfall duty*. Section 246L(1) provides that chapter 4A imposes windfall duty on a claim for an AFAD windfall. Section 246L(2) provides that windfall duty is imposed on the amount of an AFAD windfall.

New part 2 of chapter 4A contains basic concepts for windfall duty.

New section 246M defines an *AFAD windfall*. An AFAD windfall, in relation to a relevant transaction on which invalid AFAD is purportedly imposed, is the total of the invalid AFAD, any assessed interest and penalty tax for the invalid AFAD and any amount paid for late payment interest in relation to the invalid AFAD.

New section 246N defines a *claim* for an AFAD windfall. Section 246N(1) provides that a person makes a claim for an AFAD windfall if, on or after the decision day, they give notice to the Commissioner that they dispute their liability for invalid AFAD imposed on a relevant transaction and includes examples.

As provided for in the examples, a person may make a claim by asking the Commissioner for a reassessment to decrease their purported liability for the invalid AFAD to nil or by objecting to the assessment of the person's purported liability for invalid AFAD. They may also make a claim by starting a proceeding in relation to the person's purported liability for the invalid AFAD, which may be a proceeding contemplated under the provisions of the *Taxation Administration Act 2001* (Administration Act) such as an appeal to the Supreme Court under part 6, division 2 of that Act or under the common law. Other examples of a person making a claim are where they advise the Commissioner that they do not intend to pay an amount relating to their purported liability for the invalid AFAD or ask the Commissioner to refund an amount paid for the person's purported liability for the invalid AFAD.

Section 246N(2) provides for certain circumstances where a person is taken to have made a claim for an AFAD windfall. Under section 246N(2)(a), a person is taken to have made a claim

if, under a court order, the Commissioner is required to repay the person an amount paid in relation to their purported liability for invalid AFAD, other than an order in a proceeding mentioned in section 246N(1) started on or after the decision day. The court order may be in a proceeding contemplated under the provisions of the Administration Act or under the common law.

Section 246N(3) clarifies that a person will be taken to have made a claim irrespective of whether the proceeding for which the court order is made commenced before or after the commencement of chapter 4A. For example, if a person had commenced proceedings before commencement of chapter 4A and the court makes an order on or after the decision day, they will be taken to have made a claim for an AFAD windfall.

Under section 246N(2)(b), a person is taken to have made a claim if, before the decision day, they had lodged an objection to an assessment of AFAD and the question of whether the AFAD is invalid AFAD is relevant to the objection decision. If the Commissioner had not, before the decision day, given written notice to the person of the Commissioner's decision on their objection and the person does not withdraw their objection before such notice is given, the person will be taken to have made a claim for an AFAD windfall. This will apply irrespective of whether the objection was lodged before or after commencement of chapter 4A.

Section 246N(2)(c) also provides that a person is taken to have made a claim if both the Commissioner and the person are aware of the person's purported liability for invalid AFAD and the person does not pay an amount that would, if the invalid AFAD had been validly imposed, have been payable by the *payment day*. For a person who withdrew an objection mentioned in section 246(2)(b), the payment day is 30 days after the person notified the Commissioner of their withdrawal. For all other persons, the payment day is 30 days after the decision day.

New part 3 of chapter 4A contains provisions about liability for windfall duty.

New section 246O provides for when liability for windfall duty arises. Section 246O(1) provides that a person's liability for windfall duty arises when the person makes a claim for an AFAD windfall. Section 246O(2) specifies when a claim is made or taken to have been made by a person. For a person who makes a claim under section 246N(1), liability arises on the day the Commissioner is notified that the person disputes their liability for invalid AFAD. For a person who is taken to make a claim under section 246N(2), liability arises either on the day the court order is made, on the day written notice of the decision on the objection is given or the day after the payment day, depending on the basis they are taken to have made a claim.

New section 246P provides for who is liable to pay windfall duty. For a claim made under section 246N(1), the person who gives notice that they are disputing their liability for invalid AFAD is liable to pay windfall duty. For a claim taken to be made under section 246N(2), the person liable to pay windfall duty is either the person required to be repaid under the court order, the person who made the objection or the person who does not pay the amount by the payment day, depending on the basis they are taken to have made a claim.

New section 246Q provides that the rate of windfall duty imposed on a claim for an AFAD windfall is 100 per cent of the amount of the AFAD windfall.

*Example:*

An assessment notice given for a reassessment of a purported liability for AFAD imposed on a relevant transaction stated that AFAD in the amount of \$34,000 is payable. Also, that unpaid tax interest (UTI) in the amount of \$850 and penalty tax in the amount of \$5,100 are payable.

If a person makes a claim for an AFAD windfall in relation to the transaction, the AFAD windfall will be the total of those amounts, being an amount of \$39,950. The person will be liable to pay windfall duty in the amount of \$39,950.

New section 246R provides for the order in which the Commissioner must apply amounts paid for invalid AFAD to a liability for windfall duty. Section 246R(1) provides the section applies if a person liable for windfall duty has paid an amount to the Commissioner in relation to a purported liability for invalid AFAD and the person's liability for invalid AFAD is decreased to nil on a reassessment. Section 246R(2) provides that the person is not entitled to a refund under section 37(1)(a) of the Administration Act which generally provides an entitlement to a refund of an amount paid under a tax law if a taxpayer's liability is decreased under a reassessment.

Instead, the Commissioner must apply the amount to the person's liability for windfall duty in the order specified in section 246R(3). That is, the amount must be applied first to the amount of the AFAD windfall attributable to assessed interest or penalty tax, second to the amount of the AFAD windfall attributable to an amount paid for late payment interest in relation to the invalid AFAD and third to the amount of the AFAD windfall attributable to the invalid AFAD that would have been payable had it been validly imposed.

Section 246R(4) provides that if the Commissioner is required to repay an amount to a person for an amount paid in relation to invalid AFAD because of an order of a court or tribunal, the Commissioner is taken to have complied with the order if the Commissioner applies the amount in the way provided for under section 246R(3). Section 246R(5) provides that the section does not affect the operation of section 42 of the Administration Act. This ensures that if a person has not paid, or only partly paid, an assessment of purported liability for invalid AFAD when the liability for windfall duty arises and therefore has an outstanding liability for windfall duty, any payments for windfall duty will be applied by the Commissioner in the order set out in section 42 of the Administration Act.

New part 4 of chapter 4A contains provisions about reassessment of windfall duty.

New section 246S provides for reassessment of windfall duty in certain circumstances. Where windfall duty is assessed on a claim for an AFAD windfall in relation to a relevant transaction and the Commissioner would, if the invalid AFAD to which the AFAD windfall relates had been validly imposed on the relevant transaction, have been required or permitted to reassess AFAD for the relevant transaction under chapter 4 of the Duties Act or the Administration Act, section 246S requires or permits the Commissioner to make a reassessment of the windfall duty.

For example, if the Commissioner would have been required to make a reassessment for AFAD for a relevant transaction because an AFAD exemption had been claimed but its requirements had subsequently not been met, section 246S requires the Commissioner to make a



reassessment of any windfall duty imposed on an AFAD windfall in relation to the relevant transaction.

Where windfall duty is reassessed under section 246S, section 246S(4) provides that chapter 4 of the Duties Act and part 5 of the Administration Act apply for working out the amount of invalid AFAD, and any UTI or penalty tax in relation to it, as if it were validly imposed AFAD.

New part 5 of chapter 4A contains provisions for administering windfall duty.

New section 246T provides special rules relating to the limitation period for particular reassessments. Under the Administration Act, a reassessment decreasing a taxpayer's liability for tax must generally be made within the limitation period, being 5 years after the assessment notice for the original assessment was given. However, if invalid AFAD is purportedly imposed on a relevant transaction and a person makes a claim for an AFAD windfall in relation to the transaction, section 246T(2) provides that a reassessment to decrease the person's liability for the invalid AFAD to nil may be made at any time, despite the limitation period.

New section 246U specifies how the provisions relating to UTI in section 54 of the Administration Act apply to an amount of unpaid windfall duty for an AFAD windfall. UTI will not accrue for any person liable for windfall duty who paid their purported liability for invalid AFAD in full. Where a purported liability for invalid AFAD was not paid in full, references to an amount of *primary tax* in section 54 of the Administration Act are taken to be references to the amount of the AFAD windfall that is attributable to invalid AFAD.

Further, the start date for the accrual of UTI on an unpaid amount of windfall duty is to be determined in accordance with section 246U(c), rather than section 54(5) of the Administration Act. If the person had paid an amount to the Commissioner in relation to the purported liability for invalid AFAD and, when the last payment was made, late payment interest was paid in full, UTI starts accruing the day after the last payment was made. In all other cases, UTI will accrue on the day after the assessment notice was given for the assessment of the purported liability for invalid AFAD. If the person had been given multiple assessment notices because their liability for AFAD had been reassessed, UTI will accrue on the day after the most recent assessment notice was given.

New section 246V imposes a charge, in certain circumstances, on a person's interest in AFAD residential land that was the subject of a dutiable transaction on which transfer duty was imposed and invalid AFAD was purportedly imposed. A charge is imposed if the person is liable for windfall duty in relation to the invalid AFAD and the windfall duty has not been paid in full by the date it is payable. Except for a charge under section 156P of the Duties Act for unpaid transfer duty for an ELN transfer, the charge has priority over all other encumbrances over the person's interest in the land, whether registered or unregistered and irrespective of when they were created.

The Commissioner may lodge a request to register the charge with the Registrar of Titles and once registered, the charge is not affected by a disposition of the person's interest in the land. However, the Registrar of Titles must not register the charge if the person is no longer the registered owner of the land. Section 246V is consistent with other provisions in the Duties Act imposing a charge on land for unpaid duty and also with new section 63L of the Land Tax Act which imposes a charge over an interest in land for unpaid windfall tax.

New section 246W provides that sections 246C to 246G apply in relation to a charge on a person's interest in land that is registered under section 246V, with appropriate adjustments due to the different subject matter. Sections 246C to 246G allow land the subject of a charge over an interest in land for unpaid transfer duty to be sold where certain procedural requirements are complied with and provide for how the proceeds of the sale are to be applied.

New part 6 of chapter 4A contains miscellaneous provisions for windfall duty.

New section 246X provides for transfer duty validly imposed on relevant transactions under chapter 2, and landholder duty and corporate trustee duty validly imposed on relevant transactions under chapter 3 in circumstances where invalid AFAD was purportedly imposed on the transaction. Section 246X(2)(a) clarifies that an assessment of duty under chapter 2 or 3 is and has always been separately assessed from an assessment of AFAD for the same transaction, whether or not the assessment of those duties are the subject of the same assessment notice as the AFAD. Section 246X(2)(b) clarifies that the purported imposition of the invalid AFAD in relation to the relevant transaction does not affect the validity of an assessment of any other duty under chapter 2 or 3 for the transaction. Similarly, the purported imposition of the invalid AFAD does not affect any other rights, liabilities, acts or omissions in relation to the assessment of that other duty on the relevant transaction. This section ensures that where an assessment notice includes more than one assessment, the assessments relating to transfer duty, landholder duty and corporate trustee duty remain valid, despite the assessment notice including an assessment relating to invalid AFAD.

New section 246Y provides that a person's right to recover an amount under section 246I in relation to transfer imposed on a dutiable transaction is not affected merely because invalid AFAD was purportedly imposed on the transaction. It also provides that the person may recover the amount as a debt as if the invalid AFAD had been validly imposed.

New section 246Z provides that a reference to a refund of tax or late payment interest in section 61(1) of the Administration Act does not include a reference to a refund of an amount paid to the Commissioner because of the purported imposition of invalid AFAD on a relevant transaction. This section ensures that the Commissioner cannot be ordered by a court to pay interest under section 61(1) of the Administration Act in relation to court decisions that require the Commissioner to repay an amount in relation to a purported liability for invalid AFAD.

*Clause 6* amends the dictionary in the schedule to insert new definitions for *AFAD windfall*, *claim*, *decision day*, *invalid AFAD*, *payment day* and *windfall duty* for Chapter 4A. It also amends the existing definition of *relevant transactions* to ensure it also applies to Chapter 4A.

## **Part 3 Amendment of the Electricity Act 1994**

*Clause 7* provides that part 3 amends the *Electricity Act 1994*.

*Clause 8* inserts new part 21 into chapter 14, which relates to validation of transfers of the particular generation authority.

New section 363 provides the transfer of generation authority G01/17 to Tilt Renewables Australia Pty Ltd ACN 101 038 331 dated 14 June 2024 and having effect from 26 June 2024 is taken to be, and to have always been, validly made under the *Electricity Act 1994*. Anything done or omitted to be done by a person as a result of, or in reliance on, the transfer is taken to

be, and to have always been, as valid and lawful as it would be or would have been if, at the time it was done or omitted to be done, the transfer had been validly made. The revocation of the transfer on 20 June 2025 is taken to be, and to have always been, validly made under the *Electricity Act 1994*. No compensation is payable by the State to any person because of the operation of this section.

New section 364 provides the transfer of generation authority G01/17 to Tilt Renewables dated 20 June 2025 and having effect from 20 June 2025 is, to remove any doubt, taken to be, and to have always been, validly made under the *Electricity Act 1994*.

## **Part 4 Amendment of the First Home Owner Grant and Other Home Owner Grants Act 2000**

*Clause 9* provides that part 4 amends the *First Home Owner Grant and Other Home Owner Grants Act 2000*.

*Clause 10* amends the heading to Part 3, division 7, to replace ‘2025’ with ‘2026’.

*Clause 11* amends section 25EA(1) to replace all references to ‘2025’ with ‘2026’, to extend the increased amount of the First Home Owner Grant of \$30,000 for a further year, until 30 June 2026.

## **Part 5 Amendment of the Land Tax Act 2010**

*Clause 12* provides that part 5 amends the *Land Tax Act 2010*.

*Clause 13* amends section 60, which provides that unpaid land tax is a first charge on land. The amendments provide that a charge for unpaid land tax is a first charge subject to any charge for an outstanding liability for windfall tax. Further, they provide that a charge in relation to unpaid land tax has priority over all other encumbrances over the land, other than a charge of an outstanding liability for windfall tax.

*Clause 14* inserts new part 7A which provides for windfall tax.

New division 1 of part 7A contains preliminary matters.

New section 63A provides for the application of part 7A. Section 63A(1) sets out the threshold conditions for when part 7A applies. Firstly, land tax at a foreign surcharge rate must have been purportedly imposed on taxable land for a financial year. A *foreign surcharge rate* is defined in the schedule (Dictionary) as either the surcharge rate for a foreign company or trustee of a foreign trust under section 32(1)(b)(ii) or the rate for an absentee under section 32(1)(c).

Secondly, the purported liability for land tax at a foreign surcharge rate must have arisen before 8 April 2024. Thirdly, the purported liability must have been assessed and an assessment notice given before the decision day. Fourthly, the purported imposition of land tax at a foreign surcharge rate must have been invalid under section 32(1)(b)(ii) or (c) only because the provisions purporting to impose the foreign surcharge rate, including section 104 and 105, were invalid or inoperative to any extent under section 109 of the Constitution.

The fourth condition will be satisfied where a court decides that either sections 32(1)(b)(ii) or 32(1)(c) and either sections 104 or 105 are constitutionally invalid or inoperative. Section 104 provides for the imposition of land tax at the surcharge rate for a foreign company or trustee of a foreign trust in circumstances where the purported imposition of the land tax at the surcharge rate payable on or after 1 January 2018 and before 8 April 2024 was invalid only because the provisions that purportedly imposed it were to any extent invalid or inoperative under section 109 of the Constitution. Section 105 provides for the imposition of land tax at the relevant absentee rate in circumstances where the purported imposition of land tax at the absentee rate payable on or after 1 January 2018 and before 8 April 2024 is invalid only because the provisions that purportedly imposed it were to any extent invalid or inoperative under section 109 of the Constitution.

Section 63A(2) provides that the fourth condition is taken to be satisfied if a corresponding provision is to any extent invalid or inoperative under section 109 of the Constitution. This will be where a court decides that a corresponding provision is invalid or inoperative. A *corresponding provision* is defined in section 63A(8) and includes provisions of tax laws in Queensland and other States and Territories that impose foreign surcharges. For example, provisions of Queensland's Duties Act which impose AFAD are corresponding provisions. Also, provisions of the *Land Tax Act 2005* (Vic) that impose surcharge rates of land tax on absentee owners and absentee trusts.

Where the relevant threshold conditions in section 63A(1) are satisfied, section 63A(3) provides that the land tax described in those conditions is *invalid land tax*. This will be the case where the fourth condition is satisfied because a court decides that sections 32(1)(b)(ii) or 32(1)(c) and 104 or 105 are constitutionally invalid or inoperative or taken to be satisfied because a court decides that a corresponding provision is invalid or inoperative.

Section 63A(4) and (5) provide that if either sections 32(1)(b)(ii) and 104 only, or sections 32(1)(c) and 105 only, were to any extent invalid or inoperative as mentioned in the fourth condition, then *invalid land tax* includes land tax purportedly imposed on taxable land for a financial year at the foreign surcharge rate under any of the provisions. That is, if a court decides that any of the provisions imposing Queensland's foreign surcharge rates are invalid or inoperative under section 109 of the Constitution, then the fourth condition will be satisfied in relation to the purported imposition of land tax at both the foreign surcharge rate for foreign companies and foreign trusts and the rate for absentees.

Section 63A(6) declares, for the avoidance of any doubt, that *invalid land tax* does not include land tax validly imposed at the general rate for companies and trustees of trusts under section 32(1)(b)(i).

Section 63A(7) defines *decision day*, which is relevant to the third condition. A decision day is the earlier of the day a court first decides that either sections 32(1)(b)(ii) or 32(1)(c) and either sections 104 or 105 were, to any extent, constitutionally invalid or inoperative or the day that a court decides that a corresponding provision is, to any extent, invalid or inoperative under section 109 of the Constitution.

New section 63B provides that the Commissioner must give notice of the decision day within 5 business days after the Commissioner becomes aware the decision day has happened by publishing it on the Commissioner's website.

New section 63C provides for the imposition of *windfall tax*. Section 63C(1) provides that part 7A imposes windfall tax on a claim for a land tax windfall. Section 63C(2) provides that windfall tax is imposed on the amount of a land tax windfall.

New division 2 of part 7A contains basic concepts for windfall tax.

New section 63D defines a *land tax windfall*. A land tax windfall, in relation to taxable land on which invalid land tax is purportedly imposed for a financial year, is the total of the invalid land tax, any assessed interest and penalty for the invalid land tax and any amount paid for late payment interest in relation to the invalid land tax.

New section 63E defines what is a *claim* for a land tax windfall. Section 63E(1) provides that a person makes a claim for a land tax windfall if, on or after the decision day, they give notice to the Commissioner that they dispute their liability for invalid land tax purportedly imposed on taxable land for a financial year and includes examples.

As provided for in the examples, a person may make a claim by asking the Commissioner for a reassessment to decrease their purported liability for the invalid land tax to nil or by objecting to the assessment of the person's purported liability for invalid land tax. They may also make a claim by starting a proceeding in relation to the person's purported liability for the invalid land tax, which may be a proceeding contemplated under the provisions of the Administration Act, such as an appeal to the Supreme Court under part 6, division 2 of that Act, or under the common law. Other examples of a person making a claim are where they advise the Commissioner that they do not intend to pay an amount relating to their purported liability for the invalid land tax or ask the Commissioner to refund an amount paid for the person's purported liability for invalid land tax.

Section 63E(2) provides for certain circumstances where a person is taken to have made a claim for a land tax windfall. Under section 63E(2)(a), a person is taken to have made a claim if, under a court order, the Commissioner is required to repay the person an amount paid in relation to their purported liability for invalid land tax, other than an order in a proceeding mentioned in section 63E(1) started on or after the decision day. The court order may be in a proceeding contemplated under the provisions of the Administration Act or under the common law.

Section 63E(3) clarifies that a person will be taken to have made a claim irrespective of whether the proceeding for which the court order is made commenced before or after the commencement of part 7A. For example, if a person had commenced proceedings before commencement of part 7A and the court makes an order on or after the decision day, they will be taken to have made a claim for a land tax windfall.

Under section 63E(2)(b), a person is taken to have made a claim if, before the decision day, they had lodged an objection to an assessment of land tax for a financial year and the question of whether the land tax is invalid land tax is relevant to the objection decision. If the Commissioner had not, before the decision day, given written notice to the person of the Commissioner's decision on their objection and the person does not withdraw their objection before such notice is given, the person will be taken to have made a claim for a land tax windfall. This will apply irrespective of whether the objection was lodged before or after commencement of part 7A.

Section 63E(2)(c) also provides that a person is taken to have made a claim if both the Commissioner and the person are aware of the person's purported liability for invalid land tax and the person does not pay an amount that would, if the invalid land tax had been validly imposed, have been payable by the *payment day*. For a person who withdrew an objection mentioned in section 63E(2)(b), the payment day is 30 days after the person notified the Commissioner of their withdrawal. For all other persons, the payment day is 30 days after the decision day.

New division 3 of Part 7A contains provisions about liability for windfall tax.

New section 63F provides for when liability for windfall tax arises. Section 63F(1) provides that a person's liability for windfall tax arises when the person makes a claim for a land tax windfall. Section 63F(2) specifies when a claim is made or taken to have been made by a person. For a person who makes a claim as defined in section 63E(1), liability arises on the day the Commissioner is notified that the person disputes their liability for invalid land tax. For a person who is taken to make a claim as defined in section 63E(2), liability arises either on the day the court order is made, on the day written notice of the Commissioner's decision on the objection is given or the day after the payment day, depending on the basis they are taken to have made a claim.

New section 63G provides for who is liable to pay windfall tax. The persons liable for windfall tax are set out in section 63G(1). For a claim made as defined in section 63E(1), the person who gives notice that they are disputing their liability for invalid land tax is liable to pay windfall tax. For a claim taken to be made as defined in section 63E(2), the person liable to pay windfall tax is either the person required to be repaid under the court order, the person who made the objection or the person who does not pay the amount by the payment day, depending on the basis they are taken to have made a claim.

Where a purported liability for invalid land tax for which windfall tax is imposed was assessed under section 22(4) as if the land were owned by one co-owner or under section 22A(1) as if the land owned by two or more trustees of the same trust were land owned by one person, each co-owner of the land or each trustee of the trust respectively at the time the purported liability for invalid land tax arose are liable for windfall tax.

New section 63H provides that the rate of windfall tax imposed on a claim for a land tax windfall is 100 per cent of the amount of the land tax windfall.

*Example:*

An assessment notice given for a reassessment of a purported liability for invalid land tax imposed in relation to taxable land for a financial year stated that land tax at the foreign surcharge rate in the amount of \$51,000 is payable. Also, that unpaid tax interest in the amount of \$2,300 and penalty tax in the amount of \$7,650 are payable.

If a person makes a claim for a land tax windfall in relation to the taxable land, the land tax windfall will be the total of these amounts, being \$60,950. The person will be liable to pay windfall tax in the amount of \$60,950.

New section 63I provides for the order in which the Commissioner must apply amounts paid for invalid land tax to a liability for windfall tax. Section 63I(1) provides the section applies if a person liable for windfall tax has paid an amount to the Commissioner in relation to a

purported liability for invalid land tax and the person's purported liability for invalid land tax is decreased to nil on a reassessment. Section 63I(2) provides that the person is not entitled to a refund under section 37(1)(a) of the Administration Act, which generally provides an entitlement to a refund of an amount paid under a tax law if a taxpayer's liability is decreased under a reassessment.

Instead, the Commissioner must apply the amount to the person's liability for windfall tax in the order specified in section 63I(3). That is, the amount must be applied first to the amount of the land tax windfall attributable to assessed interest or penalty tax, second to the amount of the land tax windfall attributable to an amount paid for late payment interest in relation to the invalid land tax and third to the amount of the land tax windfall attributable to the invalid land tax that would have been payable had it been validly imposed.

Section 63I(4) provides that if the Commissioner is required to repay an amount to a person for an amount paid in relation to invalid land tax because of an order of a court or tribunal, the Commissioner is taken to have complied with the order if the Commissioner applies the amount in the way provided for under section 63I(3). Section 63I(5) provides that the section does not affect the operation of section 42 of the Administration Act. This ensures that if a person has not paid, or only partly paid, an assessment of a purported liability for invalid land tax when the liability for windfall tax arises, and therefore has an outstanding liability for windfall tax, any payments for windfall tax will be applied by the Commissioner in the order set out in section 42 of the Administration Act.

New division 4 contains provisions about reassessment of windfall tax.

New section 63J provides for reassessment of windfall tax in certain circumstances. Where windfall tax is assessed on a claim for a land tax windfall and the Commissioner would, if the invalid land tax to which the land tax windfall relates had been validly imposed on the land, have been required or permitted to reassess the land tax liability at a foreign surcharge rate under the Land Tax Act or Administration Act, section 63J requires or permits the Commissioner to make a reassessment of the windfall tax.

For example, if the Commissioner would have been required to make a reassessment of land tax because the owner of the land had successfully challenged their land valuation resulting in a reduction to the taxable value of their land for the financial year, section 63J requires the Commissioner to make a reassessment of any land tax windfall imposed in relation to the taxable land for the financial year.

Where windfall tax is reassessed under section 63J, section 63J(4) provides that section 32(1)(b)(ii) and (c), which are the foreign surcharge rates, and part 5 of the Administration Act apply for working out the amount of invalid land tax, and any UTI or penalty tax in relation to it, as if it were validly imposed land tax.

New division 5 of part 7A contains provisions about the effect of purported liability for invalid land tax on other liabilities for land tax.

New section 63K provides for land tax validly imposed at a general rate for companies and trustees of trusts under section 32(1)(b)(i) for taxable land for a financial year in circumstances where invalid land tax was purportedly imposed on the land at the foreign surcharge rate under section 32(1)(b)(ii). Section 63K(2) provides that an assessment of land tax at the general rate

is taken to be, and to have always been, made separately from an assessment of land tax at the foreign surcharge rate in section 32(1)(b)(ii), whether or not the assessments were the subject of the same assessment notice. Section 63K(3) provides that the purported imposition of invalid land tax does not affect the validity of the assessment of land tax at the general rate under section 32(1)(b)(i). Similarly, the purported imposition of invalid land tax does not affect any other rights, liabilities, acts or omissions in relation to the assessment of land tax at the general rate. This section ensures that where an assessment notice includes more than one assessment, the assessments relating to land tax at the general rates remain valid, despite the assessment notice including an assessment relating to invalid land tax.

New division 6 of part 7A contains provisions about recovery of windfall tax.

New subdivision 1 provides for charges for unpaid windfall tax.

New section 63L provides that an outstanding liability for windfall tax is a first charge on a person's interest in the taxable land on which invalid land tax was purportedly imposed for a financial year, if the person with the outstanding liability still has an interest in the land when the liability for windfall tax becomes payable. The charge has priority over all other encumbrances over the person's interest in the land, whether registered or unregistered and irrespective of when they were created.

The Commissioner may lodge a request to register the charge with the Registrar of Titles and once registered, the charge is not affected by a disposition of the person's interest in the land. However, the Registrar of Titles must not register the charge if the person is no longer the registered owner of the land. Section 63L is consistent with existing section 60 which provides that unpaid land tax is a first charge on land and also with new section 246V of the Duties Act which provides for a charge over an interest in land for unpaid windfall duty relating to a dutiable transaction.

New section 63M provides that the Commissioner can apply to the Supreme Court for an order to sell the land, if a charge has been registered over the land under new section 63L and the outstanding liability for windfall tax has not been paid within 18 months after registration. At least 6 months before making the application, the Commissioner is required to give the persons liable to pay the outstanding liability and the owner of the land notice of the Commissioner's intention, as set out in section 63M(3). New section 63M is consistent with existing section 246C of the Duties Act which allows the Commissioner to apply to the Supreme Court for an order to sell land the subject of a charge for unpaid transfer duty. The application of section 246C is being extended to also apply to a charge for unpaid windfall duty by amendments made by this Bill.

New section 63N provides that the Supreme Court must order the sale of land the subject of a charge for an outstanding liability for windfall tax if satisfied that proper notice of the application was given and there is an outstanding liability payable. New section 63N is consistent with existing section 246D of the Duties Act which provides for when a court must order the sale of land the subject of a charge for unpaid transfer duty. The application of section 246D is being extended to also apply to a charge for unpaid windfall duty by amendments made by this Bill.

New section 63O sets out how the proceeds of a sale of land under a court order are to be applied and in what order. The proceeds must first be applied to the Commissioner's expenses



on the application and then to any expenses properly incurred on the sale or attempted sale. The proceeds must then be applied to the outstanding liability for windfall tax and then to the payment of any amounts secured by a security interest or charge registered before the charge for unpaid windfall tax. Any balance proceeds must be applied as the court orders. New section 63O is consistent with existing section 246E of the Duties Act which provides for how proceeds of a sale of land under court order that is the subject of a charge for unpaid transfer duty are to be applied and in what order. The application of section 246E is being extended to also apply to a charge for unpaid windfall duty by amendments made by this Bill.

New section 63P requires the transfer of the land to be registered by the Registrar of Titles if it is sold under a court order. New section 63P is consistent with existing section 246F of the Duties Act which provides for the registration of a transfer after land the subject of a charge for unpaid transfer duty is sold under a court order. The application of section 246F is being extended to also apply to a charge for unpaid windfall duty by amendments made by this Bill.

New section 63Q provides that a former owner may recover, in a court of competent jurisdiction, the proceeds of sale of land under a court order to sell as a debt payable by the persons liable to pay the outstanding liability for windfall tax for which the order was made. The amount of the debt payable is the amount equal to the proceeds of the sale of the land under the order to sell, less an amount paid under section 63O(d). New section 63Q is consistent with existing section 246G of the Duties Act which provides for an equivalent right of recovery where a court has ordered the sale of land the subject of a charge for unpaid transfer duty. The application of section 246G is being extended to also apply to a charge for unpaid windfall duty by amendments made by this Bill.

New subdivision 2 provides other recovery provisions in relation to windfall tax.

New section 63R provides that the Commissioner may recover windfall tax from a mortgagee in certain circumstances. Section 63R(1) provides that, if a person has an outstanding liability for windfall tax in relation to taxable land on which invalid land tax was purportedly imposed for a financial year and they still have an interest in the land when the liability becomes payable, the Commissioner may require a mortgagee for their interest in the land to pay the outstanding liability for the person. Section 63R(3) provides that where a mortgagee pays an outstanding liability under section 63R, they are entitled to recover the amount from the person as a debt and the amount is taken to be secured by the mortgage in addition to any other amount it secures. New section 63R is consistent with existing section 62 which provides for the recovery of unpaid land tax from a mortgagee.

New section 63S provides that the Commissioner may take security for the payment of unpaid windfall tax in the form of a bank guarantee, cash deposit or both. New section 63S is consistent with existing section 61 of the Land Tax Act which provides that the Commissioner may take security for unpaid land tax.

New division 7 of part 7A contains miscellaneous provisions for windfall tax.

New section 63T provides special rules relating to how the limitation period applies for particular reassessments. Under the Administration Act, a reassessment decreasing a taxpayer's liability for tax must generally be made within the limitation period, being 5 years after the assessment notice for the original assessment was given. However, if invalid land tax is purportedly imposed on taxable land for a financial year and a person makes a claim for a tax

windfall in relation to the land for the financial year, section 63T(2) provides that a reassessment to decrease a person's liability for the invalid land tax for the financial year to nil may be made at any time, despite the limitation period.

New section 63U specifies how provisions relating to interest in section 54 of the Administration Act apply to an amount of unpaid windfall tax for a tax windfall. UTI will not accrue for any person liable for windfall tax who paid their purported liability for invalid land tax in full. Where a purported liability for invalid land tax was not paid in full, references to an amount of *primary tax* in section 54 of the Administration Act are taken to be references to the amount of the land tax windfall that is attributable to invalid land tax.

Further, the start date for accrual of UTI on an unpaid amount of windfall tax is to be determined in accordance with section 63U(c), rather than section 54(5) of the Administration Act. If the person had paid an amount to the Commissioner in relation to the purported liability for invalid land tax and, when the last payment was made, late payment interest was paid in full, UTI starts accruing the day after the last payment was made. In all other cases, UTI will accrue on the day after the assessment notice was given for the assessment of the purported liability for invalid land tax. If the person had been given multiple assessment notices because their liability for land tax at the foreign surcharge rate had been reassessed, UTI will accrue on the day after the most recent assessment notice was given.

New section 63V provides that a reference to a refund of tax or late payment interest in section 61(1) of the Administration Act does not include a reference to a refund of an amount paid to the Commissioner because of the purported imposition of invalid land tax on taxable land for a financial year. This section ensures that the Commissioner cannot be ordered by a court to pay interest under section 61(1) of the Administration Act in relation to court decisions that require the Commissioner to repay an amount in relation to a purported liability for invalid land tax.

*Clause 15* amends section 64, which details the purpose and operation of part 8 of the Land Tax Act providing for avoidance schemes. Section 64 is amended to refer to windfall tax as well as land tax. The effect of this amendment, and amendments to other provisions of part 8, is to ensure that part 8 applies to schemes to reduce liability for windfall tax in the same way it currently applies to schemes to reduce liability for land tax.

*Clause 16* amends section 66 which provides for the application of part 8 of the Land Tax Act. Section 66 is amended to ensure that part 8 applies to schemes to reduce liability for windfall tax as well as land tax.

*Clause 17* amends section 67 which provides for when a land tax benefit is obtained and is relevant to whether an avoidance scheme exists. Section 67, including the heading of the section, is amended to replace the concept of a *land tax benefit* with the concept of a *tax benefit*. This new concept is broader in scope and covers amounts of both land tax and windfall tax payable that are less or expected to be less than they would have been had the scheme not been entered into.

*Clause 18* amends section 68 which details the matters to be considered in deciding a person's purpose in entering into or carrying out a scheme. Section 68 is amended to replace references of *land tax benefit* with the new expanded concept of *tax benefit*, ensuring section 68 applies for windfall tax as well as land tax.

*Clause 19* amends section 69 which provides for circumstances where the commissioner is satisfied that a person has obtained, or but for part 8 would obtain, a land tax benefit from a scheme. Section 69, including the heading of the section, is amended to replace references of *land tax benefit* with the new expanded concept of *tax benefit*, and to include references to windfall tax in the section. This is to ensure section 69 applies for windfall tax as well as land tax.

*Clause 20* amends the dictionary in the schedule to insert new definitions for *claim*, *decision day*, *foreign surcharge rate*, *invalid land tax*, *land tax windfall*, *outstanding liability*, *payment day* and *windfall tax*, which are all relevant to windfall tax.

## **Part 6 Amendment of Parliament of Queensland Act 2001**

*Clause 21* provides that part 6 amends the *Parliament of Queensland Act 2001*.

*Clause 22* inserts new section 91D to provide that if a portfolio committee is examining a Bill for an annual appropriation Act in a public hearing under section 26C of the *Constitution of Queensland 2001*, then the Speaker or the Deputy Speaker of the Legislative Assembly is the chairperson of the committee.

New section 91D(2) also provides that if the Speaker is present as a witness before a public hearing being held under section 26C of the *Constitution of Queensland 2001*, then the Deputy Speaker is the chairperson of the committee.

## **Part 7 Amendment of the Payroll Tax Act 1971**

*Clause 23* provides that part 7 amends the *Payroll Tax Act 1971*.

*Clause 24* amends the definition of *rebate* in section 27A(3), which provides the formula for working out the rebate for wages paid or payable to apprentices and trainees during a periodic return in an eligible year. The amendment extends availability of the 50 per cent rebate to the 2025-26 financial year.

*Clause 25* amends the definition of *rebate* in section 35A(4). For an annual payroll tax amount, section 35A(4) provides the formula for working out the rebate for wages paid or payable to apprentices and trainees during an eligible year. The amendment extends availability of the 50 per cent rebate to the 2025-26 financial year.

*Clause 26* amends the definition of *rebate* in section 43A(3), which provides the formula for working out the rebate for wages paid or payable to apprentices and trainees during a final return period in an eligible year. The amendment extends availability of the 50 per cent rebate to the 2025-26 financial year.

*Clause 27* amends the definition of *eligible year* in the dictionary in the schedule to include the financial year ending 30 June 2026. This amendment, along with the other amendments to sections 27A(3), 35A(4) and 43A(3) explained above, extend availability of the 50 per cent rebate for wages paid or payable to apprentices and trainees to the 2025-26 financial year.

## Part 8 Amendment of the State Penalties Enforcement Act 1999

*Clause 28* provides that part 8 amends the *State Penalties Enforcement Act 1999*.

*Clause 29* makes a number of amendments to section 35.

Section 35(2)(a) is amended to provide that, on registration of a default certificate, the amount unpaid is increased by the amount of the registration fee. As noted in new section 35(2A) (which is ultimately renumbered as section 35(3)), this is the case whether or not section 33(3) applies in relation to the default certificate. Practically, this means that amended section 35(2)(a) will apply irrespective of whether the default certificate was given to SPER by a retaining authority or a non-retaining authority.

The amendment of section 35(2)(a) does not change the existing position that the amount unpaid is not increased by the amount of any late lodgement fee paid by the administering authority under section 33(6)(b).

New section 35(2B) (ultimately renumbered as section 35(4)) provides that amended section 35(2)(a) does not apply in relation to the registration of an amended default certificate given to SPER by an administering authority under section 33(7). The amount unpaid is only increased by the amount of the registration fee upon initial registration of the default certificate, not an amendment of it.

The clause also makes renumbering amendments to section 35.

*Clause 30* inserts new part 10, division 10 to provide a transitional and validating provision for the *Revenue and Other Legislation Amendment Act 2025*.

New section 198(1) provides that new section 198 applies to a default certificate registered under section 33 on or after 10 June 2022 (the date on which amendments to section 35 made by the *State Penalties Enforcement (Modernisation) Amendment Act 2022* commenced).

New section 198(2) provides that amended section 35 applies (and is taken to have applied) from 10 June 2022 in relation to such a default certificate. This is consistent with the position that the *State Penalties Enforcement (Modernisation) Amendment Act 2022* was not intended to change the existing and longstanding interpretation and practice that the amount owing by an alleged offender would be increased by a registration fee upon registration of a default certificate (other than an amended default certificate) in all cases (i.e. irrespective of whether the default certificate was given to SPER by a retaining authority or a non-retaining authority).

New section 198(3) provides that anything done, or omitted to be done, in relation to such a default certificate, or an enforcement order issued in relation to it, is taken to be, and to have always been, as valid and lawful as it would be or would have been if amended section 35 had been in force from 10 June 2022. For example, if a non-retaining authority gave SPER a default certificate on 9 June 2022 that was registered by SPER on 13 June 2022, an enforcement order issued by SPER that reflected that the amount owing by the alleged offender included the registration fee would be valid and lawful (provided that the procedural requirements in relation to the issuing of the enforcement order had been followed). Similarly, if the alleged offender did not respond to that order within 28 days after the date of the order, subsequent enforcement action taken by SPER (e.g. issuing a fine collection notice to the alleged offender's employer

for the redirection of the alleged offender's earnings) in relation to the amount owing would also be valid and lawful, again providing that relevant procedural requirements had been followed.

As SPER's practices in relation to registration of default certificates and amended default certificates since 10 June 2022 are consistent with amended section 35, the retrospective operation of amended section 35 as a result of new section 198(2) will not practically result in any change to the amount that an alleged offender has been required to pay to SPER upon registration, or the amount that has been the subject of any subsequent enforcement actions.